



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kenson Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MNSD, FF
 Tenant: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

At the outset of the hearing I clarified with the tenant that while his Application for Dispute Resolution indicated that he was seeking a claim of \$25,000.00 the monetary order worksheet he submitted totaled \$117,000.00. I cautioned the tenant that if he pursued his claim through this Application that he could not pursue any of the amounts over and above \$25,000.00 either through this decision or by filing a claim with any other tribunal or court. The tenant indicated he understood these limitations.

I also clarified in the landlord's claim that while they had originally claimed \$700.00 their monetary order worksheet totaled on \$515.25 plus the \$50.00 filing fee. The landlord confirmed they only sought the lesser amount.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled retain a portion of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order compensation for the landlord failing to make repairs and stress and medical conditions; for return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 32, 67, and 72 of the *Act*.

Background and Evidence

Both parties provided copies of a tenancy agreement signed by the parties on January 24, 2014 for a month to month tenancy beginning on February 1, 2014 for a monthly rent of \$2,655.00 due on the 1st of each month with a security deposit of \$1,300.00 paid. The tenancy ended on October 31, 2015.

The tenant also submitted an additional tenancy agreement signed by the parties of January 24, 2013 for a 1 year fixed term tenancy beginning on February 1, 2013 for the monthly rent of \$2,600.00 due on the 1st of each month.

Both tenancy agreements submitted contained an addendum that required the tenant to have the carpets professionally cleaned at the end of the tenancy. The tenant submits that they shampooed the carpets by themselves. The tenant has provided no evidence to confirm the carpets were shampooed by themselves or anyone else. The landlord claims 215.25 for carpet cleaning and has provided a receipt.

The parties also agreed the tenants had agreed to hire the landlord's cleaners to complete the cleaning of the rental unit at the end of the tenancy. The landlord has submitted an invoice in the amount of \$300.00 for this service. There was no contract for cleaning services or email documents by either party submitted to confirm this arrangement.

The Condition Inspection Report submitted into evidence does not indicate a need for cleaning of the rental unit.

The tenant seeks compensation for a number of items. In his monetary order worksheet the tenant seeks \$85,000.00 for medical reasons such as stressed caused by the landlord's rude behaviour at the move out inspection; post-traumatic stress disorder; sleeplessness; depression; anxiety; and change of personality. The tenant also noted \$10,000.00 for dirty carpet and sickness caused by that. During the hearing the tenant reduced his claim for all medical issues to \$10,000.00 to \$15,000.00.

The tenant has provided absolutely no medical documentation at all that might confirm that the tenant has suffered from any of the above noted medical conditions.

The tenant submitted that at the start of the tenancy he argued with the landlord who had marked the condition of the carpet as fair when it was poor. He stated that the carpets were very dirty. The Condition Inspection Report indicates that the carpet condition was fair and was signed as agreed to by the tenant.

The tenant's monetary order worksheet also indicates the tenant seeks compensation in the amount of \$16,000.00 for a broken refrigerator for the entire duration of the tenancy; \$3,000.00 for an ant attack; and \$3,000.00 for a broken closet. In the hearing the tenant reduced the claim for the broken refrigerator to between \$2,000.00 and \$3,000.00 and the broken closet to \$2,000.00.

The tenant provided no explanation as to how he determined these amounts for the compensation he sought. The tenant also stated in his written submission that: "The main reason we did not file this letter before and during our stay was because we were scared that they are going to raise the rental price as they kept doing it anyways since we moved in to that house but our concern was a great raise in the rental price and that is why we did not file this letter while we were staying there" [reproduced as written].

The landlord stated that they had been informed about ants and one occasion and they dealt with the problem immediately. The landlord also submitted that they found only two months before the end of the tenancy that the closet was broken.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In regard to the landlord's claim for carpet cleaning I find that since there was a clause in the tenancy agreement that required the tenant to have the carpets professionally cleaned they tenant was required to do so. Despite the tenant's assertion that they had cleaned the carpets themselves, I find the tenant has provided no evidence to confirm that they had done so. I also find that even if the tenant could confirm they cleaned the carpets themselves this does not meet the requirements that the tenant agreed to in the tenancy agreement.

As a result, I find the landlord has established that the tenant has breached a term of the tenancy agreement. I also accept that the landlord has had to have the carpets professionally cleaned at a cost of \$215.25.

As to the landlord's claim for interior or general cleaning in the amount of \$300.00 I find, based on the landlord's testimony and on a balance of probabilities, that the parties had entered into an agreement to hire the landlord's cleaners to complete cleaning of the rental unit prior to the end of the tenancy.

As such, I find the parties entered into an agreement that is outside of the tenancy agreement; is a contract for services and is therefore outside of the jurisdiction of the *Act*. As a result, I decline to accept jurisdiction on the part of the landlord's claim for \$300.00. I note the landlord may pursue this through a court or tribunal of competent jurisdiction.

Section 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

Despite the tenant's submission that he had email evidence of the problems with the rental unit he only submitted a report of ants on one occasion and one with an attachment of two pictures "of our windows for your reference as per your request".

I note that the Condition Inspection Report for the start of the tenancy does indicate that the water function and icemaker were not working at the start of the tenancy. I also noted that the Report goes on to say in the section entitled "Repairs to be completed at start of tenancy" the following: "Carpet condition is fair. Touch up paint mark & scuff mark on walls". There is no indication that the landlord would be fixing the refrigerator.

As a result, I find the tenant has failed to provide any evidence that they informed the landlord of any ongoing issues or the need to repair the refrigerator or the closet. I also find the tenant has failed to provide any evidence that they informed the landlord of an ongoing ant issue or that the landlord failed to take any action to correct it.

Furthermore, despite the tenant's testimony that he was afraid to submit a "letter" or Application to the Residential Tenancy Branch because he thought the landlord would increase rent by a significant amount he has provided no evidence as to why he would believe such a thing. I find that by failing to seek the assistance of the Residential Tenancy Branch the result is a failure, on the part of the tenant, to make any attempt to mitigate any losses claimed.

In regard to the tenant's claim for compensation for medical reasons in the amount of \$10,000.00 to \$15,000.00 I find the tenant claiming to have endured this amount of suffering for an interaction that was 1 to 2 hours in duration after which the tenant would have no need to interact with anyone representing this landlord in the future is absurd. The tenant has also provided no explanation as to how he determined the value of the loss to be in the amounts claimed.

Furthermore, the tenant has provided no medical documentation that he has suffered any of the noted medical conditions such as Post Traumatic Stress Disorder; sleeplessness; depression; anxiety; or a change in personality or even any illness from the alleged "dirty carpet" at the start of the tenancy.

Section 62(4)(c) states the director may dismiss all or part of an application for dispute resolution if the application or part is frivolous or an abuse of the dispute resolution process. Based on the above, I find the tenant's claim for compensation is frivolous.

For these reasons, I dismiss the tenant's Application for Dispute Resolution in its entirety without leave to reapply.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$240.25** comprised of \$215.25 carpet cleaning and \$25.00 of the \$50.00 fee paid by the landlord for this application as they were only partially successful in their claim.

I order the landlord may deduct this amount from the security deposit of \$1,300.00 held in satisfaction of this claim. I grant a monetary order to the tenant in the amount of **\$1,059.75** for the return of the balance of the security deposit. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 8, 2016

Residential Tenancy Branch