



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

On June 5, 2019, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards those debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was adjourned multiple times and was set down for a final hearing on February 24, 2020 as there was not enough time to complete the hearing initially.

The Landlord attended the final adjourned hearing with E.C. and A.W. attending as witnesses for the Landlord. The Tenant also attended the final adjourned hearing. Co-tenant W.M. attended the December 5, 2019 adjourned hearing to provide his testimony. All parties provided a solemn affirmation.

With respect to the Landlord’s request to apply the security deposit towards the debts the Landlord is claiming for, as the security deposit was already dealt with in a previous Decision, this portion of the Landlord’s Application is dismissed in its entirety (the relevant file number is listed on the first page of this Decision).

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?

- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2017; however, there was contradictory testimony with respect to the date the Tenant gave up vacant possession of the rental unit. Rent was established at \$2,400.00 per month and was due on the first day of each month. A security deposit of \$1,200.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence. The Tenant and co-tenant W.M. were listed as two of the co-tenants on this agreement.

All parties agreed that a move-in inspection report was conducted on September 1, 2017, where both parties signed and agreed to the condition of the rental unit at the start of the tenancy.

The Landlord advised that A.W. took over as her property manager and the move-out inspection was completed over two separate days. On August 31, 2018, A.W. brought the move-out inspection report with him but W.M. did not bring his own copy, so he asked W.M. to bring a copy of it the next day to complete the inspection. The Landlord referenced an email with W.M. dated September 1, 2018, that was submitted as documentary evidence, to support her position. When A.W. attended the next day with W.M., they conducted a move-out inspection together; however, W.M. did not sign the report.

The Tenant advised that he returned the keys on August 31, 2018 and that he cannot speak to what his roommates did after that. He stated that W.M. documented on page 4 of the move-out inspection report his opinion of the state of the rental unit at the end of the tenancy. He stated that the condition of the rental unit was not in good shape when they moved in and it was left in better condition when they moved out, but as he was not there during the move-out inspection, he cannot speak to the actual condition. He then stated that W.M. was at the rental unit on August 31, 2018 with A.W., that W.M. returned the keys then, and that he “guesses that W.M. was recalled” because the condition of the rental unit was unsatisfactory. He “guesses” that W.M. went back on September 1, 2018, that he met with A.W., and that he “guesses” that W.M. did not sign the move-out inspection report.

W.M. advised that he attended a move-out inspection report with A.W. and that he was told by A.W. that the condition of the rental unit was “alright with him” and that W.M. was “good to go”. However, he received an email from the Landlord the next day stating that she was not happy with the condition of the rental unit, so he went back to clean “over the next couple of days.” He acknowledged that he attended a second move-out inspection that lasted almost four hours with A.W., and he believes that this was on September 2, 2018. He estimated that he spent an additional eight hours cleaning and he acknowledged that he did not sign the report as he did not believe the condition of the carpet was their fault.

A.W. advised that he did not attend the move-in inspection; however, the rental unit was not left in a re-rentable condition at the end of the tenancy, so he had to “do a lot of work” as it was a “big job”.

The Landlord advised that she was seeking compensation in the amount of **\$852.41** for the cost of replacing the carpet on the stairs because of the condition it was left by the Tenant. She stated that there were many stains left despite the Tenant claiming it had been cleaned. She claimed that a carpet company advised her that the stains were so bad that even if the carpet was cleaned by the Tenant, the stains would still return. She referenced several pictures and the invoice for the cost to replace this carpet, submitted as documentary evidence, to support this claim. As well, she advised that the new tenants confirmed the state of the carpet. She stated that the carpet was six years old.

A.W. stated that the carpet was not professionally cleaned, and he confirmed that the stair carpet was replaced.

E.C. confirmed that the carpet was replaced as it was not clean and was “unsightly”.

The Tenant advised that he hired cleaners prior to moving out and the rental unit was left in are-rentable condition. He refuted the pictures of the stair carpet and speculated that they were taken well after the move-out inspection. As well, the angle that the pictures were taken makes it hard to determine the actual condition. He suggested that an attempt by the Landlord to re-clean the carpet should have been done instead of replacing the entire carpet. He re-stated that he was not personally at the rental unit at the end of the tenancy.

The Landlord advised that she was seeking compensation in the amount of **\$401.03** for the cost of materials that A.W. had to spend to fix items in the rental unit. She stated that W.M. acknowledged the damage at the move-out inspection. She referred to an

email dated October 2, 2018 from A.W. outlining these costs and she stated that he noted the following:

- Four hours of cleaning at \$25.00 per hour, totalling **\$100.00**. She referenced the invoice, submitted as documentary evidence, to support this claim.
- **\$19.18** for the cost to replace a corroded shower head hose. She referenced the invoice and picture, submitted as documentary evidence, to support this claim.
- **\$54.44** for the cost to replace a broken part in the toilet. As well, wood glue was needed to replace a broken partition, and a broken basement light was replaced. She referenced the invoices and pictures, submitted as documentary evidence, to support this claim.
- **\$51.95** for the cost to replace broken blinds. She referenced the invoice, and picture, submitted as documentary evidence, to support this claim.
- **\$175.46** for the materials to fix a spot on the concrete, carpet stain removal, a porch stain, and a dirty exhaust vent. She referenced the invoice and pictures, submitted as documentary evidence, to support this claim.

The Tenant advised that the damaged shower hose was not noted on the move-out inspection report and that he recalls that it was “like that on move-in”. He questioned the four hours spent on cleaning as he had hired his own cleaner and he referenced the invoice, submitted as documentary evidence, to support this claim. He claimed to have steam cleaned the carpet in April and right before giving up vacant possession of the rental unit. He stated that any repairs to the walls were done to fix what would be considered reasonable wear and tear. He noticed that the toilet was running within the last three weeks of moving out of the rental unit, but he was not sure what the problem was. He stated that he could not recall about the broken partition. Regarding the broken basement light, he did not believe it was broken and he could not remember the condition of this. He noted that he had no recollection of any broken blinds and if they were noted as broken, he acknowledged that they probably were. Finally, he reiterated that he spent \$600.00 on cleaners already. As well, he stated that any painting was not required as he left the rental unit in the same condition it was rented in.

W.M. stated that he did not remember about the wood partition coming up.

The Landlord advised that she was seeking compensation in the amount of **\$457.50** for the cost that her property manager charged for conducting specific duties. The Landlord

referenced the invoice, submitted as documentary evidence, and stated that the charges were “self-explanatory”.

The Tenant questioned why the Landlord was claiming for the cost of her property manager’s time and the Landlord simply stated that it was because this was the cost of that person’s time.

E.C. described the invoice and explained that these were costs for tasks that she charged as a property manager. Administrative tasks were charged at lower rates.

The Tenant questioned these charges and wondered why the Landlord was paying someone to supervise W.M. to clean. It is his position that he should not be paying these costs.

The Landlord advised that she had to make sure that W.M. cleaned the rental unit properly.

The Landlord advised that she was seeking compensation in the amount of **\$217.50** for the cost that A.W. incurred to do extensive repairs because the Tenant did not leave the rental unit in re-rentable condition. She referenced the invoice, submitted as documentary evidence, to support this claim and she stated that she could not elaborate on this further. She stated that out of the \$1,033.00 that she paid to A.W. to have items fixed, she is only seeking minimal compensation from the Tenant, to be reasonable.

The Tenant questioned the Landlord about the breakdown of this invoice.

The Landlord referenced the spreadsheet submitted and then related the requested costs to accompanying pictures submitted. In addition, she stated that W.M. acknowledged that the oil spill was their fault.

The Tenant simply advised that the items the Landlord referred to were either like that upon move in, or due to reasonable wear and tear.

The Landlord advised that she was seeking compensation in the amount of **\$1,575.00** for the cost of replacing the carpet that was eight to nine years old; however, as this was addressed above, she is no longer seeking this claim. As such, this claim was dismissed without leave to reapply.

Finally, the Landlord advised that she was seeking compensation in the amount of **\$694.00** for the cost of lost rent as the next tenants were delayed in being able to move in based on the condition that the Tenant left the rental unit. She stated that the new tenants moved in eight days late and she referenced an email from them, submitted as documentary evidence, which confirms this.

The Tenant questioned what part of the *Act* allows for the Landlord to claim for this compensation.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In turning my mind to the Landlord's claims, I find it important to note that Sections 23 and 35 of the *Act* outline the Landlord's requirements to conduct a move-in and move-out inspection report together with the Tenant. Clearly the importance of having completed these reports would be paramount to a claim for damages at the end of the tenancy.

Section 67 of the *Act* allows a party to claim for compensation if damage or loss results from a party not complying with the *Act*, the *Residential Tenancy Regulations*, or the tenancy agreement. As well, the *Act* provides for the Director to determine the amount of compensation awarded.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Before assessing the Landlord's claim for damages, the issue with respect to the move-out inspection report must be considered. Section 35 of the *Act* allows for the move-out inspection to be completed on a mutually agreed upon day. As the undisputed evidence is that W.M. was a co-tenant as per the tenancy agreement, this means that all the tenants on the agreement are jointly and severally liable for the actions of the other

tenants, and the Landlord can choose to pursue one, some, or all of the tenants for any compensation believed to be owed. Therefore, as W.M. was a tenant, I am satisfied that him meeting A.W. for the second move-out inspection was a mutually agreed upon day.

While it is not clear to me why A.W. would expect the tenants to bring a copy of the move-out inspection report, I am satisfied that a tenant responsible for this tenancy attended this second move-out inspection with A.W. Despite W.M. not agreeing to the Landlord's purported condition of the rental unit, I do not find that him not signing the report indicates that some of the deficiencies outlined are not accurate. While W.M. claimed that A.W. stated that the condition of the rental unit was "good to go", it is then not clear to me why he would not have signed the report. Furthermore, if W.M. believed that the rental unit was left in a re-rentable condition, it is not clear to me why he would have returned to complete further cleaning. Moreover, the Tenant was not even present at the end of the tenancy, so I give his testimony with respect to the condition of the rental unit little weight. These factors cause me to doubt the legitimacy of the Tenant's submissions, and consequently, I prefer the Landlord's evidence on the condition of the rental unit.

Regarding the Landlord's claim of \$852.41 for the cost of replacing the stair carpet, I am satisfied by the totality of the evidence that the carpet was more likely than not soiled or stained beyond ordinary wear and tear. While the Tenant claimed to have steam cleaned the carpet at the end of the tenancy, I do not find that this would necessarily have removed significant staining that may have damaged the carpet permanently. I find it important to note that Policy Guideline # 40 outlines that the useful life of a carpet is estimated at 10 years. Furthermore, the Landlord stated that the carpet was six years old, and then contradictorily stated that it was eight to nine years old. As the Landlord has provided inconsistent statements about the age of the carpet, and as the Landlord has already received a substantial percentage of useful life of the existing carpet, I find that the Landlord has established that she should be granted a monetary award in the amount of **\$300.00** to satisfy this claim.

With respect to the Landlord's claim for compensation in the amount of \$401.03, I find that the Tenant's consistent arguments with respect to these points is that of denial or that the rental unit was like that at the start of the tenancy. Furthermore, if the rental unit was in re-rentable condition at the end of the tenancy, it is not clear to me why W.M. continued to return and clean or fix items. When weighing these factors against the Landlord's evidence, I find that I prefer the Landlord's evidence on the whole. As such, , I am satisfied that the Landlord has established that she should be granted a monetary award in the amount of **\$401.03** to satisfy this claim.

With respect to the Landlord's claim for compensation in the amount of \$457.50 for the cost she paid her property manager, while the *Act* has provisions for compensation for loss, these costs were incurred because the Landlord elected to pay someone else to manage the rental unit for her. These are tasks that the Landlord could have completed herself and if she chose to pay someone else to do them for her, that was her choice to make. Similarly, if the Landlord did these administrative tasks herself, the *Act* would not provide compensation to her as these are costs associated with being a Landlord. Furthermore, it is not clear why the Landlord would expect to recover costs for supervision. Ultimately, I dismiss this claim in its entirety.

Regarding the Landlord's claim for compensation in the amount of \$217.50 for the costs of extensive repairs because the Tenant did not leave the rental unit in a re-rentable condition, when weighing the Landlord's evidence against the Tenant's simple denials or claims of ignorance, I find that I prefer the Landlord's evidence, on a balance of probabilities. As such, I am satisfied that the Landlord has established that she should be granted a monetary award in the amount of **\$217.50** to rectify these issues.

Finally, with respect to the Landlord's claim for compensation in the amount of \$694.00 for the cost of eight days of lost rent because the next tenants were delayed in being able to move in based on the condition that the Tenant left the rental unit, I am satisfied that the Tenant left the rental unit in less than satisfactory condition and that the Landlord required time to bring the rental unit up to a re-rentable state. Furthermore, the consistent evidence is that the next tenants were not able to move into the rental unit until eight days after their tenancy was supposed to start. As the next tenants were compensated for this, and as this was due to the Tenant's negligence, I am satisfied that the Landlord has established that she should be granted a monetary award in the amount of **\$694.00** to make up for this loss.

As the Landlord was successful in her Application, I find that she is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Landlord's cost of carpet replacement	\$300.00
Landlord's cost of materials	\$401.03
Landlord's cost of repairs	\$217.50

Landlord's loss of rent	\$694.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$1,712.53

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$1,712.53** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: March 24, 2020

Residential Tenancy Branch