



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation under the Act and the tenancy agreement, for damage to and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. 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 monetary compensation from the Tenants?

Background and Evidence

This tenancy began on September 1, 2010. The parties entered into a written tenancy agreement for an initial term of one year, following which the tenancy continued on a month-to-month basis. The initial rent was \$1,100.00 per month, and the Tenants paid the Landlord a security deposit of \$550.00 on or about September 1, 2010. I note no interest has been payable on deposits since 2009.

The Landlord performed an incoming condition inspection report in accordance with the Act. The Tenants dispute that the outgoing condition inspection report was performed in accordance with the Act.

The Landlord testified that the tenancy began well and everything appeared to be fine with the yard and the rental unit for the first two years.

The Landlord testified that about two years into the tenancy the female Tenant, who appeared at this hearing on behalf of both Tenants, telephoned him to inform him that the Tenant's children had painted the carpet in the master bedroom of the rental unit. The Landlord testified that at this time the Tenant told him he could keep the security deposit to pay for the carpet damage.

The Landlord testified that on or about June 29, 2013, he received a phone call from the Tenants indicating they were looking for a different place to rent. The Landlord testified that the Tenant calling him at this time that the Landlord's rental unit was, "in rough shape", or words to that effect.

The Landlord testified he did not get a Notice to End Tenancy in writing from the Tenants, that they just gave verbal notice they were leaving at the end of July 2013.

On July 19, 2013, the spouse of the Landlord, acting as Agent for the Landlord, went to the rental unit to inspect it. The Agent for the Landlord did not bring the original condition inspection report performed at the beginning of the tenancy, for comparison purposes. The Landlord testified this was to be a preliminary inspection, and they wanted to do the official outgoing inspection later. The Tenants submit they informed the Agent for the Landlord that they would wait for her to go back and retrieve the original condition inspection report, but the Agent refused to do so. The Tenants submit that the Agent wanted them to sign a list of damages to the rental unit at that time, but they refused to do so.

The Tenants vacated the rental unit on or about August 4, 2013.

The Landlord testified he notified the Tenants he wanted to perform the outgoing condition inspection report on August 6 or 7; however, the Tenants refused to do so and informed him they considered the inspection of July 19 to have been the outgoing condition inspection report.

The Landlord performed what he refers to as the final condition inspection report on August 7, 2013. He testified he tried to contact the Tenants but they did not want to participate in this inspection. He testified he could not give the Tenants a notice of the second opportunity to conduct the inspection on the approved form, as they provided him with no forwarding address.

The Claims of the Landlord

The Landlord testified that when he went through the rental unit he found holes punched through four doors, the carpet had been damaged in the master bedroom with paint, the sink in the master bedroom had been stained, the spout for the bathtub had been stained, there were significant crayon marks on the walls of the bedrooms and in other areas, and the refrigerator door had been scratched. The Landlord further testified that

when he went into the storage shed on the property he found drug paraphernalia left behind and there was a strong odor of marijuana in this shed.

The Landlord claims \$728.00 for the carpet replacement in the master bedroom. The Landlord stated the carpet was five years old at the time of this hearing. An invoice has been provided for this claim.

The Landlord claims \$457.65 for the replacement of the doors. An invoice has been submitted in support of this claim. The Landlord testified that a portion of the amount claimed for these items was for preparing the doors to have hinges installed.

The Landlord claims \$100.00 for repairing holes in the walls of the three bedrooms. The Landlord did this work himself and testified he worked for about 25 hours fixing the holes and repainting.

The Landlord claims \$305.00 for paint and stain blocker. He testified that he had to use a stain blocker product and then apply two coats of paint to cover the marker and crayon writing on the walls.

The Landlord claims \$555.77 to replace the fridge in the rental unit. The Landlord testified that there were gouges in the surface of the door and the cost of having these repaired exceeded the cost of simply replacing the fridge. The Landlord testified the fridge was five years old at the time of the hearing.

The Landlord claims \$72.50 for repairing the window trim in two of the bedrooms. In evidence he produced a photograph showing a nail holding a curtain over the window, as well as receipts.

The Landlord claims \$49.90 for the replacement of a screen door.

The Landlord claims \$175.00 to replace closet doors at the rental unit. The Landlord has submitted a photograph showing the door has a crack in it and it had been drawn on with a marker.

The Landlord claims \$138.19 to replace a light fixture in the kitchen ceiling fan, which includes installation.

The Landlord claims \$250.00 for "odds and ends", and testified that this included a broken kitchen tile, a damaged electrical outlet, the stained faucet, and damage to window blinds.

Tenants' Reply to the Landlord's Claims

The Tenants agree with the claims for the master bedroom carpet, the bedroom and pantry doors, the closet door and with painting the walls damaged by crayons and markers.

The Tenants argued that there was no mention of the third bedroom in the rental unit on the incoming condition inspection report and therefore, they should not be liable for any claims regarding a third bedroom.

The Tenants do not agree with the cost of replacing the fridge. They argue the scratches on the freezer and front doors of the fridge could have easily been fixed or repaired.

The Tenants argue there was no damage to the walls of the master bedroom.

The Tenants agree there was damage to the window trim in the second bedroom, but submit they should not be liable for the damage to the window trim in the third bedroom, as the third bedroom was not on the condition inspection report.

The Tenants agree with the claim for the light fixture; however, they submit that the fixture could be replaced with a cheaper version for \$11.55. In evidence they provide an estimate for a replacement fixture.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants breached section 37 of the Act, by failing to return the rental unit to the Landlord in a reasonably clean state and undamaged, except for reasonable wear and tear. Having reviewed all the evidence, testimony, photographs and the incoming report, I find the damages left by the Tenants were well beyond reasonable wear and tear. For example, painting the carpet in the master bedroom is not the usual use of a carpet. Likewise, holes punched into doors, significant pen and crayon marks on walls, and fridge doors repeatedly scratched in regular patterns are not reasonable wear and tear.

As for the outgoing condition inspection report, I find the Landlord did not perform this in accordance with the Act, as he failed to give the Tenants a written notice of the second opportunity to inspect the rental unit in the approved form. Nevertheless, not much turns on this point, as I find that the Tenants had already extinguished any right to claim for the return of the deposit when they gave the Landlord permission to keep the deposit three years ago in compensation for the damage to the master bedroom carpet. Here I accept the undisputed testimony of the Landlord that the Tenant (who was present at this hearing), gave the Landlord permission to keep the security deposit for the carpet damage sometime ago.

I also do not accept the arguments of the Tenants that the Landlord is precluded from making a claim regarding the third bedroom in the house, because it was not indicated on the condition inspection reports. I find this is similar to circumstances that occur in other matters where no condition inspection reports were performed at all, and the claimant must prove the before and after condition of the rental unit in the absence of these reports.

It is clear from the evidence and testimony of both parties that the rental unit contained three bedrooms, and the Tenants admitted using this third bedroom. I find that the photographic evidence indicates the third bedroom was damaged in the same manner as the second bedroom in the rental unit. I find that the Tenants are responsible for these damages, as they are for the other damages claimed by the Landlord. I find it more likely than not that if the third bedroom been presented to the Tenants at the outset of the tenancy in the same condition it was in at the end of the tenancy, the Tenants would likely not have accepted the rental unit.

Therefore, I allow all of the above claims of the Landlord, subject to depreciation as set out below, and except for the claims for \$250.00 for odds and ends. I found the Landlord had insufficient evidence to prove the losses on the odds and ends items.

As for mitigation, although the Tenants breached the Act by not proving the Landlord with the required Notice to End Tenancy pursuant to section 45 and 52 of the Act, the Tenants did know for several weeks they were vacating the rental unit. This leads me to find the Tenants failed to mitigate their losses as required under section 7 of the Act,

as they had ample time to make the repairs to such things as the fridge and replace the carpets at the property themselves but failed to do so.

As for the awards to the Landlord for the carpet and the fridge, policy guideline 40 sets out that,

“If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement.”

[Reproduced as written.]

In this instance the useful life expectancy of the carpets are 10 years and the Landlord testified these were five years old. Therefore, I allow the Landlord 50% of the amount claimed for carpet in the amount of **\$364.00**. The useful life expectancy for the refrigerator is 15 years old and the Landlord testified it was five years old. Therefore, I allow the Landlord 66% of the amount claimed for the fridge in the amount of **\$366.94**

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director’s authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

I find that the Landlord have established a total monetary claim of **\$2,196.18** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the Landlord may retain the deposit of **\$550.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,646.18**. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord has proven much of his claim: that the Tenants breached the Act and tenancy agreement by failing to return the rental unit to the Landlord in a reasonably clean and undamaged state. A few of the Landlord’s claims are dismissed due to insufficient evidence.

The Landlord may keep the security deposit in partial satisfaction of the claims and the Landlord is granted a monetary order for the balance due of **\$1,646.18**

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 04, 2013

Residential Tenancy Branch

