



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67 for damages to the property;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

SERVICE

Both parties attended and agreed the Application for Dispute Resolution was served by registered mail. I find that the tenant is served with the Application according to section 89 of the Act.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The landlord stated that they bought the property in 2008, it was not brand new, and the tenancy commenced December 1, 2011, that monthly rent was \$1200 and a security deposit of \$600 was paid November 20, 2011 and it is still in trust. The tenant vacated on August 1, 2014.

The landlord said they went to inspect in August and they were shocked at the condition. The tenant had an unauthorized dog which may have done some of the damage to the floors. The landlord supplied a Condition Inspection Report at move-in and move-out, a copy of the lease, invoices and photographs on a USB as evidence of the damage. The landlord claims as follows:

- i. \$3603.56 for replacing 4 year old laminate (\$2016.05) and 7 year old carpet (\$1614.51). Invoices are included. The landlord said that the laminate had lifted due to moisture and she believed it was from urine from an unauthorized

dog owned by the tenant. The tenant noted the move in report showed some lifting of the floors and that the landlord had a litter of puppies in the unit before they moved in. They also noted that there had been a water damage incident during their tenancy when a sink pipe and a dishwasher leaked. They disclaimed any responsibility for any damage to the laminate flooring. The landlord said her puppies had been trained and were in a kennel in the home so did no damage. She agreed there had been a water damage incident that they had repaired during the tenancy. The tenant agreed their children may have stained the carpets in the bedrooms but said there were stains already there due to wear and tear.

- ii. \$140 for a patio set which was 3 years old. The tenant agreed they damaged a chair by sitting on it but said it was plastic type wicker weave and not strong.
- iii. 12.47 battery replacement; the tenant agrees.
- iv. \$120: to fix a barbeque which was 4 years old at move-out? The tenant said the burners only had gone which is normal wear and tear and the landlord said the accumulated rust in the photograph illustrated it had rusted out because of lack of care –the tenant's negligence.
- v. \$195: to clean unit plus \$79.51 for supplies. It was noted that carpets were not steam cleaned at move-in but the report does not note the unit is dirty at move in.
- vi. \$350: to replace front door. The tenant noted the landlord had had two large refrigerators delivered which possibly damaged the door; they denied any damage caused by them. The landlord agreed they had had refrigerators delivered.

The landlord had made a number of other claims which were denied by the tenant; invoices for them were not provided. However, the landlord said she was limiting her claim to \$2500.00 as stated on her Application mainly for floor replacement.

The tenant provided no documents in dispute but had a file which was not heard until later due to an administrative error. The tenant's evidence is considered in their own file under #825192 but the monetary award is calculated together for both files for convenience. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Monetary Order

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage

In the matter of the laminate floors, I find the weight of the evidence is that most of the alleged damage is lifting of the floor due to moisture. I find that there was a water escape from the plumbing during the tenancy which was not the fault of the tenant and the damage may have occurred during the water incident. I do not find it credible that it is proven to be the tenant's fault because the landlord smelt a urine smell in parts of the floor; the evidence shows that the landlord had a litter of puppies which lived in the unit before this tenancy commenced and I find it equally likely that some urine smell may have originated from puppies, no matter how well trained. Therefore, I find insufficient evidence that this tenant caused the damage to the laminate floors and I find them not liable for the costs incurred to replace it. I dismiss this portion of the landlord's claim.

Regarding the seven year old carpet, I find the male tenant honestly agreed that some stains may have been the result of his children playing. However, he notes there were some stains on the rug when they moved in and others were the result of reasonable wear and tear. I note the Residential Tenancy Guideline provides calculates a usable life of items in rented premises which is designed to account for reasonable wear and tear. Carpets are assigned a useful life of 10 years and these carpets were 7 years old so had 30% of useful life remaining. The landlord paid \$1614.51 to have them replaced and I find them entitled to recover 30% of the cost or \$484.35. I find most furniture is assigned a useful life of 10 years and the tenant agreed they damaged the 3 year old patio set; therefore I find the landlord entitled to recover 70% of its cost or \$98.

I find the landlord's evidence credible that there was a lot of cleaning required. Their evidence is well supported by the photographs on the USB provided and the move-out report. The tenants' photographic evidence is based on the landlords' photographs in an advertisement which I find may not represent the appearance of the suite at move-out; in fact a few letters from prospective tenants indicate this. I find them entitled to recover the \$195 for cleaning labour and \$79.51 for supplies. I find their evidence also supported by the female tenant's evidence in their hearing where she said they did not clean the oven and could have cleaned baseboards etc. if the landlord had pointed them out to her. She said they were in a rush and did not have enough time. The male tenant agreed batteries had to be replaced; the battery replacement cost was \$12.47 so I find the landlord entitled to recover that cost.

I find insufficient evidence to support the landlord's claim that the damage to the barbeque was caused by the tenant's negligence. I accept the tenant's evidence that they did not damage it but it was exposed to the elements and that the burners do go in a couple of years. The photographs show rust inside it but there is no provision in the lease or evidence of any cover provided by the landlord to prevent rust; it may simply be the result of a wet climate on such items. Likewise, I find insufficient evidence to support the landlord's claim for a replacement front door. I find the tenant's evidence credible that large appliances were twice moved through the door and any damage that occurred was not done by them but likely by the movement of these large items through the comparatively smaller door.

Conclusion:

I find the landlord is entitled to a monetary award as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application. As calculated below, after applying amounts due to the tenant from their hearing, the tenant has a credit balance of \$330.66. A monetary order for this amount is awarded to the tenant and enclosed.

Calculation of Monetary Award:

Landlord: carpet replacement allowance	484.36
Patio set allowance	98.00
Cleaning (195+79.51)	274.51
Battery replacement	12.47
Filing fee to landlord	50.00
Less security deposit of tenant (no interest 2011-14)	-600.00
Less award to tenant for loss of use of dryer	-600.00
Less filing fee to tenant	-50.00
Balance is Total Monetary Award to tenant	-330.66

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: October 15, 2014

Residential Tenancy Branch

