



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 for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

The landlords attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlords testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 29, 2015, Canada post tracking numbers were provided as evidence of service. The Canada post track indicates the items were successfully delivered on October 31, 2015.

I find that the tenants have been duly served in accordance with the Act.

The landlords appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to monetary compensation for damages?
Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on June 15, 2013. Rent in the amount of \$1,000.00 was payable on the 15th of each month. The tenants paid a security deposit of \$500.00 and a pet damage deposit of \$250.00. The tenancy ended on October 15, 2014.

The landlords testified that the pet damage deposit was returned to the tenants during the tenancy as their dogs were no longer on the property. However, shortly after that their two pit bulls dogs returned.

The landlords testified that a move-in condition inspection report was completed. The landlords stated the tenants did not participate in the move-out condition inspection, although one was scheduled.

The landlords claim as follows:

a.	Cleaning and damages to unit	\$945.00
b.	Filing fee	\$ 50.00
	Total claimed	\$995.00

The landlords testified that the tenants did not have the carpets cleaned and they were left dirty by the tenants. The landlords seek to recover the cost of cleaning the carpets in the amount of \$136.50. Filed in evidence is a receipt for carpet cleaning.

The landlords testified that the tenants did not leave the rental unit clean. The landlord stated that inside the rental unit the walls, the appliances, the floors were left dirty. The landlord stated that the tenants further failed to clean the balcony as it was black with dirty and there was also crayon on the outside window sills. The landlords stated that they hired two people to do the cleaning which totaled 11 hours at the rate of \$15.00 per hour. The landlord seeks to recover cleaning costs in the amount of \$165.00. Filed in evidence are receipts for cleaning.

The landlords testified that the tenants left furniture items behind that had to be removed and taken to the garbage depot, which included an old air conditioner that they had to pay extra fee of \$19.95. The landlords seek to recover the amount of \$31.95. Filed in evidence are receipts for garbage disposal.

The landlords testified that the tenants caused damage to the laminate floor when their fish tank broke and water went underneath the laminate flooring causing damage. The landlords stated that the material to repair the floor cost the amount of \$111.55 and the installation was \$150.00. The landlords seek to recover the amount of \$261.55 .Filed in evidence is a receipt for repair.

The landlords testified that the tenants caused damage to the walls as they used big hooks, causing big holes when removed. The landlords stated that the living room was

bright yellow and there were black scuffs all over the wall. The landlords stated that they believe the wall going down to the basement was scuffed and scratched by the tenants' two bit bulls. The landlords stated that they seek to recover their cost for having the walls repaired and painted in the amount of \$330.00. Filed in evidence are receipts for wall repairs and painting.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenants are generally expected to clean the carpets if vacating after a tenancy of one year or if they had pets.

I accept the undisputed testimony of the landlords that the tenants did not clean the carpet at the end of the tenancy, as their tenancy exceeded one year and they had pets. I find the tenants' actions caused losses to the landlords. Therefore, I find the landlords are entitled to compensation for the cost of having the carpet cleaned in the amount of **\$136.50**.

I accept the undisputed testimony of the landlords that the tenants failed to leave the rental unit reasonable cleaned, as the appliances, walls, floors, balcony required cleaning and crayon on the outside window sills had to be removed. The tenants are expected to have the above items cleaned at the end of the tenancy. I find the tenants breached the Act, when they failed to leave the rental unit reasonable clean and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover the cleaning costs in the amount of **\$165.00**.

I accept the undisputed testimony of the landlords that the tenants left items on the property at the end of the tenancy. I find the tenants breached the Act, when they failed to removal all their belongings or garbage, which included an air conditioner and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover the disposal fees in the amount of **\$31.95**.

I accept the undisputed testimony of the landlords that the tenants' fish tank broke and caused damage to the laminate flooring. I find the tenants breached the Act, when they failed to leave the rental unit undamaged at the end of the tenancy and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover the cost to repair the flooring in the amount of **\$261.55**.

I accept the undisputed testimony of the landlords that the tenants caused damage to the walls, by using big hooks, by leaving a large amount of scuff and scratches on the walls. This is not normal wear and tear. I find the tenants breached the Act, when they failed to leave the rental unit undamaged at the end of the tenancy and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover the cost to repair the flooring in the amount of **\$330.00**.

I find that the landlords have established a total monetary claim of **\$975.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$500.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$475.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: June 10, 2015

Residential Tenancy Branch

