



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking the return of double the deposit. Both parties confirmed that they received each other's Notice of Hearing letter, Application for Dispute Resolution and evidence. I am satisfied that the parties have exchanged said documents in accordance with the service provisions of the Act and the Rules of Procedure. Both parties gave affirmed evidence.

Issue to be Decided

Is either entitled to a monetary order as claimed?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on September 1, 2013 and ended on September 2, 2015. The tenants were obligated to pay \$2000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1000.00 security deposit. The landlord stated that the tenant left the suite and carpets dirty which required them to clean them. The landlord stated that the tenant damaged some blinds, curtains, and toilet seat. The landlord stated that the tenant also left unpaid cable bills for the landlord to deal with. The landlord stated that they incurred the costs of vacuum bags and cleaning supplies because of the tenant. The landlord is seeking a monetary order. The landlord stated that the tenant did not provide his forwarding address until they were served the Notice of Hearing Documents.

The landlord is applying for the following:

1.	General Suite Cleaning and Supplies	\$337.70
2.	Shaw Cable	\$5.60
3.	Contractor to repair blinds, shades and toilet seat and supplies	\$671.95
4.	Carpet cleaner and labour	\$185.83
5.	Vacuum Bags	\$40.31
6.	Estimated Damage to Kitchen due to dirtiness	\$100.00
7.	Estimated Damage to Window Covering	\$100.00
8.	Filing Fee	\$50.00
	Total	\$1491.41

The tenant gave the following testimony. The tenant stated that he cleaned the unit very well when he moved out. The tenant agrees that he did not clean the carpets and is agreeable to that portion of the landlords claim as well as the cable charges. The tenant stated that the unit was damaged and old when he took possession and that the blinds, shades and toilet were already damaged and in poor condition. The tenant stated that much of the unit was aged and tired when he moved in. The tenant stated that he seeks the return of double the security deposit $\$1000.00 \times 2 = \2000.00 .

Analysis

The landlord has made a claim for damages that they allege the tenant is responsible for. When addressing that claim I have considered the following.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In addition to the above, I have considered Policy Guideline 40 addresses the “useful life” of building elements. An Arbitrator may award an amount based on the pro-rated

amount of “useful life” remaining on an item if it is damaged or needs replacing. Mattresses are not listed in the table. If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer.

I address the landlord’s claims and my findings as follows.

1. General Suite Cleaning \$220.00 and Supplies \$117.70.

The landlord and tenant conducted a condition inspection report at move in which both parties signed. The parties also conducted a move out condition inspection but were in disagreement with the condition of the unit. The tenant did not sign the report as he felt it did not reflect the condition of the unit fairly. The landlord provided photos of the unit at move out.

Policy Guideline 1 states that a tenant must leave a unit reasonably clean at move out. The landlords’ photos depict a unit that is not reasonably clean with many areas that were left dirty, grimy and greasy. Based on the testimony and photos provided by the landlord and on a balance of probabilities, I find that the tenant did not leave the unit reasonably clean. The landlord hired a cleaner at a cost of \$220.00 for 8-9 hours of cleaning. I find that the landlord is entitled to this amount.

The landlord stated that the cleaner required the landlord to buy cleaning supplies in the amount of \$117.71. The landlord submitted a receipt for this part of the claim. The landlord has failed to demonstrate how and why the cleaner would require an exorbitant amount of cleaning supplies to clean a three bedroom suite. In addition, it would only be logical for the cleaners to have their own cleaning supplies when they take on a job. Based on the vague and often contradictory testimony of the landlord in regards to the cleaning supplies, I dismiss this portion of the claim.

2. Shaw Cable. \$5.60.

The tenant accepts responsibility for this claim as made by the landlord and I therefore grant the landlord \$5.60.

3. Contractor to Repair Blinds, Shades, toilet seat and supplies - \$671.95.

The landlord stated that due to the tenants’ negligence or recklessness he damaged the above items. The tenant adamantly denies that he damaged any items in the unit. The tenant stated that the unit was old and worn and was at best, in fair shape. The landlord stated that the unit was renovated in late 2005 or early 2006. The shades and blinds

were over ten years old. Policy guideline 40 lists shades and blinds as have a useful life of ten years. In the landlords own testimony she acknowledged the items were at least ten years old and had exceeded their useful life. The landlord had no idea how old the toilet seat was. In addition, the landlord failed to provide sufficient evidence to show that the damage was due to the tenants negligent or recklessness. Based on all of the above, I dismiss this portion of the landlords' application.

4. Carpet Cleaner and Labour - \$185.83.

The tenant takes responsibility for not having shampooed the carpets. The landlord rented a carpet shampooer from Safeway and did the work herself. The landlord rented the machine for \$35.83 and is asking for \$150.00 for labour and the time to pick up the machine and return it. Based on the time and resources the landlord expended on dealing with something that the tenant was obligated to do as per Residential Tenancy Policy Guideline 1, I find that the landlord is entitled to the amount as claimed of \$185.83.

5. Vacuum Bags – \$40.31

The landlord stated that because the tenant didn't vacuum the unit at move out they had to buy vacuum bags for the vacuum. I find this claim to border on frivolous as the landlord purchased a pack of vacuum bags and is attempting to have the tenant pay for it when they have failed to show the logic or reason for having to purchase so many bags to vacuum one suite on one occasion. The landlord has not met the criteria set out in Section 67 of the Act as outlined above, and I therefore dismiss this portion of their claim.

6. Estimated damage to kitchen floor - \$100.00.

The landlord stated that due to the tenants "dirtiness", the tenant has caused at least \$100.00 damage to the tiles in the kitchen. The landlord failed to explain how they came to quantify this amount or what criteria was used to determine it, based on the insufficient and vague testimony provided, I dismiss this portion of the landlords' application.

7. Estimated damage to window covering - \$100.00.

As I have stated in claim #3 the window coverings had already exceeded their useful life. Also, as I have stated in claim #6, the landlord failed to explain the criteria used to quantify the amount. Based on the above, I dismiss this portion of the landlords' application.

The landlords' total entitlement is \$411.43.

I address the tenants' application and my findings as follows.

The tenant stated that he is seeking the return of double the security deposit. The tenant stated that the first time that he served the landlord his forwarding address in writing was when he served him the Notice of Hearing documents for this hearing. I confirmed this testimony with the tenant on three separate occasions. The tenant filed his application on September 18, 2015 and the landlord filed their cross application on September 24, 2015. Section 38 of the Act addresses this issue as follows;

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord did file an application within fifteen days of receiving the tenants forwarding address. The tenant was premature in asking for the return of double the deposit as he had not given his forwarding address in writing as is required under the Act until serving the landlord notice of this hearing; therefore the doubling provision was not triggered.

As each party has only been partially successful in their application I decline to award either the recovery of the filing fee and each party must bear that cost.

Conclusion

The landlord has established a claim for \$411.43. I order that the landlord retain that amount from the security deposit and that the remaining \$588.57 be returned to the

tenant. I grant the tenant an order under section 67 for the balance due of \$588.57. This order may be filed in the Small Claims 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 30, 2016

Residential Tenancy Branch