



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, OLC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed an Application requesting a monetary order for damage to the rental unit; to keep the security deposit, and to recover the cost of the filing fee.

The Tenant filed for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and for the Landlord to comply with the Act, and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant appeared at the hearing. The hearing process was explained and the parties 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 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.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the rental unit?
- Is the Landlord entitled to keep the security deposit?
- Is the Tenant entitled to compensation under the Act, Regulation, or tenancy agreement?
- Are the parties entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began in August 2011. Rent in the amount of \$675.00 was due on the first day of each month. The Tenant paid the Landlord a security deposit of \$325.00. The Tenant moved out of the rental unit on October 30, 2017, after receiving a 2 Month Notice to End Tenancy for Landlord Use of Property.

Tenant's Application:

The Tenant testified that the Landlord issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated September 15, 2016 ("the 2 Month Notice")

The Tenant testified that the Landlord failed to compensate him in the amount of one month's rent after issuing the 2 Month Notice.

In response, the Landlord confirmed that he issued the Tenant the 2 Month Notice dated September 15, 2016. The Landlord testified that he did not give the Tenant compensation of one month's rent because the Tenant left the rental unit dirty and damaged.

The Tenant testified that he was unable to afford to hire a cleaning service at the end of the tenancy, so he cleaned to the best of his ability prior to moving out.

Landlord's Application

The Landlord testified that the Tenant left the rental unit damaged at the end of the tenancy. The Landlord is seeking compensation for the following items:

Carpet	\$2,500.00
Paint	\$23.02
Counter tops	\$280.00
Royal lighting	\$26.71
Piping	\$52.62
Silicone	\$19.81
Drywall tape	\$23.05
Screws	\$65.09
Kitchen vanity and toilet.	\$453.54

Carpet \$2,500.00

The Landlord testified that he replaced the carpet in the rental unit. He testified that the Tenant's cat tore the carpets and urinated on the carpets in the livingroom and bedrooms. The Landlord testified that the carpets were approximately five years old. The Landlord testified that he replaced the carpets with the same quality of carpeting as before. The Landlord provided a copy of a receipt for the carpet purchase and installation.

In response, the Tenant testified that the cat destroyed the carpet by the door at the bedroom. He testified that the cat urinated in the hallway. The Tenant testified that there was no other damage done to the carpets. The Tenant testified that he lived in the rental unit for five years and the carpet was not new when he moved in.

Paint \$23.02

The Landlord testified that the Tenant's child damaged the gyprock in the basement. The Landlord testified that he fixed the gyprock and repainted the wall. The Landlord is seeking to recover the cost of the paint.

In response, the Tenant testified that he is not aware of any drywall being damaged. The Tenant submitted that he has not seen any evidence of damage to the drywall.

Counter Tops \$280.00

The Landlord testified that the formica counter tops were damaged with knife marks. The Landlord testified that he replaced the countertop himself. The Landlord did not provide any evidence of damage to the countertops. The Landlord testified that the countertops were approximately 15 years old.

In response, the Tenant testified that he used a cutting board, and did not cut on the countertop. He testified that there was no damage to the countertop and that the Landlord made no mention of damage at the time of the move out inspection.

The Tenant submitted that the Landlord moved his son into the rental unit and the Landlord renovated the unit for his son.

Light Fixture \$26.71

The Landlord testified that a light fixture came loose from the wall and was broken. The Landlord purchased a new light fixture and is seeking to recover the cost for the new fixture. The Landlord did not provide any evidence in support of his testimony regarding a damaged light fixture.

In response, the Tenant testified that he did not damage the light fixture.

Sink \$52.62

The Landlord testified that the Tenant damaged the bathroom sink, and the Landlord replaced the sink. The Landlord is seeking the cost for the silicone sealant and labour.

The Landlord testified that the sink was 10 -15 years old. The Landlord did not provide any evidence in support of his testimony regarding a damaged sink.

In response, the Tenant testified that he did not do any damage to the bathroom sink.

Drywall tape \$23.05

The Landlord testified that the Tenant damaged the walls in the Livingroom and hallways. The Landlord did not provide any evidence in support of his testimony regarding damage to the walls.

In response, the Tenant testified that there were no holes in the walls. He testified that there may have been a few nail holes, but drywall tape was not required.

Screws \$65.09

The Landlord testified that he installed new gyprock and tiles in the bathroom and is seeking to recover the cost of the drywall screws. The Landlord did not provide any evidence in support of his testimony regarding the need to install new drywall in the bathroom.

In response, the Tenant testified that the Landlord's claim is frivolous. The Tenant testified that there was no damage in the bathroom.

Kitchen Vanity and Toilet \$453.54

The Landlord testified that the vanity and toilet in the bathroom were dirty and needed to be replaced. He testified that they were approximately 8 years old. The Landlord is seeking to recover the cost of purchasing a new vanity and toilet.

In response, the Tenant testified that there was no damage to the bathroom vanity or toilet caused by him or his children.

Security Deposit \$325.00

The Tenant testified that he agreed that the Landlord could retain the security deposit of \$325.00 at the end of the tenancy for the carpet damage.

Analysis

Section 51 (1) of the Act states that a Tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the Landlord on or before the effective date of the Landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

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

Tenant's Application:

Compensation for 2 Month Notice

I find that the Tenant received a 2 Month Notice from the Landlord and is entitled to the equivalent of one month's rent under the tenancy agreement. The Tenant moved out on October 30, 2016. I find that the Landlord owes the Tenant \$675.00.

Landlord's Application

Security Deposit

I find that the Tenant agreed in writing that the Landlord could keep the security deposit of \$325.00 due to damage.

Carpet

With respect to the Landlord's claim for the replacement cost of the carpet, the Residential Tenancy Branch Policy Guideline #40 states that carpets have a useful life of 10 years. I find that the carpet was at least five years old at the end of the tenancy. I find that the Landlord is not entitled to the full cost of the carpet replacement.

In addition, the Tenant refuted that Landlord's claim that there was damage to the carpet in areas other than the hallway and bedroom. There is insufficient evidence from the Landlord that the Tenant is responsible for carpet damage to other areas of the rental unit. I therefore reduce the Landlord claim by a further 50%.

I find that the Tenant is only responsible for the damage that a cat did to the carpet in the hallway and bedroom. After considering the age of the carpets and the damage done to the hallway and bedroom, I grant the Landlord \$625.00 for the carpets.

Landlord's Other Claims.

The remaining claims of the Landlord are dismissed due to insufficient evidence to prove that the Tenant was responsible for the damage. The burden of proof rests with the applicant. The Landlord alleged the Tenant was responsible for the damage but did not provide sufficient evidence such as photographs to prove damage to the items he is claiming compensation for.

Furthermore, the Landlord did not provide documentary evidence of a move in inspection and move out inspection report. A properly completed condition inspection report is evidence of the state of repair and condition of the rental unit at the start of the tenancy.

The Landlord testified at the start of hearing that he took his photographs on November 1, 2016, the day after the Tenant moved out. Later in the hearing the Landlord testified that he did not remove the toilet in the bathroom until two weeks after the Tenant vacated. I find that the Landlord's testimony regarding when the photographs were taken is unreliable because one photograph shows that the toilet was removed and therefore, according to the Landlord's testimony, it could not have been taken on November 1, 2016.

The Tenant refuted all of the Landlord's allegations that the Tenant is responsible for the costs to renovate and repair the rental unit. When two parties provide opposing but equally believable testimony, the burden of proof rests with the applicant. The Landlord's claims are dismissed.

Filing fees

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since both parties were partially successful, I decline an award to recover the filing fees.

The Tenant is granted the amount of \$675.00 for compensation related to the 2 Month Notice.

The Landlord is granted the amount of \$625.00 for the partial replacement cost of the carpets.

The Landlord already received the security deposit of \$325.00. After setting off the security deposit of \$325.00 against the \$625.00, I find that the Landlord is entitled to \$300.00 from the Tenant.

After setting off the \$300.00 that the Tenant owes the Landlord against the \$675.00 that the Landlord owes the Tenant, I grant the Tenant a monetary order in the amount of \$375.00. This monetary order

may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord failed to compensate the Tenant after issuing a 2 Month Notice and owes the Tenant one month's rent.

The Tenant is responsible for damage to the carpets in the amount of \$625.00.

After setting off the amounts awarded, the Tenant is granted a monetary order in the amount of \$375.00.

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: September 8, 2017

Residential Tenancy Branch