



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 an Application for Dispute Resolution by the landlord for a monetary order for money owed, for damages to the unit, and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave 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 at the hearing.

This matter commenced on February 19, 2018, an interim decision was made, which should be read in conjunction with this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on October 1, 2012. Rent in the amount of \$2,263.00 was payable on the first of each month. The tenant paid a security deposit of \$1,100.00 and a pet damage deposit of \$500.00 (the "Deposits"). The tenancy ended on July 31, 2017.

The parties agreed a move-in condition inspection report was completed. The tenant did not remain at the rental unit to formally complete the move-out inspection. The tenant took a picture of the notes the landlord was making and the tenant completed their own move out inspection report after they vacated.

The tenant is cautioned when they fail to participate and complete a move-out condition inspection that they extinguish their rights to the return of the deposit. They cannot make their own report after they have vacated.

The landlord claims as follows:

a.	Late fee for July 2017, rent	\$ 25.00
b.	Lawn care & blackberry removal	\$ 400.00
c.	House cleaning & supplies	\$ 907.93
d.	Replace kitchen floor, estimate for lower floor	\$1,733.77
e.	Brushes and tub seal	\$ 19.00
f.	Replace locks (missing key)	\$ 72.78
g.	Carpet Replacement	\$3,075.52
h.	Patching, painting, flooring, cleaning	\$1,740.00
	Total claimed	\$7,974.00

Late fee

At the outset of the hearing the tenant indicated they were not disputing the late fee for July 2017, rent.

Lawn care & blackberry removal

The landlord testified that as a term of the tenancy agreement the tenant was responsible to maintain the lawn and the garden in the backyard. The landlord stated that they had received complaints that the yard was not being maintained.

The landlord testified that on July 2, 2017, they attended the premises and the lawn was overgrown by a few feet and was lying on the ground. The landlord stated that the play area and gardens were severely overgrown with blackberries.

The landlord testified they spent one day with the neighbor cleaning the side area and went back 4 to 5 evenings to continue cleaning and hauling the debris away. The landlord stated that they spent 20 hours cutting the lawn and cutting down the blackberry that have overgrown in the gardens. The landlord seeks compensation at the rate of \$20.00 per hour for a total of \$400.00. Filed in evidence are photographs of the backyard taken on July 2, 2017.

The tenant testified that their inability to mow the lawn was because the landlord provided them with a lawn mower that was not functional. The tenant stated that if the landlord provided them with a proper lawn mower they could have left the lawn better.

The tenant testified that the landlord started working on the yard prior to them vacating and they did not consent for them to do so. The tenant indicated that the neighbor helped the landlord and they were not expecting compensation. Filed in evidence is a letter.

The landlord responded that on July 2, 2017, when they spoke to the tenant about the yard. The tenant told them that they had other priorities other than the yard. The landlord stated they were not responsible for providing the tenant with a lawn mower. The landlord stated that they were claiming for the hours that they worked, not the neighbor.

House cleaning & supplies

The landlord testified that the tenant left the premises quite messy. The landlord stated that the laundry room was extremely dirty, the kitchen was not cleaned which including the appliance and greasy walls, the bathrooms were dirty and all the floors required to be cleaned. Filed in evidence are photographs.

The landlord testified that they hired cleaners to clean the premises and the landlord seeks to recover the cost of the cleaners in the amount of \$627.93. Filed in evidence is a receipt for cleaning the rental unit.

The landlord testified that they also did cleaning to get the job done faster. The landlord seeks to recover 20 hours of cleaning at the rate of \$20.00 per hour. The landlord seeks compensation for cleaning in the amount of \$400.00.

The tenant testified that they kept good care of the rental unit during their tenancy. Filed in evidence are photographs of the premises during the tenancy.

The tenant testified that they had their youngest child help clean. The tenant testified that they did not have time to finishing cleaning as they had to get their belongings into storage before it closed. The tenant stated that they wanted to be able to come back on August 1 and 2 to clean the entire rental unit; however, the landlord refused.

Replace kitchen floor, estimate for lower floor

The landlord testified that the tenant caused damage to the kitchen floor by their kitchen chair legs poking holes in the flooring, which had to be replaced. The landlord stated that the floor was approximately 8 years old at the time. The landlord seeks to recover the cost of \$599.96. Filed in evidence is a photograph of the floor.

The landlord testified that the tenant also caused damage by scratching the laminate floor on the lower level, which included a family area and two bedrooms. The landlord stated that they have not had the flooring replaced. The landlord seeks to recover the estimated cost of replacement in the amount of \$1,133.77. Filed in evidence is a photograph of the floor.

The tenant testified that they are not responsible for the flooring. The tenant testified that the dishwasher leaked on several occasions causing water to go underneath the flooring. The tenant stated they informed the landlord of the problem; however, the landlord only brought another used dishwasher and never made any repairs to the flooring. The tenant stated that they took a photograph of the water leaking from the dishwasher and it also shows the flooring lifting. Filed in evidence is a photograph.

The tenant testified that they deny their furniture made any holes in the flooring. The tenant denied they caused any scratches to the flooring in the lower level rooms.

The landlord responded that there was no damage to the floor where the dishwasher was.

Brushes and tub seal

The landlord testified that the tenant replaced the tub surround as it was broken by someone slipping. The landlord stated that although it was installed by a qualified person, it was not completed, as the edges required to be sealed with silicone sealer. The landlord seeks to recover the cost of supplies in the amount of \$19.00.

The tenant testified that they had a red seal contractor install the new tub surround. The tenant stated that the contractor completed the job in a professional manner and if the landlord wanted to add more sealer that was their personal choice.

Replace locks (missing key)

The landlord testified that the tenant was given three (3) exterior keys and one (1) mailbox key at the start of the tenancy. The landlord stated that at the end of the tenancy only two (2) exterior keys were returned and one (1) mailbox key. The landlord stated that as all keys that gave access to the rental unit were not returned they had to change the lock. The landlord stated this was less expensive than paying a locksmith. The landlord seeks to recover the cost of the lock in the amount of \$72.78. Filed in evidence is a receipt.

The tenant testified that they returned all keys to the landlord. The tenant stated that the only key they did not return was to a lock that they installed on an interior door.

Carpet Replacement

The landlord testified that the tenant left the carpet stained with cat urine and there were large orange patches. The landlord testified that they were able to have some of the stains dyed to help hide the stains; however, the living room and hallway need to be replaced. The landlord stated the carpets were at least ten (10) years old. The landlord stated that the estimate replacement cost is the amount of \$3,075.52.

The tenant testified that they deny causing any damage to the carpets. The tenant stated that the previous renters had cats and the even had a litter of kittens. The tenant stated that their cat never urinated on the carpets.

Patching, painting, flooring, cleaning

The landlord testified that there was damage to the walls that had to be repaired. The landlord stated there was a big hole at the bottom of the stairs, two large holes in the master bedroom, a significant amount of anchor holes in the family room and large holes around the windows where the tenant had hung window covering over top of the ones that were provided.

The landlord testified that they also had to remove coat hooks that were installed in the hallway and bathroom. The landlord testified that they had to fill and sand the holes. The landlord stated that they had to repaint the holes and in some areas the entire wall needed to be painted. The landlord stated that they did not paint the entire rental unit. The landlord seeks compensation in the amount of \$1,740.00.

The tenant testified that they did leave some holes in the wall; however, not as many as the landlord has indicated. The tenant stated it would have taken ten (10) minutes to fill these holes. The tenant stated that they are not responsible for any painting as the paint was old.

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. In this case, the landlord has the burden of proof to prove their claim.

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.

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.

Section 37(2) of the Act states when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Late fee

The parties agreed that the landlord was entitled to a late rent fee for July 2017. Therefore, I find the landlord is entitled to recover the amount of **\$25.00**.

Lawn care & blackberry removal

The tenancy agreement states that the tenant is responsible for lawn and garden care to at least the neighborhood standard.

Although the landlord commenced starting to clean of the yard prior to the tenancy ending, I find that reasonable as the lawn and gardens were significantly overgrown. The tenant presented no evidence that they had a reasonable plan to get the yard maintained at a lower cost.

Further, the landlord was not seeking the cost of the neighbor, these were hours of the landlord, which I find to reasonable based on the over grown yard. I find the tenant breached the tenancy agreement by failing to maintain the yard during the tenancy and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the amount of **\$400.00**.

House cleaning & supplies

I accept the evidence to the landlord that the rental unit was not left reasonably clean, this is supported by the photographs and by the tenant's written submission of the tenant dated August 4, 2017.

While the tenant wanted to come back on August 1, 2017 to clean the premise there tenancy had legally ended on July 31, 2017 and the tenant was not entitled to have access to the premises after that date.

I find the tenant breached section 37 of the Act, when they failed to leave the rental unit reasonably clean and this caused losses to the landlord. I find the amount the landlord paid for cleaners reasonable, and a receipt has been provided in support of their claim.

I further find the landlord hours for cleaning are reasonable. Therefore, I find the landlord is entitled to recover the total amount for cleaning the rental unit the amount of **\$907.93**.

Replace kitchen floor, estimate for lower floor

I accept the evidence of the landlord that the tenant caused damage to the kitchen floor as supported by the photograph. I also accept the evidence of the tenant the floor was damage by the water, when the dishwasher leaked.

I accept the flooring was eight (8) years old at the time of replacement. I have determined that the useful life span of the flooring is ten (10) years old; I have

calculated this based on the life span of carpets and tiles as set out in the Residential Tenancy Branch Policy Guideline 40.

After I have applied the depreciated value of 80%, I find the remaining amount is \$119.99. Since I have found both parties are equally responsible for the damage, I find the depreciated value of \$119.00 will be equally shared. Therefore, I find the landlord is entitled to recover the depreciated value in the total amount of **\$59.99**.

I am not satisfied that the landlord has suffered any loss for the lower flooring. The flooring is almost at the end of its useful lifespan; the floor has not been replaced and is currently being used by the new renters. I find the landlord has failed to prove they suffered any loss. Therefore, I dismiss this portion of their claim.

Brushes and tub seal

In this case, there was an accident in the bathroom that caused damage to the tub surround. The tenant at their expensed paid for the repair that was completed by a qualified repair person.

The evidence of the landlord was that additional sealer was required and they seek reimbursement. I find the landlord's claim is unreasonable. The landlord benefited with a new tub surround and I find adding sealant is a normal job to maintain and repair the rental unit. Therefore, I dismiss this portion of the landlord's claim.

Replace locks (missing key)

The move-in condition inspection report confirms the tenant was provided with 3 exterior keys and 1 mail box key. The evidence of tenants was that they returned all the keys, except for the interior key. I find the evidence of the tenant on this issue not credible as there written submission confirms they only returned 2 keys and the mailbox key.

I find the tenant failed to return all keys that gave access to the rental unit. I find the tenant breached the Act and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover the cost of replacing the lock in the amount of **\$72.82**.

Carpet Replacement

The evidence of the landlord was that they seek to replace the carpets due to stains. The tenant denies they caused any stains to the carpet. Both parties have provided a

different version of events. I have reviewed the photographs of both parties and while I accept there appears to be some staining in the photographs provided by the landlord, I also accept the tenant's photographs that support the carpets appear to be reasonably clean.

In this case, the carpets were at least ten (10) years old when the tenancy ended. The Residential Tenancy Policy Guideline 40 defines the useful life of building elements. Carpets have a useful life span of ten years.

The evidence of the landlord was that the carpets have not been replaced and they were able to dye some of the stains to make the carpet useable for the new tenants. I find the landlord has failed to prove that they suffered a loss as the carpets have not been replaced.

Further, the carpets are past their useful lifespan and the tenant is not responsible for the replacement. Therefore, I must dismiss this portion of the landlord's claim.

Patching, painting, cleaning

I accept the photographic evidence of the landlord that there was damage to the walls that was above normal wear and tear, as there was a large hole in the wall on the stairway, there are multiple large holes where curtains were hung; however, some of the holes are normal wear and tear, such as using anchors to hang items on the walls. I find the tenant breached section 37 of the Act, when they failed to leave the rental unit undamaged. Therefore, I find a reasonable amount of compensation to the landlord to make the repairs is the amount of **\$300.00**.

The landlord is further claiming cost for painting, I find that the tenant is not responsible for painting as the Residential Tenancy Policy Guideline 40 defines the useful life of paint is four (4) years old, and all evidence supports the paint was past its useful life span. Therefore, I dismiss the landlord's request for painting.

I find that the landlord has established a total monetary claim of **\$1,865.74** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the Deposits of **\$1,600.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$165.74**.

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

Since I have determined the landlord is entitled to keep the tenants Deposit, I find it not necessary to consider the extinguishment provision under the Act.

Conclusion

The landlord is granted a monetary order and may keep the Deposits 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: May 15, 2018

Residential Tenancy Branch