

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of cleaning, repair to the rental unit and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim for costs incurred to repair the rental unit? Is the landlord entitled to retain the security deposit and to recover the filing fee?

Background and Evidence

The tenancy started on June 29, 2008. Rent was set at \$1,100.00 per month. The tenant paid a security deposit in the amount of \$550.00. A move in inspection was conducted on June 29, 2009 and some minor discrepancies were noted. The tenancy ended on May 31, 2009 and on that date the tenant provided the landlord with his forwarding address and a move out inspection was conducted by both parties. Some discrepancies were noted and except for moving fees of \$100.00, there was no agreement between the parties for the landlord to retain all or an additional portion of the security deposit.

On the day of the move, the tenants had the carpets steam cleaned. At the time the landlord conducted the move out inspection, the carpets were still wet. The landlord noted on the move out inspection report that the carpet in the entry way looked grey. In the hearing, she stated that all high traffic areas looked grey.

Other comments on the move out inspection sheet were

1. "little dings" from "plugs from curtains and screws in walls"
2. "carpet pulled and fraying from TV cable, hopefully can push down"
3. "paint chips on wall and door of main bathroom"

4. “closet organizer shelves not locked in – unsure if broken”

5. “folding chairs missing”

The landlord stated that she was not claiming damages for the closet organiser shelves. The tenant stated that the movers may have taken the folding chairs in error and agreed to check his storage unit and return the chairs to the landlord. The landlord stated that her claim was mainly to do with the condition of the carpet and the walls

The landlord is claiming the following:

1.	Paints and supplies to repair wall damage	\$369.16
2.	Carpet cleaning	\$106.05
3.	Labour 96 hours @\$40.00/hour	\$3,840.00
4.	Move in and Move out fees	\$100.00
5.	Cost to replace carpet (estimate)	\$3,265.50
6.	Filing fee	\$50.00
	Total	\$7,730.71

The landlord stated that the extent of the damage to the rental unit was not noticed at the time of the move out inspection because it was not bright enough in the unit. The tenant argued that the inspection was conducted on May 31 at approximately 5 p.m. when it was still bright outside.

The landlord also stated that after the carpet dried up, she noticed some grey colouring with black spots and has filed a baggie filled with grey fluff. The landlord contacted the tenant a week later, to advise him of the condition of the carpet. The landlord hired a professional cleaner to clean the carpet approximately three months later. The landlord explained the delay by stating that she went away on vacation for a month and upon her return, got the walls fixed prior to hiring the commercial carpet cleaner.

The tenant filed evidence of having hired a steam cleaner on the day he moved out and stated that the landlord had given him permission to hang pictures on the wall, on condition that he used fine art nails. The tenant admitted that he hung a rod in the den without permission and that he did not repair the holes in the walls.

Analysis

The testimony of the tenant and the landlord is conflicting with regard to the damage to the unit. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Both parties have filed the move out inspection report as evidence of the damage. The move out inspection is an opportunity for the tenant and landlord to identify damage and come to an agreement on any deductions that can be made to the security deposit. The inspection should be conducted diligently using a flashlight if necessary as it is the only opportunity to identify damage that the tenant is responsible for.

Since the testimony of both parties is conflicting with regard to the extent of the damage, I will use the move out inspection report which is evidence filed by both parties, to assess the damage that the tenant is responsible for.

1. Damage to the wall:

The tenant agreed that he had created holes in the wall for the purpose of hanging art. *Residential Tenancy Policy Guideline #16* states that an arbitrator may award nominal damages which are a minimal amount and may be awarded where there has been no significant loss but that there has been an infraction of a legal right. The move out inspection report describes these holes in the walls as "little dings". The landlord is claiming \$369.16 for supplies. I find that the landlord's claim of \$3,840.00 for labor is unreasonable and I will award the landlord \$100.00 towards fixing the holes in the wall.

2. Carpet cleaning:

The tenant denies having caused damage to the carpets and both parties agreed that the tenant had steam cleaned the carpet prior to moving out. The move out inspection report states that the carpet was "gray". Therefore I find that the landlord is entitled to the cost of cleaning the carpet in the amount of \$106.05.

3. Move in and move out fees:

The tenant agreed to pay the landlord \$100.00 for moving fees.

4. Carpet replacement:

The landlord stated that she noticed some additional damage to the carpet after it dried. The landlord did not contact the tenant immediately but did so a week later. The landlord did not record any damage to the carpet on the inspection report other than discoloration in only one area i.e. the entry. Since the testimony of both parties is contradictory, I will rely on the evidence of the move out inspection report. Accordingly, the landlord's claim to replace the carpets is dismissed.

5. Filing Fee

The landlord has established a small portion out of her claim of \$7680.71 and therefore must bear the cost of filing her application.

Overall the landlord has established a claim of \$306.05. I find that the tenant is entitled to the return of the security deposit of \$550.00 plus accrued interest of \$4.19 with a deduction of \$306.05. I hereby order the landlord to return the balance of the security deposit to the tenant within 15 days of receiving this decision.

Conclusion

The landlord may retain \$306.05 from the security deposit of \$550.00 plus accrued interest of \$4.19 and must return the balance, to the tenant in the amount of **\$248.14**, within 15 days of receiving this decision.

Dated September 24, 2009.

Dispute Resolution Officer