



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlords for a Monetary Order for unpaid rent, for damages to the rental unit, Compensation for loss or damage under the Act or tenancy agreement and to recover the filing fee for this proceeding. The landlord also applied to keep all or part of the security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the tenants on July 28, 2009 by registered mail.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Has the landlord provided sufficient evidence that the damage is caused by actions or neglect of the tenant?
- Is the landlord entitled to a Monetary Order to cover the costs for repair to damages and cleaning of the rental unit?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?

Background and Evidence

This tenancy started on June 01, 2007 and ended on June 30, 2009. This tenancy was initially a fixed term tenancy for one year and then reverted to a month to month tenancy. Rent for this unit was \$1,250 per month due on the first of each month. The tenants paid a security deposit of \$625.00 and a pet damage deposit of \$350.00 on May 30, 2007. The landlords and tenants conducted a move in condition inspection at the outset of the tenancy. However, no move out condition inspection was conducted at the end of the tenancy. The tenants gave the landlords their forwarding address in writing on July 08, 2009 and requested the return of their security deposit.

The landlords claims the tenants did not clean the unit at the end of the tenancy and were not available during the first week of July to carry out a move out condition inspection. The landlords also claim that the tenants caused damages to the rental unit including nail polish and crayon marks on the wall; stab like marks all over a wall; red stamp marks saying "paid" all over one wall; routed ledge in basement with dust and wood shavings left behind; holes in doors and frames; broken motion sensor monitor; burned out fluorescent bulbs; broken Venetian blinds; two broken light covers; wooden toilet seat replaced with a broken plastic seat. The landlord also claims the tenants did not clean the unit thoroughly, The carpets had not been cleaned properly to get rid of animal smells and stains; walls had not been cleaned to remove crayon marks; fridge was left with mould inside and had not been cleaned underneath; stove drawer not cleaned out and not cleaned underneath; heat vents full of debris including melted crayons and pet food; patio door sliders full of debris, cupboards and drawers in kitchen not cleaned and items left behind; kitchen fan not cleaned, shelf's not cleaned, closets doors not cleaned of crayon marks; oil spill on driveway.

The landlords claim the tenants owed \$100.00 in rent. The landlords also claim the tenants removed two window fans that had been fitted to the unit and are claiming costs of \$80.00 and they claim the tenants removed a broom from the unit which cost \$25.00. The landlords are claiming \$52.00 for replacement blinds, light bulbs and toilet seat; labour and paint supplies at a cost of \$380.00 plus \$47.68 for other paint supplies; photographic developing for evidence

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photographs at a cost of \$59.85; registered mail cost of 56.00; cleaning and other paint supplies of \$50.00. The landlords incurred cleaning costs for carpet cleaning of \$160.00 and house cleaning of \$200.00.

The tenants claim they did clean the house before they left and they borrowed a carpet cleaning machine and cleaned the carpets. The tenants admit they are responsible for the nail polish marks on one wall and did not clean under the fridge and stove. The tenants claim that they did clean the fridge out and left the door open to prevent mould issues. The tenants also confirm that they do owe \$100.00 to the landlord for rent payment.

The tenants claim that they asked the landlords to do a condition inspection of the unit when they moved out however they were not available. They also asked the landlords realtor to conduct the inspection but she was not willing to do so. The tenants claim that the landlords wanted to sell the unit and therefore expected them to do more work to it then would normally be expected when a tenant moved out. Most of the marks were normal wear and tear. The tenants claim that without a move out condition inspection report the landlord is not able to determine what damage was at the unit when they moved into the unit and what they have done to the unit beyond normal wear and tear. The tenants claim the unit was left in the same condition as when they rented it two years before.

The tenants claim the unit needed re-painting when they moved in and they should not be expected to repaint at the end of their tenancy. The tenants state that the window fans were left at the unit when they moved out. The tenants claim that they went back to the house around the middle of July, 2009 to again attempt to do a walk through with the realtor. The landlord states that she did not think this was an appropriate time to do the walk through as all the cleaning had already been done by this time.

Analysis

I have carefully considered all the evidence before me, including the testimony of both parties. I find the landlord did not conduct a move out condition inspection on or after the day the tenants

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ceased to occupy the rental unit, or another mutually agreed day pursuant to section 35 of the *Act*. This section of the *Act* also states; A landlord must offer the tenant at least two opportunities to attend the move out condition inspection. Consequently, section 36(2)(c) of the *Act* says that the Landlord's right to claim against the security deposit for damages is extinguished.

Security deposit	\$625.00
Accrued interest	\$23.40
Total amount of security deposit	\$998.40

However, The landlords are seeking a Monetary Order for damages and cleaning to the rental unit and I find the landlords have provided sufficient evidence concerning the lack of cleaning and some damage to the unit which by the tenants own admission were caused through their actions or neglect. I find the tenants must bear some of the landlords painting costs for damage to the walls of the unit from nail polish to an amount of \$200.00. I further find that although the tenants may have had the carpets cleaned these were not cleaned sufficiently to ensure they were left clean at the end of the tenancy and they have not provided any evidence to support their claim that the carpets were cleaned by themselves. I find I prefer the evidence of the landlords and the written statements from the carpet cleaner and realtor as to the state the carpets were left in and how they were clean and odor free after they had been professionally cleaned. Therefore, I find the landlords are entitled to recover this cost from the tenants to an amount of \$160.00.

A also prefer the landlords evidence as to the generally cleaning of the rental unit. The tenants admit they did not clean under the fridge or stove and the photograph evidence supports this. The landlord's photographic evidence also supports the general build up of dirt and debris in other areas of the rental unit which would have accumulated during a tenancy of two years. Section 32(2) of the *Act* states; *A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit.* A tenant is therefore expected to clean the unit thoroughly at the end of the tenancy. Due to the above, I find the landlord is entitled to recover some cleaning costs to the amount of \$200.00.

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With regards to the remainder of the landlords claim, I find that the landlords have the burden of proof and must show that the damage or missing items were caused by the action or neglect of the tenants. This means that if the landlord's evidence is contradicted by the tenants, the landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence such as a move in and move out condition inspection report, I find that the landlords have not provided sufficient evidence to show that the remainder of the damage or loss happened directly because of the tenants actions or neglect.

I further find that the tenants are not liable to pay the cost for the landlord's photographic evidence or registered mail costs as these are costs the landlord has incurred as a result of making an application for this hearing and providing evidence for the hearing. However, as the landlords have been partially successful they are entitled to recover the filing fee from the tenants of \$50.00. I find the landlords are entitled to recover the following amounts

Painting due to nail polish marks	\$200.00
Generally cleaning	\$200.00
Outstanding rent	\$100.00
Filing fee	\$50.00
Total amount due to the landlord	\$710.00

I find that sections 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep **\$710.00** from the Tenants' security deposit and accrued interest to offset against the amounts in the table above.

Conclusion



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I find in partial favour of the landlords monetary claim. **I Order** the landlord to retain \$710.00 from the tenant's security and pet damage deposits in full and final settlement of this claim and the remainder of the deposits of **\$288.40** must be returned to the tenants within five working days of receiving this notice.

The remainder of the landlords claim is dismissed without leave to reapply.

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: November 18, 2009.

Dispute Resolution Officer