



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant – MNSD, FF

For the landlord - MND, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant seeks the return of the security deposit and to recover the filing fee. The landlord seeks a Monetary Order for damage to the rental unit, to keep the security deposit and to recover the filing fee.

Both parties served the other party with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to receive the security deposit back?
- Is the landlord entitled to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order to cover the additional costs for repair to damages and cleaning of the rental unit?



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

Background and Evidence

Both parties agree that this tenancy started on July 01, 2005. It was a fixed term tenancy which reverted to a month to month tenancy at the end of the fixed term. The tenant paid \$1,400.00 rent each month which was due on the first of each month. The tenant paid a security deposit of \$650.00 on July 01, 2005. No move in or move out condition inspections were completed.

The tenant testifies that at the end of the tenancy he was not given the opportunity to attend a move out condition inspection with the landlord. The tenant claims that after he moved out and handed back the keys, the landlord contacted him and requested that he return to the rental unit to help do some cleaning. The tenant testifies that he did return to help with the cleaning and claims that his son took some photographs after the cleaning was finished (included as evidence). The tenant also testifies that he did have the carpets professionally cleaned at the end of his tenancy and has provided a receipt for this work.

The tenant claims that the bathroom fittings were rusty and corroded and the landlord did not maintain the property during the term of his tenancy. The tenant claims that the work the landlord claims he has done to the unit since the tenancy ended is all cosmetic work and was not required through any fault of the tenant. The tenant claims the unit was not left in a filthy condition and any damages were normal wear and tear. The tenant requests the return of the security deposit.

The landlord's agent testifies that the tenant contacted him at the end of the tenancy to tell the landlord that he was sick and would not be available to attend the move out condition inspection. A few days later the tenant called to set up another time however the landlord was not available at this time and an inspection was not completed. The landlord's agent claims that when he visited the rental unit he found the tenants had left it in a filthy and unacceptable condition. He confirms that he did call the tenant and ask him to come back to help clean the unit particularly the kitchen and bathroom which were both left in a filthy and unhygienic condition. The landlord confirms that on October 03, 2009 the tenant did return to do some cleaning in the kitchen.

Residential Tenancy Branch
Ministry of Housing and Social Development

The landlords' agent testifies that he wrote the tenant a letter stating that he would not return the security deposit due to the damages caused in the unit and the cleaning that was required to make the unit acceptable for new tenants. The landlords' agent claims he did not receive a reply to this letter and thought the tenant had agreed to him keeping the security deposit.

The landlord has provided photographs of the rental unit taken at the end of the tenancy and additional photographs after the remedial work was carried out. The landlord claims the tenant damaged the walls, ceiling, baseboards, doors and frames. There were chips and marks all over the walls and woodwork which required filling, sanding, priming and painting. There were black marks on the ceiling which the landlords' agent testifies that tenant told him were caused by the heaters however there were no heaters in these locations. The landlords' agent carried out this work himself and is claiming the cost of materials of \$346.23. (Receipts provided)

The landlords' agent claims the tenant damaged the blinds at the living room balcony window, the kitchen, the master bedroom and two blinds in the second bedroom and one blind in the third bedroom. The blinds were layered with grease and no longer worked correctly. The blinds were six years old and the landlord paid \$1,408.84 to replace them. (Receipts provided)

The landlord agrees that the tenant did have the carpets cleaned however; the carpets remained severally soiled and the landlords' agent testifies that he had to remove the carpets and replace them with laminate flooring as this was the cheapest option. The landlords' agent testifies the carpets were six years old and in good condition at the start of the tenancy. The landlord has provided receipts for the laminate flooring at a total cost of \$2,922.00. The landlord has provided photographic evidence of the condition of the carpets at the end of the tenancy which shows the severe staining.

The landlord states that he is not charging the tenant for all the labour he put into the rental unit to make repairs and do the cleaning as he feels he would have had to undertake some work of this nature at the end of a four year tenancy. However, the landlords' agent does claim that this work was more extensive due to the tenants' lack of cleanliness throughout the unit.

Residential Tenancy Branch
Ministry of Housing and Social Development

The landlord has called his first witness who was a maintenance man who carried out some work at the rental unit. This witness testifies that the condition of the unit was horrible and it could not be re-rented in that condition. The carpets were filthy, the bathroom was filthy and overall the conditions in the unit were not acceptable. The tenant declined to cross examine this witness as he stated he had not met him before.

The landlord called his second witness who is the new tenant renting the unit. This witness testifies that he viewed the rental unit while the tenant was still in residence. He claims the unit was in a terrible condition, the carpets were very dirty, the bathroom looked like it had never been cleaned, there were mildew and yellow stains all around the toilet and in the toilet bowl, there was a bad paint job and some custom art work in the bathroom. The kitchen was dirty overall including heavy grease particularly on the kitchen fan. The witness testifies that the unit did not feel sanitary and he had to put conditions in place on his agreement to rent the unit that all this work and clean up was done before he rented it due to the condition of the unit when he viewed it.

The tenant cross examined this witness and asked the witness how long he was at the rental unit for. The witness replied about five or ten minutes. The tenant asked the witness if he noticed the paint chips. The witness replied that he only noticed how dirty the place was. The tenant spoke about the paint job in the bathroom and explained to the witness that this was done by the landlord. The witness testifies that since he has been a tenant at the property the landlord is responsive and attentive to any maintenance issues.

Analysis

Sections 23 and 35 of the Act say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if he has left a rental unit unclean at the end of the tenancy.

Residential Tenancy Branch
Ministry of Housing and Social Development

The purpose of having both parties participate in the condition inspections is to provide evidence of the condition of the rental unit at the beginning and end of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be considered. In this instance I find the landlord has provided sufficient evidence to support the majority of his claim for damage and cleaning of the rental unit. The landlords witnesses evidence also serve to corroborate the landlords' evidence that the tenant did not comply with s. 32 of the Act. This states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and must repair damage to the rental unit that is caused by the actions or neglect of the tenant or person permitted on the residential property by the tenant.

This means that at the end of the tenancy the tenant must clean and repair any damages to the rental unit. Consequently, I find the tenant caused damage to the walls, ceiling and some baseboards, door frames and doors which required preparation and painting. The landlord has mitigated his loss in this instance by carrying out the work himself. However, the rental unit has not been painted for six years and it would be unreasonable of the landlord to expect the tenant to pay for the entire cost of re-painting due to this. Therefore, the landlords' claim of \$346.23 has been reduced by 20% and I find he is entitled to a monetary award of **\$277.79**.

I also find that although the tenant did have the carpets cleaned they remained stained to an extent that cleaning them could not remove the grease and stains. Consequently, the landlord had no option but to replace them. I find the landlord has replaced the carpets with a cheaper option of laminate flooring and as such has attempted to mitigate his loss in this area. However, as the carpets were six years old and generally have a life span of 10 years I have deducted 30% from his claim of \$2,922.00 and find he is entitled to recover **\$2,045.40**

With regards to the landlords claim for the cost of replacing the blinds; I find the burden of proof is on the landlord to prove the existence of the damage to all the blinds and that it stemmed directly from the actions of the tenant during the tenancy. I find that the landlord has not provided sufficient evidence to support his claim that all the blinds in the unit were heavily soiled and broken by the tenant. The landlord has provided a receipt for the blinds to be replaced but

Residential Tenancy Branch
Ministry of Housing and Social Development

no evidence to show that they were all damaged during the tenancy with the exception of the blinds at the balcony door. Therefore, this section of his claim of \$1,408.84 is reduced to cover the costs in replacing the balcony door blinds only. The landlord received a 35% discount on the cost of the blinds therefore; I find he is entitled to recover **\$329.96** for the blinds, tax and share of installation.

In failing to complete the condition inspection report when the tenants moved in and out of the rental unit, I find the landlord contravened s. 23(1) and 35(3) of the Act. Consequently, s. 36(2)(c) of the Act says that the Landlord's right to claim against the security deposit for damages is extinguished. I find however, 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. Therefore, I order the landlord to keep the tenants' security deposit and accrued interest in compensation for the damages. Due to this the tenants claim for the return of the security deposit is dismissed without leave to reapply.

As the landlord has been partially successful with her claim I find she is entitled to recover the \$50.00 filing fee paid for the application pursuant to s.72(1) of the Act.

As the tenant has not been successful with his application I find he must bear the cost of filing his own application.

A Monetary Order has been issued to the landlord for the following amount:

Preparation and painting	\$277.79
Replacement of balcony blinds	\$329.96
Filing fee	\$50.00
Less security deposit and accrued interest offset against money owed to the landlord	(-\$673.03)
Total amount due to the landlord	\$2,030.12

Conclusion



Dispute Resolution Services

Page: 7

Residential Tenancy Branch
Ministry of Housing and Social Development

The tenants' application is dismissed without leave to reapply.

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,030.12**. The order must be served on the tenant and is enforceable through the Provincial Court 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: February 10, 2010.

Dispute Resolution Officer