



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlords' application for a monetary order for damage to the unit, site or property; for an order permitting the landlords to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenants for the cost of this application.

The parties appeared, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. All information and evidence has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This fixed term tenancy began on September 1, 2009 and expired on July 31, 2010. The tenants vacated the unit prior to the expiry of the fixed term tenancy, on May 31, 2010. Rent in the amount of \$1,750.00 was payable in advance on the 1st day of each month, and there are no rental arrears. The landlord collected a security deposit from the tenants in the amount of \$875.00 on August 20, 2009.

The landlord testified that the floors were new laminate and took a long time to clean the stains after the tenants had vacated. Papers and other debris were left behind the hot water tank.

The landlord provided evidence that she testified contains errors, and the documents actually belong to another unit and another tenant. However, in mid-April, 2010 the tenants advised they wanted to move, and the landlord gave them a notice to fill out. The landlord also gave the tenants a notice to do a move-out condition inspection. The tenants were advised to fill out the notice which would be the tenants' notice that they were moving, but the tenant that she spoke to stated that he wanted to speak to his parents first, and the form was never returned.

The landlord further testified that the tenants' father and one of the tenants showed to do the move-out condition inspection, and the tenant refused to sign the report stating that he disagreed with it. She also testified that there were holes in almost every wall in the unit, and the tenants did not return the keys stating that they didn't know where they were. Photographs of the unit were provided in advance of the hearing and the landlord testified that she did not take photographs of the smaller holes, only the larger ones, and it appears that someone tried to fix the holes using duct tape. She also testified that some furniture was left in a traffic area by the back door. She thought the tenants would be back to retrieve the items, but they remained there for 2 or 3 days and looked old so she had them taken to the dump.

The landlord prepared a document for the tenants to show what was claimed against the security deposit, which includes the following:

- \$100.00 for repairs to the drywall;
- \$432.00 for cleaning;
- \$300.00 for painting;
- \$90.00 for carpet cleaning;
- \$75.00 for drapery cleaning;
- \$250.00 for 2 men and a truck to remove the furniture;
- \$20.00 for 3 door tags;

for a total of \$1,267.00. The landlord provided a single receipt in the amount of \$507.00 for cleaning labor, supplies, and for replacement of broken blinds. She also testified that the blinds were 9 years old. No other receipts were provided.

The tenants testified that the move-in condition inspection report contains signatures that are not of either of the tenants, and the unit was not clean when they moved in.

The tenants also testified that the furniture at the door was there waiting for their father to pick it up on the 2nd load on moving day. There were a 3-piece sofa with a pull-out bed and 2 recliners. On May 31, 2010 at 2:30 in the afternoon one of the tenants saw someone taking it away and tried to stop him, but the landlord insisted that the driver carry on. They told the landlord it was their furniture but she replied that it was too late.

The tenants also testified that the blinds in the unit were plastic and very old. They came off the wall when opening and were reasonable wear and tear. They also testified that the landlord would not allow the tenants back into the unit to take photographs once their belongings were out of the unit.

The tenants also testified that the holes in the wall shown in the landlords' photographs depict a prior repair to the holes. The photographs show markings around the holes that they stated were from a plate that was installed, mudded and painted, and after they had been repaired, someone removed the plate exposing the holes. They further testified that their father is a contractor and he assisted with repairing the drywall.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to prove:

1. That the damage exists;
2. That the damage exists due to neglect by the opposing party or a breach of the *Act* or tenancy agreement;
3. The amount claimed;
4. What efforts the claiming party made to mitigate such damages.

I have reviewed the photographs and I find that a repair to holes in the walls is evident. It is clear that a plate and some mesh had been installed and then removed, and the holes in the walls are bigger than the repair job had been. It's clear in the photographs that the repair had been ripped out and the hole became much bigger afterwards, either from ripping out the plate, or by some other means. I do not accept the evidence of the landlord that the holes had been repaired by the tenants with duct tape however I do accept the evidence of the landlord with respect to plastering and painting required in the rental unit. I also find that the tenants attempted to repair holes in the walls, whether or not the repairs were done to the satisfaction of the landlord, however not all walls were repaired by the tenants. I further find that the landlord's claim for painting and plastering is therefore justified.

With respect to the broken blinds, I have viewed those photographs, and the landlord's evidence that the blinds were 9 years old, and due to the appearance in the photographs, I find that the damage to the blinds is reasonable wear and tear for which the tenants are not responsible.

I do find, however, that the tenants did not clean the unit or leave it in a state of "reasonable health and cleanliness" as required by the *Residential Tenancy Act*. I also find that "16 hrs cleaning" written on the move-out condition inspection report is rather presumptuous by the landlord at the time the report was completed, and the invoice of the landlord's agent is exactly 16 hours. Therefore, the question arises: was the move-out condition inspection report altered after the inspection took place, or did the landlord's agent charge for 16 hours because that is what was written on the report? I find that the landlord would not have been able to estimate exactly 16 hours when the report was completed, and therefore, the landlord has failed to establish the actual expense. I accept the evidence of the tenants that \$15.00 per hour for 6 hours of cleaning is a fairer amount.

The landlord's invoice for carpet cleaning shows "approximate hours" and therefore has failed to establish how much time or money was actually spent cleaning carpets in a 2 bedroom suite. That invoice also shows 6.25 hours at \$40.00 per hour for removal of

furniture. I find that amount is extremely exaggerated and the landlord has failed to establish that it took over 6 hours to remove furniture that was already out of the rental unit. Further, the evidence of the tenants is that they returned the same day to remove that furniture but the landlord had already taken it away. I find that the landlord had an obligation under the Residential Tenancy Regulations to contact the tenants with respect to their intention to recover that furniture, and has therefore, failed to establish that the tenants should be required to pay a hauling fee for that furniture.

I further find that the landlord has established \$4.00 for light bulbs and \$20.00 for unreturned key tags.

I find that the landlord has established \$514.00 in damages, and the landlord currently holds \$875.00. The landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby order that the landlord retain the amount of \$564.00 in damages and the filing fee from the security deposit currently held in trust, and return the balance of \$361.00 to the tenants.

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: October 28, 2010.

Dispute Resolution Officer