



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request for a monetary order for \$600.00, and a request that the tenant bear the \$50.00 cost of the filing fee that they paid for their application for dispute resolution.

The tenant's application is a request for a monetary order for \$1652.50.

Landlords application

Background and Evidence

The landlords testified that:

- On the date they did the move out inspection the carpets were still damp from having been cleaned by the tenant's carpet cleaners.
- On that date they notice that the carpets had a musty smell however they decided to wait until the carpets dried to determine whether there was a need for further cleaning.
- After the carpets dried there was still a strong odour coming from the bedroom carpet and there was heavy staining as well, and as a result the bedroom carpet had to be replaced.
- The tenant also replaced some light fixtures with his own, and the original light fixtures were never returned and as a result they had to be replaced.
- A move out inspection was done and report was filled out, however the tenant failed to sign the report, and failed to take his copy even though one was offered.
- The tenant also failed to vacate the rental unit on the move out date and in fact was not entirely out of the rental unit and did not even complete the cleaning until June 5, 2010.

The landlords are therefore requesting an order as follows:

Replace carpet	\$300.00
Five days additional rent	\$137.00
Filing fee	\$50.00
Total	\$567.00

The landlords wanted it further noted that they are not asking for labour to replace the carpets or the light fixtures.

The tenant testified that:

- A move out inspection was done at the rental unit with the landlord on June 5, 2010, however the landlord did not fill out a move out inspection report, and he was never given an opportunity to sign a move out inspection report.
- During the inspection the landlord pointed out some further cleaning that needed to be done, and he therefore did that cleaning, and at the end of the inspection the landlord told him everything was fine.
- The carpets in the rental unit were left clean, as they were professionally cleaned, and there was no odour or staining.
- He does not dispute the claim for the light fixtures, and in fact had told the landlord that if they forwarded the receipt for the lights to him he would gladly pay it.
- He moved out of the rental unit on May 29, 2010 and it was initially cleaned on May 30, 2010.
- The earliest he could get the carpet cleaner in was June 3, 2010, and during the inspection on June 5, 2010 he cleaned some things that the professional cleaner had missed.
- The only thing left in the rental unit by June 5, 2010 was a computer that was being donated, and some food that had inadvertently been left in the rental unit.

The tenant therefore believes that the full claim should be dismissed other than the claim for the lighting which he had already agreed to pay.

Analysis

Due to the conflicting testimony from the landlords and the tenant I am not able to confirm whether or not a move out inspection report was completed as required by the Residential Tenancy Act.

In the absence of a signed move out inspection report, it is my decision that the landlords have not met the burden of proving that the carpet was left in need of replacement.



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The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case the landlords have supplied a carpet invoice that states very bad smell (cats pee); however they tenant has supplied numerous witness statements, including a statement from the carpet cleaner, that state that the carpets were clean and had no smell.

Therefore in this case it is my decision that the landlords have not met the burden of proving a claim for replacing carpets.

I allow the claim for the light fixtures as the tenants does not dispute this portion of the claim.

I also allow the claim for five days rent, as it is my decision that the tenant did not have the rental unit ready to return occupancy to the landlords until June 5, 2010.

Having allowed a small portion of the landlord's claim I also allow one half the claim for the filing fee.

Therefore the total amount of the landlord's claim I have allowed is as follows:

replace light fixtures	\$80.00
½ filing fee	\$25.00
Total	\$242.00

Tenant's application

Background and Evidence

The tenant testified that:

- The landlord has not returned any of the security deposit, and has not applied for dispute resolution to keep any of the security deposit and therefore he is requesting that the security deposit be returned double.
- He suffered a substantial loss of quiet enjoyment of his rental unit when the landlord tore down the back deck at the rental property and proceeded to build a new deck and a shed.
- He used that deck regularly to set up his easel for painting and the loss of use of the deck resulted in his being unable to complete some paintings on time for a showing thereby resulting in the possible loss of sales.
- The noise made from construction also interfered with his quiet enjoyment of his rental unit.
- He is therefore requesting compensation equivalent of one month's rent for loss of use and enjoyment.

The landlords testified that:

- They kept the security deposit because of damages at the rental unit and the tenant was fully aware of why they kept the security deposit.
- The deck that they removed was approximately 30 years old and in need of replacing, and had they not had interference from the tenants of the rental property, it would have been replaced quite quickly and the construction would have caused little disruption.
- As a result of threatening e-mails and phone calls from one of the tenants of the rental property they were forced to stop construction in the middle of the job.
- Had they been allowed to finish the construction the tenant would have had the new deck for the majority of the month.

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- All work that was done was between the hours of 8 a.m. and 5 p.m., which are normal working hours and this was done to cause as little disruption as possible for the tenants.
- The deck that they removed and the yard in which they were working were common property and were not for the exclusive use of this tenant.
- They therefore believe that the tenant's application should be dismissed in full.

In response to the landlord's testimony the tenant testified that:

- Although another tenant may have done so, he made no threatening e-mails or phone calls to the landlords or the landlord's mother and therefore he should not have to suffer the consequences.

Analysis

As stated earlier, in my analysis of the landlord's application, I am not able to confirm whether or not a move out inspection report was completed as required by the Residential Tenancy Act, nor am I able to confirm whether or not the tenant refused to sign a move out inspection report.

I am therefore not willing to order the landlord to return **double** the security deposit, because if the tenant did refused to sign the move out inspection report, he would have waived his right to return of the security deposit and the landlord would not have had to apply to keep it.

I will therefore only allow the claim for the original deposit plus interest. The original deposit was \$400.00 and interest on that deposit is \$10.87 for a total of \$410.87.



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I will not allow the claim for loss of quiet enjoyment. The landlord has the right to upgrade the common property if they feel it's necessary to do so, and unless the loss of quiet enjoyment is extreme they have no requirement to pay compensation to the tenant's.

In this case it is my decision that the tenant has not shown that the loss of use and enjoyment was extreme.

The landlords took reasonable steps to ensure the disruption was kept to reasonable hours, and, had their construction job not been interrupted, I believe it would have been completed within a reasonable timeframe.

Further although this tenant may not have been the one that caused the interruption in the construction, the fault was not that of the landlords either and I will not order that the landlords pay any compensation as a result of the tenant's loss of use of the deck.

Therefore the total amount of the tenant's claim that I have allowed is \$410.87

Conclusion

I have set off a \$242.00 that I have allowed the landlords claim against the \$410.87 I have allowed in the tenants claim, and I have issued an order for the landlords to pay \$168.87 to the tenant.

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 02, 2010.

Dispute Resolution Officer