



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with the landlords' request for a Monetary Order for damage to the rental unit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issues(s) to be Decided

Has the landlord established an entitlement to compensation for damage to the rental unit?

Background and Evidence

The parties provided the following undisputed evidence. The tenancy commenced February 13, 2009 and ended May 31, 2010. The monthly rent was \$750.00 and the tenant paid a \$375.00 security deposit. The landlord did not prepare a move-in inspection report the landlord took numerous pictures of the rental unit at the beginning of the tenancy. The parties started a move-out inspection together but the tenant did not stay until it was complete and the landlord did not prepare a move-out inspection report. The tenant provided a forwarding address in writing on June 21, 2010 and the landlord made this application on June 24, 2010.

In making this application, the landlords claimed the follow amounts:

Deadbolt and paint	\$ 191.56
Keys	2.78
Cleaning by landlord – 6 hours	90.00
Repairs by landlord – 4 hours	100.00
Cleaning supplies	20.00
Replacement laundry flooring – estimate	182.97
Remove laundry flooring – estimate	150.00
Repair window sills and walls – estimate	<u>300.00</u>
Landlords' Claim	\$1,037.31

Upon enquiry, the landlord stated:

- The tenant broke the key in the deadbolt.
- The tenant did not return all of the keys at the end of the tenancy.
- The landlord had to clean the fridge, freezer, stove, drawers, cupboards, deep freeze, walls, bathroom vanity and closets.
- The tenant obtained a cat during the tenancy which scratched the walls and window sills and the tenant did not repair these items. The landlord repaired the worst of the cat scratches and obtained an estimate for the walls damaged under the windows and the window sills. Two different colours of paint had to be purchased to cover the wall repairs. The unit was last painted in February 2008.
- The tenant did not inform the landlords that the washing machine was leaking. The water on the laminate floor caused black mould to grow in the joints of the laminate floor. The laminate floor was installed in most of the house in 2008 when the house was renovated. The laminate was installed on top of a membrane on top of concrete. The landlords lived in the house before renting it and experienced no issues with water infiltration. After the tenant vacated, the new tenant contacted the landlords within a couple of days to report the washing machine leaks.

In response to the landlords' claims and submissions, the tenant stated:

- The key did break in the lock for some unknown reason. The tenant left a new deadbolt behind which was partially installed. The tenant submitted that the landlord's receipt for the deadbolt and paint was high.
- The rental unit was not clean when she moved in and at the end of the tenancy she left it reasonably clean and cleaner than at the beginning of the tenancy. The tenant acknowledged the closet was not vacuumed.
- The tenant did have a cat and acknowledges some scratches were made by the cat but the landlord's estimates for repairs is high. The scratches could have been covered with paint. Further, any other damages amounted to normal wear and tear for a family with three children.
- The tenant did not know the washing machine was leaking. The tenant thought the water infiltration was from moisture coming through the concrete floor. The tenant claims she first saw mould in January or February 2010 and acknowledged she did not report it to the landlords.
- The tenant acknowledged verbally telling the landlord to keep the security deposit at the end of the tenancy.

The landlord refuted the tenant's testimony by stating the landlord did not find any pieces for the deadbolt left behind by the tenant and the rental unit was immaculate when the tenant moved in.

As evidence for the hearing the landlords provided pictures of the rental unit before the tenancy began and at the end of the tenancy. The landlords also provided copies of the tenancy agreement and invoices and estimates for repairing and cleaning the rental unit.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The Act provides that at the end of the tenancy, the tenant must leave the rental unit undamaged and reasonably clean. In addition, the tenant must return the keys to the landlord. It is important to note that normal wear and tear is not considered damage under the Act and is not recoverable by the landlord.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37. Since I heard the rental unit was renovated in February 2008 I have used February 2008 to estimate this as the age of the items that were damaged.

Upon review of the pictures, invoices and estimates provided by the landlord and upon hearing from both parties, I make the following findings, based on the balance of probabilities.

Deadbolt

I accept that the tenant is responsible for breaking the key in the deadbolt during her tenancy. The tenant did not satisfy me that she rectified the damaged deadbolt by properly replacing it with another deadbolt. Locks have an average useful life of

approximately 20 years. Therefore, I award the landlord the cost of the replacement deadbolt x 18/20 years which I calculate to be \$86.67 includes taxes.

Keys

I am satisfied the tenant did not return all of the keys to the rental unit and I award the landlord the cost of new keys which is \$2.78.

Paint

I am satisfied the tenant's cat and/or children damaged the walls beyond normal wear and tear as evidence by the deep gouges apparent in the photographs. Since the average life of interior paint is four years I hold the tenant responsible for the cost of paint supplies x 21/48 months which I calculate to be \$41.68 including taxes.

Wall and window sill repairs

I find the tenant's argument that the gouges in the walls and window sills merely required re-painting is unrealistic given the depth of the gouges. Where a tenant takes the position the landlord's loss is too high, it upon the tenant to show what a reasonable cost would be. I find the landlord's quote of \$300.00 for mudding, priming and painting to be reasonable in the absence of evidence to the contrary. I am also satisfied the landlord spend four hours to remedy the worst of the scratches to prepare for the incoming tenant. Therefore, I award the landlord \$400.00 (\$100.00 + 300.00) for wall and window sill repairs.

Cleaning

During the hearing the landlord provided a detailed verbal list of the items and rooms that she had to clean at the end of the tenancy. However, the landlord did not document the cleaning in detail. The landlord had not prepared condition inspection reports and chose to document the condition in the photographs. The photographs provided to me show dirty window tracks and some staining on the walls but there are not photographs of a dirty fridge, stove, deep freeze, bathroom vanity and the like. While I find it quite possible the landlord had to perform additional cleaning, given the

tenant disputed the landlord's claims, the landlord has the burden to prove the claim. Therefore, I award the landlord only a portion of the amount claimed. I award the landlord one-half of the amount claimed for cleaning and cleaning supplies which I calculate to be \$55.00.

Laminate flooring

The photographs taken at the beginning of the tenancy show the laundry room floor devoid of mould whereas at the end of tenancy it is undisputable that mould is evident in the flooring. Given the landlord stated that her family lived in the rental unit without signs of moisture coming through the floor, hearing of the installation technique of the flooring and hearing the incoming tenant immediately reported that water leaked from the washing machine, I accept that the mould was caused by the repeated leaking from the washing machine during the tenancy.

At issue is whether the tenant is responsible for damage caused by the leaking washing machine. I was not presented evidence the tenant caused the washing machine to leak. However, as concluded above, I find the damage occurred due to frequent and on-going water leaks not remedied in a timely manner.

Section 32(3) provides that a tenant is responsible for repairing damage that is caused by the actions or neglect of the tenant. I find in this case the tenant neglected to report the leaking washing machine to the landlord, or if the tenant did believe the cause was moisture in the floor, to report a moisture problem to the landlord.

Section 32(1) provides that the landlord must repair and maintain the residential property and section 29 of the Act provides the landlord the ability to inspect the rental unit up to once per month. I find the landlords could have minimized their damages had they performed regular inspections.

For the above reasons, I hold each of the parties equally responsible for the damaged laundry room floor. I estimate laminate flooring has a useful life of approximately ten

years. Thus, factoring in depreciation, I estimate the flooring had 8 years of life left in it and the tenant is responsible for one-half the cost to replace the flooring less the depreciation of the floor. The landlord is awarded $(\$182.97 + 150.00) \times 8/10 \text{ years} \times \frac{1}{2} = \133.19

The landlords have established an entitlement to compensation of:

Deadbolt	\$ 86.67
Keys	2.78
Paint	41.68
Cleaning by landlord (\$45.00 + \$10.00)	55.00
Wall and window sill repairs	400.00
Replace laundry flooring	<u>133.19</u>
Landlords' Claim	\$ 719.32

Since the landlords were partially successful in their application I award them a portion of the filing fee or \$34.67. I also reduce the claim by the amount of the security deposit in their possession. Therefore, **I authorize the landlords to retain the security deposit and provide the landlords a Monetary Order for the balance of \$378.99** [\$719.32 award for damages + \$34.67 filing fee - \$375.00 security deposit]

The Monetary Order must be served upon the tenant and may be enforced in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The landlords were partially successful in their application. The landlords have been authorized to retain the security deposit and have been provided a Monetary Order for the balance of \$378.99 to serve upon 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 25, 2010.

Dispute Resolution Officer