



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord and a cross application by the Tenant.

The Landlord applied for dispute resolution on May 12, 2011 for:

- A Monetary Order for damage to the unit, compensation for damage, and unpaid utilities – Section 67;
- A Monetary Order to retain the security deposit in partial satisfaction of the monetary claims – Section 38; and
- A Monetary Order for recovery of the filing fee.

The Tenant applied for dispute resolution on May 26, 2011 for:

- A Monetary Order for return of the security deposit – Section 38; and
- A Monetary Order for recovery of the filing fee – Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on July 1, 2009 and ended on April 30, 2011. A lease agreement was signed by four Tenants sharing the unit. Rent in the amount of \$1,395.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenants in the amount of \$697.50. A move-in inspection was completed with the Tenants on June 30, 2009. Over the period of the tenancy, three of the four Tenants moved out individually and were replaced by three new Tenants. The Tenants knew each other and upon each Tenant leaving, the replacing Tenant paid a portion of the security deposit to the Tenant who originally paid that apportionment of the total security deposit. No new lease agreements were signed for any of the changes of Tenants. No move-in or move-out inspections were conducted between the coming and going of the three original and new Tenants and the Landlord.

A move-out inspection was completed by the one original and three replacing Tenants at the end of the tenancy on April 30, 2011. This inspection report notes cleaning and repairs required and while the Tenants did not agree to damages as noted in the report, they did sign agreement to the Landlord's estimate of costs for damages, cleaning and utilities owing and the set off of this amount against the security deposit.

The Landlord states that at the end of the tenancy the Tenants failed to properly clean the unit, the carpets and the blinds, left garbage in their neighbours bins, failed to replace light bulbs, failed to pay utilities owing and caused damage to light fixtures, doors, a door jamb, a vent cover and a bathroom towel bar. The Landlord states that the lease agreement requires professional cleaning of the carpets and blinds upon vacating the unit. The lease agreement filed by the Landlord contains this provision in an addendum to the main agreement and the main agreement contains a provision that states if the carpets and blinds are either new or have been professionally cleaned at the start of the tenancy, the tenants will pay for professional cleaning at the end of the tenancy. The Landlord states that the carpets had been professionally cleaned at the

beginning of the tenancy and the blinds were new. The Landlord states that two bedrooms required painting due to smoke stains on the ceiling and that the hallway wall required repair and painting where the Tenants had hung their bikes. The Landlord states that the Tenants filled their neighbours' garbage bins with their garbage and that he had to empty and haul this garbage away. The Landlord provided items found in that garbage that showed the Tenants' identity as proof of this action by the Tenants. The Landlord states that the exterior metal door required painting as well to cover the marks caused by the entry of the Tenants' bikes into the unit. The Landlord states that the utility bill was for the last one and two months of the tenancy and came in the mail after the tenancy ended. The quantum of the Landlord's claim is \$1,750.00 for cleaning and repair costs and utility arrears.

The Tenants argue that since the Landlord did not complete a move-in inspection for each of the replacing Tenants at the time of their move-in, the Landlord has no claim to any damages. The Tenants state that they fully cleaned the unit before the move-out, including wiping down of the blinds that were not cloth blinds and steam cleaning of the carpets. The Tenants state that all bulbs were replaced and garbage was removed. The Tenants deny that any garbage was left in their neighbours' bins. The Tenants state that they repaired and painted the hallway wall where their bikes had been hanging and that the damages that the Landlord claims to the doors, walls, heating vent and door jamb is part of the wear and tear of a tenancy and not costs that they would be responsible for under the Act. The Tenants further state that the one metal door the Landlord is claiming costs for was recently seen by the Tenants and has not been painted as claimed by the Landlord.

The Tenants submitted that the Landlord became angry following their delivery of a letter to him detailing the cleaning done to the unit, and in particular, a professional blind cleaner was dismissed by the Landlord when the Tenants stated that they were not responsible for professional cleaning of blinds that were not cloth. The Tenants submit that the Landlord informed the blind cleaner that he would pay the cleaner twice for the job after dismissing him. The Tenants submit that the Landlord has claimed damages in

bad faith, that the damages claimed do not correlate with receipts provided, that the Landlord exceeded commonly accepted market rates for the services quoted and that the Landlord upgraded fixtures claimed to be damaged rather than repair them. The Tenants deny that they owe utilities as they paid a utility bill during the last month of their tenancy and had not been informed of any further utility bills owing.

Analysis

A security deposit collected by a Landlord under the Act is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the agreement has authority in relation to that deposit. Further, where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant. Given the evidence of the Tenants in relation to the re-apportioned assumption of the original security deposit between themselves, and the fact that the tenancy did not end with the departure of three of the four original tenants, it can be inferred that all Parties agreed to amend the original tenancy agreement to include the new occupants as Tenants with each tenant having authority in relation to the deposit and therefore responsibility in relation to the condition of the unit. Given the continued occupancy by an original Tenant over the period of the tenancy and an the amendment to the lease agreement to change three other Tenants, I find that the tenancy therefore did not end, remained intact, and additional move-in and move-out inspections were not required throughout the period of the tenancy.

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. In this case, while the move-out condition report noted several areas requiring cleaning and painting, I note that the Tenant's did not agree with the report. Contrary to this non-agreement however, I also note that the Tenants did sign an agreement to set off the damage deposit against the Landlord's

estimate of costs for the cleaning and repairs. Clearly, the Tenants did accept some damage or cleaning costs existed following the move-out.

I accept the Tenants' evidence that the blinds and carpets were cleaned, the unit was cleaned, the light bulbs were replaced, and the hallway was repaired and painted at the end of the tenancy. Although the Landlord claims a requirement for the blinds to be professionally cleaned as this is a term in the lease agreement, I find that as the blinds were not cloth and were able to be wiped down, and given the excess cost of professional cleaning, that such a term in the agreement is grossly unfair and therefore an unconscionable term that is unenforceable. I dismiss the Landlord's claim for such costs to professionally clean the blinds.

In relation to the carpets, I find on a preponderance of the evidence that stains were left on the carpet in the living room but that the Landlord did not mitigate the costs for cleaning those stains and simply had all the carpets re-cleaned. I find that a more reasonable claim for the carpets amounts to \$100.00. I also find on a preponderance of evidence that the hallway was insufficiently repaired, utilities were left unpaid, and the towel bar required repair. I also find that the Tenants left garbage that required removal and that the Landlord incurred a cost for this removal. I find therefore on a balance of probabilities that the Landlord has substantiated a claim for costs for the cleaning and repair as follows:

Re-clean the carpets	\$ 100.00
Repaint the hallway	50.00
Repair towel bar.	40.00
Garbage removal	100.00
Utility arrears	<u>234.45</u>
Total	\$ 524.45

I cannot accept that the damages claimed by the Landlord for the full replacement of light fixtures, repair of the door jamb, painting of the exterior metal door, painting of the bedroom ceilings and wall and fixing the hinges on the bathroom and bedroom door are

due to the negligence or actions of the Tenants but are rather reasonable wear and tear for which the Tenants bear no responsibility. As such, I dismiss these costs as claimed by the Landlord.

As each Party's claim has merit, I make no award in relation to the filing fee for either Party. The Landlord has established a monetary claim from which the security deposit will be set off with the remainder to be returned to the Tenants, calculated as follows:

Damages	\$524.45
Less Security Deposit and interest <i>to date</i>	-697.50
Deposit Return	\$173.05

Conclusion

I Order the Landlord to retain the amount of \$524.45 from the **deposit** and interest of \$697.50 in satisfaction of the claim and **I Grant** the Tenant a Monetary Order under Section 67 of the Act for the balance due of **\$173.05**. If necessary, this order may be filed in the Small Claims Court and enforced 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: June 14, 2011.

Residential Tenancy Branch