



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the rental unit totalling \$3,310.00. Both parties appeared and gave testimony.

Issue(s) to be Decided

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for damages.

Background and Evidence

The tenancy began in November 2008 and ended on April 1, 2011. Rent was \$950.00 and a security deposit of \$475.00 and pet damage deposit in the amount of \$475.00 were paid. Submitted into evidence was a copy of the tenancy agreement, photos, copies of communications, receipts and estimates. No move-in condition inspection report nor move-out condition inspection report was submitted into evidence.

The landlord testified that when the tenant left she did not surrender the key fob and the landlord was forced to replace it at a cost of \$160.00 which is being claimed.

The landlord testified that, although there was no move-in and move out condition inspection reports, the unit was brand new when the tenant took occupancy. The landlord testified that when the tenants vacated, they left the carpets damaged and stained, requiring replacement flooring and the landlord included 2 written estimates. The landlord testified that although no assessment from a professional carpet cleaner had been obtained, it was evident that the carpet could not be cleaned, given the extent of the urine stains which went through the carpet, through the underlay and into the concrete floor base beneath. The landlord testified that the carpet was also snagged or damaged in several places. Photographs confirmed the stains and other damage. The landlord is claiming \$2,900.00 that was eventually spent on the replacement flooring.

The landlord testified that the tenant had also caused extreme damage to the dishwasher speculating that this may have been resulted from loading it improperly and jamming an item against the heating element causing it to disengage, fall to the bottom

of the interior and burn a hole completely through the housing. The landlord was able to purchase a replacement dishwasher at a cost of \$250.00 which is being claimed.

The tenant did not dispute that the key fob was lost and agreed to the cost of \$160.00 for the damages.

With respect to the claim for the carpet, the tenant agreed that the carpet was snagged and damaged, but stated that this did not result from her cat. The tenant testified that the carpet installation was deficient and had left threads exposed at the seams which caught in the vacuum and unraveled portions of the carpet. The tenant agreed that in one spot a nail from her furniture had gouged the carpet. The tenant acknowledged the stains, which she stated resulted partly from spills. However, according to the tenant, she was told specifically by the landlord not to bother shampooing the carpet during her tenancy nor at the end of the tenancy because there were prior plans by the landlord to replace the carpeting. The tenant stated that, otherwise she would have had the carpeting cleaned on a regular basis and ensured that it was thoroughly shampooed to remove all stains before departing.

With respect to the issue of the dishwasher, the tenant stated that this appliance had malfunctioned earlier and she had replaced one of the arms at her own expense and the landlord was made aware of this. However, according to the tenant, she was never aware of the heater disengaging and only found out this information on her final day as a tenant.

Analysis

With respect to an applicant's right to claim damages from another party, section 7 of the Act provides that if a party fails to comply with the Act or agreement, the non-complying party must compensate the other for any damage or loss that results. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In regard to the claimed costs for cleaning and damages, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In establishing whether or not the tenant had complied with this requirement, I find that this can best be established with a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures. Section 23(3) of the Act covering move-in inspections and section 35 of the Act governing move-out inspections, both place the obligation on the landlord to complete the condition inspection report in accordance with the regulations and the landlord and tenant must each sign the condition inspection report, after which the landlord must give the tenant a copy of it in accordance with the regulations.

In this instance, the landlord did not conduct a move-in condition inspection report nor a move-out condition inspection report signed by both parties. I find that this has affected the evidentiary weight of the landlord's claims for damages. Moreover, I find that under normal circumstances, had a move-out inspection been scheduled and completed in compliance with the Act, this would have permitted the landlord to officially express dissatisfaction with the state of the carpet and other issues, and would then have also given the tenant a reasonable opportunity to rectify any deficiencies that were noted on the report.

Under these circumstances, I find that the tenant moved out with the impression that the carpet was not an issue of concern because of an apparent understanding that the carpet's condition was irrelevant, given that the landlord had expressed an intention to replace this flooring.

The lack of a move out condition inspection report also deprived the tenant of being informed about the landlord's concern about unacceptable damage to the dishwasher, of which the tenant was evidently unaware. In any case, I find that Section 1 of the Residential Tenancy Policy Guideline, states that, "*The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant*"

Notwithstanding the lack of a move-in and move-out condition inspection report, I find that the tenant clearly failed to comply with section 37 of the Act in that the unit was not left reasonably clean with respect to the carpet. I do not accept the tenant's position that a verbal waiver of this requirement by the landlord had totally relieved the tenant from

this responsibility and find that the staining of the carpet caused by the tenant should have been rectified by having it properly cleaned.

That being said, I find that the landlord's claim for the cost of replacing the carpet fails to meet element 4 of the test for damages and loss, in that no reasonable attempt was made to mitigate the damage by first investigating whether or not the carpet could be restored before replacing it entirely.

Given the above, I find that the landlord is entitled to be reimbursed for what it would likely have cost for professional cleaning and disinfecting of the carpet. I set this amount at \$300.00 plus compensation of \$50.00 for the one spot where the tenant's furniture had gouged the carpet.

I therefore find that the landlord has established a total monetary claim of \$560.00 comprised of \$160.00 for the key fob, \$300.00 for stained carpets, \$50.00 for damage to the carpet and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain \$560.00 from the security and pet-damage deposits and interest of \$952.38 in satisfaction of the claim leaving a balance due of \$392.38 in favour of the tenant.

Conclusion

I hereby grant the tenant a monetary order under section 67 for \$392.38. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The remainder of the landlord's application is dismissed without leave.

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: July 05, 2011.

Residential Tenancy Branch