



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNSD, MNR, MNDC, MND, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, his witness and the tenant.

At the outset of the hearing I confirmed the tenant had moved out of the rental unit and there was no longer a need for the landlord to obtain an order of possession and as such, I amend the landlord's application to exclude the matters of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for lost income; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy a tenancy agreement signed by the parties on April 11, 2010 for a month to month tenancy beginning on July 1, 2010 for a monthly rent of \$1,350.00 due on the 1st of each month with a security deposit of \$675.00 paid on April 11, 2010.

The tenancy ended by May 31, 2011 when the tenant vacated the rental unit. A move out inspection was completed and the tenant signed the subsequent report but was not provided with a copy of the inspection report until she received it as evidence for this hearing.

The tenant testified that there were a number of notations made to the document after she had signed it including comments regarding cat feces; damaged blinds; washroom cabinets. The tenant further notes that some comments that stated something was good were later crossed out and changed to damaged or dirty.

The landlord provided photographic evidence of the condition of the rental unit both during and at the end of the tenancy. These include: 7 photos of a damaged shower faucet; 5 photos of damaged blinds; 2 photos of cabinets the landlord states are damaged; 3 photos of a cabinet the landlord asserts is dirty; 2 photos of the unit during the tenancy showing a cat under a table; 1 photo of a broken key fob; 6 photos of the stove top and oven; and 4 photos of two different sections of carpet.

The landlord seeks the following compensation:

Description	Amount
Cleaning 4 hours @ \$50.00 per hour	\$226.00
Access Fob replacement	\$60.00
Track light repairs	\$16.11
Faucet repairs	\$180.90
Lost revenue	\$716.99
Total	\$1,200.00

The tenant acknowledges that she had taken the access fob apart as it was not working. She further accepts that she may not have cleaned the rental unit as well as she should have but does not understand the damage to the track lights. The tenant testified that the faucet had always been a problem throughout the tenancy and it eventually, on the day they were cleaning the rental unit, broke right off.

The landlord seeks compensation for lost revenue because the new tenants who rented the unit. According to the landlord's witness the new tenants requested the rental unit be cleaned specifically because of allergies they have to cats.

Analysis

To be successful in a claim for loss or damage the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a loss or damage exists
2. That that loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. The steps taken, if any, to mitigate any loss.

As the tenant acknowledges that she dismantled the access fob, I find that she is responsible for the replacement of the damaged fob, in the amount paid by the landlord of \$60.00.

In relation to the faucet repairs, I find it unlikely that if the tenant had had trouble with the faucet throughout the tenancy that she would not have reported the problem to the landlord to seek a repair and I am therefore not convinced that problems with the faucet

occurred only towards the end of the tenancy. As the tenant failed to report this problem, I accept it may have worsened the problem and created greater damage to the faucet, I therefore find the tenant responsible for the repair costs of the faucet.

The tenant disputes the additional content written into the move out Condition Inspection Report and I accept that it appears some comments were made at a later time, as such, I find the Condition Inspection Report to be an unreliable record of the condition of the rental unit. I therefore have relied on the photographic evidence provided by the landlord as the record of the condition of the rental unit.

I note the only damage claim by the landlord is to repair track lighting, yet he has provided no photographic evidence of the condition of the lighting and as I have found the Condition Inspection Report to be unreliable, I find the landlord has failed to establish any damage to the light fixture, and I dismiss this portion of the landlord's application.

In regard to the landlord's claim for cleaning, from the photographic evidence submitted, the only unclean part of the rental unit the landlord has confirmed is the interior oven door and two small stains on the carpet. I do not accept that this small cleaning task would warrant 4 hours of cleaning of the rental unit.

In addition, while the landlord suggests that there are stains from cat feces on the carpet and that the new tenants wanted the landlord to have the rental unit professionally cleaned due to allergies, I find it unlikely that the landlord would only have a cleaner come into clean the oven, cupboards and general cleaning but not hire professional carpet cleaners.

Carpets and other soft materials are more likely to retain remnants of cat hair and dander than the oven or cupboards. Further, if the landlords hired the professional cleaners resulting from a request from the new tenants to clean the rental unit to their standards, I find it was a choice the landlord made in relation to the new tenancy and not to this tenancy.

In addition, if the new tenants requested the landlord complete additional cleaning for their own purposes and they chose not to move into the rental unit until such time as this cleaning was completed, I find that was an agreement between the landlord and the new tenants and costs associated with that decision cannot be passed on to this tenant.

For these reasons, I dismiss the landlord's claim for loss of revenue. However, as the tenant acknowledged in the hearing that she could have cleaned the unit more thoroughly, I award the landlord \$100.00 towards cleaning costs.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$365.90** comprised of \$100.00 cleaning; \$60.00 access fob replacement; \$180.90 faucet repairs; and as the landlord was only partially successful in his claim \$25.00 of the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit held in the amount of \$675.00 in satisfaction of this claim.

I grant a monetary order to the tenant for the balance of the security deposit in the amount of **\$309.10**. This order must be served on the landlord. If the landlord fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: July 12, 2011.

Residential Tenancy Branch