



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; authority to retain the security deposit; 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.

Issue(s) to be Decided

1. Has the landlord established the tenant damaged the rental unit?
2. Has the landlord established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
3. Is the landlord authorized to retain all or part of the security deposit or pet deposit?

Background and Evidence

The tenancy commenced either December 1, 2009 or January 1, 2010 and ended March 30, 2011. The tenant paid a \$1,200.00 security deposit and a \$1,200.00 pet deposit. Both parties participated in a move-in and move-out inspection together. The landlord prepared inspection reports; however, the tenant did not agree with the landlord's assessment of the condition of the rental unit at the end of tenancy. The tenant provided a forwarding address to the landlord on March 31, 2011 and the landlord filed this application the same day.

In making this application the landlord applied for \$2,185.00 based on estimations made at the time of the move-out inspection. During the hearing, the landlord requested the application be amended to reflect an amended claim totalling \$1,994.60. Below I have summarized the landlord's amended claims and the tenant's responses to those amended claims.

<u>Item</u>	<u>Amount</u>	<u>Landlord's reason</u>	<u>Tenant's response</u>
Strata move-out fee	\$150.00	Charge imposed by strata	Tenant agreed to pay.
Hardwood floor scratches	169.40	Deep scratch in hardwood floor. Flooring new in January 2009 with only minor scratches at beginning of tenancy.	Scratches were present at beginning of tenancy. Building constructed in 2006.
Carpet cleaning	67.20	Carpet required cleaning.	Tenant agreed to pay.
Damaged cooktop	924.00	Element excessively scratched and gritty, not repairable. Damage likely caused by not regularly cleaning element and allowing grit to build up. Amount claimed based on cost of new cooktop, installation and tax.	Scratches in cooktop present at beginning of tenancy. Used one element most of the time. Only normal use of cooktop for which tenant is not responsible. Perhaps needed more cleaning.
Painting one wall	84.00	Wall anchor hole. Had to repaint wall over fireplace. Last time painted was approximately January 2009.	Agreeable to paying one-half of the claim. Did create one hole for wall hanging; however, some scratches pre-existing. Unit was not in perfect condition at beginning of tenancy.
Total amended claim	\$ 1,994.60		

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. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

Section 32 of the Act provides that a tenant must repair damage to the rental unit caused by the tenant's actions or neglect. Section 32 also provides that a tenant is not responsible for making repairs for reasonable wear and tear.

Where a tenant has caused damage and does not make the necessary repairs, the landlord may seek compensation from the tenant for the value of the loss. 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. Where it is necessary to estimate the average useful life of an item I have turned to Residential Tenancy Guideline 37 to determine the expected useful life of the damaged item.

With respect to the landlord's claims I provide the following findings and awards based upon the above described criteria.

<u>Item</u>	<u>Reasons and findings</u>	<u>Award</u>
Strata move-out fee	The tenant agreed to pay this cost and the landlord is awarded the amount claimed.	\$150.00
Hardwood floor scratches	The move-in and move-out report indicates there were scratches in the hardwood flooring; however, I find the pictures indicate the scratches are the result of cooking. From the report I cannot determine that the flooring had larger or deeper scratches at the end of the tenancy than those present at the beginning of the tenancy. I find the landlord has failed to establish the floors were deeply scratched	Nil

	at the end of the tenancy. Claim denied.	
Carpet cleaning	The tenant agreed to pay this cost and the landlord is awarded the amount claimed.	67.20
Damaged cooktop	I accept that the cooktop was scratched during the tenancy, especially over one element. The landlord provided a possible explanation as to the reason the cooktop was scratched; however, the tenant described reasonable use of the cooktop during the tenancy. The landlord has the burden to prove the scratches are the result of actions beyond reasonable wear and tear. I find the landlord has not met this onus and the claim fails.	Nil
Painting one wall	Interior painting has a useful life of approximately 4 years. I accept the walls were last painted on or about January 2009. Therefore, I find the tenant's offer to pay half the cost of painting to be more reasonable than the landlord's request for the full cost of painting the wall. The landlord is awarded one-half of the amount claimed.	42.00
Total award		\$ 259.20

Given the limited success of the landlord and the tenant was agreeable to the majority of the total award, I find it reasonably likely the tenant would have agreed to the above awards with going to dispute resolution. Therefore, I do not award the filing fee to the landlord.

I authorize the landlord to retain \$259.20 from the tenant's security deposit and I order the landlord to return the balance of the deposits of \$2,140.80 [\$2,400.00 – 259.20] to the tenant forthwith. With this decision I provide the tenant with a Monetary Order in the amount of \$2,140.80 to serve upon the landlord and enforce as necessary.

Conclusion

The landlord has established an entitlement to compensation in the amount of \$259.20 and the landlord has been ordered to return the remainder of the deposits to the tenant

forthwith. The tenant has been provided a Monetary Order in the amount of \$2,140.80 to ensure payment is made by the landlord.

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: August 04, 2011.

Residential Tenancy Branch