



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 was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit, site or property – Section 67;
2. A Monetary Order for compensation for loss - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

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

Preliminary Matter

At the onset of the Hearing, the Tenant objected to the late evidence filed by the Landlord and specifically objects to the reference letters as the Tenant argues that due to the late filing and service on the Tenant the Tenant has had no opportunity to follow-up on the references. The Tenant does not object to the remainder of the late filed evidence as it contains essentially the same materials already filed earlier as evidence by the Landlord. The Landlord objects to the exclusion of the references and in particular the one reference from the realtor as this letter contains evidence relevant to the state of the unit at move-in and the realtor was not available to attend the hearing. If the reference evidence is excluded, the Landlord requests an adjournment of the hearing in order to have the realtor attend the Hearing. The Tenant objected to the adjournment and argues that the attendance of the Realtor will not assist in the resolution of the dispute due to the evidence of intervening causation being presented by the Tenant. Considering the prejudice to the Tenant in its inability to prepare

responses to the reference letters, the late evidence comprised solely of the reference evidence is excluded and the adjournment denied.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on January 1, 2009 and was to end on April 30, 2011 pursuant to a settlement agreement reached at a previous hearing. Rent in the amount of \$1,500.00 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 Tenant in the amount of \$750.00 and a pet deposit in the amount of \$750.00. A move-in inspection was not completed between the Landlord and Tenant.

The Tenant states that he moved out of the unit on April 14, 2011 and sent a registered letter to the Landlord informing the Landlord of the move out. The Landlord acknowledges receiving this letter and states that the Tenant did not return the keys to the unit until days later. The Landlord states that a message was left for the Tenant on May 4, 2011 requesting a move-out inspection and no response was received from the Tenant. The Landlord states that two additional dates of May 7 and May 9, 2011 were further offered again with no response from the Tenant. The Landlord conducted the move-out inspection and provided the Tenant a copy of the report with the application for dispute resolution.

Carpets

The Landlord states that the Tenant caused damage to the carpets that were a year old at the beginning of the tenancy such that the carpet and underlay require replacement. The Landlord states that the carpet was not cleaned by the Tenant at move-out and that the odours were so strong that a cleaning company advised that no amount of cleaning would remove the smell. The Landlord claims the amount of **\$2,548.00** for the replacement of the carpet.

The Tenant states that at move-in the carpet in the living room was stained and smelled of detergent and chemicals that the Tenant believes was caused by an animal that was previously in the unit. The Tenant states that the carpet in one of the bedrooms was also stained at move-in. The Tenant states that in addition to the condition of the carpet at move-in, water was then entering the unit from around the glass sliding door and that this was caused by the rotten wood around the door. The Tenant states that this leak stopped when the Landlord repaired the wood shortly after.

The Tenant states the unit experienced further leaks from the ceiling that started on December 1 and lasted until January 16, 2011 when the Landlord made repairs to stop the leaks. The Tenant argues that although the Tenant advised the Landlord on several occasions about the leaks, the Landlord failed to make timely repairs and that the leaks caused additional damage to the carpets. In particular, the Tenant states that water leaked in the master bedroom such that it was dripping out of the wall, from the ceiling and through the phone jack. The Tenant states that this water went into the carpet and that the Landlord failed to attend to cleaning the carpet when the repairs were made to the roof.

The Landlord agrees that she was in the unit for 8 years previous to the Tenant and that she had cats in the unit. The Landlord states however that the smell coming from the carpet is positively known by the Landlord to come from a dog and while the Landlord does not deny the water leaks, denies that the smell came from the leaks into the unit.

Drywall Damage/Painting

The Landlord states that the Tenant left a 3 inch hole in the dining room wall, a 2 inch hole on the stairwell wall and insignificant holes at the entrance. The Landlord states further that marks were on the walls at the front door and dirt marks were on the bottom of the walls that the Landlord believes was caused by the dog rubbing up against the walls. The Landlord claims **\$1,254.40** for the cost of repairing drywall damage and repainting. The Tenant denies leaving large holes but agrees that unintentional damage

was made to the walls in the dining room and stairwell and that the Tenant left drywall materials to cover the costs of those repairs.

Blinds

The Landlord states that the Tenant failed to clean the blinds and window toppers and that the Landlord cleaned them by hand herself. All the blinds were plastic with the exception of two sets of cloth blinds. The Landlord states that animal hairs and dirt were caked on the blinds such that it took the Landlord 50 hours to clean the blinds. The Landlord claims **\$500.00** for her labour. The Tenant agrees that the blinds were not cleaned but states that the cost claimed by the Landlord is excessive and that the blinds and toppers were also damaged by the leaks. The Tenant states that his responsibility is therefore limited and that the blinds would have been cheaper to replace than to hand wash. The Landlord disputes the economy of purchasing new blinds as they are all required to be custom ordered due to the size of the windows. The Landlord further states that no mildew was on the blinds.

General Cleaning

The Landlord states that the unit required cleaning and that the Landlord spent 15 hours cleaning the unit described as a 3 bedroom, 1,200 square foot house and claims the amount of **\$300.00** for her labour. The Tenant states that he paid for professional cleaner to clean the unit at move-out. The Landlord acknowledges that the areas under the fridge and stove were cleaned but that the sides of the stove were not.

Back Yard

The Landlord states that the Tenant's dog destroyed the lawn in the back yard and that sod had been professionally laid in 2007. The Landlord states that the flower beds were also not kept up and claims the amount of **\$1,230.00** to restore the lawn and flower beds. The Tenant states that while his dog may have contributed to the loss of the lawn, the drainage in the back yard was so poor that a pond would form and that this caused erosion. The Tenant states that he left a bag of grass seed to compensate the

Landlord for any damage that may have been caused by the dog but that the Landlord is responsible for the remediation work need to improve the drainage.

Bathroom Mirror

The Landlord states that the mirror in the bathroom, purchased new in 2005 was damaged by the Tenant by chemicals and claims the amount of **\$258.48** for its replacement. The Tenant states that the damage on the bottom of the mirror is age related and not caused by the Tenant.

Bathroom Flooring

The Landlord states that the Tenant damaged the bathroom linoleum which has approximately 75 cuts on the surface and claims the amount of **\$300.00** for its replacement. The Tenant states that this damage was present at move-in and suggests that perhaps the cuts are age related.

Screen Door

The Landlord states that the Tenant damaged the screen door off the living room as it has a hole in the screen and claims the amount of **\$40.00** for its replacement. The Tenant states that the screen had damage at the bottom at move-in and that the Tenant covered it with tape to stop mosquitoes from entering the unit.

Locks

The Landlord states that because the Tenant failed to return the keys to the unit on a timely basis, the Landlord had to purchase and install another lock to the unit and claims the amount of **\$41.40**.

Analysis

In a claim for damage or loss under the Act, the party claiming costs for the damage or loss must prove on a balance of probabilities that the damage or loss claimed has been caused by the actions or neglect of the responding party. The Landlord claims that the carpet was damaged by the Tenant and requires replacement. The Tenant's evidence

of pre-existing damage and odour is supported by the undisputed evidence that the Landlord kept pets in the unit prior to the tenancy. Further, given the undisputed evidence of the ingress of water into the unit over a period of six weeks, and that one of the bedroom carpets was stained prior to the tenancy, I find that the Landlord has not substantiated on a balance of probabilities that the Tenant caused damage to the carpet. I find that the Landlord is therefore not entitled to a monetary amount to compensate the Landlord for the carpet replacement and I dismiss this part of the Landlord's claim.

Given the Tenant's acknowledgement that some minor holes were left on the walls of the unit, accepting the Landlord's evidence that some of the walls were dirty, and taking into account the materials left by the Tenant for repairs to the holes, I find that the Landlord has substantiated on a balance of probabilities that the Tenant caused some damage to the walls and I find that the Landlord is therefore entitled to a nominal award towards the cost of repairing and cleaning the walls in the amount of **\$150.00**.

Although it is accepted that some damage or dirt collection to the blinds would have occurred as a result of the water leakage, the Tenant is responsible for cleaning the blinds at move-out. The Landlord's monetary claim to clean the blinds however is unreasonably high and does not take into account the portion of the Landlord's responsibility for damage caused by the leaks. I find therefore that the Landlord is entitled to the amount of **\$150.00** in compensation.

The Landlord has claimed a total of 15 hours cleaning time to a unit that had already been cleaned. This seems unreasonable however I accept that some additional cleaning was required and I find that the Landlord is therefore entitled to a nominal amount of **\$100.00**.

In reviewing the evidence and pictures of both Parties, I accept the evidence of the Tenant that the backyard has drainage problems causing water to pool over areas of the lawn. I find that it would be reasonable as well however to expect that a large dog

running through a water soaked lawn would exacerbate the damage. Further, it would be reasonable to expect that even with good drainage a large dog would cause some lawn damage. Accordingly, and taking into account the lawn seed left by the Tenant, I find that the Tenant has contributed to damages in the back yard and I find that the Landlord is entitled to the amount of **\$500.00** to compensate the Landlord for the damage done by the dog.

Given the lack of a move-in report and considering the rebuttal evidence of the Tenant that pre-existing damage existed, I find that the Landlord has not substantiated damages to the bathroom floor and screen door and I dismiss this part of the Landlord's claim. Given the appearance of the mirror, I find it more likely that the mirror was damaged simply from age or usual wear and tear and I dismiss this part of the Landlord's claim. I also dismiss the Landlord's claim in relation to the cost for an additional lock as part of the usual obligations and choice of a Landlord between tenancies.

I find that the Landlord is entitled to recovery of the filing fee of **\$100.00** for a total entitlement of **\$1,000.00**. I order the Landlord to retain this amount from the security and pet deposit that totals \$1,500.00 and to return the remaining amount of **\$500.00** to the Tenant.

Conclusion

I order that the Landlord retain the amount of \$1,000.00 from the **deposit** and interest of \$1,500.00 in satisfaction of the claim and I grant the Tenant an order under Section 67 of the Act for the remaining amount of **\$500.00**. 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: August 29, 2011.

Residential Tenancy Branch