



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MND, MNSD, FF

For the tenants – MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the landlord and one brought by the tenants. Both files were heard together. The landlords seek a Monetary Order for damage to the rental unit, an Order to keep the tenants security deposit and to recover their filing fee. The tenants seek to recover their security deposit and their filing fee from the landlord.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The landlords' agents, the tenants and an interpreter for the tenants appeared. All persons present gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the rental unit?
- Are the landlords entitled to keep the tenants security deposit?
- Are the tenants entitled to recover their security deposit?

Background and Evidence

Both parties agree that this tenancy started on September 01, 2009. This was a fixed term tenancy which reverted to a month to month tenancy at the end of the fixed term. Rent for this unit was \$1,350.00 and was due on the 1st day of each month. The tenants paid a security deposit of \$675.00 on August 01, 2009. A move in inspection was completed with the tenants at the start of the tenancy. A move out inspection took place however this was not documented. The tenants gave the landlord their forwarding address in writing on May 31, 2011 on the day the tenancy ended.

The landlords' agent testifies the tenants caused some damage to the rental unit. The landlords' agent states the tenants left stains and ink spots on the carpets, damage to the kitchen cupboards where it appeared a cleaning solution was used which removed the varnish from these cupboards and damaged the kitchen counter tops leaving them with white stains. The landlords' agent testifies the tenants were informed of these damages during the walk through at the end of the tenancy and they refused to sign a move out condition inspection report.

The landlord seeks to recover the sum of \$1,200.00 to replace the carpets. He states the ink spots could not be removed from the carpets. The landlords' agent testifies he brought in a professional carpet cleaner to deal with the ink spot stains but when treated the stains spread and that's why the carpets were replaced as the landlord explains this is a high end executive suite and could not be re-rented with ink spot stains. The landlords' agent testifies the landlord keeps a stock of carpet and used these to replace the carpets in this unit.

The landlord seeks to recover \$600.00 to refinish the kitchen cabinets. He states the cabinets are 36 years old but were all refinished prior to this tenancy. After the tenancy his maintenance person had to sand down the cabinets and re-varnish them in order for the colour to match.

The landlord seeks to recover \$550.00 to replace the kitchen counter tops which he claims were a year old. The landlords' agent testifies the tenants have stained these with what

appears to be bleach. The landlords' agent testifies the new counter tops were taken from the landlords' stock items and replaced with by their own maintenance men.

The landlord seeks to keep the tenants security deposit of \$675.00 in partial payment towards these damages and seeks a monetary Order for the balance plus the filing fee.

The tenant's dispute the landlords claim for damages. The tenants' testify that they did sign off on the move in condition inspection report but they did this because the landlord assured them the work would be completed on the unit after they moved in. The tenants testify that they were two small ink spots on the carpet which would not warrant the carpet having to be replaced. They state they did clean the carpet prior to the end of the tenancy.

The tenant's testify that the counter top was already stained when they moved into the unit and as the landlord was still completing renovations at that time everything was in a mess and they did not think to check the counter tops more carefully. The tenants also dispute the landlords claims that the counter tops were only a year old. They state they appeared to be at least 10 years old and had not been replaced prior to the start of their tenancy as promised by the landlord.

The female tenant testifies that she did clean the kitchen cupboards with normal kitchen cleaner and they developed spots on them. She states the manager came to collect the keys and she apologized to the manager for these marks. The tenant testifies the manager told her it was alright as it was an old kitchen. The tenant states the manager telephoned her manager and then told the tenant she would be charged \$300.00. Later when this other manager came to the unit he wanted to charge them \$500.00. The tenant states she was unsure them how to determine a reasonable price to pay for the damage to the cupboards.

The landlords' agent testifies that he did try to negotiate with the tenants and states he said he would settle for \$800.00 or \$900.00 to avoid going to Dispute Resolution. He states the tenant would not settle and wanted to go to Dispute Resolution so he made his claim for all the damages.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In regard to the landlords claim for damages to the rental unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for damages does not meet all of the components of the above test. The landlord has not provided a copy of the move out condition inspection report he states was done showing the damages that allegedly occurred in the unit. The landlords' agent testifies that the landlord replaced the carpet and counter tops with ones from his stock items but has not shown any evidence to support this statement that these items were actually replaced and nothing to show the original cost of these items. I further find the landlord has provided insufficient evidence to show that he attempted to mitigate his loss by attempting to have the ink spots removed by a professional carpet cleaner.

I also refer the Parties to #1 of the Residential Tenancy Policy Guidelines which states, in part, a tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site. I would consider two ink spots stains to be reasonable wear and tear after a tenancy of this length and if the landlord wants to create a “high end” rental unit he would be responsible to make any adjustments at his own expense. I further find the landlord has provided no corroborating evidence to show that the countertops were new at the start of the tenancy or that they were irreparable damaged which would result in them having to be replaced. Consequently, the landlord has not met the burden of proof in these matters and these sections of his claim are dismissed.

With regard to the landlords claim for work carried out to re-varnish the kitchen cupboards. I again refer the parties to the Policy Guidelines #1 which state, in part, Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. In this case the tenant has testified that she used an ordinary kitchen cleaner on the kitchen cupboards. This would be a normal practise when cleaning a kitchen in most households. If the finish on the cupboards could not tolerate this type of cleaner the landlord should have notified the tenant of this in writing prior to the start of their tenancy to give them guidance as to the correct cleaner to use on these cupboards. The landlord also states the kitchen cupboards were new in 1965 which makes them 36 years old. The useful life of a kitchen cupboard is deemed to be 25 years; consequently, I find the landlords claim for damage to these cupboards is also dismissed.

The landlord has not established his claim to keep the tenants security deposit and this section of his claim is also dismissed.

With regard to the tenants claim for the return of their security deposit; Sections 35(3) and 35(5) of the *Act* require a landlord to complete a condition inspection report at the end of a

tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the tenants moved out, I find the landlord contravened s. 35(3) of the *Act*. Consequently, s. 36(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

I find the landlord has breached sections 35(3) of the *Act* and has extinguished his right to apply for the security deposit; Consequently the landlord must pay the tenant double the amount of the security deposit pursuant to s. 38 (6)(b) of the *Act*. The tenants are entitled to a Monetary Order to the sum of **\$1,350.00**.

As the tenants have been successful with their claim they are also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*. As the landlord has been unsuccessful with his claim he must bear the cost of filing his own application.

A Monetary Order has been issued to the tenants for the sum of \$1,400.00 comprised of double the security deposit plus the \$50.00 filing fee.

Conclusion

The landlords' claim is dismissed without leave to reapply.

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,400.00**. The order must be served on the Landlord and is enforceable through the Provincial Court 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: September 13, 2011.

Residential Tenancy Branch