



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MND MNSD MNDC

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. Both parties attended the hearing and had an opportunity to be heard.

At the outset of the hearing there was a discussion about the evidence packages submitted by the parties. The landlord submitted a package on October 14th and the tenants submitted a package in response on September 17th. Both packages were late but both parties were aware of the contents of the packages and I found that on balance it was not prejudicial to either party to allow these late evidence packages to form part of the evidence in this matter.

Issues

Is the landlord entitled to the requested orders?

Background and Evidence

This tenancy began on March 1, 2008. The landlord claims that the tenants did not vacate the rental unit until July 6, 2011 while the tenants claim they vacated on July 1, 2011. Both parties agree that the tenants were supposed to vacate by no later than June 30, 2011. The rent was \$1400.00 per month at the start of the tenancy and \$1,450.00 at the end. A security deposit of \$700.00 and a pet damage deposit of \$700.00 were paid at the start of the tenancy. Condition inspection reports were not completed upon move-in or move-out. The pet damage deposit has already been returned to the tenants.

The landlord testified that the tenant did not move out on time and left the rental unit dirty and damaged. The landlord claims that as a result he was unable to re-rent the unit until August 1, 2011 and thereby lost rent for the month of July. The landlord submitted invoices, estimates and photos in support of his claim.

The tenants admit they did not move out on June 30th as required. The tenants explained that the arrival of a new baby on June 13th added a considerable burden to

the move-out process. The tenants disputed the landlord's claim that the rental unit was not cleaned properly and submitted an invoice from a cleaning company dated June 29, 2011 in support of this submission. The tenants did however acknowledge that the acrylic kitchen sink was "heavily stained" upon move-out.

Analysis

The landlord has made a monetary claim against the tenant comprised of the following:

Rent for July	\$1450.00
Carpet cleaning	\$168.00
Window coverings repair	\$470.00
Sink refinishing	\$168.00
Drape cleaning	\$120.96
TOTAL	\$2376.96

As a general principle, when making a claim of this nature, the party making the claim bears the burden of proof on a balance of probabilities both as to liability and quantum. In other words, the claimant must first prove that the respondent is responsible for the damage or loss and then having proved that must prove the amount of the loss claimed. On this basis, I will consider each portion of the landlord's claim in turn.

Rent for July (\$1,450.00) – This portion of the landlord's claim is based on the tenants' failure to vacate on June 30th and the condition in which the unit was left. The landlord's position is that the tenants' actions made it impossible to re-rent the unit prior to August 1st. The tenants have admitted they overheld but dispute the landlords' claim that the unit was damaged and dirty.

Residential Tenancy Policy Guideline No. 3 deals with claims for rent and damages for loss of rent. This relevant portions of this policy state as follows:

"... if a tenant remains in possession of the premises (overholds) beyond the end of the tenancy agreement the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate the landlord for loss of rent...."

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.”

In the present case, the question of whether the unit was left dirty is disputed but the tenants have acknowledged that the kitchen sink was damaged. The tenants also acknowledge that they overhauled. The landlord has not presented specific evidence to show that he turned away tenants for July 1, but I am satisfied that on balance the landlord has established a monetary claim for the first half of July in the amount of \$725.00.

Carpet cleaning (\$168.00) – The landlord has submitted an invoice for carpet cleaning in the amount of \$168.00. The tenants have also submitted a receipt for carpet cleaning and say that the condition of the carpets at the end of the tenancy did not exceed normal wear and tear. Given the contradiction between the parties on the issue of the carpets, I am not satisfied that the landlord has provided sufficient evidence in support of this claim. I therefore dismiss the landlord’s claim for carpet cleaning.

Window coverings repair (\$470.00) – The landlord has submitted an estimate for the cost of replacing mini blinds that he claims were damaged by the tenants. The tenants admit that the blinds would get bent when they reached through them to open the window but dispute this claim on the basis that the landlord has only provided an estimate and not a paid invoice. In my view, the landlord has established this portion of his claim. The tenant has not disputed the bent blinds but rather the status of the repairs. The landlord testified that he has in fact purchased the replacement blinds and installed them himself but even if he had not yet installed them, the landlord is entitled to compensation for damage to the blinds.

Sink Refinishing (\$168.00) – The tenant has acknowledged that the sink was left badly stained. I am satisfied the landlord has established this claim.

Drape cleaning (\$120.96) – The landlord claims the tenant removed the drapes, “balled them up and threw them in a closet”. As a result, they required cleaning and pressing at the end of the tenancy. The landlord submitted a receipt from New West Cleaners showing that there were six drapes for which he was charged \$18.00 each for cleaning and pressing. The tenant responded that these were simple cotton drapes and that they could have been machine washed and dried. The tenant acknowledged that they had taken the drapes down because they felt they were a hazard for their toddler. On balance, I am satisfied that the landlord has proved this portion of his claim.

Conclusion

I find that the landlord has established a total monetary claim of \$1,483.96. I therefore order that the landlord retain the deposit of \$700.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$783.96. 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*.