



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for compensation under the Act and the tenancy agreement.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant for damages?

Background and Evidence

The tenancy commenced on July 15, 2009. Rent was \$975.00 per month payable on the first day of each month. The tenant paid a security deposit of \$700.00 which was dealt with at a previous hearing. The tenancy ended on May 15, 2011.

The landlord testified that he is seeking compensation for damages caused by the tenant.

The landlord claims as follows:

a.	Drywall mud to repair wall	14.00
b.	Paint material to repair wall	16.33
c.	Paint for wall	41.44
d.	1 day labour to patch wall and paint	200.00
e.	1 day labour to clean behind stove and fridge	200.00
f.	Labour to stretch carpet by carpet person	200.00
g.	Help the carpet person to remove all the baseboard to fix the carpet	200.00
h.	Replace cabinet door	40.00

i.	Labour to install cabinet door	50.00
j.	Filing fee	50.00
	Total claimed	\$1,011.77

The landlord testified that on two walls the tenant hung posters with tape, and when the tape was removed from the walls it made holes in the drywall that needed to be filled and painted. The cost of the material to fill the holes and paint the walls was \$71.77. Photographs have been submitted into evidence.

The landlord further testified that it took him eight hours to fill the holes and paint the walls and is seeking to be paid \$25.00 per hour.

The tenant's agent testified that the landlord was angry and ripped the posters off the wall and crumpled them up.

The landlord denies the allegation.

The landlord testified the tenant did not clean the area behind the fridge and stove and it took him eight hours to clean the mess up and he is seeking to be paid \$25.00 per hour. Photographs have been submitted into evidence

The tenant's agent testified that the tenant did not clean behind the stove or the fridge when she left the rental unit. The fridge was not on rollers and the tenant was not able to move the fridge in any event.

The tenant's agent further testified the amount the landlord is claiming to clean behind the appliances is unreasonable. The maximum time it should have taken to clean the area behind the stove would be two hours.

The landlord testified the tenant's furniture was heavy and when the tenant moved out she dragged the furniture over the carpet causing the carpet to stretch.

The landlord further testified he paid \$200.00 cash to the carpet person and he helped the carpet person by removing the baseboards and is seeking \$200.00 for his time.

The tenant's agent testified that the carpet had a wrinkle or stretch in the carpet when she moved into the rental unit.

The landlord testified that the tenant broke a cabinet door in the rental unit. It cost him \$40.00 to buy a new door and he is seeking to be compensated \$50.00 for installing the door.

The tenant's agent testified that the tenant acknowledges the hinge was broken on the cabinet door.

Analysis

This is the landlords claim for damage or loss under the Act and therefore the landlord has the burden of proof to establish his claim on the civil standard.

To prove a loss and have the tenant pay for the loss requires the landlord to satisfy four different elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The testimony of both parties was the tenant hung two posters on two separate walls in the rental unit with tape. When the tape was removed from the walls it removed small portions of drywall which needed to be filled and painted.

There was no evidence that would suggest that the landlord made set rules as to how the tenant can hang pictures, such as no adhesive hangers/tape or only picture hooks may be used and there was no evidence to suggest that the tenant used an excessive amount of tape to cause deliberate or negligent damage to the walls. In this case, I find that it was reasonable wear and tear on the walls.

Therefore, I find the landlord has not proven the elements required to be compensated for damages. I find it was the landlord's responsibility to fill the holes and the cost of filling those holes and I dismiss the landlord's claim for damages to the wall.

The parties agreed that the tenant did not clean behind the fridge and stove. The parties agreed that the fridge was not on rollers.

The Residential policy guideline **MAJOR APPLIANCES** states:

If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to

move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.

Therefore, I find the landlord was responsible for cleaning behind the fridge and the tenant was responsible for cleaning behind the stove. I find the landlord is entitled to be compensated for cleaning behind the stove and I grant three hours at \$15.00 per hour or \$45.00. The landlord is not a professional cleaner and is not entitled to \$25.00 per hour.

The parties disagreed on when the damage to the carpet occurred and in the absence of a condition inspection report, I find there is insufficient evidence to meet the burden of proof establishing that the tenant damaged the carpet as set out in the application.

Section 23(1) of the Act states: The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 23(4) of the Act states: The landlord must complete a condition inspection report in accordance with the regulations and (5) both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Therefore, I dismiss the landlord's application to be compensated for damages to the carpet.

The parties agreed that the cabinet door was broken. Therefore, I find the landlord is entitled to be compensated for that damage. However, there was no receipt filed to show the actual cost of the cabinet door. As a result, I will only allow compensation for the cabinet door and installation in the amount of \$55.00.

I find that the landlord has established a total monetary claim of **\$150.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) 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: January 03, 2012.

Residential Tenancy Branch