



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the unit; damage or loss under the Act, regulations or tenancy agreement; and retention of the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

As a preliminary matter I determined that the security deposit has already been dealt with under a previous dispute resolution proceeding and the tenant is in possession of a Monetary Order with respect to the security deposit. As decisions are final and binding, this decision cannot alter a previous order with respect to the security deposit. Accordingly, I proceeded to hear the landlord's claims for damage or loss but I have not given further consideration to the landlord's request to retain the security deposit.

The tenant submitted that she has not received payment to satisfy the Monetary Order previously issued to her. The landlord submitted that he has mailed a bank draft to the tenant. This dispute was not a matter for me to determine. The tenant remains at liberty to enforce the Monetary Order as necessary if she has not received payment in satisfaction of the Monetary Order.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for damage to the rental unit?
2. Has the landlord established an entitlement to compensation from the tenant for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy commenced May 1, 2010 and the tenant vacated the rental unit November 30, 2010. The monthly rent was \$800.00 due on the 1st day of every month. The tenant had paid a \$400.00 security deposit and the landlord refunded \$200.00 to the tenant

shortly after the tenancy ended. The tenant was granted a Monetary Order in the amount of \$400.00 on October 12, 2011 (file no. 777163) calculated as double the unreturned balance of the security deposit. On October 17, 2011 the landlord filed this application seeking compensation for the following items:

<u>Item</u>	<u>Amount claimed</u>
Carpet replacement	1,492.00
Pocket door replacement	130.00
Over holding	<u>700.00</u>
Sub-total	\$ 2,472.00
Filing fee	<u>50.00</u>
Total	\$ 2,522.00

Condition Inspection Reports

Both parties agreed that a move-in condition inspection report was prepared. The tenant submitted she was not provided a copy of the report within the time limit required under the Act but she did not dispute any information appearing on the move-in inspection report.

With respect to the move-out inspection report the landlord claimed that the report was started with the tenant in the evening of November 30, 2011 but that the tenant left before the report was completed and she did not return. Nor could the landlord get in touch with the tenant. The tenant submitted that the landlord was taking notes on November 30, 2011 and had requested that she sign over the entire \$400.00 security deposit to them. The tenant left without signing the inspection report as she had to return a carpet cleaner for a refund. The tenant claims she returned to the property but could not get in touch with the landlord.

The tenant submitted she first received the condition inspection report for the move-in and move-out inspection with the landlord's evidence served upon her for the previous dispute resolution proceeding. The tenant pointed out that the landlord has added the word "replacement" to the report where it describes the damage to the carpet at the end of the tenancy. The landlord acknowledged this one word was added to the report.

Cleaning

The landlord submitted that a cleaning lady was paid \$150.00 to clean the unit. The landlord described how the stove, fridge, windows, walls and doors required cleaning. The landlord submitted a copy of the cheque to the cleaning lady and a letter written by the cleaning lady in support of the charge.

The tenant pointed out the cheque to the cleaner was December 14, 2010 – after the landlord had refunded a portion of the security deposit – and the cleaner’s letter was dated several months later.

Carpet replacement

The landlord submitted that the tenant had applied tape to the carpet and it left a residue that could not be removed. The carpeting is at least 12 years old and has not been replaced yet. The landlord obtained a quote for \$1,492.00 for new carpet and underlay based upon the landlord’s measurements.

The tenant acknowledged putting tape on the carpet but submitted she thought she had removed more of the tape residue. The tenant submitted the carpet was in poor condition at the beginning of the tenancy as evidenced by the move-in inspection report.

Pocket door, tape residue & light fixture

The landlord submitted that the pocket door was off its rails and the landlord paid a handyman to reinstall it. The handyman also inspected the carpet but stated he could not remove the tape residue. The handyman was also asked to repair the light fixture pulled from the ceiling.

The tenant acknowledged her son pulled on the pocket door and it came off its rails. The tenant reported this to the landlord and the landlord attempted to repair it himself during the tenancy but the landlord could not do it. The tenant submitted that she did not break or pull the light fixture from the ceiling but acknowledged she hung some items from it.

The tenant pointed out that the handyman’s estimate is dated October 2011 whereas her tenancy ended November 30, 2010. The landlord submitted that he had paid the handyman for these repairs and other work done on the property and the handyman provided an “estimate” for the amount related to the pocket door reinstallation, attempts to remove the tape residue and fixing the light fixture at the request by the landlord as evidence for the previous dispute resolution proceeding. The “estimate” was for \$105.00 plus HST; however, the landlord acknowledged he paid the handyman in cash for which he does not have a receipt and that he did not pay HST to the handyman.

Over holding

The landlord submitted that the tenancy was set to end October 31, 2010 under the tenancy agreement but the tenant stayed an additional month. The tenant paid the landlord the monthly rent for November 2011.

The landlord submitted that he lost rent for the month of December 2010 due to the condition the rental unit was left by the tenant and because the unit was excessively cluttered during the tenancy and not in a condition to be shown to prospective tenants.

The landlord also submitted that the tenant did not give sufficient notice to end the tenancy for November 30, 2010.

The landlord explained that \$700.00 is being claimed for over holding as this is the amount of the reduced monthly rent he was able to obtain from new tenants starting January 2011.

The tenant submitted that the female landlord prepared a written notice to end tenancy and asked the tenant to sign it, which she did and gave to the female landlord on October 26, 2010. Although the tenant did not submit the notice to end tenancy as documentary evidence for this proceeding the tenant read from the notice during the hearing and claimed that the document was submitted as evidence for the previous dispute resolution proceeding. The female landlord was not in attendance at the hearing but the male landlord acknowledged that his wife is very paperwork oriented and the tenant's testimony sounded like something his wife would do.

Both parties provided some photographs of the rental unit as evidence for this proceeding. The landlord provided copies of the tenancy agreement; the condition inspection reports; carpet replacement estimate; the cheque paid to the cleaning lady, a letter from the cleaning lady; and, the estimate from the handyman.

Analysis

Upon consideration of all of the evidence before me, I provide the following findings and reasons.

The Act requires that at the end of a tenancy the tenant must leave the rental unit reasonably clean and undamaged. The landlord bears the burden of proof to show that the tenant did not leave the unit reasonably clean and left the unit damaged. The burden of proof is based upon the balance of probabilities.

Based upon the tenant's testimony, I find that it was the tenant that chose to leave the move-out inspection before the inspection or report was complete and this was the tenant's choice for which the landlord is not responsible for. Thus, I have accepted the landlord's assessment of the rental unit, as recorded on the move-out inspection report, with the exception of the word "replacement" which was added at a later date.

Cleaning

I find, based on the balance of probabilities, that the tenant did not leave the rental unit sufficiently clean. I make this finding based upon review of the move-out inspection report which notes several items that require additional cleaning; proof of payment to a person who wrote a statement as to the cleaning she performed on December 5, 2010. Although I noted that the cleaning lady stated she cleaned items that were not noted on the move-out inspection report, such as "washing all the floors" I found the charge for five hours to be reasonable given the range itself took over an hour and I am satisfied the cleaning lady also tried to remove the tape residue from the carpet. However, I find the cleaning lady's hourly rate of \$30.00 excessive and if the landlord chose to pay this hourly rate I find that was a decision of the landlord for which the tenant is not responsible. Therefore, I reduce the hourly rate to a more reasonable rate of \$20.00 per hour and I award the landlord \$100.00 for cleaning.

Carpet replacement

Upon review of the move-in inspection report I note the landlord had assessed the carpet as being in poor condition and in need of replacement at the beginning of the tenancy. While I accept the tenant left tape residue on the carpet at the end of the tenancy, the carpet was already in such poor condition that it required replacement, and I find the landlord did not suffer a loss in value of the carpet as a result of the tape residue. Therefore, this portion of the landlord's claim is dismissed.

Pocket door, tape residue and light fixture

Based upon the tenant's testimony I find the pocket door required reinstallation due to the actions of her child. I find this constituted damage for which the tenant was responsible for reinstalling the door or compensating the landlord to perform this repair. I accept the evidence before me that reinstallation of a pocket door requires removal of trim in order to place the door back on the rails and replacement of the trim afterwards. I am further satisfied that the landlord had to have a handyman do this repair based upon the tenant's testimony that the landlord tried to do it himself during the tenancy and was not successful.

Upon review of the photographs, I am satisfied tape residue was apparent on the carpet and I find it reasonable the landlord requested the handyman to inspect the problem in order to try to come to a solution to remove the tape residue.

Upon review of the move-out inspection report I am satisfied the light fixture had a cracked lens at the end of the tenancy that was not there at the beginning of the tenancy and that a repair was required.

In light of the above items that required repair, I find the handyman's estimate of \$105.00 to be reasonable and I award this amount to the landlord.

Over holding

The landlord has made a claim for over holding. Over holding is when a tenant does not leave the rental unit when the tenancy has come to an end. The landlord pointed to the tenancy agreement expiring on October 31, 2010. However, upon review of the tenancy agreement I note the fixed term expired October 31, 2010 and that the tenancy would continue on a month to month basis thereafter. Thus, I reject the landlord's position that the tenancy came to an end October 31, 2010. Rather, having heard the tenant vacated the rental unit November 30, 2010 and had paid rent for November 30, 2010 I find the landlord established the tenant over held the rental unit by no more than several hours. I find the landlord failed to show that over holding the unit several hours caused the landlord to incur a loss.

The tenant submitted that she had given one month's written notice to end the tenancy to the female landlord. The tenant also read from the written notice she signed. The female landlord was not present at the hearing to refute this testimony and the male landlord acknowledged that written notice may have been given to his wife. Nor did the male landlord deny that the written notice was included in evidence submitted under the previous dispute resolution proceeding. Based on the balance of probabilities, I accept the tenant's version of events and find the tenant had given the female landlord one month of written notice to end the tenancy. Therefore, I find the landlord failed to establish the tenant failed to give sufficient notice to end a month-to-month tenancy.

I make no finding as to whether the tenant's unit was excessively cluttered during her last month of tenancy as this would not entitle the landlord to compensation for December 2010. Although a tenant is required to maintain reasonable sanitary and cleanliness standards during the tenancy, a landlord's remedy for a violation of this requirement is to give the tenant a 1 Month Notice to End Tenancy for Cause. The landlord's remedy is not financial compensation for such a violation.

Finally, with respect to the landlord's argument that the condition of the rental unit left by the tenant resulted in the loss of rent for December 2010 I reject this position as the landlord has not proven the tenant is responsible for damages other than the need for additional cleaning, reinstallation of a pocket door and repair to a lens on a light fixture. When I compare such damages to the need for new carpeting due to prior deterioration I am not satisfied the tenant is responsible for the loss of revenue for December 2010.

In light of the above, I dismiss the landlord's claim for over holding or loss of rent.

Monetary Order

The landlord has established an entitlement to compensation totalling \$205.00 for cleaning and damages (\$100.00 cleaning + \$105.00 damages). Given the landlord's limited success in this application I award the landlord \$15.00 toward the filing fee he paid. Therefore, the landlord has been provided a Monetary Order in the total amount of \$220.00 to serve upon the tenant.

Conclusion

The landlord was partially successful in this application and has been provided a Monetary Order in the amount of \$220.00 to serve upon the tenant.

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 24, 2012.

Residential Tenancy Branch