



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing him to retain the security deposit. Both parties participated in the conference call hearing.

The tenants had sent evidence to the Residential Tenancy Branch and at the hearing, the landlord testified that he had not been served with a copy of that evidence. The tenants stated that they sent the evidence to an address other than the address listed as the address for service on the application for dispute resolution. The landlord stated that he did not recognize the address to which the tenants had sent the evidence. I found that the landlord had not been properly served with the evidence and I did not consider it.

During the hearing the landlord withdrew his claim for the cost of repairing a damaged gate with the understanding that he would be free to bring the claim at a later date if the tenants' car insurance did not cover the cost of repairs. The hearing proceeded to address the remaining claims.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenants paid an \$800.00 security deposit in June 2010. The landlord had presented invoices which he claimed were issued by R.P., a maintenance person with whom he had contracted to perform repairs. The tenant challenged those invoices, claiming that she had spoken with R.P. who had told her that the landlord had falsified the invoices and that none of the repairs had been completed. An attempt was made to contact R.P., but he was unavailable at the time of the hearing.

The landlord claimed and the tenants did not dispute that the rental unit was new at the outset of the tenancy and had never been occupied.

The landlord testified that he had never been in the rental unit and acknowledged that he was relying on photographs and narrative provided by one of his agents.

The landlord's claims and my findings on each claim are as follows.

1. **Parking space cleaning.** The landlord seeks to recover \$200.00 paid to clean the parking stalls used by the tenants during the tenancy. The landlord testified that the tenants' vehicles leaked oil, staining not only their assigned parking space, but also other parking spaces in which they had parked. The landlord claimed that he paid R.P. \$200 to clean the parking stalls. The tenants testified that in a telephone conversation, R.P. told them that he had not cleaned the stalls and did not do power washing. The tenants further testified that they had looked at the parking stalls after their tenancy had ended and found that they had not been cleaned. The tenants denied that their vehicles leaked oil and argued that the landlord could not know whether stains left in the stalls were theirs or had come from other vehicles. As the rental unit was new at the beginning of the tenancy, I infer that the building is a new building, in which case it stands to reason that the parking stall was clean at the outset of the tenancy. There was no dispute that at the end of the tenancy, there were stains in the concrete and I accept that the tenants caused these stains in the parking stall which they were assigned. However, I am not satisfied that they caused stains in other stalls which were not assigned to them, as other tenants could have parked in these stalls. In the absence of evidence that the invoices were falsified, I find that the landlord paid \$200.00 to clean 3 parking stalls and I find that he is entitled to recover the cost of cleaning one stall. I award the landlord \$66.67.
2. **Window seat repair.** The landlord seeks to recover \$250.00 as the cost of repairing and repainting a window seat. The invoices show that he was invoiced \$175.00 on July 15 and a further \$75.00 on July 31. The landlord provided photographs showing that there were numerous marks on the window seat and testified that he paid to have the seat repaired and repainted. The tenants argued that the photographs were misleading and while they acknowledged that they caused some of the marks, they claimed that it was reasonable wear and tear. I accept that the tenants caused the marks on the window seat and I find that there was damage which was beyond what may be characterized as reasonable wear and tear. I find that the landlord is entitled to recover the cost of repairing the window seat and I award him \$250.00.

3. **Carpet shampoo and replacement.** The landlord seeks to recover \$600.00 as the cost of replacing part of the carpet in the rental unit and a further \$145.00 as the cost of shampooing the carpet which was not replaced. The landlord testified that there was a burn in the carpet which required him to replace it. The tenants argued that they have visited the rental unit recently and know that the carpet has not been replaced. The tenants acknowledged that they did not shampoo the carpet at the end of the tenancy. Having viewed the photograph provided by the landlord, I accept that a small part of the carpet was irreparably damaged, but I find that the tenants should not have to bear the cost of replacing that section as the affected area was fairly small and does not interfere with the use of the carpet. I find that the landlord is entitled to the cost of the diminished value of the carpet rather than the cost of replacing it. I award the landlord \$50.00 to reflect the diminished value. The tenants resided in the unit for a year and should have shampooed the carpet at the end of their tenancy. I find that the landlord is entitled to recover the cost of shampooing and I award him \$145.00 for a total award under this heading of \$195.00.
4. **Floor replacement.** The landlord seeks to recover \$750.00 as the cost of replacing the flooring of the rental unit. The landlord provided photographs showing that there were a number of scratches on the laminate flooring and testified that part of the flooring had to be replaced. The tenants argued that it is not possible to replace just part of laminate flooring and stated that the damage was insignificant. I find that the damage is beyond what may be characterized as reasonable wear and tear, but as with the burn in the carpet, the affected area was fairly small and does not interfere with the use of the flooring. I find that the landlord is entitled to the diminished value of the flooring rather than the cost of replacing it. I award the landlord \$50.00 to reflect the diminished value.
5. **Wall repair and paint.** The landlord seeks to recover \$500.00 as the cost of repairing damage to the walls and repainting several walls and a further \$210.00 as the cost of touching up walls which did not need to be entirely repainted. The landlord provided photographs showing scratches on the walls. The tenants testified that some of the damage depicted in the photographs were marks which could easily have been washed off and did not require repair. They claimed that the remaining damage was reasonable wear and tear. While some of the damage may have been mere marks which could have been removed, there are a number of significant scratches and gouges which I find go beyond reasonable wear and tear. I am not satisfied based on the evidence before me that entire walls had to be repainted, although I find that repairs and painting touch-ups were required. As some of the

damage falls within reasonable wear and tear and some does not, I find that \$150.00 will adequately compensate the landlord and I award him that sum.

6. **Cleaning.** The landlord seeks to recover \$120.00 as the cost of cleaning the rental unit and \$45.00 as the cost of cleaning blinds. As evidence that the unit required cleaning, the landlord provided a photograph showing that the top of the refrigerator and cupboards were dusty. The condition inspection report does not indicate that any cleaning was required. I find that while there may have been a small amount of dust left behind, the tenants had substantially fulfilled their obligation to clean the unit and I find that the landlord has not proven that \$165.00 worth of cleaning was required. I therefore dismiss the claim.
7. **Loss of income.** The landlord seeks to recover \$1,600.00 in lost income for the month of June, claiming that the tenants did not provide 1 month's written notice that they were vacating the rental unit. B.T. appeared at the hearing and testified that she was acting as the landlord's agent at the end of the tenancy and the tenants gave her 30 days verbal notice. She stated that she informed the owners upon receiving the notice. The landlord claimed that he learned that the tenants would be vacating the unit just 2 weeks immediately began advertising the unit but was unable to re-rent it for several months. Although the Act requires that a notice to vacate be in writing, it is clear that B.T. as the agent for the landlord accepted verbal notice and transmitted this information to the owner of the property. I find that the landlord had notice that the tenants were vacating at least one month prior to the end of the tenancy. Although the landlord was unsuccessful in re-renting the unit for June, I am not persuaded that the tenants were the cause of that loss. I dismiss the claim.

Conclusion

In summary, the landlord has been successful as follows:

Parking space cleaning	\$ 66.67
Carpet shampoo and replacement	\$195.00
Floor replacement	\$ 50.00
Wall repair and paint	\$150.00
Filing fee	\$ 50.00
Total:	\$761.67

The landlord has been awarded \$761.67. I order the landlord to retain this sum from the \$800.00 security deposit and I further order him to return the balance of \$38.33 to

the tenants forthwith. I grant the tenants a monetary order under section 67 for \$38.33. This order may be filed in the Small Claims Division of the Provincial 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: February 07, 2012

Residential Tenancy Branch