



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions. (The landlord raised a concern about some evidence she had received late from the tenants and therefore I offered to adjourn the hearing to allow her more time to review the evidence, however the landlord declined the offer stating she wished to get the matter concluded today).

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request for a monetary order in the amount of \$3632.64 and a request to retain the full security deposit of \$992.50 towards the claim. The landlord is also requesting recovery of the \$50.00 filing fee.

The tenants claim is a request for a monetary order in the amount of \$2646.66 and a request for recovery of the \$50.00 filing fee.

Landlords application

Background and Evidence

The landlord is claiming \$3632.64 in damages; however the tenants have conceded the following portions of the claim:

One closet carpet ruined	\$36.95
Damages to walls	\$1736.00
Broken closet door mirror	\$263.20
Cover plate for exposed ceiling wires	\$3.29
Two area rugs missing	\$76.16
Eight replacement light bulbs	\$21.13
Total	\$2136.73

The remainder of the claim is dealt with below:

The landlord testified that:

- The tenants altered the wiring in the rental unit without permission, putting up their own light fixture and then removing it at the end of the tenancy, and as a result she had to have an electrician come in to do an inspection, and to cover up the open wiring box.
- The tenants removed a thermostat plate and packed it away with some of their belongings when they moved out due to a flood in the rental unit, and since there was work going to be taking place in the rental unit she had to replace the thermostat cover to ensure that dust would not get into the thermostat and caused damage.
- The tenants were given an elevator key to be able to stop the elevator while moving furniture however that key was never returned, and therefore had to be replaced.

- The tenants did some cleaning in the rental unit however they left numerous deficiencies and as a result she had to have another for three hours of cleaning done.
- The tenants also packed up the appliance maintenance manuals when they moved out after the flood in the rental unit, and did not return the manuals prior to her re-renting the unit and therefore she had to pay to have those manuals replaced.
- The tenants were also told on numerous occasions that the area carpets in the rental unit had to be professionally cleaned and that she would make arrangements to have the cleaning done. The tenants instead chose to have the cleaning done themselves and permanently damaged the carpets, and as a result they had to be replaced.
- The tenants allowed water to sit on a shelf under the kitchen sink and as a result the shelf was damaged by that water and had to be repaired. The contractor stated that the damage is a result of items being left wet on the shelf.

The landlord is therefore requesting an order as follows:

Damages conceded by tenant	\$2136.73
Electrical inspection	\$56.00
Thermostat cover	\$16.79
Elevator key	\$50.00
Cleaning 3 hours X \$40.00	\$120.00
6 Appliance manuals	\$300.00
Four area carpets	\$555.52
Repair damaged shelf	\$397.60
Filing fee	\$50.00
Total	\$3682.64

The landlord further requests an order to keep the full security deposit of \$992.50 towards the claim and requests that a monetary order be issued for the remaining \$2690.14.

The tenants testified that:

- They did put in their own chandelier however the landlords saw it on several occasions and made no issue about it until a dispute arose at the end of the tenancy. She did not need to call an electrician.
- They accidentally put the thermostat cover in storage and the landlord was informed of this and told that we would recover it. It was later recovered and returned to the landlord. They had to move quickly due to a flood at the rental property and therefore some of the landlord's things were accidentally stored with their belongings.
- They were given an elevator key to be able to move belongings into the rental unit, however when they were done they place that key in their mailbox for the landlord to retrieve.
- They did a thorough cleaning of the rental unit when they vacated and in fact the landlord told them the cleaning was very good. They also offered to come back and do some further cleaning however the landlord did not offer them any reasonable opportunities to do so.
- They did also inadvertently put the landlord's appliance manuals into storage however again they informed the landlord that they would return them once they found them in the storage unit. The landlord did not need to go and buy new manuals and in fact the manuals are available online free and therefore she could have obtained them at no cost as well.
- At no time did the landlord ever inform them that the area carpets could be damaged by cleaning them. They therefore rented a cleaner and cleaned the carpets at the end of the tenancy. They believe the carpets are in reasonable condition considering the length of the tenancy, with nothing more than normal wear and tear.
- They never left anything wet on the shelf under the kitchen and they believe the damage was caused when the garburator leaked. They informed the landlord of the leak however the landlord did not promptly come and deal with the problem. Therefore if any water damage occurred it is the landlord's responsibility for not promptly dealing with the matter.

Analysis

Electrical inspection

It is my decision that I will allow the landlords claim for the electrical inspection, because the tenants did do electrical work without the authorization to do so. Therefore even if the landlord later became aware of that work, it is still reasonable for the landlord to have an electrical inspection done to make sure that everything is safe at the end of the tenancy.

Amount allowed \$56.00

Thermostat plate and appliance manuals

I will not allow the landlords claim for replacing the thermostat plate or the appliance manuals.

The tenant's belongings had to be put into storage as a result of a major flood at the rental property which required that the unit be vacant so it could be repaired.

It's understandable when forced to quickly move that one might accidentally packed items belonging with the rental unit along with one's own belongings.

It is also reasonable to allow the tenants reasonable time to return those items especially since the tenants had informed the landlord they would do so.

Elevator key

I will allow the landlords claim for the missing elevator key, because there is no evidence that the tenants ever inform the landlord they had placed the key in their mailbox for her to pick up. Further the landlord testified that she had no time did she ever retrieve an elevator key from the tenants mailbox.

Amount allowed \$50.00

Cleaning

Under the Residential Tenancy Act a tenant is only required to maintain "**reasonable** health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required.

The claim for cleaning is therefore denied.

Area carpets

I also deny the landlords claim for replacing the area carpets as I am not convinced that the landlord ever inform the tenants that the carpets should only be cleaned professionally. The tenancy agreement does not state that the carpets must only be professionally cleaned, it simply states that the that the tenants agree to pay the landlord for equivalent cleaning, and although the instructions for cleaning the suite do state to call a cleaner to pick up the carpets, it does not state that those carpets cannot be cleaned by the tenants.

Cracked shelf under kitchen sink

I also deny the landlords claim for repairing the damaged shelf under the kitchen sink because the landlord has not met the burden of proving that this damage was the result of any negligence on the part of the tenants.

The tenants did report a leaking garburtor to the landlord and there is the possibility that the damage to the shelves occurred before the tenants noticed the leak had occurred.

The landlord has argued that the tenants must have left wet items on the shelf even after discovering the leak, however that is only speculation and not sufficient to meet the burden of proving negligence on the part of the tenants.

Filing fee

I will allow the landlords claim for recovery of the \$50.00 filing fee

Therefore the total amount of the landlord's claim I have allowed is as follows:

damages conceded by the tenants	\$2136.73
Electrical inspection	\$56.00
Elevator key	\$50.00
Filing fee	\$50.00
Subtotal	\$2292.73
Less security deposit held by landlord	-\$992.50
Total	\$1300.23

The remainder of the landlords claim is dismissed without leave to reapply.

Tenants application

Background and Evidence

The tenants testified that:

- Due to a major flood at the rental unit they were forced to vacate the rental unit on September 21, 2011.
- They paid rent right to the end of October 2011 however they were never granted access to move back into the rental unit again.
- The landlord agreed in writing to reimburse their rent but has now declined to do so.

- They are therefore requesting an order for the return of all rent paid for the period of time that they did not have use of the rental property and for their filing fee as follows:

10 days rent for September 2011 at \$66.16 per day	\$661.60
October 2011 rent	\$1985.00
Filing fee	\$50.00
Total	\$2696.60

The landlord testified that:

- She did originally agreed to return the rent for the period of time that the tenants were not in the rental unit however that was when she believed her insurance company would cover the cost.
- She later found out that her insurance company would only cover costs for herself and not for tenants.
- The tenants also had their own insurance and therefore did not have to pay any money to be relocated and therefore she does not believe that she should have to pay back any of the tenants rent.

Analysis

It is my decision that the landlord does have to return the rent paid for the period of time than the tenants did not have access to the rental unit.

The landlord is not liable for damages caused to the tenants property that results from incidents such as this, unless there is negligence on the part of the landlord, however if the tenants are forced to move out of the rental unit, the tenants are not required to pay rent for the time that they are not in the rental unit.

I therefore allow the tenants claim for the return of rent totalling \$2637.60

I also order recovery of the tenants filing fee of \$50.00

Total amount allowed in the tenants claim - \$2687.60

Conclusion

I have allowed \$1300.23 of the landlords claim, and I have allowed \$2687.60 of the tenants claim. I have therefore set off the amount allowed in the landlords claim against that allowed in the tenants claim and have issued an order for the landlord to pay \$1387.37 to the tenants.

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