



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDS, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to retain a portion of the security deposit paid by the tenant.

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.

Preliminary issue

The agent for the landlord requested an adjournment of the Dispute Resolution hearing in order for the landlord to submit documentary evidence that was available for the hearing, but was not provided to the tenant and the Residential Tenancy Branch.

In this instance, the hearing was on the landlord's application submitted on December 6, 2011, with the hearing scheduled for February 15, 2012 and I find that the landlord could have submitted any evidence upon which the landlord wished to rely during the two months prior to convening the hearing. I find that there is insufficient evidence to prove that the landlord did not have a fair opportunity to make evidentiary submissions.

Further, I find that delaying the hearing, particularly for the purpose of allowing the landlord a second opportunity to submit evidence that could have been served on the tenant and placed into evidence in advance of the hearing, would be prejudicial to the tenant.

Therefore, the landlord's agents' request to adjourn this hearing is dismissed.

The tenant provided late evidence and the evidence was not provided in a format that is allowable under the Act. Therefore the documentary evidence of the tenant will not be permitted into evidence.

This hearing proceeded on the oral testimony of the parties.

Issue(s) to be Decided

Is the landlord entitled to keep a portion of the security deposit paid by the tenant?

Background and Evidence

The parties agree that the tenancy began on July 1, 2010. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$475.00 was paid by the tenant. The tenancy ended on November 30, 2011.

The parties agree that a move-in inspection was completed at the start of the tenancy and a move-out inspection was completed on November 30, 2011.

The tenant testified that when they were doing the move out inspection, the landlord was going around the rental unit checking things off without making any comments, and at the end of the inspection she was told to sign the report. On the report it said that the tenant was giving up the security deposit. The tenant stated she refused to sign the inspection report as there was no damage to the rental unit and the landlord did not have a reasonable explanation for keeping the security deposit.

Neither party filed a copy of the move-in inspection or move-out inspection report.

The landlord's agent claims that the rental unit was not cleaned to a satisfactory level and is seeking compensation for the time he spent cleaning at the rate of \$20.00 per hour.

The landlord's agent claims as follows:

a.	Three hours and 30 minutes to clean the stove	\$70.00
b.	One hour and 30 minutes to clean the refrigerator	30.00
c.	Two hours to clean the balcony windows	40.00
d.	30 minutes to clean the kitchen sink and taps	10.00
e.	One hour and 30 minutes to wipe the railing and mop the 3' x 7'-8' balcony	30.00
f.	The cost of cleaning supplies	15.00
g.	Filing fee	50.00
	Total claimed	\$245.00

Stove

The landlord's agent testified that the tenant did not clean the stove to a satisfactory level and it took him three hours and 30 minutes to clean the stove.

The tenant testified that she cleaned the stove to the best of her ability by applying three different cleaners underneath the burner rings and to the drip bowls. The tenant stated that she also used an oven cleaner inside the stove. The tenant stated the stove is about 30 years old and underneath the burner rings and in the drip bowls there was staining and rust that was mixed with grease. The cleaners she used did not get the

staining out and she was afraid to use anything that was more abrasive or corrosive as it might have caused further damage to the stove.

The landlord's agent stated the stove is approximately 20 years old.

Refrigerator

The landlord's agent testified that the tenant did not clean the refrigerator to a satisfactory level and it took him one hour and 30 minutes to re-wipe the inside and clean the seal around the refrigerator door.

The tenant testified that the refrigerator was clean and there was no requirement for the landlord to clean the refrigerator. However, she did leave a bottle of alcohol in the freezer, which she thought it would be nice to leave for the next tenants to enjoy. However, the bottle did leak a small amount of alcohol in the freezer and this was discovered during the inspection, but she was able to clean the spill before she left the rental unit.

Window cleaning

The landlord's agent testified that he had to clean the living room windows inside and out and it took him two hours to clean the windows.

The tenant testified that she cleaned the windows inside and outside, but felt she was not obligated to clean the outside windows in any event. The tenant states it is ridiculous that it would take two hours to clean the windows.

Kitchen Sink

The landlord's agent testified that the tenant did not clean the kitchen sink and it took him 30 minutes to clean the sink with a scouring pad.

The tenant testified that it is possible that she forgot to polish the sink and that it could have been left dull as she was doing a lot of cleaning. The tenant states it is ridiculous that it would take anyone 30 minutes to clean a sink.

Balcony railings and deck

The landlord's agent testified that he had to wipe the railing on the outside balcony and mop the balcony deck and that it took him one hour and 30 minutes.

The tenant testified that she is not responsible for cleaning the outside of the building. However, she did sweep the deck on the balcony. The tenant states the balcony is 3 feet by 7 feet and it is ridiculous that it would take the suggested time.

Cleaning material

The landlord's agent testified that it cost him \$15.00 in cleaning supplies and is seeking to be compensated.

The tenant testified that if she had left the rental unit in the condition the landlord is alleging then those may be reasonable cost. However, the tenant states she disputes the landlord claim that the unit was not cleaned properly.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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

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

Stove

The testimony of the parties was the tenant did clean the stove. However, it was not to the landlord's standard and the landlord had the stove re-cleaned.

The evidence of the tenant was that she cleaned the stove to the best of her ability, that under the burner rings and drip bowl it was stained and rusted and she did not want to use a corrosive cleaner as it might have damaged the stove top.

The evidence of both parties was that the stove was at least 20 years old.

As required by the Policy Guidelines the tenant did clean the stove, however, she was not able to remove staining under the burner rings and drip bowls.

The Policy Guidelines state that the useful life span of a stove is fifteen years, and as this stove has exceeded its life span. I find that the tenant is not responsible to leave the stove in a new like condition. Therefore, I dismiss the landlord's claim for compensation for cleaning the stove.

Refrigerator

The evidence of the parties was that the tenant did clean the refrigerator, however, not to the landlord's standard. I find that the landlord's agent has not proven that that tenant left the refrigerator in a state that was below a reasonable level of cleanliness.

Windows cleaning

The evidence of the landlord's agent was the tenant did not clean the living room windows and he cleaned the inside and outside of those windows. The evidence of the tenant was that she cleaned the windows. There is no documentary evidence from the landlord to prove the tenant left the windows unclean. Therefore, I dismiss the landlord's claim for compensation.

Kitchen sink

The evidence of the landlord's agent was the tenant did not leave the kitchen sink clean and it took 30 minutes to clean with a scouring pad. The evidence of the tenant was that she may have left the kitchen sink dull. There is no documentary evidence to support that the tenant left the sink dirty. The tenant's evidence was that it may have been dull. Therefore, I dismiss the landlord's claim for compensation.

Balcony railings and deck

The evidence of the landlord's agent was that the tenant did not wipe the outside rails or mop the deck of the balcony. The evidence of the tenant was that she did sweep the deck. There is not provision in the policy guidelines that would suggest the tenant is responsible for exterior cleaning. Therefore, I dismiss the landlord's claim for compensation.

Cleaning material

The evidence of the landlord's agent was that it cost him \$15.00 for cleaning materials. There is no documentary evidence filed by the landlord to support the claim, such as receipts. Since I have dismissed the landlords claim for cleaning the above items, the landlord is not entitled to recover these costs in any event. I dismiss the landlords claim for compensation for cleaning materials.

In this case, the onus was on the landlord to prove that the tenant did not leave the rental unit in a reasonable state cleanliness and that the landlord suffered a loss. The landlord did not discuss these issues with the tenant or give the tenant an opportunity clean the alleged deficiency at the end of tenancy. The landlord did not file a copy of the move-out inspection report or any other documentary evidence to support the claim.

Therefore, I dismiss the landlord's application and as the landlord's application was not successful, the landlord is not entitled to recover the cost of filing the application.

Therefore, pursuant to the policy guidelines, I grant the tenant a monetary order for the full amount of her security deposit in the amount of \$475.00.

Conclusion

The landlord's application is dismissed. I grant the tenant a monetary order under 67 of the Act.

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 15, 2012

Residential Tenancy Branch