



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of repairs, cleaning and for the filing fee. The landlord also applied to retain the security deposit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim for costs of repairs, cleaning and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on January 01, 2010 and ended on December 31, 2011. Rent was \$850.00 per month due on the first of the month. Prior to moving in, the tenant paid a security deposit of \$425.00. The rental unit consists of a basement suite. The landlord lives upstairs.

Prior to moving in a move in condition inspection was conducted in the presence of both parties. Some existing damage was noted on the report. A move out inspection was conducted on January 02, 2012. The landlord stated the deficiencies were written on the report during the move out inspection. The tenant stated that the condition of the unit was not documented in his presence. The date on the report is January 01 and January 13, 2012. The landlord provided contradictory evidence with regard to when the deficiencies were documented.

The landlord stated that the unit was left in an unclean condition and filed photographs to support his testimony. The tenant agreed that he had not cleaned under the appliances but stated that during the move out inspection, he offered to return to clean these areas. The move out inspection report does not indicate that these areas were left in a dirty condition.

The landlord also filed photographs showing a dirty window sill, dirty sink, dusty baseboard and dust on a portion of the carpet. The tenant stated that he hired a cleaning person for four hours and provided an invoice to support his testimony. The tenant also filed a copy of a receipt for a carpet cleaner rental.

The landlord stated that an exterior door was damaged and that the lock appeared to have been tampered with. The tenant denied having caused damage to the door or the lock. The landlord is claiming \$300.00 towards the cost of replacing both and has filed an estimate from a contractor in the amount of \$350.00 for the door and installation. The estimate states that the damage is due to vandalism.

The landlord stated that there are three window ledges that were broken and is claiming \$150.00 to repair and retouch the paint. The landlord has filed receipts from a hardware store for supplies. The photographs show the ledges coming away from the wall. The tenant stated that he did not cause any damage to the ledges but all three of them had the same problem. He stated that he did not place any objects on these ledges and one of the ledges was behind furniture and not accessible.

The landlord stated that the tenant left behind damage to a wall from the installation of a Murphy bed. The tenant did not dispute this. The landlord is claiming \$25.00 to fix this damage.

The landlord stated that the tenant left a burn mark on the counter top in the washroom. The tenant denied this. However the landlord filed a photograph showing the mark and is claiming \$100.00 to replace the counter top. The landlord has filed an estimate of \$230.00 for materials and installation. The landlord agreed that he has not yet incurred this expense.

The landlord is claiming the following:

1.	Replace exterior door and lock	\$300.00
3.	Repair holes in wall	\$25.00
4.	Replace bathroom counter top	\$100.00
5.	Cleaning	\$100.00
	Total	\$675.00

Analysis

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

The claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

Based on the above, I will assess each of the landlord's claims.

1. Replace exterior door and lock - \$300.00

The estimate filed by the landlord states that the damage was due to vandalism. The tenant denies having caused any damage to the exterior door. Since the damage is on the outside of the door and in the absence of evidence to indicate that the tenant caused the damage, I find that the landlord has not proven his claim. Accordingly, the landlord's claim for \$300.00 is dismissed.

2. Repair three ledges \$150.00

Residential Tenancy Policy Guideline #1 provides as follows:

The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises). Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

Based on the photographs and the verbal testimony of both parties, I find that all three ledges appear to be coming away from the wall. The rental unit is approximately nine years old.

On a balance of probabilities, it is more likely than not that this is not a result of deliberate negligence on the part of the tenant but is a due to normal wear and tear. Based on the evidence and testimony of both parties, I find that the damage to the ledges was due to wear and tear and accordingly the landlord's claim for \$150.00 is dismissed.

3. Repair holes in wall - \$25.00

The tenant agreed that he had made holes in the wall to support his bed and therefore I find that the landlord is entitled to his claim of \$25.00.

4. Replace countertop \$100.00

Based on the evidence in front of me, I find that it is more likely than not that the tenant damaged the counter top. This damage was not recorded in the move in inspection report. The landlord filed a photograph of the mark on the counter top. However, the landlord has not yet incurred the expense to fix the damage and I also find that the damage is cosmetic. The landlord has filed a claim for the repair in the amount of \$100.00. I find that while the counter top has a mark on it, this damage does not affect its functionality. Since, the damage has reduced the value of the counter top; I will award the landlord an arbitrary amount towards this loss of value.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Based on the estimate filed by the landlord (\$80.00) and the age of the counter top (nine years), I will award the landlord a minimal award of \$20.00.

5. Cleaning - \$100.00

The landlord filed photographs showing areas that were not cleaned by the tenant. These included areas under the appliances, window sills and a portion of a carpet. The tenant stated that he hired a cleaning person for four hours and filed a receipt in the amount of \$60.00. The tenant also filed a receipt indicating that he had hired a carpet cleaner on December 31, 2011.

The tenant stated that he offered to return to clean under the appliances but was not given the opportunity to do so. The landlord has filed a photograph of a small area of the carpet which appears dirty. Based on the evidence, it is more likely than not that all the other carpeted areas were clean. However, other photographs showed dirt on a window sill and on the base board.

Based on the testimony of both parties, I find that tenant did leave the unit in a clean condition except for areas indicated in the photographs. I find that the tenant did hire a cleaning person and a carpet cleaner. The portions that were missed by the tenant were negligible and do not warrant a charge of \$100.00 for cleaning. Accordingly, I award the landlord \$20.00 towards his time spent cleaning.

Overall the landlord has established the following claim:

1.	Replace exterior door and lock	\$0.00
3.	Repair holes in wall	\$25.00
4.	Replace bathroom counter top	\$20.00
5.	Cleaning	\$20.00
	Total	\$65.00

Since the landlord has only proven a small portion of his claim, he must bear the cost of filing this application.

I order that the landlord retain \$65.00 from the security deposit of \$425.00 and return the balance of \$360.00 to the tenant within 15 days of receipt of this decision.

Conclusion

The landlord must return \$360.00 to 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: March 14, 2012.

Residential Tenancy Branch