



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order permitting the landlord to keep all or part of the tenants' security and pet deposit.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the landlord entitled to keep the security and pet deposits?

Background and Evidence

Both parties agree that this tenancy started on April 01, 2009. This tenancy reverted to a month to month tenancy and rent for this upper unit was \$1,300.00 per month. The tenants paid a security deposit of \$650.00 and a pet deposit of \$650.00 on or about April 01, 2009. The tenancy ended on January 01, 2012 and both parties attended the move in and move out condition inspections of the unit. The tenants gave the landlord their forwarding address in writing on January 03, 2012.

The landlord's agent testifies that she conducted the move out condition inspection of the property as the owner had appointed the agents company to act on behalf of the owner in November, 2011. The landlord's agent testifies that during this inspection they found some damage to four walls which the tenants had patched but had not sanded or painted. The landlord's agent testifies that a professional painter had to paint all the walls in order to match the paint but has documented that the work done to the patched walls was charged at the rate of \$230.00. This price also included the repair of a corner of a wall which appeared to have been chewed by the tenants' dog. The landlord has provided the receipt for this work.

The landlord's agent testifies that the tenants had not cleaned the carpets at the end of the tenancy and these were left stained. The carpet cleaner had to come twice to clean the carpets and some staining still remains. The landlord seeks to recover the cost of cleaning the carpets from the tenants and has provided the receipt for this work of \$105.28.

The landlord's agent testifies that the unit required some minor cleaning after the tenants had vacated. A cleaner came to the unit and wiped out some cupboards, cleaned the vents and washed the hardwood floors. The landlord seeks to recover the sum of \$75.00 for this work which took three hours at \$25.00 per hour. The receipt has been provided by the landlord.

The landlord's agent testifies that the vinyl deck flooring was left torn. This damage has not yet been repaired by the landlord but the landlord's agent has proved two quotes for this work. One quote is for \$1,787.00 and the second quote is for \$1,831.20. A copy of the quotes has been provided in evidence.

The landlord's agent testifies that although the final amount claimed is more than the security and pet deposits the landlord is only seeking an Order to be permitted to keep the security and pet deposits.

The tenants' dispute the landlords claims. The tenants testify that they do accept some responsibility for the unfinished repairs to the walls and state they filled the holes in the walls but could not repaint these as the downstairs tenants had used all the matching paint. The tenants state some of this damage to the walls was caused by a door handle because the landlord had not fitted a door stop.

The tenants' testify that the carpets were already in poor condition at the start of their tenancy and the carpets have been documented as such on the move in condition inspection. The tenants' testify that the landlord had not ensured the carpets had been cleaned prior to their tenancy commencing and the carpets have been left in the same condition as they were in at the start of their tenancy.

The tenants dispute the landlords claim for cleaning. The tenants' testify that they cleaned the unit and left it in a better condition then it was in when they rented it. The tenants testify that the hardwood floors were not left dirty and they had cleaned them before the move out inspection. The tenants state the only area itemized on the move out inspection report as being dirty was a vent in a bedroom.

The tenants dispute the landlords claim that they were responsible for the torn decking. The tenants' testify that this decking material was at least 10 to 15 years old and a pervious tenant had driven his truck into the siding below the deck which had caused some structural damage in this area. The tenants state this structural damage could be the cause of the seam in the vinyl coming apart which caused water to get under the vinyl decking. The tenants' testify that this damage was not caused by their actions or neglect and they did inform the landlord that the seam was coming apart approximately two years ago. The tenants state the landlord did not respond to their message and did not inspect the damage or take steps to remedy it. The tenants' testify that they took some preventative action to protect the rest of the deck from water damage by removing the torn piece of vinyl.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim concerning damage to four walls in the rental unit; I find the tenants did repair most of this damage but argue they were unable to paint the repairs as the downstairs tenants had used all the matching paint. I find however that the tenants did not ask the landlord or her agent for any matching paint in order to mitigate their loss in this matter and some of the photographic evidence of the damage shows it is more than normal wear and tear. I further find the tenants have not shown that some of the damage was caused due to the lack of a door stop. Therefore, I find the landlord is entitled to recoup the charges incurred by the painter of **\$230.00** and may deduct this sum from the security deposit.

With regard to the landlords claim for cleaning the carpets; I find from the evidence presented that the carpets were in a poor condition at the start of the tenancy as documented on the move in condition report. I find it is therefore likely that the other carpets had also not been cleaned at the start of this tenancy and therefore these tenants will not be held responsible for cleaning the carpets at the end of their tenancy.

With regard to the landlords claim for minor cleaning in the unit; Under the *Residential Tenancy Act* a tenant is responsible 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 as the move out inspection report only indicates that the vent in a bedroom and the floor in the entrance way were left dirty.

With regards to the landlords claim for damage to the vinyl decking; the tenants argue that this decking was not damaged due to any action or neglect on their part but rather

they had to take preventative action to prevent further damage being caused to the wooden deck due to water damage. The tenants also argue that they informed the landlord when the vinyl decking first started to tear and the landlord took no remedial action two years ago. The tenants also argue that the decking is approximately 10 to 15 years old. The landlord's agent did not contradict the tenants' testimony in this matter. I find that although the landlord has shown that there is damage to the deck, the landlord has not met the burden of proof to show that the deck was damaged by the actions or neglect of the tenants. I further find the useful life of a deck is approximately 20 years so the deck would likely to be nearing the end of its useful life and I find the landlord did not take action to repair the deck when first notified by the tenants. Consequently, this portion of the landlords claim cannot succeed.

Conclusion

The landlord is entitled to retain **\$230.00** from the tenants' security and pet deposits pursuant to s. 38(4)(b) of the Act. The balance of the deposits of **\$1,070.00** must be returned to the tenants and a Monetary Order has been issued to the tenants for this sum.

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 19, 2012.

Residential Tenancy Branch