



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 for Dispute Resolution by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

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.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the unit?

Is the landlord entitled to keep all or part of the security deposit paid by the tenant?

Is the landlord entitled to compensation under the act for loss or damage?

Background and Evidence

The tenancy began on April, 1, 2011. Rent in the amount of \$1,250.00 was payable on the first of each month. A security deposit of \$625.00 and a pet deposit of \$625.00 were paid by the tenant. The tenancy ended on January 31, 2012.

The parties agree the tenant used \$550.00 from the pet deposit towards January 2012, rent, leaving the balance of the tenant's pet deposit at \$75.00.

The parties agree on February 1, 2012, the tenant still had possession of the rental unit. The move out inspection was completed at 5:45 p.m. on February 1, 2012 and the inspection was signed by all parties, indicating everything was fine in the rental unit at the end of tenancy. Neither party filed a copy of the move out inspection.

The landlord claims the agent for the landlord was intimidated by the tenant and due to the tenant overholding the rental unit the move out inspection was not completed accurately.

The witness for the landlord testified she was acting as the landlord's agent when she attended the rental unit with a third party, to complete the move out inspection. The witness testified that she was intimidated by the tenant and did not properly complete

the move out inspection. Filed in evidence is a copy of an email dated April 2, 2012, from the third party who attended the move out inspection with the landlord's agent.

The landlord claims compensation as follows:

a.	Overholding the rental unit 2 days @\$43. Per day	\$86.00
b.	Replace master bedroom flooring	\$760.00
c.	Light bulbs	\$32.00
d.	5 hours cleaning to compensate current tenants	
e.	Filing fee	\$50.00
	Total claimed	\$878.00

Overholding

The landlord testified that tenant did not vacate the rental unit on January 31, 2012, at 1:00 p.m. as required by the Act. The landlord stated he calculated the tenant was overholding the rental unit for 2 days as the tenant was not out until 5:45 p.m. on February 1, 2012, which is greater than a 24 hour period.

The landlord testified that the new tenants took possession on February 1, 2012, however, they were required to wait until the tenant vacated the rental unit. The landlord's states he has not provided compensation to the new tenants.

The tenant testified that she was in the rental unit on February 1, 2012. The tenant stated she was ready to do the move out inspection prior to 5:45 p.m., however, the property site manager was unavailable to complete the move out inspection until that time.

Master bedroom carpet

The landlord testified that the master bedroom carpet was ruined and needed to be replaced as the tenant's cat urinated on the carpet and it was not possible to steam clean the carpets. The landlord stated they replace the carpet which was approximately five years old with laminate flooring.

The witness for the landlord testified that due to strong smell of cleaners in the rental unit the smell of cat urine was not obvious.

The tenant testified that the carpets were not in good shape when she moved into the rental unit and that her cat has never urinated on the carpet. The tenant testified that the previous tenant had cats as well. The tenants states the smell of cleaners was from her cleaning the rental unit for the move out inspection.

Light bulbs

The witness for the landlord testified that at the move out inspection there were approximately 10 to 12 light bulbs burnt out in various locations in the rental unit. Filed in evidence is an email dated February 14, 2012 – Re: February 11th update. Filed in evidence are two receipts for light bulbs.

The tenant testified that she agrees there were light bulbs burnt out at the end of tenancy, however, she believes it was only seven.

Cleaning rental unit

The witness for the landlord testified the new tenants spent approximately five hours cleaning the rental unit to bring the level of cleanliness to a standard level. Filed in evidence is a copy of an email dated April 4, 2012, from the new tenants.

The landlord stated the new tenants have not been compensated and will compensate the new tenants if successful with their claim for cleaning costs.

The tenant testified she spent hours cleaning the rental unit and it was clean when they did the move out inspection.

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 one party pay for the loss requires the other party to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the circumstances before me the landlord has the burden of proving his claim.

The landlord's witness testified she went to the rental unit with a third party to complete the move out inspection with the tenant, however, no deficiencies were noted on the move out inspection as she was intimidated by the tenant. The email dated April 2,

2012, filed in evidence states "(name) signed off on the damage deposit after being berated by the mother" [reproduced as written]

Section 21 of the Act States a condition inspection report completed in accordance with this section is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Overholding

"overholding tenant" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In this case the tenancy was to end on January 31, 2012, at 1:00 p.m. The tenant was still in possession of the rental unit until 5:45 p.m. on February 1, 2012. The new tenants were on site and were not able to move into the rental unit until after 5:45 p.m. Therefore, I find the tenant was overholding the rental unit.

The landlord is seeking compensation in the amount of \$86.00, however, the landlord has not incurred any cost associated with the tenant overholding the rental unit, such as paying for additional accommodation for the new tenants. The new tenants were not compensated any money for their inconvenience. I find the landlord has not proven a loss exists. Therefore, I dismiss the landlord's claim for compensation for the tenant overholding the rental unit.

Master bedroom carpet

The evidence of the landlord was that the carpet in the master bedroom was replaced with laminate floor due to the tenant's cat urinating on the carpet. The evidence of the landlord's witness was that due to the strong smell of cleaners, the cat urine was not detectable. The evidence of the tenant was that her cat has never urinated on the carpet and the previous tenant had cats as well. The parties agreed the move out inspection noted everything was fine with the rental unit at the end of tenancy.

I find that the landlord has not provided a preponderance of evidence to the contrary, that the tenant damaged the carpets. The agent for the landlord was at the move out inspection with a third party. The landlord's agent was obligated to accurately record the condition of the rental unit at the end of tenancy. Therefore, I dismiss the landlord's claim for damages to the carpet.

Light bulbs

The parties agree that there were light bulbs burnt out at the end of tenancy. The move out inspection does not address any light bulbs burnt out. The evidence of the landlord's witness was there were approximately 12. The email of February 14, 2012, filed in evidence would support the landlord's claim of twelve burnt out bulbs. However, it would appear the bulbs were not replaced immediately after the tenant vacated the rental unit, as receipts for the bulbs are dated January 31, 2012(which is prior) and February 12, 2012. The evidence of the tenant was there were approximately seven burnt bulbs at the end of tenancy.

As the landlord has not proven the actual amount of light bulbs burnt out on the day tenancy ended and the landlord does not have a preponderance of evidence to the contrary to support his claim. The tenant has conceded that there were approximately seven light bulbs that needed to be replaced. As a result, I will only allow the landlord compensation for seven light bulbs. The landlord has filed receipts for twelve light bulbs in the total amount of \$31.52. Therefore, I granted the landlord the sum of \$20.00 for the light bulbs.

Cleaning rental unit

The parties disagree on the state the cleanliness the rental unit was left in at the end of tenancy. The parties agreed that the move out inspection indicates everything was fine at the end of tenancy.

The landlord has not proven a preponderance of evidence to the contrary. The landlord has submitted an email dated April 2, 2012 from the third party that witnessed the move out inspection. In the email it states "the floors were sticky. The suite had not been vacuumed well" [reproduced as written]. The email dated April 4, 2012, from the new tenants addressing some cleaning issues they had with the rental unit. However, there were no photographs to support the new tenants email.

Further the new tenants were not compensated for their time cleaning. I find the landlord has not proven that damage or loss exists. Therefore, I dismiss the landlord's claim for compensation for cleaning the rental unit.

As the landlord application has largely been unsuccessful. I am not granting the cost to recover the filing fee paid for their application.

I find the landlord has proven a monetary claim of \$20.00 against the security deposit. Therefore, I grant the tenant a monetary order in the amount of \$680.00 for the balance of her security deposit and pet deposit.

Conclusion

The landlord's monetary claim is off-set from the tenant's security deposit and pet deposit.

The tenant is granted a monetary for the balance due.

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: April 24, 2012.

Residential Tenancy Branch