



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MND, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* for Orders as follows:

1. A Monetary Order for damages to the unit – Section 67
2. A Monetary Order in compensation for damage or loss under the Act, regulation or tenancy agreement – Section 67
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to their claims and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Both parties acknowledged receipt of one another's evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. It is noted that the tenant previously was successful in securing the return of their security deposit following a hearing in response to their application.

The landlord's claim on this application is as follows:

Damages to rental unit at end of tenancy	\$1355.20
General / final cleaning - after insurance work / renovation	\$360.00
Insurance deductible	\$500.00
Compensation for inconvenience for time spent in hotel during work	\$1000.00
Total of landlord's claim <i>on application</i>	\$3599.36

The burden of proof lies with the landlord to prove their claims.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed. The tenancy began on December 01, 2010 and ended November 29, 2011. Rent in the amount of \$1550.00 was payable in advance on the first day of each month. At the outset of the tenancy both parties conducted a start of tenancy inspections at which time the only deficiencies in the rental unit were noted as 'Fair' - carpeting in the entry and a missing cover in the kitchen sink area. An end of tenancy inspection was mutually attended by the parties but the landlord did not complete an inspection report of the inspection. The landlord claims that on the following day they determined there were damages to the rental unit but did not record these discoveries on the inspection report, nor did they send a copy to the tenant, but the tenant was notified that the windows and blinds were not cleaned.

The landlord also claims the tenant caused the kitchen countertop to shift at the tiled backsplash. The landlord provided a photograph of an end of the countertop having moved approximately one-half inch from the original position at the backsplash. The tenant testified they did not do anything to cause the movement – claiming that any movement was the result of the original poor construction, or had occurred due to normal wear and tear. In respect to the landlord's claim of unclean windows and blinds, the tenant testified they hired a cleaning service which they think cleaned these areas but may not have, and would have returned to clean them if the landlord had alerted them to do so. The tenant testified that in their opinion they left the rental unit reasonably clean. The landlord claims they had to make drywall repairs and paint areas, which the tenant testified they determine to be reasonable wear and tear. The landlord provided a series of photographs of the closet and closet wall indicating marks left by relocated open shelving which the landlord described as 'drywall repairs'. The tenant claims they had received permission from the landlord to install shelving and provided this evidence. The landlord also claims replacement of the kitchen faucet. The tenant testified the faucet was original and functional throughout the tenancy until

they vacated; and, that the landlord simply wanted to upgrade the faucet for the purpose of upgrading the rental unit for resale.

Subsequent to the tenant's departure, the landlord claims that they discovered the rental unit had apparently incurred some water damage to the laminate flooring in the unit. The landlord claims the purported water damage was not recent and now dry, but that consequent indications of past water presence were apparent to them. The landlord claims that water damage could only have occurred during the tenancy period and that the tenant caused the water damage. The landlord made an insurance claim and the insurance company accepted the claim and covered the cost of the repairs, living expenses, and hotel accommodations for the landlord during the repairs. The tenant strongly denied they caused any water damage to the flooring and could not recall an incident associated with any abundance of water in the suite to cause any damage, but specifically not as purported by the landlord. The tenant testified that any damage as purported by the landlord was from before or after their tenancy. None the less, the landlord claims that as a result of the water damage, the insurance repairs were completed by their contractor, which resulted in soiled carpeting in the rental unit as well as general un-cleanliness of the rental unit from the repairs. The landlord acknowledges that both of these conditions were following the work of the contractors doing the renovation work. The tenant testified they are not responsible for the soiled carpeting and the unclean state of the rental unit following the contractor's renovations.

The landlord is claiming the \$500.00 deductible portion of their insurance claim. The tenant denies responsibility for the insurance claim, purported by the landlord to have resulted from the conduct of the tenant.

The landlord further claims \$1000 compensation - claiming they were inconvenienced during the hotel accommodation period while the insurance work was being performed. Again, the tenant denies causing any damage resulting in an insurance claim – consequently resulting in the landlord's hotel accommodation.

The landlord provided receipts for the monetary amounts claimed.

Analysis

I have considered all evidence and all submissions to this claim and have considered all testimony given in the hearing. On preponderance of the evidence in this matter I have reached a Decision.

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss (in this case the landlord) bears the burden of proof.

Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, solely, 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 reasonable steps to mitigate or minimize the loss or damage.

As well, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement. In such a case, the onus is on the tenant to show that the expenditure claimed by the landlord is unreasonable.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the damage or 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. In plain terms, the landlord must prove the tenant caused the damages claimed. Once that has been established, the landlord must then provide evidence that can verify *the actual monetary amount of the loss or damage*. Finally, the landlord must show that reasonable steps were taken to address the situation and to reasonably mitigate the damage or losses that were incurred.

In respect to the *non-insured* damage claims by the landlord, I accept the tenant's testimony that they neglected to ensure cleaning of the blinds and windows upon vacating the rental unit, and I also accept the landlord's evidence that the tenant caused damage to the closet walls requiring some remediation, including painting, and I find the damage is clearly *beyond reasonable wear and tear*. As the landlord has only provided a global cost for multiple deficiencies for cleaning and repairs, I grant the landlord compensation for these items in the nominal amount of **\$200.00**, without leave to reapply.

On the preponderance of all the evidence before me and on the balance of probabilities, I find the landlord has not met the test for their claim of damages and loss in respect to the balance of their application. The landlord has failed to prove that all damage and losses resulting in the insurance claim and following the insurance renovations were the result, solely, of the actions or neglect of the tenant, in violation of the *Act* or agreement. The landlord has also failed to sufficiently prove that all other work performed following the tenant's departure (invoice dated December 28, 2011) was the result of the actions or neglect of the tenant, in violation of the *Act* or agreement. As a result, the balance of the landlord's monetary claim for repairs, cleaning after the contractor's work, and compensation for inconvenience associated with the insurance claim, **are dismissed**, without leave to reapply.

As the landlord was partly successful in their claim, I grant the landlord recovery of the filing fee in the amount of **\$50.00**, for an award to the landlord in the sum of **\$250.00**.

Conclusion

I grant the landlord a Monetary Order under Section 67 of the Residential Tenancy Act for the amount of **\$250.00**. The landlord is given this Order, which if necessary, may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is *final and binding* on both parties.

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: May 29, 2012

Residential Tenancy Branch