



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNSD, MND, MNR, FF

For the tenants – MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; and to recover the filing fee from the tenants for the cost of this application. The tenants applied for a Monetary Order for the return of their security and pet deposits; and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the tenants were permitted to provide additional evidence after the hearing had concluded. 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 a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damages to the unit, site or property?

- Is the landlord permitted to keep all or part of the tenants' security and pet deposit?
- Are the tenants entitled to a Monetary Order to recover their security and pet deposit?

Background and Evidence

Both parties agree that this tenancy started on May 13, 2011 for a fixed term tenancy which was due to expire on April 30, 2012. The tenancy ended on March 01, 2012. Rent for this unit was \$1,725.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of \$862.50 and a pet deposit of \$862.50 on April 26, 2011. The tenants' gave the landlord their forwarding address in writing on March 08, 2012 and the landlord filed their application for Dispute Resolution on March 13, 2012.

The landlord's agent testifies that the tenants gave notice to end their tenancy on February 06, 2012. The landlord's agent testifies that the tenants were informed that they are required to give 30 days' written notice and the tenants would be responsible for rent for March if the unit could not be re-rented. The tenants agreed but later cancelled their rent cheque for March, 2012.

The landlord's agent testifies that they advertised the unit on an internet site, they went to their wait list and contacted potential renters and approached other tenants in the building to rent this unit. The landlord's agent testifies that the unit was shown to a high volume of prospective tenants but the unit did not show well as the tenants had painted the walls. The landlord's agent testifies that they even obtained permission to show the identical unit next door to attract potential tenants as that unit showed better. The unit was eventually re-rented for May 01, 2012.

The landlord seeks to recover a loss of rent for March, 2012 to the sum of \$1,725.00.

The landlord seeks to apply the tenants' security deposit of \$862.50 and pet deposit of \$862.50 to the unpaid rent.

The landlord's agent testifies that the tenants had painted the walls in the unit a navy blue colour and a grey colour without the landlord's permission. The walls had to be restored to their original colours and the landlord has provided an invoice from their painter for this work. This invoice also includes the repair of some minor damage to the walls with small holes and some damage to the baseboards. The landlord seeks to recover the sum of \$439.60. The landlord has provided photographic evidence to support this section of their claim.

The landlord's agent testifies that the tenants failed to leave the rental unit in a reasonably clean condition. The landlord found the fridge had been left dirty; the drawer in the stove was not cleaned; due to the repairs to the drywall the landlords also had to clean drywall dust before the unit could be re-rented; all cupboards and closets and the area behind the fridge had to be cleaned and sanitized due to pet hair and dander in the suite. The landlord seeks to retain \$100.00 from the tenants' security deposit for this work and a cleaning receipt has been provided in evidence.

The landlord's agent testifies that the unit was fitted with custom blinds at the start of the tenancy. These blinds were only 10 months old and navy blue paint was found on the living room blinds. The landlord's agent testifies that she sought advice from the blind installer who informed the landlord that this paint was in the weave of the blinds and could not be removed without spreading the paint. The landlord's agent testifies that the bedroom blind also had some kind of brown rust like stain on it which could not be removed. These blinds have to be replaced and the landlord has provided quotes for these costs for \$629.50 plus HST and \$420.00 plus HST. The landlord's agent testifies the blinds have not yet been replaced but the landlord will go with the cheaper quote of \$420.00 plus HST of \$50.40 to a sum of \$470.40. A copy of the quote has been provided in evidence.

The tenants agree that they owe the landlord rent for March, 2012 of \$1,725.00. The tenant testifies that they wanted the landlord to apply their security and pet deposit to this amount but the landlord did not agree to settle this matter.

The tenants dispute the landlords claim for cleaning the unit. The tenant (MV) testifies that the landlord must proof that the tenants failed to leave the rental unit in a reasonably clean manner and the landlords photographic evidence does not show pictures of dirty cupboards and closets, mirrors, windows or floors. The tenant testifies that they did clean the unit before the end of their tenancy and when the landlord started to show the unit because the landlord's agent informed them that the unit did not show well. The tenants have provided photographic evidence of the condition of the unit.

The tenant (MV) does not dispute that they painted the walls of the unit but states they do dispute the amount the landlord is charging for this work. The tenants' cross examines the landlord as to why there was only one quote obtained for this work and why the landlord did not give full details of what they were claiming for on the application.

The landlord replies that when the application was filed she put in estimates for the work in the total amount claimed box and then obtained an invoice from the landlord's painter for the work. The invoice is a reasonable amount for this work and this is a professional painter who knew the walls would need more than one coat of paint to cover the dark colour of the tenants' paint. The landlord testifies that the painter was scheduled to do the work on March 02, 2012 but he could not start the work due to the fact that the tenants had not fully moved out at that time. The landlord's agent testifies the painter did not charge for this scheduled day and only charged for the actual work completed. The landlord's agent addresses the tenants point about the details of the dispute and states this information was forwarded to the tenants in the landlord's evidence.

The tenants testify that the landlord has only made notations on the move out report concerning what damage the tenants are responsible for and noted the tenants are only responsible for the paint on the walls. The tenants testify that the landlord has not mentioned cleaning or the blinds on this section of the report and while the tenants agree the report does indicate blue paint on the living room blinds there is no mention of brown stains on the bedroom blinds and the landlord has provided no photographic evidence of the bedroom blinds either.

The tenant (MV) also testifies that the landlord has not shown what steps were taken to attempt to remove the paint from the living room blinds before the blinds were replaced.

The tenants seek to recover their security and pet deposit as the landlord has not shown how they have mitigated their loss.

Both parties also seek to recover their filing fee of \$50.00.

The tenant presented other evidence that was not relevant to my decision. I looked at the evidence that was relevant and based my decision on this.

Analysis

I have carefully considered all the evidence before me including the late evidence received from both parties and the sworn testimony of both parties.

With regard to the landlords claim for loss of rent for March, 2012, the tenants do not dispute that they owe this rent to the landlord because they ended the tenancy before the end of the fixed term; therefore it is my decision that the landlords are entitled to recover the sum of **\$1,725.00** from the tenants pursuant to s. 67 of the *Act*.

When the landlord has failed to complete a move in condition inspection report at the start of the tenancy a landlord extinguishes their right to file a claim against the security

and pet deposit for damages. As the landlord has also filed a claim for unpaid rent a landlord is entitled to recover this from a security and pet deposit. Therefore, I find the landlord is entitled to keep the tenants security and pet deposits to the total sum of **\$1,725.00** pursuant to s. 38(4)(b) of the Act. This sum will be offset against the unpaid rent of \$1,725.00.

With regard to the landlords claim for damage and cleaning; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlord has must meet the above test to show that some cleaning of the unit was required at the end of the tenancy. The move out condition inspection report indicates the areas that were found to be dirty such as floors; electrical outlets; under the stove; the oven and stove; the refrigerator and freezer; light fixtures; and ceiling fans. The tenants argue that they did clean the unit and have provided photographic evidence

showing the unit and specific areas such as the bathroom, fridge, kitchen and floors as being clean. The landlord argues that due to the tenants dog dander some areas had to be re-cleaned and sanitized and after the dry wall and baseboards were repaired this created dust which also had to be cleaned.

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. However, as the tenants had not repaired some minor damage to drywall and baseboards I find this would have created some additional dust when the landlord's painters carried out these repairs. Therefore, this additional cleaning would be the tenants' responsibility. Consequently, I find the landlords claim for \$100.00 to be extreme and I limit the landlords claim to **\$50.00**

With regard to the landlords claim for painting the unit; the tenants agree that they did paint the unit in strong colours. The tenants argue that the landlord did not obtain different quotes for this paint in order to mitigate their loss. It is my decision that the tenants should have restored the unit to its original colour at the end of the tenancy and as this was not the case I find the landlords claim for painting these walls and doing minor repairs to be a reasonable amount and the landlord has met the burden of proof in this matter. Therefore, I uphold the landlords claim for **\$439.60**.

With regard to the landlords claim for replacing the blinds; I find the landlord has met the burden of proof with regards to the paint on the living room blind. The tenants should have taken precautions to prevent paint getting onto the blinds when they painted the wall. The tenants are therefore responsible for this damage to the blinds. The tenants argue that the landlord has not shown that she attempted to clean the paint from the blind at the end of the tenancy before replacing the blind and therefore not mitigating the loss. However, the tenants must bear equal responsibility for not attempting to

remove the paint at the end of the tenancy as tenants are responsible to repair any damage caused by the actions or neglect of the tenants pursuant to s. 32(3) of the *Act*. I am satisfied with the landlord's agent's sworn testimony that the blind installer informed the landlord that the paint could not be removed and find this a reasonable assumption based on the type of the blinds. Consequently, I find the landlord has met the burden of proof in the matter of the living room blind and is entitled to recover the cost of replacing this blind to a sum of **\$235.20** (half of the cheaper quote plus HST).

With regard to the replacement cost for the bedroom blind; It is my decision that the landlord has not met the burden of proof in this matter the landlord has not shown on the move out condition inspection report that there was staining on this blind and there is no photographic evidence provided to support the damage to this blind. Consequently, the landlords claim cannot succeed in this matter and this section of the landlords claim is dismissed.

As the landlord has been largely successful with their claim I find the landlord is entitled to recover their **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*.

With regards to the tenants claim to recover their security and pet deposits; as these deposits have been awarded to the landlord to offset against the unpaid rent for March, 2012, the tenants application has no merit and is dismissed.

As the tenants have been unsuccessful with their claim I find the tenants must bear the cost of filing their own application.

A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for March , 2012	\$1,725.00
Cleaning	\$50.00
Painting and repairs	\$439.60
Living room blind	\$235.20

Filing fee	\$50.00
Less security and pet deposits	(-\$1,725.00)
Total amount due to the landlord	\$774.80

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$774.80**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

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 18, 2012.

Residential Tenancy Branch