



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for or a Monetary Order for unpaid utilities; 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 deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords agent attended the conference call hearing, gave sworn testimony. 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 a Monetary Order for damage to the unit?
- Is the landlord entitled to a Monetary Order for unpaid utilities?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both parties agree that this tenancy started on December 01, 2009. At that time the unit was rented by two tenants. One tenant moved out and this tenant continued to rent the unit for a fixed term and moved from the rental unit on May 31, 2011. Rent for this unit

was \$2,090.90 per month and was due on the first day of each month. Utilities were not included in the rent. The tenant paid a security deposit of \$1,000.00 on December 04, 2009.

The landlord's agent testifies that a move in condition inspection was conducted with the tenants at the start of the tenancy and a move out condition inspection was started with the tenant (ED) at the end of the tenancy however ED only stayed for the first 15 to 25 minutes of the inspection and then left to attend his son's birthday.

The landlord's agent testifies that this was a brand new house at the start of the tenancy. At the move out inspection it was noted that the kitchen counter had some chips each side of the sink. The chips were repaired and the counter did not need to be replaced. The landlord's agents have provided a copy of the invoice for this work to the sum of \$123.20.

The landlord's agent testifies that on one of the stairways to the lower level there were some gouges in the wall which appeared to have been caused by the removal of furniture. These gouges had to be filled, sanded and repainted. A towel rail had also been pulled from the wall and the towel rail had to be replaced in that area and the wall filled, sanded and repainted. The landlord's agents have provided an invoice for this work to the sum of \$403.20.

The landlord's agents testify that the unit had wooden blinds which the tenant had not cleaned at the end of the tenancy. The blinds were left dusty and dirty. The landlord's agent testifies that the blinds were not cleaned until 10 months after the tenant had vacated the unit and the owners had moved back into the property. The landlord's agents have provided an invoice for this work to the sum of \$356.00.

The landlord's agent testifies that during the move out inspection it was clear that if the tenant had done any cleaning in the unit it was minimal. The owners spent four hours cleaning the kitchen, two hours cleaning the dining and living areas, two hours cleaning

the master bedroom, bath and closets, two hours cleaning the lower level consisting of a rec room, a bedroom and a bathroom, two hours cleaning the upper level consisting of two bedrooms, full bathroom a landing area and closets, one hour cleaning the laundry room and four hours cleaning the interior of the windows and the interior and exterior of the balcony windows. The landlord's agent states that as the owners did this work themselves there is no invoice to present however the owners seek to recover \$30.00 per hour for the 17 hours worked to a sum of \$510.00.

The landlord's agent testifies that the unit was fitted in areas with engineered hard wood flooring in a burgundy colour. The landlord's agent testifies that there were two chips in the flooring in the kitchen in front of the island and scratches on the living room and master bedroom floors. There was also a dull area on the floor in the areas used by the tenants for their office desk and chair. The scratch in the master bedroom is a significant scratch. The landlord's agent testifies that they had a flooring company out to look at the flooring and they were told they no longer made this type of floor so the individual boards could not be replaced. The landlords agent testifies that that left the owners with two options one was to refinish the floor which the owners were reluctant to do in case the floor could not be restored correctly, or to replace the floor entirely. The landlords seek instead compensation from the tenant for the diminished value of the floor to the sum of \$500.00.

The landlord seeks to recover the unpaid water bill. The landlord has calculated a sum from the bill, presented in evidence, for the billing period of March 30 to July 01, 2012 and have prorated this to \$84.67 because the tenancy ended on May 31, 2012.

The tenant disputes the landlords claim for damage to the hardwood floors. The tenant testifies that when they moved into the unit they brought area rugs to place under their furniture and placed felt pads on the legs of their furniture. This included the area in which their desk was situated. The tenant testifies that they took all reasonable precautions to protect the floor and most of the damage is caused by reasonable wear and tear. The tenant testifies that a chip in the kitchen floor occurred when the tenants'

sock caught on a splinter in the wooden flooring and pulled a piece of the wood away. The tenant states this was not caused by his negligence. The tenant does acknowledge that two scratches were made on the floor through their actions or that of a guest.

The tenant testifies that he finds the landlords invoice for repairing a small area on the wall and the towel rail to be excessive to simply fill, sand, and paint a small area of drywall. The tenant states the landlord has not provided any other quotes for this work.

The tenant disputes the landlords claim for cleaning. The tenant testifies that the three days before he moved out of the unit his sisters and mother came to the unit to help the tenant clean. The tenant testifies that all areas of the unit were cleaned to a reasonable standard with the exception of the blind in the kitchen and one in the bedroom. The tenant states he is only required to leave the rental unit in a reasonable standard of cleanliness and the landlord's expectations are too high. The tenant states that it seems as if the landlords wanted to move back into a brand new house even though the tenants had lived in the house for a year and a half.

The tenant testifies that he could not stay for the duration of the move out inspection but he did go through the house with the landlord's agent and the landlord's agent indicated that everything looked fine. The tenant states that due to this he had no concerns about leaving the landlords agent to complete the inspection in the tenants absence.

The tenant does not dispute the landlords claim for \$84.67 for the water bill.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for damage to the counter top; the tenant has not disputed this damage and therefore I find the landlord has established their claim for repairs to the counter top to the sum of **\$123.20**.

With regard to the landlords claim for damage to the walls; I have considered the evidence before me and have applied a test used for damage or loss claims. In this test the person making the claim must met the burden of proof as follows:

- Proof that the damage or loss exists
- Proof that this damage of 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.

The landlords agent testifies that the tenants damaged the walls in two areas, and has provided an invoice for this repair and the inspection reports showing damage to these areas but the landlord has failed to show the extent of this damage with photographic evidence to determine if the amount claimed is fair in relation to the damage as the landlord has not provided any other quotes for this work and the tenant contradicts the landlord's agents testimony as to the extent of the damage. Therefore, I am not satisfied the landlord has fully mitigated the loss in this matter or shown the extent of the damage that would warrant a charge of this amount. Therefore, I have limited the landlords claim for repairs to the walls to the sum of **\$200.00**.

With regard to the landlords claim for cleaning the blinds; 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 or for themselves. 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 for all

the blinds. The landlord's agent also testifies that the landlords did not have these blinds cleaned for 10 months after the tenancy ended and the blinds would therefore accumulate more dirt, grease and dust on them during the owner's occupancy of which the tenant will not be held responsible. The tenant has agreed that he failed to clean two of the blinds. Therefore I limit the landlord's claim of \$356.00 to **\$75.00** for this work.

With regard to the additional cleaning of the unit, I again refer the landlords to what a tenant is responsible for with regards to cleaning and as I have no documentation available such as photographic evidence to show that the rental unit was not left to a reasonable standard as declared by the tenant. When the landlord's evidence is contradicted by that of the tenant then the burden of proof falls to the party making the claim. The landlord must provide corroborating evidence to meet the burden of proof. As the landlord has not provided sufficient corroborating evidence the landlords claim for cleaning cannot succeed and is dismissed without leave to reapply.

With regard to the landlords claim for the sum of \$500.00 for compensation for damage to the wooden floor, a landlord must show that the damage caused to the floor was beyond normal wear and tear for a dark floor of this nature by normal usage of the floor. When a landlord rents a home to a family that has wooden floors unless the landlord can show that the tenants actions or neglect caused damage to the floor beyond normal wear and tear then the landlords must consider any damage to a wooden floor as part of the cost of doing business as a landlord. The move out inspection report does highlight some chips and scratches to the floor in certain areas but does not detail the amount of or depth of these scratches that could not be rectified with some remedial scratch cover or polish. The landlord has not provided any documentary evidence from the flooring company to show that the floor could not be repaired and the chips and scratches covered. However, the tenant agrees that two scratches on the floor did occur through the fault of the tenant of tenants guests; therefore I limit the landlords claim for compensation for some of these scratches to **\$100.00**

With regard to the landlords claim to recover a prorated amount for the water bill; the tenant does not dispute the amount claimed by the landlord for this bill therefore I find the landlord is entitled to recover the sum of **\$84.67**.

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

I find the landlord is entitled to deduct the allowable costs awarded from the tenants security deposit pursuant to s. 38(4)9B) of the *Act* as follows:

Counter top repairs	\$123.20
Painting	\$200.00
Cleaning two blinds	\$75.00
Compensation for scratches on floor	\$100.00
Water bill	\$84.67
Filing fee	\$50.00
Amount due to the landlord	\$632.87
Less security deposit	(-\$1,000.00)
Amount due to the tenant	\$367.13

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to deduct the sum of **\$632.87** from the tenant's security deposit of \$1,000.00. The balance of the deposit must be returned to the tenant and a Monetary Order has been issued to the tenant for the balance due of **\$367.13**. The order must be served on the landlord 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 23, 2012.

Residential Tenancy Branch