



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages; and
2. To keep all or part of the security deposit.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit.

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 tenant entitled to the return of double the security deposit?

Is the landlord entitled to a monetary order for damages?

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

Background and Evidence

The tenancy began on March 15, 2011. Rent in the amount of \$1,295.00 was payable on the first of each month. A security deposit of \$650.00 was paid by the tenant.

Tenancy ended on February 29, 2012 in accordance with the Act.

The parties agree on April 13, 2011 the move-in inspection report was completed in accordance with the Act. The parties agree on February 27, 2012 the move-out inspection was completed. However, the tenant did not agree with the move-out report. Filed in evidence is a copy of the move-in and move-out inspection report.

Landlord's application

Kitchen

The landlord's agent testified the tenant left some spots on the refrigerator and it had to be re-cleaned. It took approximately 15 minutes complete.

The landlord's agent testified that the tenants did not properly clean the cabinets and they had to be re-cleaned and took approximately 15 minutes to complete.

The landlord's agent testified the tenant did not properly clean the stove at the end of tenancy. Filed in evidence is a photograph of the stove.

The tenant testified that the kitchen refrigerator and cabinets were cleaned at the end of tenancy. However, there may have been a spot on the refrigerator handle.

The tenant testified they cleaned the stove at the end of tenancy, however, they were unable to remove some of the grease. The tenant stated that when they initially received this replacement stove from the landlord that it was dirty and not cleaned and they left the stove in a far better condition than when they received it.

The landlord's agent agreed that during the tenancy the tenants were provided an replacement stove and she did not have time to clean it and left the cleaning for the tenants to complete.

Glass cleaning

The landlord testified that the tenants did not clean the inside or outside of the windows at the end of tenancy. Filed in evidence are photographs.

The tenant testified that the windows were left in a condition as good as or better than when they moved into the rental unit. The tenant stated the windows were reasonably cleaned. The tenant stated it was unreasonable to expect someone to clean the outside windows during the rain storms in February.

Blinds

The landlord testified the blinds in the two bedrooms were not cleaned at the end of tenancy.

The tenants testified that he does not agree the blinds required cleaning.

The landlord's agent testified that tenants removed and damaged the vertical blinds from the sliding door and the tenants did not reinstall the blinds at the end of tenancy. The landlord stated that it took him one hour and thirty minutes to repair the blinds and one hour to install the blinds.

The tenant testified that the vertical blinds were old, broken and falling down when they moved in to the rental unit. Some of the runners were reattached with scotch tape. The tenant stated that the blinds were a safety issue as the ends were very sharp and they would fall down with the slightest touch, which caused them concern that they would fall and cause injury to their child.

The tenant testified they had permission to take down the blinds and leave them in the basement for the landlord. The tenant stated they purchased new window coverings and left the new coverings for the next tenants.

Glass Chip

The landlord's agent testified that there was a chip in the glass window that is attached to the sliding glass door. The landlord testified that the chip has not been fixed. Filed in evidence is an estimate to repair the chip. Filed in evidence is a photograph of the chip in the window.

The tenant's testified that this chip was over looked by both parties at the move-in inspection as the window was covered by the vertical blinds and during that inspection the focus was on the sliding glass door as the lock was broken. The tenant stated when the blinds were removed they noticed the chip, however, it had been filed with some type of substance. The tenant stated the chip was overlooked again at the move-out inspection.

Tenant's application

The tenant testified that he is seeking the return of double the security deposit, as the landlord has only applied to retain \$189.00.

The landlord's agent testified that they have applied to retain the full amount of the security deposit and they have filed within the required time lines under the Act.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Landlord's application

In this case the parties participated in a move-out inspection. However, the parties did not agree on the condition the tenant left the rental unit. Therefore, the items that were in dispute at the move-out inspection the landlord has the burden of proving his claim.

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.

Kitchen

The evidence of the landlord was the refrigerator and cabinets needed additional cleaning. The evidence of the tenant was the refrigerator and cabinets were cleaned at the end of tenancy. The evidence of the tenant was there may have been a spot on the refrigerator handle. There is no photographic evidence of the refrigerator or cabinets that would indicate the tenants did not leave these items in a reasonable state. The tenants are only responsible to leave the unit in a reasonable suitable state. They are not responsible for cleaning to bring the premises to a higher standard than that set out in the *Act*. I find the landlords have not provided proof that damage or loss exist. Therefore, I dismiss the landlord's claim for compensation for cleaning the refrigerator and cabinets are dismissed

The evidence of the both parties was the tenant was provided a replacement stove which was not cleaned as the landlord did not have time to clean it. The photographic evidence show the stove was cleaned, however it would support the stove needed addition cleaning. In this case, the tenants were not provided a clean stove. The tenants are not required to bring the cleaning to a higher standard than what was provided to them. I find the landlord has not proven a loss or damage exists. Therefore, I dismiss the landlord's claim for compensation for cleaning the stove.

Glass cleaning

The evidence of the landlord's agent was the tenant did not clean the inside and outside of the windows at the end of tenancy. The evidence of the tenant was they cleaned the inside of the windows. However, they felt it was unreasonable to expect them to clean the outside windows during a rain storm in February. The photographic evidence filed by the landlords show the outside of the windows to be dirty.

In this case the tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy. The landlord is responsible for cleaning the outside of the windows, at reasonable intervals. The landlord has proved insufficient evidence to prove the tenant left the inside windows in an unreasonable state. The tenants are not responsible to bring the premises to a higher standard than set out in the *Act*. The photographic evidence only shows the dirt

on the outside of the windows. I find the landlord has not proven a loss or damage exists. Therefore, I dismiss the landlord's claim for compensation for cleaning the blinds is dismissed.

Blinds

The parties disagreed on the condition of the blinds in the bedrooms. The landlord has failed to provide sufficient evidence to prove the tenants left the blinds in a unreasonable state of cleanliness. Therefore, I dismiss the landlord's claim for compensation.

The evidence of the landlord was the tenant's damage the vertical blinds and he was required to repair them and install them. The evidence of the tenant was the blinds were old and falling down when they moved into the rental unit and as a safety issued they were taken down and stored with the landlord's approval.

Policy Guidelines 1 Responsibility for Residential Premise - the landlord is responsible to ensure the unit met the health, safety and housing standards. The move-in inspection report indicates the blinds were falling down and old at the start of the tenancy. The tenant had the permission of the landlord to remove the blinds and store them in the basement. The tenant cannot be held responsible for damages when the blinds were in such a state at the start of tenancy. I find the landlord has not suffered a loss. Therefore, I dismiss the landlords claim for compensation to repair and install the vertical blinds.

Chip window

The evidence of the parties was the window attached to the sliding glass door was chipped and this was not noticed at the move-out inspection. The evidence of the tenant was at the move-in inspection the focus was on the sliding glass door as the lock was broken and the vertical blinds covered up the window. The evidence of the tenant was he noticed this chip in the glass when the vertical blinds were removed at the start of the tenancy and the chip was filed with some type of substance at that time.

In this case, the chip in the glass was missed at the move-out inspection. The evidence of the tenant was at the move-in inspection this chip was missed due to the vertical blinds covering the window and the focus was on the broken lock on the sliding door. As this was missed by the landlord at the move-out inspection, I find it is possible that it was missed at the move-in inspection. In absent of any other documentary evidence, I find the landlord has provided insufficient evidence to prove the tenant damage the glass. Therefore, I dismiss the landlord's claim for compensation for the cost of repairing the glass.

Tenant's application

In this case, the parties performed both the incoming or outgoing condition inspection. Therefore the landlord had the right to claim against the security deposit for damages. The evidence shows that the landlord had applied for arbitration, within 15 days of the end of the tenancy to retain a portion of the security deposit. I find the landlord has complied with the Act. Therefore, I find the tenant is not entitled to the return of double the security deposit.

As I have found the landlord is not entitled to compensation for loss or damage under the Act. The landlord is not authorized to retain any portion of the tenant's security deposit and must return the security deposit to the tenant forthwith.

As both parties were not successful with their claim, neither party is entitled to recover the cost of filing their application from the other party.

Should the landlord fail to return the security deposit, I grant the tenant a monetary order in the amount of **\$650.00** under Section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant is granted a monetary in the above amount.

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 11, 2012.

Residential Tenancy Branch