



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

As both parties submitted substantial documentary evidence regarding financial claims that the tenant is making against the landlord, I clarified that the only matters before me in this hearing are those raised in the landlord's Application and claim.

As such, I advised the parties that the only evidence I would consider in this case is that which is relevant to the landlord's claims, with the exception that should the landlord fail to establish any entitlement to the tenant's security deposit, I would consider issuing the tenant a monetary order for return of the security deposit.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; lost revenue; for compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 23, 24, 35, 36, 37, 38, 67 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on February 6, 2011 for a 1 year fixed term tenancy that began on March 1, 2011 with a requirement that the tenant vacate the property at the end of the fixed term on February 28, 2012 for a monthly rent of \$1,400.00 due on the 1st of each month with a security deposit of \$700.00 paid on January 31, 2010. The tenant and landlord had a previous tenancy agreement immediately prior to this tenancy. The tenancy ended at the end of the fixed term after the tenant vacated the rental unit.

The parties agreed that at the start of the tenancy the landlord had an agent complete a move-in inspection with the tenant. The tenant submits that he is uncertain whether or not the document submitted into evidence by the landlord is the report that came from

that inspection, because he states he dictated and the agent specifically wrote "The carpets are soiled, stained, and have not been professionally cleaned". The report does state that the two bedrooms carpets are "bit stained"

The landlord submits that the rental unit is 3 years old; this tenant is the second tenancy in the unit; and there were some minor stains in the carpet at the end of the first tenancy. The landlord asserts the staining caused during this tenancy is primarily cat urine; while the tenant acknowledges that carpets were more stained now he disputes the cause is cat urine, but rather wear and tear.

The landlord submitted several photographs taken at the end of the tenancy, dated February 29, 2012 of the carpets in the master and second bedrooms. The photographs show several stained areas in both rooms. The tenant provided no photographs showing the carpets in any area of the rental unit.

While there are no problems identified in the original condition report with the walls in any room in the rental unit, the landlord provided several photographs dated February 29, 2012 showing staining from what appears to be furniture rubbing against the walls and some type of drips running down the wall, a wall with a large patch and one with several smaller patches.

The tenant testified that he had been trying to get the landlord to provide him with a paint chip or permission to take a piece of drywall out that he could take to a hardware store to colour match and that the landlord stated in an email submitted into evidence that she didn't care about the wall and nothing further was done. The tenant provided no testimony with regard to the landlord's claim for painting any of the other areas of the rental unit.

The tenant testified that he acknowledges that he did miss some cleaning. Specifically the tenant agrees he did not clean around the edge of the dishwasher; the shower track; and he may have missed a couple of other small things but it did not require the amount of cleaning the landlord submits.

The tenant provided several undated photographs that he indicates show the cleanliness of the rental unit. The photographs include the laundry area; living room; kitchen with cabinets and the open fridge; the bathroom; and the wall that had been patched by the tenant.

The landlord provided photographs of the dishwasher and surrounding flooring; the oven; the shower tracks; ring stains on the bottom shelf of a cabinet and crumbs in other cabinets; clothes left in the dryer. The landlord submitted the cleaning required was two people for 3 hours each.

The parties agree the fridge had been damaged and the tenant accepts the landlords claim as presented in relation to the replacement parts required.

For the above, the landlord seeks the following compensation:

| Description | Amount |
|--------------------------|-------------------|
| Carpet Replacement | \$1,294.22 |
| Painting | \$1,120.00 |
| General Cleaning | \$288.00 |
| Fridge Replacement Parts | \$120.39 |
| Total | \$2,822.61 |

The landlord testified that she had arranged a move out condition inspection for February 29, 2012 but the tenant did not attend. It was not until they provided him with a Notice of Final Opportunity to Schedule a Condition Inspection that the tenant attended. The condition inspection was conducted on March 3, 2012.

The tenant testified that he did not attend the 1st scheduled inspection because he was upset with the landlord and didn't feel it would be a very constructive interaction. The parties jointly signed the condition inspection report after noting the following:

“Both party meet together at 6:00 p.m. on the suite basement, for move inspection. Rob is not happy to pay more than damage deposit to fix all the damage that we have on the carpets, paint, cleaning.”

The landlord testified that she had arranged for new tenants to move in for the beginning of March, 2012 but in anticipation of potential requirements to clean or repair the rental unit the new tenancy would begin a couple of days after the start of the month.

The landlord further stated that as a result of the condition of the rental unit and the delay in completion of the move out condition inspection the new tenants could not wait until the 15th when all repairs were complete and they did not start their tenancy. The tenant seeks compensation in the amount of \$1,400.00 for lost revenue for the month of March 2012.

Analysis

To be successful in a claim for damage or loss the party making the claim has the burden of providing sufficient evidence to establish the following 4 points:

1. That damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. All reasonable steps were taken to mitigate any damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave it reasonably clean and undamaged except for reasonable wear and tear. From the photographic evidence and testimony of both parties I find the tenant failed to leave the rental reasonably clean.

Primarily from the photographic evidence I accept the landlord has established the unit required a moderate level of cleaning and I find 6 hours of cleaning to be reasonable. However, I find that as the landlord completed the cleaning and did not hire professional cleaners as noted in her estimate the rate of \$48.00 per hour is not reasonable and grant the landlord \$30.00 per hour, for a total cleaning compensation of \$180.00.

I also accept, based on the testimony of both parties, including their agreement that the tenant had hired a professional carpet cleaner and the photographic evidence submitted by the landlord that the carpets were sufficiently stained to require removal. I further find that the condition results from more than just reasonable wear and tear.

I accept the landlord has established the actual cost of the carpet replacement at \$1,294.22. Residential Tenancy Policy Guideline #40 provides a useful life of building elements chart and from that chart the useful life of carpeting is 10 years. As the carpeting was 3 years old I discount the amount of compensation to adjust for the remaining useful life and grant the landlord \$905.95 for carpet replacement.

Despite the tenant's assertion that the landlord waived any obligation to have the tenant paint the large patch, I note the tenant provided no testimony or evidence regarding the landlord's claim for any of the other walls in the unit.

I find the landlord has established there was a need for painting resulting from the tenancy and the tenant's failure to return the rental unit undamaged. Policy Guideline #40 stipulates that the useful life of a paint finish is 4 years and I therefore discount the landlord's claim for painting to reflect this from \$1,120.00 to \$280.00.

As noted above the parties agreed to the landlord's entitlement for compensation for the replacement of fridge parts in the amount claimed of \$120.39.

In relation to the landlord's claim for compensation for lost revenue, I accept that the condition of the rental unit and the actions of the tenant to delay the condition inspection contributed to the landlord's inability to rent the unit for the month of March 2012.

However and despite the landlord's testimony that she had arranged for new tenants I find that the landlord, by her testimony anticipated failure of the tenant to leave the unit in a condition suitable for renting to new tenants. As such, I find the landlord should have anticipated the potential and arranged a new tenancy for later in the month of March.

And finally, I find the landlord's failure to enter into a written tenancy agreement with the new tenants constitutes a failure to take all reasonable steps to mitigate this damage or

loss. For these reasons I find the landlord has established a loss of the equivalent of ½ month's rent.

With regard to the landlord's claim for costs of photographic prints and registered mail, I find these are costs associated with choices the landlord has made to present their case and are therefore the responsibility of the tenant and I dismiss this portion of the landlord's claim.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$2,236.34** comprised of \$700.00 lost revenue; \$180.00 general cleaning; \$905.95 carpet replacement; \$280.00 painting; \$120.39 fridge replacement parts and the \$50.00 fee paid by the landlord for this application.

I order that the landlord may retain the deposit of \$700.00 in partial satisfaction of the claim and grant a monetary order for the balance due of **\$1,536.34**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced 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 15, 2012.

Residential Tenancy Branch