



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on September 1, 2010 and ended on February 28, 2012. At the onset of the tenancy the Landlord collected \$800.00 as a security deposit and \$250.00 as a pet deposit. Both a move-in and move out inspection was conducted between the Parties. The move out inspection notes a problem with the carpets and an estimated cost to clean is noted to be \$60.00. The Landlord does not dispute that the Tenants steamed cleaned the carpet at the end of the tenancy, that the carpet is original to the house and over 30 years of age. The Landlord states however that the carpet could have been cleaner if done by a professional and that the Landlord hired such a company to clean the carpets for a cost of \$152.32. It is also noted that professional carpet cleaning is required by the terms of the tenancy agreement. The Tenants state that they were not informed by the Landlord that the carpets required professional

cleaning, that the Tenants steam cleaned the carpets prior to the inspection and that the carpets were very old.

The Landlord states that that following the move-out inspection, additional problems were noted with the cleanliness of the unit, in particular, the stove top was unclean, the fridge was not entirely cleaned and some of the cupboards had crumbs. The Landlord provided photos of the stove. The Landlord states that the damage on the stove was observed at the move-out inspection but the Landlord did not note these damages in the report in order not to embarrass the Tenants. The Landlord states that it is her usual practice to do touch up cleaning between tenancies to ensure cleanliness is up to her standard. The Landlord claims \$70.00 for her time in cleaning the unit after the end of the tenancy. The Landlord states that the stove top was not cleanable and states that an estimated replacement of the burner plates is \$36.00 and the replacement of the entire stove top is \$193.38. The Landlord did not provide any business estimate for the cost of these parts.

The Tenants state that the entire house was cleaned and that three people worked all day to have the unit cleaned for the inspection. The Tenant states that the stove was cleaned underneath and that the fridge had been pulled out during the tenancy and cleaned. The Tenant does not recall if the fridge had been cleaned underneath on the day of cleaning the unit for the move out. The Tenant states, and the Landlord does not dispute, that the Landlord informed the Tenants at move-out that the Landlord would return to do a touch-up cleaning, in particular to the stove and did not advise the Tenants that more cleaning was required.

The Landlord states that the new tenants discovered that the toilet flushed slowly and required a plumber to come in and fix the problem. The Landlord did not offer any evidence in relation to the Tenants causing the problem with the toilet. The Tenant states that the toilet had a slow water problem during the tenancy and that the Tenants snaked the toilet out in November 2011 but that nothing was stuck and that the snake did not improve the flow of water. The Landlord claims \$80.00 for the repair of the toilet.

Analysis

Section 37 of the Act provides that when a tenancy vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. Section 5 of the Act provides that parties may not contract out of the Act and any attempt to do so is of no effect.

Considering that the Act only requires a tenant to leave a unit reasonably clean, and given the age of the carpet, I find that the term requiring professional cleaning to be contrary to the Act and therefore of no effect. Given the undisputed evidence of the Parties that the carpets had been steam cleaned by the Tenants, I find that the Landlord has not substantiated a claim for cleaning the carpets and I dismiss this part of the application.

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that efforts have been made to mitigate the costs being claimed.

Given the undisputed evidence of the Parties, I find that at the time of the move-out no damages other than the carpet cleaning was raised between the Parties. Had the Landlord raised the issue of the stove or other unclean areas at the time of move-out, the Tenant may have had opportunity to remedy the problem. In failing to raise the problem at the time of the inspection, I find that the Landlord failed to mitigate the damages now being sought. I therefore dismiss this part of the application.

As the Landlord provided no evidence on the cause of the toilet problem and accepting the evidence that the problem was raised after the onset of the following tenancy, I find

on a balance of probabilities, that the Landlord has not established that the Tenants were responsible for any damage to the toilet or that the problem arose during the tenancy. I therefore dismiss this part of the application.

As the application has been dismissed in its entirety, I decline to make an award in relation to recovery of the filing fee. I order the Landlord to return the security and pet deposit plus interest of \$1,050.00 to the Tenants forthwith.

Conclusion

The Landlord's application is dismissed. I grant the Tenants an order under Section 67 of the Act for **\$1,050.00**. If necessary, this order may be filed in the Small Claims Court 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 23, 2012.

Residential Tenancy Branch