



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for 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; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. Part of the tenant's evidence was sent late to the landlord and the Residential Tenancy Office and has not been considered in this decision. All other evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

A previous hearing on the tenant's application for the return of double the security deposit was held on April 12, 2012. During that hearing it was found in favour of the tenant for the security deposit to be returned to the tenant. S.77 of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order is final and binding on the parties. Therefore any findings made by the Dispute Resolution Officer that presided over the prior hearing are not matters that I have any authority to alter and any decision that I render must

honour the existing findings. The portion of the landlord's application relating to the request for an order to retain the security deposit is therefore dismissed as this matter has already been determined in the previous hearing.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this month to month tenancy started on September 01, 2008. Rent for this unit by the end of the tenancy was \$1,060.00 due on the first day of each month in advance.

The landlord testifies that the tenancy ended by mutual agreement on November 30, 2012. The tenant had until 12.00 noon to vacate the rental unit and ensure it was left in the same condition it was at the start of the tenancy. The tenant was given an extension of time to finish moving his belongings and to clean the unit until 10.00 p.m. on November 30, 2011 and the tenant attempted to return the next day to do this work but the landlord informed the tenant that no further extensions were allowed. The tenant finished removing some of the remaining belongings and garbage but the cleaning was left uncompleted.

The landlord testifies that the tenant failed to clean the carpets at the end of the tenancy. The landlord testifies she had the carpets cleaned at a discounted rate and seeks to recover the sum of \$80.00 from the tenant.

The landlord testifies that the tenant had failed to leave the rental unit in a clean condition. The landlord spent five hours removing garbage and had to employ a cleaning person to clean the unit. This work consisted mainly of cleaning the oven and stove elements, the fridge, the walls, the floors, behind the appliances, which were on rollers, dusting, cleaning

the bathrooms and general cleaning in all other areas. The landlord testifies she obtained three quotes from cleaning companies for this work which have been provided in evidence. The landlord claims she went with the cheapest quote of \$396.00 plus HST (\$443.52). The landlord has not provided an invoice or receipt for this work. The landlord testifies the cleaning company had to be booked and could not start the work until December 08, 2011.

The landlord testifies that the tenant was required to repair any wall damage at the end of the tenancy. The tenant failed to repair the holes where the tenants television was mounted to the wall and failed to remove the sticky tape left on walls from pictures. The landlord has provided three quotes for this work all of \$250.00. The work consists of filling the holes, sanding and painting the entire wall to match the paint and removing the sticky residue on the walls.

The landlord seeks to recover the sum of \$242.20 for damage to a hall carpet made by the tenant's cat. The landlord testifies that she has not yet had this carpet replaced. The tenant did show the landlord the damage to the carpet but the landlord states the tenant tried to minimize this damage by saying threads could be cut off.

The landlord seeks to recover the sum of \$600.00 for the repair to the bathroom ceiling. The landlord testifies that there is a clause in the addendum to the tenancy agreement which says the tenants agree to inform the landlord of any repairs and maintenance required in the unit. The landlord testifies that she went to the unit in September, 2011 and was shocked to see mould all over the bathroom ceiling. The landlord states if the tenant had informed her of this mould before it had become so bad the landlord could have taken remedial action to prevent additional costs in having the whole ceiling replaced.

The landlord testifies that she had a tenancy agreement in place with the tenant living in the basement unit for that tenant to rent the upper unit starting on December 01, 2011. The landlord testifies that due to the cleaning and other work required to bring the rental unit to a condition suitable for renting the downstairs tenant could not move into the unit until December 09, 2011. The landlord testifies that she had an agreement with the new tenant for a monthly rent of \$1,400.00 as the landlord has made upgrades to the house and

included more utilities in the rent. As the new tenant could not move in until December 09, 2012 the landlord states she lost rental income of \$650.00 and seeks to recover this from this tenant.

The tenant agrees he did not clean the carpets at the end of the tenancy but states he did intend to do the cleaning as he had an oral agreement with the landlord that the tenant could return on December 01, 2011 to remove the rest of his belongings, remove the garbage and clean the unit. The tenant states the landlord went back on this agreement and the landlord's husband came to change the locks around 2.00 p.m.

The tenant testifies that his roommates did start to clean the unit while he moved items from the unit. The tenant cross examines the landlord and asks the landlord why she has not provided any invoices or receipts for the cleaning of the unit and asks the landlord if the landlord did the cleaning or was it a cleaning company. The landlord replies that she did some cleaning and hired a company to do the rest. The landlord agrees she does not have an invoice or receipt for this work. The tenant states that he finds it strange that the landlord could not find a cleaning company to come into the unit for nine days.

The tenant testifies that he did leave some holes in the wall from his television mount but states he was not given the opportunity on December 01, 2011 to come back to fill these holes. The tenant testifies that the landlord had told the tenant many times that the landlord intended to paint the unit. The tenant disputes the landlords claim and states as the unit required painting the tenant should not have to absorb all the costs. The tenant cross examines the landlord and asks the landlord when the unit was last repainted and why the entire wall had to be repainted for six small holes. The landlord replies that the unit was last re-painted in 2007 and high quality paint was used. The tenant asks the landlord where the receipts are for this work. As the landlord has provided three quotes why has the landlord not provided the receipts? The tenant asks if in fact the landlord or the landlord's husband painted the unit and not a painting contractor. The landlord replies that a painting contractor did the work and agrees she has not provided receipts.

The tenant testifies that the tape he had used on the walls did not strip the paint and could have been easily removed. The tenant agrees to pay \$50.00 towards filling and sanding the

holes. The tenant testifies that his cat did cause some damage to the carpets but the damage was not significant enough to have to replace the carpet. The tenant cross examines the landlord and asks the landlord if the damage was so bad why have the carpets still not been replaced for the new tenant. The landlord replies that the carpets were new in 2007 and the landlord did not replace the carpets straight away as the landlord did not want to delay the new tenants move in date any longer as the carpets were out of stock.

The tenant disputes the landlords claim that he failed to notify the landlord of the problem with mould on the bathroom ceiling. The tenant testifies that had he noticed the mould before the landlord he would have informed the landlord as the tenant would not wish to live with a mould problem due to health issues. The tenant testifies that the landlord was at the unit in the summer and had not noticed the mould then either. The tenant testifies he did not cause the mould, there was no fan in the bathroom and the tenant opened a small window if he showered. The tenant testifies that the landlord had sprayed and painted over the mould when she noticed it and did not take the necessary measures to eliminate it until she had the ceiling removed.

The tenant disputes the landlords claim for a loss of rent. The tenant denies that the unit was left in such a condition that a new tenant could not move in. The tenant testifies that the landlord has provided no receipts to show when the cleaning and painting was done. The tenant also testifies that the landlord had informed the tenant that she wanted to do some renovations on the unit due to some water damage on the floor and the landlord wanted to repaint the entire unit. The tenant states he does accept that some deep cleaning would be required in the unit which would take a few hours but certainly not nine days. The tenant suggests that the landlord used this time to carry out some renovations in the unit and that is the reason the new tenant could not move in.

The tenant cross examines the landlord and asks if the hardwood floor had been replaced. The landlord relies that no it has not and states the new tenant has stated that the unit was left in a mess from the outgoing tenant.

The tenant calls his witness. This witness testifies that he helped the tenant move from the unit on November 30, 2011. The witness states they left the unit around 9.30 p.m. The witness testifies that he remembers the landlord agreeing they could return the next day to pick up the garbage and to clean the unit. The witness testifies that he understood that the landlord was going to do some renovations to the unit to correct water damage to the floors, for the carpet and to paint the unit. The witness states he was going to come by the next day to help the tenant but did not do so.

The landlord cross examines this witness and asks the witness if he came to the unit the next day. The witness replies that he did not but the tenant did return around 1.00 p.m. The landlord questions the witness about cleaning the unit. The witness testifies that the two roommates of the tenants cleaned the unit on November 30, 2011.

The tenant disputes the landlord photographic evidence and states these pictures were taken of the unit on November 30, 2011 before the tenant came back and removed the garbage from the unit and cleaned the floors. The tenant states these pictures are misleading.

The landlord disputes this and states the photographic evidence does not lie and this was the mess the tenant left in the unit on November 30, 2011 at the end of the tenancy as mutually agreed. The landlord disputes the tenants claim that she did renovations in the unit and testifies that the unit was just cleaned and they did the bare minimum amount of painting.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. 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.

With this in mind I have considered the landlords claim for carpet cleaning. A tenant is required to clean the carpets at the end of the tenancy when a tenancy is longer than a year and the tenant has pets. The tenant does not dispute this part of the landlords claim therefore the landlord has established a claim for carpet cleaning to the sum of **\$80.00**.

With regard to the landlords claim for cleaning of \$443.52; The landlord has provided some evidence to show that there was some cleaning required in the unit. The tenant argues that he was not given the opportunity to go back and do the rest of the cleaning and the tenant has raised concerns over the fact the landlord has provided quotes but no invoices or receipts showing a cleaning company did the work. When a tenancy ends on November 30, 2011 a landlord is not required to extend the time for a tenant to return to the unit to do any additional cleaning. Consequently I find the tenant did not leave the rental unit in a reasonable condition pursuant to s. 32 of the *Act* at the end of the tenancy on November 30, 2011. However the landlord has provided no invoices or receipts showing the actual amount paid for this cleaning or to show that a cleaning company actually came and did this work. Therefore I must limit the landlords claim for cleaning to **\$200.00**.

With regard to the landlords claim for damage to the wall; the tenant argues that the amount changed is excessive for the size of the holes and the tenant should not be held responsible for painting the entire wall as the unit had not been painted for five years. The tenant also argues that the landlord has provided no invoices or a receipt to show the work was actually completed by a contractor. I have considered both parties testimony in this matter and find the landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible. The tenant agrees he did not repair the holes left by the tenants television mount and did not remove the tape from the walls. However a landlord is expected to paint a rental unit at reasonable intervals and the useful life of interior paint is deemed to be four years. Consequently I find the tenant is reasonable for the repairs to the wall but I limit the landlords claim to the sum of **\$75.00** due to the period since the walls were last repainted.

With regard to the damage to the carpet; the tenant does not dispute that the tenant's cat did cause this damage to the carpet. The tenant does dispute that the landlord will have the carpet replaced. I refer the parties to the Residential Tenancy Policy Guidelines which state, in part, that where a landlord chooses not to return the unit to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had. Consequently I uphold the landlords claim for the value of the carpets to the sum of **\$242.20**.

With regard to the landlords claim for \$600.00 to replace the bathroom ceiling; I have considered this claim and applied the test used for damage or loss claims. The landlord agrees that the tenant did not directly cause the mould on the bathroom ceiling but argues that had the tenant informed the landlord of the mould, steps could have been taken sooner to eliminate the mould before the ceiling had to be replaced. The tenant argues that he did not notice the mould or he would have notified the landlord. The tenant also argues that he had notified the landlord that a fan was required in the bathroom and the landlord did not mitigate this problem by fitting a fan. It is my decision that the landlord has insufficient evidence to show that the tenant acted in a negligent manner by not notifying the landlord

about the mould. The landlord could not have any knowledge as to when the tenant first noticed the mould and therefore the tenant cannot be held responsible for the replacement of the bathroom ceiling. This section of the landlords claim is therefore dismissed.

With regard to the landlords claim for loss of rent for nine days in December; the landlord argues the tenant's failure to comply with s. 32 of the *Act* in leaving the rental unit in a clean manner with all damages repaired meant the incoming tenant could not move into the unit on December 01, 2012. The tenant contradicts the landlord's testimony and argues the landlord informed the tenant that the landlord wanted to do renovations in the unit at the end of the tenancy. The tenant also disputes that the landlord used a cleaning or painting company to do this work and the cleaning would only have taken a few hours and not nine days.

I have considered this section of the landlords claim and find the landlord has not met the burden of proof to show that the unit could not be re-rented for nine days due to the tenant's actions or neglect. The landlord has provided no corroborating evidence to show a cleaning company cleaned the unit and the unit could not have been cleaned sooner and as I have found the tenant is not responsible for painting in the unit I am not satisfied that this work was either required or carried out. Consequently, I dismiss this section of the landlords claim.

As the landlord has been partially successful with her claim I find the landlord is entitled to recover half the filing fee from the tenant to the sum of **\$25.00** pursuant to section 72(1) of the *Act*.

The landlord will receive a Monetary Order for the following sum pursuant to s. 67 and 72(1) of the *Act*:

Carpet cleaning	\$80.00
Cleaning	\$200.00
Wall repair	\$75.00
Value of carpet	\$242.20

Subtotal	\$597.20
Plus portion of filing fee	\$25.00
Total amount due to the landlord	\$647.20

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$647.20**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The reminder of the landlords claim is dismissed without leave to reapply.

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: June 06, 2012.

Residential Tenancy Branch