



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid rent; 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 and pet 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 tenants 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 examine each other 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. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damages to the unit, site or property?
- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

- Are the landlords entitled to keep the security and pet damage deposits?

Background and Evidence

The parties agree that this tenancy started on November 15, 2010. Rent for this unit was \$1,000.00 which was due on the 1st day of each month. The tenants paid a security deposit of \$500.00 and a pet damage deposit of \$500.00 on either November 04 or November 05, 2010. The parties agree that the tenants provided their forwarding address in writing on May 04, 2012. The Parties also agree that the landlord failed to complete a move in or move out condition inspection report of the rental unit at the start and end of the tenancy.

Damages

The landlord testifies that the tenants caused some damage to the carpets in the living room, one bedroom and a walk-in hall closet. The living room carpet has two small burns by the fireplace, the tenants' cat has torn an area of carpet in the entrance to the closet and the bedroom carpet had a cat urine smell that was not removed after the tenants cleaned the carpets. The landlord testifies that they had a quote to replace the carpets in the bedroom and closet and to repair the burn marks. The landlord has provided a quote of \$1,119.31 for the replacement carpets.

The landlord testifies that the bedroom carpet has already been replaced at a cost of \$357.52 including underlay and installation. The carpet in the closet has not yet been replaced and the landlord estimates that it will be a similar cost to the bedroom, if they can get a remnant piece of carpet, as this area is eight feet by six feet. The landlord testifies that the carpets in these areas are approximately 10 years old.

The landlord testifies that the carpet fitter who did the bedroom carpet gave a verbal quote of \$100.00 to repair the burn marks in the living room carpet and this work has not yet been completed.

The landlord testifies that the tenants did clean the carpets but it did not remove the stains on the living room carpet or the smell of cat urine or stains on the bedroom carpets. The landlord had the carpets cleaned twice by a professional carpet cleaner but the cat urine smell remains in the bedroom and the stains remain on the living room carpet.

The landlord testifies that the tenant failed to replace a damaged weather strip on the back door the landlord has provided a receipt for \$7.37 for a new weather strip and seeks to recover a total of \$10.00 which includes a sum for the landlords' time taken to replace the weather strip.

The landlord testifies that the tenants removed a kitchen blind and when the landlords' replaced this blind at the end of the tenancy there was a part missing that held the blinds on. The landlord testifies that they have tried to find a replacement part but have been unable to, so the blind will need to be replaced. The landlord has not had this work done yet but estimates it will be around \$20.00 to \$40.00. The blind was six years old.

The landlord testifies that the tenants did not remove all their recycling and garbage at the end of the tenancy. The landlords had to remove these items to the dump and were charged a dump fee of \$8.00. The landlords seek to recover the sum of \$13.00 which includes \$5.00 for the landlords' gas.

The landlord testifies that the tenants failed to leave the rental unit clean at the end of the tenancy. The landlord states she spent eight hours cleaning areas of the unit such as grease from the kitchen cupboards; the inside of these cupboards; the fan over the stove top; behind the fridge; inside the fridge; rust stains on the kitchen tiles; the laundry room floor and washer dryer; mould around the bath tub; hard water film from the bathtub enclosure; mould and cat hair from the windows and windowsills in the bedrooms; and a further attempt at cleaning the carpet stains. The landlord testifies that the back door had to be repainted due to cat scratches and the wood on the kitchen

worktops had to be repainted. The landlord seeks to recover the sum of \$200.00 for her time and labour and \$18.00 for a specialized carpet cleaning solution used to make another attempt to clean the stains from the carpets.

The landlord testifies that they did invite the tenants to return to the unit and do an inspection of the damage and cleaning. The tenants did not reply to this invitation. The landlord testifies she also sent an e-mail to the tenants with an attempt to reduce the overall costs claimed to avoid a hearing however the tenants did not contact the landlord about this offer.

Unpaid rent and loss of income

The landlord testifies that the tenants failed to give written notice to end the tenancy. They had given notice to move out in March, 2012 but rescinded that notice. The tenants then called the landlord and gave notice again effective on April 30, 2012. The landlord states the unit was re-rented for May 01, 2012 but the landlords seek to recover rent of \$1,000.00 due to insufficient and improper notice from the tenants.

Security deposit

The landlords request an Order to keep the tenants security and pet damage deposit of \$1,000.00 to offset against the rent, damages and cleaning.

The tenant testifies that they had the carpets cleaned in the living room on April 15, 2012 to help the landlord re-rent the unit. The tenant testifies that they did not clean the bedroom carpets but state that the landlords' husband did a walkthrough of the unit with the tenants at the end of the tenancy and did not mention any concerns about a cat urine smell. The tenant testifies that had the smell been so noticeable they or their guests would have smelt it during the tenancy. The tenant states the cat did not urinate on the carpets but was sick on a bedroom carpet.

The tenant testifies that they had to use an open fire as this was their only heat source in the unit. The tenant testifies that they did not notice any burn marks on the carpet and if these had occurred it was not through the tenants' actions or neglect.

The tenant agrees that their cat did scratch an area of the hall closet carpet but as the hall closet is large in comparison to the damage the tenant does not believe the whole carpet will need to be replaced. The tenant testifies that the carpet in the bedroom and closet appeared to be older than 10 years

The tenant agrees that they meant to replace the weather strip but state the landlords' husband said he had purchased some weather stripping and would replace it himself. The tenant testifies that she has no knowledge of what happened to a part from the blind and states these parts would pop out of the other blinds in the unit.

The tenant testifies that it was difficult to put all their recycling into the bins provided due to the other tenants' use of these bins. The tenant agrees some recycling was left in the rental unit.

The tenant testifies that when they moved out she did complete a thorough clean of the unit including the kitchen and appliances. The landlord's husband did the walk through of the unit and was satisfied with how clean the unit was. The tenant disputes the landlords claim for cleaning and painting. The tenant testifies that there was never any mention of the back door requiring painting and the tenant states she did not see any scratches on the door. The tenant states the painting on the work top the landlords have claimed for is normal wear and tear as the paint would come off the wooden edges of the work tops.

The tenant disputes the landlords claim for unpaid rent as the unit was re-rented for May 01, 2012 the landlord has not lost any rent.

The tenant testifies that the landlord did invite the tenants to return to the rental unit but not until May 02, 2012 after the new tenant had moved into the unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties attending. With regard to the landlords claim to keep the security and pet deposits; Sections 23(4), 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security and pet deposit for damages is extinguished.

The landlord did however file a claim for unpaid rent within the allowable 15 days however the landlord filed this claim on May 14, 2012 after the unit had been re-rented on May 01, 2012. Therefore at the time of filing their claim the landlords claim for unpaid rent was invalid.

When a landlords right to claim against the security and pet deposit has been extinguished a landlord is not entitled to file a claim to keep the deposits and if the deposits have not been returned to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord his forwarding address in writing the landlord must pay double the security deposit to the tenant.

Consequently I deny the landlords claim to keep the security or pet damage deposits and find the tenants are entitled to a monetary award to recover double the deposits to the sum of **\$2,000.00**.

With regard to the landlords claim for unpaid rent for May, 2012; as the unit was re-rented for May 01, 2012 the landlords have not incurred a loss of rent for May, 2012 and consequently this section of the landlords claim is denied.

With regard to the landlords claim for damages to the unit, site or property; 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 test in mind I have reviewed the landlords claim and find the tenants agree that they did not clean the bedroom carpets and the landlord has provided sufficient evidence to show staining on the living room carpet resulting in the landlords having to clean the carpets again. I find therefore the landlord has met the burden of proof regarding carpet cleaning and is entitled to a monetary award of **\$120.96**.

With regard to the landlords claim for replacement carpets in one bedroom and the closet; the landlord argues that the bedroom carpet had to be replaced due to the smell of cat urine. The tenants argue that their cat did not urinate on the bedroom carpets and the carpets were 10 years old. I find the landlord has provided insufficient evidence to

show that the bedroom carpets were left with a cat urine smell and as the carpet in this area was past its useful life of 10 years I find the landlord has not established a claim for replacement carpets in the bedroom. With regard to the carpet in the closet, the landlord has provided a photograph showing an area of torn or scratched carpet and the tenants agree that their cat did do this damage to a small area. However the landlord has not provided an actual cost to replace or repair this area of carpet and the landlord agrees that this carpet was also 10 years old and is therefore past its useful life. Consequently I limit the landlords claim to a nominal sum of **\$100.00**.

With regard to the landlords claim for repair to the burn marks in the living room carpet. The landlord testifies that this carpet was new at the start of the tenancy. The tenants argue that they had to use the open fire and are therefore not responsible for the burn marks on the carpets as they were not caused by the tenants' actions or neglect. The landlord has not provided sufficient evidence to show the actual cost of the repair to the burn marks and has not shown that the tenants were negligent in burning the carpet. Consequently, this section of the landlords claim is denied.

With regard to the weather stripping repair, I find the tenants were aware of this damage and should have ensured this damage was repaired at the end of the tenancy. Consequently I uphold the landlords claim for replacement weather stripping of \$7.37 and allow the landlords a nominal amount for the time taken to replace the stripping. The landlord has therefore established a claim for **\$10.00**.

With regard to the landlords claim for a replacement blind for the kitchen; the tenants agree that there was a part missing from the blind and agree that they did remove the blind during their tenancy. However the landlord has not provided a quote or invoice for the actual cost to replace this blind. Therefore I limit the landlords claim to **\$15.00**.

With regard to the landlords claim for costs to remove the tenants recycling and garbage, the tenant agrees this was left at the unit but argues that the bins provided were full. It is my decision that a tenant remains responsible for any items left in the

rental unit or on the property consequently I uphold the landlords claim for dump fees and gas to the sum of **\$13.00**.

With regard to the landlords claim for cleaning and painting to the sum of \$200.00; The landlord has not provided a condition inspection report to detail the cleaning required in the unit and the tenants argue that this landlords husband was happy with the condition of the rental unit during the walkthrough. The landlord has provided no evidence to show that the back door or worktops required painting that went beyond normal wear and tear. Therefore without sufficient evidence to support this section of the landlords claim that the tenants did not leave the rental unit to a reasonable standard of cleanliness, I must deny the landlords claim for cleaning and painting. The landlord is however entitled to recover the **\$18.00** spent on the specialist cleaner for the carpet as a further attempt to remove the stains.

As the landlord has been only partially successful with their claim I find the landlords are entitled to recover half the \$50.00 filing fee to the sum of **\$25.00** pursuant to s. 72(1) of the *Act*.

As the landlords have been partially successful with their claim I find the landlords' award will be deducted from the tenants' security deposit. The balance of the deposit has been awarded to the tenants as follows:

Double the security and pet deposits for the tenants	\$2,000.00
Less carpet cleaning	(-\$120.96)
Less carpet damage	(-\$100.00)
Less weather strip	(-\$10.00)
Less blinds	(-\$15.00)
Less dump fees and gas	(-\$13.00)
Less specialist carpet cleaner	(-\$18.00)
Less filing fee	(-\$25.00)

Total amount due to the tenants	\$1,698.04
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Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to recover the sum of **\$301.96**. This sum has been deducted from the tenants' monetary award for double their security and pet deposits.

As the tenants are entitled to recover double the security deposit from the landlords the copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,698.04**. The order must be served on the landlords 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: July 10, 2012.

Residential Tenancy Branch