



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, 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 both tenants.

During the hearing the landlord clarified that despite applying to retain the security deposit only he had intended to claim an amount for damage totalling \$52.53 more than the security deposit by submitting a "Monetary Order Worksheet". As all matters were discussed in this hearing and the tenants were served with the worksheet well in advance of the hearing, I find the tenants were sufficiently prepared and were not prejudiced by this minor change and I accept the landlord's amendment.

Issue(s) to be Decided

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

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on January 29, 2007 for a month to month tenancy beginning on February 1, 2007 with a security deposit of \$600.00 paid and a rent of \$1,240.00, at the end of the tenancy. The tenancy ended on May 31, 2012.

The parties agree the tenancy ended in May 2012, while there is dispute over the actual end date of the tenancy the parties agree that they met on May 30, 2012 to go over the condition of the rental unit. The tenants testified that the landlord had completed a report prior to their arrival and they were presented with the landlord's list of deficiencies.

The parties agree that the tenants indicated they would take care complete the items on the list. The parties disagree on whether or not a final inspection was scheduled to be completed the next day after the tenants had completed additional cleaning and repairs.

The landlord submits the tenants attended the rental unit on the morning of May 31, 2012; locked the doors and then left around 11:00 a.m. and refused to complete a final inspection. The tenants submit that they were in the rental unit all morning cleaning and attending the landlord's list but that at no time, despite being on location for the duration of the time they were there, did the landlord offer to complete a final inspection.

The parties also agree that late that evening the list was dropped off at the landlords by an agent for the tenants with various items checked off as complete. The landlord submits that when he returned to the rental unit it was not cleaned to normal standards.

The landlord seeks the following compensation:

Description	Amount
Blind cleaning	\$111.15
Blind replacement - bedroom	\$88.43
Blind replacement – living room	\$138.79
Carpet Repair	\$100.00
Soil replacement	\$33.60
Labour – clean; replace and repair – 11 hours at \$18.00/hr.	\$198.00
Total	\$669.97

The tenants submit that they had agreed to the replacement blinds of equal value but that the landlord had never provided a receipt or estimate to them. The tenants testified they have no objection now to this portion of the landlord's claim.

The tenant's testified they did clean all the blinds and have provided a photograph showing a person steam cleaning vertical blinds. The tenants submit the condition of the carpet is recorded in the move in condition inspection report as being damaged in the living room. The tenants also submit they had permission to put the sand in the yard for their pool and the landlord was parked on the sand whenever the tenants were finishing things up at the end of the tenancy.

Analysis

I accept the landlord is entitled to the amounts claimed for replacement blinds based on the agreement of the tenants in the amount of \$227.22.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a 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. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

To establish if any repairs or cleaning is required at the end of a tenancy the burden is on the party making the claim, in this case the landlord, to provide sufficient evidence to establish the respondent, in this case the tenants, has breached the *Act* by failing to leave the rental unit in a condition that is compliant with Section 37.

When the respondent disputes the condition of the rental unit in a hearing the landlord, to be successful in their claim, must provide additional evidence that will corroborate their submissions. I find that a list of deficiencies that is provided to the tenants to use to complete their cleaning and repairs does not constitute a report on the condition of the rental unit at the end of the tenancy.

I also find that the tenants returning of the same document listing items they have taken care of since the list was issue also does not constitute a report on the condition of the rental unit at the end of the tenancy. As such, the landlord must provide additional evidence of the condition of the unit at the end of the tenancy.

To this end the landlord has provided his diary notes that state the unit has not been cleaned to normal standards. The landlord provides no additional comment as to what was uncleaned, with the exceptions of the blinds, to these standards or if any or the entire list he had provided to the tenants had been or not been completed. I find the landlord has failed to establish the rental unit required cleaning and I dismiss this portion of the landlord's claim.

In regard to blind cleaning as the tenants dispute the landlord's claim because they have completed blind cleaning and they have provided at least one photograph showing they are cleaning the blinds, I find the landlord has failed to establish the tenants failed to clean the blinds and I dismiss this portion of the landlord's claim.

However, as I find it would be unlikely the damage to the carpet changed and neither party disputed the condition of the carpet at the end of the tenancy therefore I must consider the condition of the carpet at the start of the tenancy to determine if the landlord suffered a loss as a result of the tenancy.

I accept the tenant's position that the move in condition inspection report identifies that carpet was both dirty and damaged at the start of the tenancy. Without more detailed information as to what that damage was at the start of the tenancy I find the landlord has failed to establish that the damage to the carpet occurred as a result of the tenancy and I dismiss this portion of the landlord's claim.

While the landlord claims for soil replacement, I note the landlord indicated on the list of deficiencies the following: "Removal of your old pool liner and misc. debris from yard to dump and clean-up will be no expense to you." I find the landlord indicated that he had no intention of charging the tenants for yard work on the list of deficiencies implying the tenants would not have to take care of any yard issues. As such, I find the landlord cannot now seek compensation for work he indicated was not necessary and I dismiss this portion of the landlord's claim.

As I have accepted the tenants' agreement that the landlord was entitled to compensation for replacement blinds, I find it therefore reasonable that the landlord would have to install the replacement blinds and accept his submission of 1.5 hours at \$18.00 per hour to be reasonable. As the other labour charges are related to the above claims that I have found the landlord has failed to establish I dismiss this portion of the landlord's claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$227.22** comprised of \$227.22 replacement blinds and \$27.00 installation labour. As the landlord was largely unsuccessful in his claim I dismiss his claim for the \$50.00 fee paid for this application.

I order the landlord may deduct this amount from the security deposit and interest held in the amount of \$617.44 in satisfaction of this claim, and return the balance to the tenants. I grant a monetary order to the tenants in the amount of **\$390.22**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: August 14, 2012.

Residential Tenancy Branch