



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MND, MNDC

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 three agents for the landlord and both tenants.

At the outset of the hearing the landlord's agent clarified the landlord was not seeking a monetary order for any unpaid rent and that the tenant's had provided written consent for the landlord to retain the security deposit, confirmed by the tenants' documentary evidence. In addition the landlord clarified that they were seeking compensation for cleaning and damage to the rental unit.

As such I amend the landlord's application to seek a monetary order for damage to the unit and for compensation for damage or loss only. While the landlord does not need to claim for the security deposit as the tenants gave written permission for the landlord to retain the deposit, the landlord was clear that the amount of the claim was not discounted by the amount of the security deposit.

I note that despite the confusion in the landlord's Application the tenants were sufficiently prepared to present response to all of the landlord's potential claims and had provided a binder of evidence to respond to all claims in accordance with the Residential Tenancy Branch Rules of Procedure.

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; for compensation for damage or loss, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord testified the tenancy began on January 1, 2004 as a month to month tenancy with a rent geared to income arrangement that had rent due on the 1st of each month, including parking, at \$906.00 at the end of the tenancy with a security deposit of \$385.00 paid on November 22, 2003. The tenant testified that they moved in on December 15, 2003.

The tenancy ended as a result of the tenants' notice to end tenancy provided to the landlord on November 1, 2011. The letter the tenants provided to the landlord states the tenants intend to end the tenancy effective 12:00 noon on December 1, 2011 and that the "unit will be ready for final inspection after move out on December 1 at 12:00 noon."

The landlord testified that they provided the tenants with a Notice of Final Opportunity to Schedule a Condition Inspection approximately 4 days prior to the end of November 2011 by putting it in their mail slot for an inspection to be completed on November 30, 2011 at 1:00 p.m. The tenant testified they did not receive the Notice.

The landlord seeks compensation for the following:

Description	Amount
Painting – 2 nd coat only to cover dark colours used by tenants	\$308.50
Crisper replacement	\$130.00
Cleaning of the stove and cupboard	\$40.32
Replace damaged section of carpeting due to dog damage	\$158.00
Steam cleaning of carpets	\$137.75
2 Bi-fold door replacements	\$280.18
Labour to install bi-fold doors – 2 hours at \$48/hr.	\$48.00
Total	\$1,102.75

The tenants submit that the inspection the landlord is relying upon was completed the day prior to when they said they would be available for the inspection and as such it is not a valid representation of the condition at the end of the tenancy.

In her testimony, however the tenant agreed that they should be responsible for the replacement of one bi-fold door as they had installed a cat door into it and for the damage to the carpet caused by their cat (not their dog as submitted by the landlord). In their written submission the tenants also confirm that they left the landlord their security deposit to "cover the cost of the crispers and one bi-fold door."

The tenants submit that they had assumed that since the landlord had not put a 2nd coat of paint in the rental unit at the start of the tenancy they would not be required to put a 2nd coat of paint in the unit at the end of the tenancy. The tenants also submit that they assumed the landlord would replace the carpet because they had asked for the carpet to be replaced during the tenancy and there was mould in the carpet and underlayment.

The tenants also dispute the replacement of the 2nd bi-fold door. The tenants stated that despite no indication of the hole in the bi-fold door in the move in condition inspection report the landlord told them it would be replaced shortly after the start of the tenancy because of the hole and that the replacement never happened.

In relation to cleaning, the tenants' written submission states: "The kitchen and appliances had been cleaned as best as possible at the time of move out. The stove and oven are extremely old and need to be replaced. The oven is stained from age. The oven had been cleaned with Easy Off oven cleaner prior to moving out."

Analysis

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 45 of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement.

As such, if the landlord receives a notice to end tenancy on November 1, 2011 the earliest possible effective date, if rent was due on the first of the month, would be December 31, 2011.

Despite the tenants' notice being dated November 1, 2011 with an effective date of December 1, 2012 I accept that the landlord, through their actions took this to mean the tenants would be vacating on or before the end of November 2011. For example, the landlord is not seeking compensation for lost rent for the month of December 2011 due to a late notice to end the tenancy.

As such and in accordance with Section 37 of the *Act* the tenants were required to vacate the rental unit no later than 1:00 p.m. on November 30, 2011 and therefore I find the tenant's claim that that landlord entered the rental unit without 24 hour notice is irrelevant because the tenancy had ended prior to the landlord's entry at 1:00 p.m. on November 30, 2011.

While I accept the tenants put forward they would be available for a move out inspection on December 1, 2011 Section 35 states the inspection must be completed on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon day. The Section goes to prescribe how the landlord must offer opportunities for the inspection.

As such, I find that the fact that the tenants noted in their notice to vacate letter that the "unit will be ready for final inspection after move out on December 1 at 12:00 p.m." does

not indicate that **they** will be available for an inspection at that time but rather that they intend to overhold the rental unit for an extra day.

Section 88 of the *Act* allows a landlord serving documents such as a Notice of Final Opportunity to Schedule a Condition Inspection by leaving a copy in the mail box or mail slot for the address at which the person resides. I find the testimony that the Notice was served to the tenants by this method 4 days prior to the end of the tenancy satisfies this requirement. I find, based on the balance of probabilities, it is unlikely that the tenants did not receive this Notice.

Even if I were to accept the tenants had received the Notice, I find that with the exception, perhaps, of cleaning the tenants took no other steps to address the other claims in the landlord's Application and if the inspection had been completed the next day for the most part the results would have been the same.

From the tenant's own testimony I find the tenants accept that the replacement of the crisper; one bi-fold door and installation; and damaged carpet are their responsibility to pay for.

In regard to the 2nd bi-fold door and installation, I find that as the move in condition report reflects the condition of the entire unit and that there are no subsequent written agreements that that door was going to be replaced at the start of the tenancy, I find the landlord has established the damage resulted during the tenancy and the tenants are responsible for its replacement.

In relation to the landlord's claim for both the painting and carpet steam cleaning, I find that the tenants had no intention of completing one coat of paint to lessen the impact of the non-approved colour or of steam cleaning the carpets because of assumptions the tenants made.

Residential Tenancy Policy Guideline 1 states in regard to painting that the tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible. I find that by using a dark colour on the walls the tenants are responsible for the painting of at least one coat of paint.

Guideline 1 goes on to say, in regard to carpet cleaning, that a tenant is generally responsible for steam cleaning or shampooing the carpets after a tenancy of one year or in the case of a tenancy with pets regardless of the length of the tenancy. In the case before me the tenancy was at least 7 years in duration and the tenants had both at least one cat and one dog. As such, I find the tenants are responsible for carpet cleaning.

Finally, in relation to cleaning the stove and cupboards, while the tenant didn't provide any testimony that they cleaned the stove and cupboards sometime after the landlord inspected the unit on November 30, 2011 they did submit in their written documentation that the stove was old and stained and nothing regarding the cupboards.

Despite this claim there is no indication of a stain in the oven or stove at the start of the tenancy and despite the submission of several photographs the tenants did not submit any photographic evidence of the condition of the rental unit on December 1, 2011. As such, I accept the landlord's account of the condition of the stove and cupboards and find the landlord is entitled to compensation for this cleaning.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,102.75** comprised as described in the table above.

I order the landlord must deduct the security deposit and interest held in the amount of \$398.61 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$704.14**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord 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 28, 2012.

Residential Tenancy Branch