



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damage to the unit, and to keep all or part of the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Issue

The landlord stated he no longer has in trust the tenants security deposit as it was returned to the tenants at the end of tenancy.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the rental unit?

Background and Evidence

The tenancy began March 2010. Rent in the amount of \$1,150.00 was payable on the first of each month. A security deposit of \$575.00 was paid by the tenants.

The parties participated in a move-in inspection. The parties participated in a move-out inspection; however the move-out inspection was not done in writing.

The parties agreed that the tenants were served with a two month notice to end tenancy for landlord use of property with an effective vacancy date of June 30, 2012. However,

the tenant was able to locate new rental accommodation prior to that date and gave the landlord ten days notice to vacate, with an effective date of May 31, 2012.

The landlord claims as follows:

a.	Carpet cleaning	\$133.28
c.	3 hours at the rate of \$60.00 to repair damaged wall by cat	\$180.00
d.	1 hour at the rate of \$60.00 to clean outside deck	\$60.00
e.	3 days rent – divide by 31 days	\$123.00
f.	TOTAL CLAIMED	\$720.28

Carpet cleaning

The landlord testified the tenants did not steam clean the carpets at the end of tenancy as required. The landlord seeks to recover the cost of cleaning the carpets in the amount of \$133.28. Filed in evidence is a copy of the receipt.

The tenants agreed that they did not steam clean the carpets at the end of tenancy.

Carpet repair

The landlord testified the tenants' cat damaged the bedroom carpet and it was required to be repaired. The landlord stated he was able to minimize the loss as he was able to have the damaged carpet patched. The landlord seeks to recover the cost of repairing the carpet in the amount of \$224.00. Filed in evidence is a copy of the receipt.

The tenant agreed that the cat damaged the carpet. The tenant was not expecting the cost of the repair to exceed \$150.00.

Repair damage walls

The landlord testified the tenant's cat scratched the walls causing damage to the walls.

The landlord testified the tenants also hung pictures on the walls with screws and these holes were required to be filled, sanded and painted.

The landlord seeks compensation for the three hours it took him to make the repairs to the walls and seeks to recover \$180.00.

The tenants agreed that their cat made a scratched on the hallway wall which was approximately 5 inches in length and an area of 3inch by 4 inch in the bedroom. The tenant states they are responsible for the cost of repair the damage caused by the cat.

The tenant testified that they were required to use screws in the walls as they hung a heavy mirror, and Art, which they did not want to risk having these items fall from the wall. The tenant disputes that they should be responsible for those cost of fixing these holes as this was normal wear.

The tenant testified the work should have not taken any longer than two hours and the hourly rate the landlord is claiming is unreasonable.

Clean outside deck

The landlord testified the tenants left stains on the deck and it took him one hour to clean the deck. The landlord seeks to be compensation \$60.00.

The tenant testified that there were no stains on the deck.

Three days rent

The landlord testified that he returned to the tenants their rent cheque for June, 2012, however, feels he is entitled to 3 days of rent as the tenants were still in possession of the rental unit until June 3, 2012.

The tenant testified on May 31, 2012, the movers had not arrived and it was agreed with the landlord that they could come back to clean the rental unit, and on June 3, 2012, they met and performed the verbal move-out inspection and returned the keys.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;

- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act and a corresponding loss.

Carpet cleaning

The tenant agreed the carpets were not steamed cleaned at the end of tenancy.

Under Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is generally expected to clean the carpets if vacating after a tenancy of one year.

In this case, the tenancy exceeded one year, it was the tenants' responsibility to ensure the carpets were cleaned at the end of tenancy. Therefore, I find the landlord is entitled to compensation for carpet cleaning in the amount of **\$133.28**.

Carpet repair

The tenant agreed the cat damaged the landlord's carpet. The landlord had the carpet repair and paid \$224.00. I do not find the amount claimed by the landlord to be unreasonable. Therefore, I find the landlord is entitled to compensation for repairing the carpets in the amount of **\$224.00**.

Repair damage walls

In this case, the tenant acknowledged her cat caused damage to the walls, and agree they are responsible for cost of repairing the damage.

The tenant has also acknowledged that screws were used to hang heavy items on the walls.

Under Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is generally responsible to repair the walls when screws have been used.

The landlord is claiming it took three hours to repair the walls. I find the time claimed not unreasonable, however, I find the rate of \$60.00 per hour claimed is unreasonable.

Therefore, I will grant the landlord a nominal amount of \$15.00 per hour for worked perform in the total amount of **\$45.00**.

Clean outside deck

In this case, the evidence of the landlord was the deck required cleaning due to staining. The evidence of the tenant was there were no stains on the deck. In the absents of a move-out inspection report or any other documentary evidence, such a photographs, I find the landlord has failed to provide sufficient evidence to prove the deck required cleaning due to stains. As a result the landlord's claim for compensation is dismissed.

Three days rent.

In this case, the tenants were served with a notice to end tenancy for landlord use, with an effective date of June 30, 2012. The tenants gave the landlord ten day's notice end tenancy, which was to end May 31, 2012. However, the effective date was extended by the parties until June 3, 2012, due to the movers not arriving on time and giving the tenant sufficient time to clean the rental unit.

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
- (b) **paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice,** unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*]

Under section 50 of the Act, the landlord is entitled to a proportion of rent payable of rent due to the effective date or any extension of the tenants notice. Therefore, I find the landlord is entitled to compensation for three days of rent in the amount of **\$123.00**.

I find that the landlord has established a total monetary claim of **\$575.28** comprised of the above described amount and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary

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 1, 2012.

Residential Tenancy Branch