



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC MNSD FF

Introduction

This Dispute Resolution hearing is being held to deal with an Application by the landlord for a monetary order against the tenant for money owed or compensation for damage or loss under the Act and to retain part of the security deposit in satisfaction for the amount claimed. The hearing was also convened to deal with a cross Application by the tenant for a monetary order for the return of the security deposit .

Both the landlord and the tenants were present and gave testimony.

Issue(s) to be Decided

The issue to be determined for the landlord's application, is whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss.

The issue to be determined on the tenant's application is whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act

The burden of proof is on each applicant in respect to their reciprocal claims.

Background and Evidence

The following facts are not under dispute:

- The tenancy began on April 1, 2011
- Rent was \$1,585.00 per month
- A security deposit of \$792.50 and a pet damage deposit of \$792.50 had been paid
- The tenant vacated on May 31, 2012
- The tenant's written forwarding address was provided at the end of the tenancy
- Move-in and move-out condition inspection reports were completed

Submitted into evidence by the landlord was a copy of the "Security Deposit Refund" sheet indicating that the tenant would be charged \$50.00 for damage to the fireplace, \$107.52 for cleaning 6 sets of blinds, \$180.00 for cleaning of the suite and \$168.00 for

the floor. Also submitted by the landlord were copies of receipts for the cleaning and repairs done on the suite.

The landlord testified that, although the tenant had patched holes left in the drywall above the fireplace, these areas were not left in good condition and had to be re-patched. The tenant did not agree with the need to re-patch the area and submitted a photograph of the area as it was left. The tenant also pointed out that the move-in and move-out condition inspection report made no mention of this alleged damage.

The landlord testified that the tenant was required to have the blinds “professionally cleaned” at the end of the tenancy, pursuant to a term in the tenancy agreement. No copy of the tenancy agreement was in evidence. However, the landlord read the applicable clause into evidence and stated that the tenants had initialed the addendum page of the agreement on which this term was outlined. The landlord testified that the reason for the requirement that the blinds be “professionally” cleaned was because they have to be removed to do the job properly. The landlord stated that they do not accept self-cleaning done by the tenant.

The tenant testified that the blinds were left in a reasonably clean condition and supplied photos to support this testimony. The tenant also pointed out that the move-out condition inspection report had no notation that any of the blinds were left in a dirty state. The tenant’s position is that sending the already clean blinds for professional cleaning was unnecessary.

The landlord testified that the tenant had not left the rental unit in a clean condition and the landlord incurred expenses to have a final cleaning done. The landlord testified that the cleaner spent approximately 4 or 5 hours on the unit cleaning various areas that were not cleaned properly by the tenant at a cost of \$180.00. The landlord testified pointed out that one of the photos shows that there is a blue tint around the bathtub drain, which confirms that it was not fully cleaned.

The tenant disputed the landlord’s testimony about the need for additional cleaning. The tenant stated that they did a thorough cleaning and even touched up areas that the landlord indicated, during the inspection, required more cleaning. The tenant made reference to photos that showed various areas of the unit, including the bath-tub, toilet, floors, refrigerator, windows and sinks. With respect to the blue tints on the chrome part of the bath-tub drain, the tenant stated that this stain was not caused by the tenant and did not come out with normal cleaning products.

The tenant also pointed out that the unit was less than clean when they moved in and that the move-out condition inspection report showed that the unit was left in a clean condition when they moved out.

The tenant's witness supported the testimony about the final cleaning and testified that the rental unit was left in a reasonably clean state at the end of the tenancy.

The landlord stated that the floors, which are a finished cement surface required a waxing after the tenant left, to bring them back to a polished state at a cost of \$168.00 and the landlord is claiming this cost from the tenant.

The tenant disputed that this re-surfacing treatment should be seen as the tenant's responsibility. The tenant stated that the floors were left in a clean shiny condition, as evidenced by the photos and the move-out condition inspection report.

Analysis

With respect to the tenant's claim for the refund of the security deposit, I find that these funds are always held in trust for the tenant unless an order is issued or written permission is given by the tenant for the landlord to keep it. Pursuant to section 38 of the Act, I find that the landlord made application to keep some of the security and pet damage deposits within 15 days of receiving the tenant's forwarding address.

With respect to the landlord's monetary claim for damages in the amount of \$505.62, it is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 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 landlord.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave it reasonably clean, and undamaged except for reasonable wear and tear.

With respect to the holes over the mantle that were repaired by the tenant, I find that there is conflicting verbal testimony about the quality of the repair work. The burden of proof is on the landlord to establish that there was residual damage left by the tenant,

that required additional work to repair. However, I find no evidence on the move-in or move out condition inspection reports relating to the wall over the fireplace. I find that the landlord has not met the burden of proof to show that the tenant left damage in violation of the Act and that the landlord's costs should be bourn by the tenant. For this reason, I find that this portion of the landlord's claim must be dismissed.

With respect to the landlord's claim for additional cleaning costs, I acknowledge that these expenses were genuinely incurred, however, I find that the standard of "reasonable" cleanliness imposed by the Act has been met, as evidenced both by many of the photos as well as the move out condition inspection report. I therefore find that the landlord's claim for the additional cleaning costs must be dismissed.

With respect to the landlord's claim for the cleaning of the blinds, I find that the requirement for "*professional cleaning*" is not a standard imposed by the Act. Under the Act the tenant would only be obligated to ensure that the blinds were left in a reasonably clean condition. However, in this case, the landlord's position is that there was a clear term in the tenancy agreement, that the cleaning of the blinds must be done professionally and that the tenant had agreed to this term but failed to fulfill this term.

Section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under the Act or the tenancy agreement.

Section 58 of the Act also states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) *rights and obligations under the terms of a tenancy agreement*. (My emphasis)

I accept the landlord's testimony that the tenant failed to comply with this particular term in the tenancy agreement, and I find that this fact would satisfy element 2 of the test for damages. I also find that the landlord's monetary claim for the costs incurred in blind-cleaning has successfully met element 3 of the test for damages. However, to satisfy element 4 of the test for damages, the landlord would also need to prove that reasonable efforts were made to mitigate the damages as required under section 7(2) of the Act.

I find that I must accept the tenant's testimony that, despite violating the agreement, the blinds were manually cleaned and as such were left ion a reasonably clean condition, as required under section 37 of the Act. I find that the move out condition inspection report confirmed that the blinds were not left in an unreasonably clean state. For this reason, I find that the landlord did not take reasonable steps to mitigate the costs, because, despite the evidence that the blinds were not dirty, the landlord still insisted on

having the blinds cleaned and chose to incur costs of \$107.52. Therefore I find that the claim has failed element 4 of the test for damages and must be dismissed.

In regard to the landlord's claim for the floor waxing, I find that the move-in condition inspection report indicates that the floor already had condition issues when the tenancy began. In any case, I find that the tenant's responsibility would be restricted to ensuring that the surface of the concrete was kept clean and dusted. I find that marring of the actual finish of the flooring would likely fall into the category of normal wear and tear, which is not a liability for the tenant according to section 37 of the Act. I find that the re-finishing of the waxed surface of the floor would likely be the responsibility of the landlord under the Act, because of the nature of the substance. Accordingly I find that the landlord's claim for the cost of waxing the floors must also be dismissed.

Conclusion

I hereby grant a monetary order in favour of the tenant for \$1,635.00 comprised of a \$792.50 refund of the security deposit, a \$792.50 refund of the pet-damage deposit and the \$50.00 cost of the application. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord's claim is dismissed in its entirety without leave.

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 20, 2012.

Residential Tenancy Branch