



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, 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 the tenant.

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 damages or losses; for all or part of the security deposit and to recover the filing fee from the tenant 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

Both parties provided a copy of a tenancy agreement signed by the parties on May 10, 2011 for a 13 month fixed term tenancy beginning June 1, 2011 for a monthly rent of \$1,150.00 due on the 1st of each month with a security deposit of \$575.00 paid.

The landlord has submitted into evidence the additional following documents:

1. Copies of information provided to the tenant regarding the required preparations and cleaning required at the end of the tenancy;
2. A copy of a Craigslist advertisement dated May 9, 2011 advertising the rental unit citing the rent would be \$1,250.00;
3. A copy of a Condition Inspection Report signed by the tenant and landlord on both move in and move out;
4. A copy of an invoice from a contractor for door stop installation; blind installation and wall dots and scratch repairs for a total of \$280.00;
5. A copy of a page from strata bylaws showing a moving fee is charge by the strata when a resident is moving in to the building; and
6. Receipts from Home Depot for blind replacement and a door stop totalling \$54.50.

The landlord's financial claim is broken down as follows:

Description	Amount
Carpet Cleaning	\$145.60
Blind parts	\$52.61
Door stop parts	\$1.89
Wall repair, blind installation, door stop installation	\$280.00
Moving in/out fee	\$100.00
Door stop, broken blind for patio, damaged closet shelving piece	\$100.00
Rental loss - \$50 per month for 12 months	\$600.00
Total	\$1,280.10

The tenants have submitted into evidence the following documents:

1. A copy of an invoice made out to the landlord for "carpet cleaning kitchen & bathroom & windows and floors cleaning – Livingroom & Hallway a lots stains removal - \$145.60". The following portion of the statement is struck through "kitchen bathroom & windows and floors cleaning";
2. A copy of a Condition Inspection Report signed by the tenant and the landlord on both move in and move out. This Report is slightly different than the one provided by the landlord. The landlord's report has additional comments made; and
3. Several photographs of the rental unit.

The tenant submits that the carpet cleaning bill was altered by the landlord and that it included general cleaning of the rental unit as well as carpet cleaning and as such he should not be held responsible for the additional cleaning charges. The landlord submits that the other cleaning was not performed by the cleaners and the full charge was for carpet cleaning the living room and hallway.

The tenant submits that the bedroom blinds just stopped working and so they were "stuck" in the position permanently and that they were old blinds and the cord had worn thin. The landlord submits the damage was more than wear and tear but could not identify how old the blinds were as they came with the unit when he took ownership just over a year ago.

The landlord testified the area for repairs on the wall included the corner of one wall and two tape damaged areas in a bedroom. The tenant submits that he thought the repair would be around \$20.00 and that \$200.00 is unreasonable for such a minor repair.

The landlord pointed out that Clause 18 (h) of the tenancy agreement allows that the landlord *may* charge the tenant for moving in/out fees. The landlord testified that he did not inform the tenants of the amount of these fees until after the tenants had moved out.

The tenant testified that he had not been charged any move in fees at the start of the tenancy and was not informed about this charge until after he had moved out of the unit.

The landlord submits that he had not notice the damage to the patio door blinds or the closet shelf during the move out inspection. The tenant submitted that he showed the landlord during the move out inspection that the patio blinds worked and that the shelf in the closet was in the same condition as when they moved in.

The landlord submits that the rental unit was advertised at \$1,250.00 per month but because the tenants agreed to a 2 year fixed term he lowered the rent to \$1,150.00 and it was this year when the tenant informed he had lost employment and would not be able to pay rent in future that the tenancy ended.

The parties have both submitted copies of the tenancy agreement where the original end date was June 30, 2013 but the year was changed to 2012 and initialed by both parties, there is no date noted as to when this change occurred. The landlord confirmed that he has re-rented the rental unit effective August 2012 for a rent of \$1,200.00.

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 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.

I accept from the testimony of both parties that the carpets in the living room and hallway required cleaning, however as the invoice submitted by the tenant that he received from the landlord has been altered, without signature or reason provided on the invoice, I find the invoice is for work over and above carpet cleaning without a breakdown as to specific costs.

As such, I find the landlord has failed to establish the cost of carpet cleaning, however as the tenant submits that he determined \$50.00 would be the cost by researching how much this carpet cleaning might have been, I find the landlord is entitled to \$50.00 for carpet cleaning.

In relation to the landlord's claim for a replacement blind in the bedroom, I find, in the absence of any knowledge on the part of the landlord as to the age of the bedroom blinds, the landlord has failed to establish that the condition of the blinds results from any actions of the tenants that is over and above regular wear and tear. As such, I find the landlord is not entitled to compensation for their repair, replacement or installation.

As the parties agree the wall damage occurred and neither party provided any evidence or testimony disputing the requirement to replace door stops, I find the landlord is entitled to compensation for these items. Based on the receipts submitted I find the landlord has established the value of the loss he has suffered as \$235.09.

As the landlord did not inform the tenants of the value of any move in/move out fee that he intended to impose prior to either the start or the end of the tenancy, I find the landlord cannot retroactively charge the tenant for this fee despite the clause in the tenancy agreement and I dismiss this portion of the landlord's Application.

In relation to the landlord's claim for additional damage, I find there is no reason why this damage would not have been detected during the condition inspection conducted with the tenant. In particular, as the landlord had already noted a problem with the bedroom blind, I find it unlikely that he would not have checked all the blinds to see if they worked during the walk through. Therefore, I dismiss this portion of the landlord's claim.

In regard to the landlord's claim for lost rental income of \$50.00 per month, I note the tenancy agreement stipulates that rent was \$1,150.00 per month. While the landlord has noted on his copy of the tenancy agreement that this rent was agreed to as a result of the tenant's agreement for a 2 year fixed term tenancy; the length of the tenancy in the agreement was changed from 2 years to 1 year and initialled by both parties. However there were no changes made to the rent amount. As such, I find the landlord has not suffered a loss of any rental income.

Further and from the landlord's testimony he has entered into a new tenancy agreement effective August 1, 2012 for rent in the amount of \$1,200.00 per month, an increase of \$50.00 per month from what the tenant would have paid if the tenancy had continued. Therefore, I find the landlord has not suffered a loss as a result in the change in the end date of the tenancy in the tenancy agreement or the subsequent end of the tenancy. For these reasons, 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 **\$312.09** comprised of \$50.00 carpet cleaning; \$237.09 wall repairs; door stops and installation; and \$25.00 of the \$50.00 fee paid by the landlord for this application, as he was only partially successful in his claim.

I order the landlord may deduct this amount from the security deposit and interest held in the amount of \$575.00 in satisfaction of this claim. I grant a monetary order to the tenants for return of the balance of the security deposit in the amount of **\$262.19**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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: October 03, 2012.

Residential Tenancy Branch