



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order permitting the landlord to keep all or part of the tenant's security deposit and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the landlord entitled to keep all or part the security deposit?

Background and Evidence

The parties agree that this tenancy started on May 01, 2004 for a fixed term of one year. Since that time the tenancy has reverted to a month to month tenancy. The tenant paid a monthly rent of \$1,051.00 which was due on the first of each month. The tenant paid a security deposit of \$437.50 on April 20, 2004. The parties also agree that the landlord and tenant attended a move in and a move out condition inspection of the rental unit and the tenant provided a forwarding address to the landlord on August 13, 2012.

The landlord has provided a sworn statement of events, a copy of the tenancy agreement and the inspection reports along with photographic evidence of the rental unit and a description of the photographs. The landlord's agent testifies that the tenant failed to leave the rental unit clean at the end of the tenancy. The landlord has provided a sworn statement that she spent seven hours cleaning the rental unit including underneath the fridge and stove. The landlord seeks to recover \$30.00 per hour for this work to the sum of \$210.00. The landlord's agent testifies that the appliances did not have wheels for easy access.

The landlord's agent testifies that the tenant did not replace six burnt out light bulbs in the unit. The landlord's sworn statement declares that she had to purchase these light bulbs and seeks to recover \$5.00 per bulb to the sum of \$30.00 plus \$15.00 to travel to the store to buy them and then fit them in the bathroom fixture. The landlord has not provided a receipt for the light bulbs.

The landlord's agent testifies that the tenant damaged the countertop as it was identified at the move out inspection that a one inch hole had been drilled in the countertop. The landlord's agent testifies that this hole was not shown on the move in condition inspection report. The landlord seeks a nominal amount to of \$95.00 to remove the countertop, to fabricate a new top and replace the kitchen countertop.

The landlord's agent testifies that the landlord seeks to recover the sum of \$99.10 from the security deposit for fees paid to make 112 colour photocopies of the 31 photos provided in evidence.

The tenant disputes the landlords claim. The tenant testifies that the move out condition inspection report was not completed correctly. The tenant testifies that on the inspection report the landlord had written two to three hours of cleaning and then crossed it out and now claims seven hours of cleaning. The tenant testifies that he refused to sign this report as the landlord was to determine if the cleaning was going to take two or three hours. The tenant testifies that when he met with the landlord again the landlord had added burnt out light bulbs plus \$15.00 to obtain and install and had added a one inch hole in the work top

to the report. The tenant testifies that the landlord had added these comments after the inspection therefore making the report invalid.

The tenant agrees that there were burnt out light bulbs he had removed but disputes the landlords claim that these would cost \$5.00 each to replace and \$15.00 to purchase and fit them.

The tenant disputes the landlords claim that the unit took seven hours to clean. The tenant testifies that the landlord had previously only told the tenant to clean the blinds, which the tenant did. During the inspection the landlord points out that the stove and fridge were dirty. The landlord should have identified others areas that required cleaning so the tenant could have agreed an amount.

The tenant testifies that he did not pull out the fridge and stove but states the flooring under the fridge was damaged after a leak that had been present for two years.

The tenant disputes that he caused any damage to the countertop. The tenant testifies that this hole must have been missed by the landlord on the move in inspection and was not noticed by the tenant during his tenancy as his coffee maker was situated in this area.

The landlord's agent argues that the tenant should have signed the condition inspection report to disagree with the landlords findings.

The tenant testifies that at the start of the tenancy he also paid a \$60.00 security deposit for the garage key and clicker. This was returned to the landlord at the end of the tenancy and the landlord has documented that this deposit was paid on a receipt the landlord has provided in evidence.

The landlord's agent testifies that she has no knowledge of this deposit as the landlord has not mentioned it.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and the landlords sworn statement provided in evidence. In this matter the landlord has the burden of proof to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find the landlord did document on the move out condition inspection report that the cleaning would take two or three hours. This has been crossed off and the landlord is now seeking to recover seven hours; however the Residential Tenancy Policy Guidelines #1 states

If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.

I am therefore satisfied from the evidence presented that the tenant failed to leave the rental unit in a reasonably clean condition. However I must limit the landlords claim as there is no evidence the landlord told the tenant how to move the fridge and stove without damaging the floor or injuring the tenant. I therefore find the landlord is entitled to recover cleaning costs for five hours work to the sum of **\$150.00**.

The landlord seeks to recover the sum of \$45.00 for the cost of light bulbs and for travel and fitting time to obtain and replace the light bulbs. The landlord has not provided a receipt for these bulbs showing the actual cost of the bulbs and the tenant has disputed the landlords

claim as to the cost of the bulbs and the landlords travel and fitting time. Consequently, I find the landlord is not entitled to recover the cost of the light bulbs. I am also not satisfied that the landlord has met the burden of proof concerning the time taken to purchase and fit the light bulbs. This section of the landlords claim is therefore dismissed.

With regard to the landlords claim for the hole in the kitchen counter. The landlord has met the burden of proof that this hole was not in the counter at the start of the tenancy. I also find it unlikely that a hole of this size would go unnoticed by the landlord at the start of the tenancy or by the tenant during the period of the tenancy as suggested by the tenant. The landlord is requesting a nominal sum of \$95.00 to replace the countertop consequently; I will allow this claim of **\$95.00** as the landlord is not requesting a sum to replace the whole counter top which would be significantly higher.

With regard to the landlords claim for costs associated with photocopying the photographs used in evidence. There is no provision under the *Act* for costs of this nature to be awarded. Consequently this section of the landlords claim is dismissed.

As the landlord has been partially successful with this claim I find the landlord is entitled to retain half the \$50.00 filing fee from the tenant to the sum of **\$25.00** pursuant to s. 72(1) of the *Act*.

The tenant testifies and points out the landlord's documentary evidence showing the tenant paid a security deposit of \$437.50 and a key deposit of \$60.00 for the garage key and clicker. The landlord has not mentioned the key deposit in her claim therefore I will deal with both deposits at this time. As the landlord has been partially successful with this claim I find the landlord is entitled to retain a portion of the tenant's security deposit as follows:

Cleaning	\$150.00
Filing fee	\$25.00
Amount to be retained by the landlord	\$270.00
Security deposit, key deposit and accrued	\$515.11

interest	
Amount to be returned to the tenant	\$245.11

Conclusion

I HEREBY FIND in partial favor of the landlord's claim to retain all or part of the tenant's security deposit. The landlord is entitled to retain the sum of **\$270.00** from the security deposit.

The balance of the security deposit, accrued interest and key deposit of **\$245.11** must be returned to the tenant. A Monetary Order has been issued to the tenant for this sum. The order must be served on the landlord and is enforceable through the Provincial Court 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: November 13, 2012.

Residential Tenancy Branch