



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to applications by the tenants and the landlords.

The tenants' application is seeking orders as follows:

1. Return of all or part of security deposit and pet deposit; and
2. To recover the cost of filing fee from the landlord for cost of this application.

The landlords' application is seeking orders as follows:

1. For a monetary order for damage to the unit, site or property;
2. For a monetary order for compensation for damage or loss under the Act;
3. To keep all or part of security deposit and pet deposit; and
4. To recover the cost of filing fee from the tenant for cost of this application.

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

Issue(s) to be Decided

Are the tenants entitled to the return of double the security deposit?

Are the landlords entitled to a monetary order for damages to the unit, site or property?

Are the landlords entitled to a monetary order for compensation under the Act?

Background and Evidence

The tenancy began on March 1, 2008. Rent in the amount of \$925.00 was payable on the first of each month. A security deposit of \$462.50 and a pet deposit of \$462.50 were paid by the tenants. The tenancy ended on July 31, 2012. The parties agreed no move-in inspection was completed.

Tenants' application

The tenants seek the return of double the security deposit and pet deposit. The documentary evidence submitted by the tenant indicates on July 24, 2012. The landlord was provided the tenants forwarding address in writing, which was served via email.

On July 29, 2012, the landlord responded to that email acknowledging receiving the tenants' forwarding address.

Landlords' application

The landlords' claims as follows:

a.	Replacement of living room carpet	\$ 1,784.61
c.	Clear bathtub drain	218.22
d.	Refinish dining room floor	1,690.08
e.	Clean kitchen, main floor bathrooms, vacuuming	151.19
f.	Repair damaged wall (height marks)	350.00
g.	Filing fee	50.00
	Total claimed	\$ 4,646.18

Replacement of living room carpet

The landlord testified that he is seeking the cost to replace the living room carpet, due to sparks from the fireplace burning small holes in the carpet. Filed in evidence is an estimate to replace the carpet and photographs of the carpets.

The tenant testified that the fireplace was used for the purpose intended, and they tried to protect the carpet the best they could and even place an area rug in front of the fireplace. However, due to the screen that was provided with the fireplace, it was impossible to stop small sparks from going through the screen and landing on the

carpet. The tenant stated this was the primary source of heating during the winter months and that they should not be responsible as it was normal wear and tear given the design.

Cleanup overgrown yard

The landlord testified that prior to the commencement of this tenancy he had the yard fully cleaned. The landlord stated at the end of tenancy the yard was left in a very poor condition and that he had to pay to have the yard cleaned and the garbage removed. Filed in evidence is an invoice for work that was completed to the yard prior to tenancy commencing. Filed in evidence are photographs of the yard at the end of tenancy and an invoice for yard cleanup.

The landlords' witness testified that he works for the local city and that they have attended to this residence in 2010, 2011 and 2012 for complaints of the property being unsightly due to over grown grass. The witness stated on June 6, 2012, he inspected the sight and it met the minimum bylaw standards.

The tenant testified that he did attempt to mow the lawn, however, the mower was not working properly. The tenant stated that the garbage removed was from the previous tenants as it was stored underneath there RV, which remained on the property for sometime after their tenancy ended.

Clear bathtub drain

The landlord testified that when the new tenants moved into the rental unit, it was discovered that the bathtub drain was plugged. The landlord stated he paid \$194.84 to have the plumber unblock the drain.

The tenant testified that there was no issue with the drain at the end of tenancy.

Refinish dining room floor

The landlord testified that the tenants put large scratches in the wood floor and seek the cost of having the floors refinished. The landlord stated the floor has not been refinished since he purchased the property. Filed in evidence are photographs and an estimate to have the floors resurfaced.

The tenant testified the floor is in the same condition as when he took possession of the unit and that he believes that it was more like 20 years that the floors were refinished.

Clean kitchen, main floor bathrooms, vacuuming

The landlord testified the tenants did not properly clean the unit at the end of tenancy. The landlord stated the upstairs of the house was okay, however, the main floor required additional cleaning as the stove and oven were not cleaned to a reasonable standard, there was still dog hair on the floor which required vacuuming and both bathrooms on the main floor needed additional cleaning. Filed in evidence are photographs.

The tenants testified that the stove was in poor condition when the tenancy started and that she cleaned the stove the best she could. The tenant disagrees that there was any dog hair that required the unit to be re-vacuumed or that the bathrooms had to be re-cleaned.

Repair damaged wall (height marks)

The landlord testified that the tenants used the wood panel to mark their child's height. The landlord stated that he had an estimate to have the wall repaired and he was told that it would be cheaper to replace the wood panel with drywall.

The tenant testified that he did mark the wood panel with his child's height and recognizes that he should have not done that, but, stated this wood panelling has been used by other tenants going back to 1997 to mark their child's height.

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 each party has the burden of proof to prove a violation of the Act by the by the other party and a corresponding loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenants' application

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this case, the landlord acknowledged receiving the tenants' forwarding address on July 29, 2012, via email, and email appears to be a regular form of communication by the parties. The tenancy ended July 31, 2012. The landlords did not file their application for dispute resolution to retain a portion of the security deposit and pet deposit until October 16, 2012, which is outside the required timeline under the Act.

The landlords have breached section 38 of the Act. The landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of \$1,900.00, comprised of double the pet damage deposit (\$462.50) and security deposit (\$462.50) on the original amounts held, and the \$50.00 fee for filing this Application. This order may be off-set with the landlord's application.

Landlords' application

Section 37 of the Residential Tenancy Act states:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion

Replacement of living room carpet

The fireplace was used for the purpose in which it was intended as this was the main heat source for the living room area and was used frequently during the winter months. The photographs submitted by the landlord show very small burn marks on the carpet. The photographs submitted by the tenant show the fireplace opening is protected by a screen and that the carpet runs underneath the hearth.

There was no evidence to support that the tenants were acting in a neglectful matter. The fire screen was provided by the landlord and it appears by the photographs to be inadequate. Furthermore, having carpet so close to the fireplace appears to be a design flaw. As a result, I find that this was reasonable wear and tear given the design of the fireplace. I find the landlord has failed to prove the tenants have violated the Act. Therefore, I dismiss the landlords' claim for compensation for carpet replacement.

Cleanup overgrown yard

In this case, there landlord has submitted documentary evidence that the yard was in good condition when the tenancy commenced in March 2008. The evidence of the landlord was the yard was in poor condition at the end of tenancy. The evidence of the

landlord's witness was that the city has received unsightly yard complaints in 2010, 2011 and 2012, while these tenants resided on the property and on June 6, 2012, when the city inspect the yard it met the minimum bylaw standard. The evidence of the tenant was at the end of the tenancy he was unable to finishing mowing the lawn due to his mover not functioning properly.

The photographs submitted by the landlord supports the landlords' claim as the grass in areas was extremely long. The landlord was required to hire and pay a company to bring the yard up to a reasonable standard.

Under the Residential Policy Guideline #1 - Landlord & Tenant – Responsibility for Residential Premises, states:

Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow.

As a result, I find the tenant has breached the Act and the landlord has suffered a loss.

However, the tenants' dispute the garbage was theirs. The evidence of the tenant the previous tenants had the garbage stored underneath their RV. As each party has provided a different version of events and both versions are equally probable versions, I find without further evidence, such as a move-in inspection or photographs of the yard at the start of tenancy, the landlord has failed to prove the tenants were responsible for the garbage cleanup or removal.

Therefore, the landlords claim for compensation in the amount of \$402.08, is reduced by one hour of yard work and the garbage fee. I grant the landlord a nominal amount for yard cleaning in the amount of **\$333.08**.

Clear bathtub drain

In this case, the evidence of the landlord was that when the new tenants moved into the rental that they discovered the bathtub drain was plugged. The evidence of the tenant was that he did not notice any problem with the drain at the end of tenancy. The invoice submitted into evidence states "Pulled back lots of hair clumps filed tub 3x and drained properly" and supports the landlords claim.

Under the Act, the tenant is generally required to pay for repairs where as a result of neglect, by the tenant or his or her guest. I find the by not regularly removing the hair

from the drain was a breach of the Act. Therefore, the landlord is entitled to compensation in the amount of **\$194.84**

Refinish dining room floor

The evidence of the landlord was the tenants left deep scratches in the wood flooring. The evidence of the tenant was that the scratches were in the wood floor at the beginning of the tenancy.

In this case, each party has provided a different version of events, and both versions are equally probable, without further evidence, such as a move-in inspection report which is evidence of the condition of the unit at the start of the tenancy. I find the landlords' have provided insufficient evidence to support the claim. Therefore, I find the landlords are not entitled to compensation.

Clean kitchen, main floor bathrooms, vacuuming

In this case, the evidence of the landlord was the tenant did not clean the main floor to a reasonable standard of cleanliness. The photographs submitted by the landlords support that the cupboard, stove and oven required additional cleaning to bring them to a reasonable standard. Therefore, I find the tenants have violated the Act.

However, the photographs do not support any addition cleaning was required other then the above mentioned. As the landlord has not provided an invoice from the cleaner which would provide more details to determine the appropriate compensation, I will allow the landlord a nominal amount for cleaning the stove and cupboard in the amount of **\$100.00**.

Repair damaged wall (height marks)

The tenants have acknowledged marking their child's height on the wall. As a result, I find the tenants have violated the Act, as it is unreasonable to use the wall for any other purpose than what the wall was intended. The photographs submitted by the landlords are close-ups of the markings the tenants made on the wall, they do not show the entire wall, which would allow me to assess if the tenants should be responsible for the full cost of restoring the wall, as the wall was used by other tenants for the same purpose. As a result, I will allow the landlord a nominal amount to repair the wall in the amount of **\$175.00**.

As a result of the above finding, I find that the landlords have established a total monetary claim of **\$852.92** comprised of the above described amount and the \$50.00 fee paid for this application.

However, the tenants' monetary claim of **\$1,900.00** will be offset by the landlord monetary claim of **\$852.64**. The tenants are granted a formal order for the balance due of **\$1,047.08**.

Conclusion

The landlords' monetary claim is offset with the tenants' monetary claim. The tenants' are granted a formal order for the balance due.

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 15, 2012.

Residential Tenancy Branch