



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application for authorization to deduct amounts from the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

I heard the tenant did not receive the landlord's evidence package sent by registered mail. The tenant acknowledged that the service address given to the landlord is not the tenant's residential address, but that of her relative, and that she did not pick up the registered mail before it was returned to sender. I accepted the landlord's documentary and photographic evidence as I was satisfied the landlord served the tenant with the evidence in a manner that complied with the Act and Rules of Procedure. I informed the parties that I would describe the evidence to the tenant as necessary.

Issue(s) to be Decided

Has the landlord established an entitlement to receive compensation of \$161.20 for damage, garbage removal, and cleaning?

Background and Evidence

The tenancy commenced October 1, 2011 and the tenant paid a \$425.00 security deposit. The tenancy ended September 30, 2012.

A move-in inspection report was not prepared. Rather, the landlord inspected the property September 4, 2012 and took pictures of the unit. Those pictures were not provided in the landlord's evidence package.

The parties participated in a move-out inspection together on September 30, 2012 and a move-out inspection report was signed by both parties. The tenant indicated on the move-out inspection report that she agreed with the landlord's assessment of the

condition of the property as of September 30, 2012. Also indicate don the move-out inspection report is the tenant's forwarding address.

The move-out inspection report reflects carpeting with two stains, a dirty entry closet, a burnt out light bulb and a dirty oven. As well, the move-out inspection report indicates the tenant had until mid-night to finish removing the remainder of her possessions from the property.

Below, I have summarized the parties' respective positions with respect to the landlord's claims against the tenant. :

Garbage removal

The tenant and her father were moving the remainder of the tenant's possession late in the evening on September 30, 2012 while the landlord and her father were standing nearby. As the tenant and her father were moving the box-spring through the entry door the landlord's elderly father, who was standing near the door, fell to the ground. It was undisputed that both the landlord and the tenant and the tenant's father had been telling the landlord's father to move out of the way and that he had move some before he fell.

The landlord stated that at the time she did not know whether her father was hit by the box-spring or was pushed to the ground by the tenant or her father but that she thought it prudent to call the police. The tenant stated the landlord became irate and the landlord accused her or her father of pushing the landlord's father. However, the tenant described how the tenant and/or her father had thought the landlord's father was out of the way when her father gave the box-spring a push but that it ended up hitting the landlord's father, causing him to fall to the ground.

It was undisputed that after the landlord's father fell to the ground the landlord told the tenant she was calling the police. The landlord did call the police and the ambulance. The tenant left the property on foot, with the remainder of her property left on the outside of the house. The tenant did not return with the truck, as she had planned, to retrieve the remainder of her property.

The police made contact with the tenant the following day and the tenant took the position that it was not wise to return to the property.

The landlord proceeded to have the tenant's possessions disposed of and is seeking reimbursement of \$80.00 to do so. The tenant was of the position she is not responsible for the entire cost as the reason the possessions were left behind is not entirely her fault.

Carpet cleaning

The landlord had the carpets in the living room and two bedrooms cleaned at a cost of \$164.64 but is only seeking compensation of \$54.88 – the cost to clean one bedroom and a closet – from the tenant. The landlord acknowledged that she was aware the tenant had cleaned the carpets herself but the landlord submitted that she had to hire a professional cleaner as two visible stains remained and the closet was not cleaned.

The tenant stated she rented a carpet cleaner and acknowledged that two stains were remained visible in the bedroom and the tenant did not steam clean the closets. However, the tenant stated that only one of the stains was caused during her tenancy and the closets were no dirtier than when she moved in. The tenant was also of the position that the stains were small and nothing more than normal wear and tear.

Oven cleaning

It was undisputed that the tenant did not clean the inside of the oven. The landlord is seeking \$22.40 to clean the oven.

Light bulb

The landlord is seeking recovery of \$3.92 for a replacement light bulb. The tenant acknowledged the light bulb needed replacement but submitted that at the beginning of the tenancy there was a different light bulb that required replacement and the tenant supplied that light bulb. The landlord could not recall a burnt out light bulb at the beginning of the tenancy.

Analysis

Having heard the landlord failed to fulfill the move-in inspection report requirements the landlord has lost the right to claim against the security deposit for damage to the rental unit or property. However, the landlord retains the right to make a monetary claim for compensation if the tenant violated her obligations under the Act, regulations or tenancy agreement. Accordingly, I find the landlord owes the tenant \$425.00 for return of the security deposit and I proceed to consider whether the landlord is entitled to monetary compensation for violations of the Act, regulations or tenancy agreement by the tenant.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Garbage removal

Under the Act, a tenant is obligated to return vacant possession and leave the rental unit reasonably clean by 1:00 p.m. on the last day of tenancy. The tenant still had possessions in the unit into the evening of September 30, 2012 which violated the Act and I find this violation contributed to the landlord's angst and frustration. Nevertheless, the parties appeared to have reached an agreement for the tenant to remove her possessions by midnight, as evidenced by the move-out inspection report. I accept that it is when the landlord's father fell and the landlord indicated she was calling the police that the situation significantly deteriorated.

Upon hearing from the parties, and taking into account criminal charges were not pursued against the tenant or her father, I find it likely that the landlord's father fell due to an unfortunate accident that resulted from his close proximity to the door after he failed to adhere to several requests for him to move out of the way. However I find the tenant was not precluded from returning to the property to retrieve her possessions on the outside of the house.

In light of the above, I find it appropriate to apportion the cost of disposing of the tenant's property based upon the parties' respective contribution to the dispute that resulted that evening. I find the tenant's contribution to the abandonment of the property to 75% and I award the landlord 75% of the disposal costs, or \$60.00.

Carpet cleaning

Residential Tenancy Policy Guideline 1 provides that a tenant is generally held responsible for carpet cleaning where the tenancy exceeds one year or the tenant had pets, smoked in the unit, or left the stained. In this case, the tenancy did not exceed one year. I was not provided evidence the tenant left the closet stained or excessively soiled and I do not hold the tenant responsible for professional cleaning of the closet carpeting. I accept that there were two stains on the bedroom carpet at the end of the tenancy; however, in the absence of the move-in inspection report, I cannot determine whether one of the stains was present at the beginning of the tenancy as submitted by the tenant. Considering the tenant's obligation to leave the rental unit "reasonably clean" and the landlord bears the burden to establish the condition of the

rental unit at the beginning of the tenancy, I limit the landlord's award to one-third of the amount claimed, or \$18.30.

Oven cleaning

The tenant was required to clean the oven before the tenancy ended as part of her obligation to leave the rental unit "reasonably clean" and I find the landlord's claim for \$22.40 to do so is reasonable. Therefore, I grant the landlord's request for \$22.40.

Light bulb

As provided in Residential Tenancy Policy Guideline 1, a tenant is expected to replace light bulbs that burn out during their tenancy. It is clear from the move-out inspection report that one bulb burnt out during the tenancy and the tenant did not replace that light bulb. However, in the absence of a move-in inspection report, I find it possible the tenant replaced a bulb at the beginning of the tenancy for which she was not responsible as submitted by the tenant. As I find it reasonable that this rather insignificant loss has been offset by the tenant's previous actions to replace another bulb at the beginning of the tenancy I make no award for a replacement light bulb.

Filing fee

I award the landlord one-half of the fee she paid for this Application given her level of success. Therefore, I award the landlord \$25.00.

In summary, I have awarded the landlord the following compensation:

Garbage removal	\$ 60.00
Carpet cleaning	18.30
Oven cleaning	22.40
Filing fee	<u>25.00</u>
Total award to landlord	\$ 125.70

Pursuant to section 72 of the Act, I offset the landlord's award of \$125.70 against the amount owed to the tenant for her security deposit and I order the landlord to return the net balance of \$299.30 to the tenant without further delay. Provided to the tenant with her copy of this decision is a Monetary Order in the amount of \$299.30 to serve and enforce if necessary.

Conclusion

The landlord has been compensated \$125.70 and must return \$299.30 to the tenant without further delay. The tenant has been provided a Monetary Order in the amount of \$299.30 to serve and enforce if necessary.

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: January 09, 2013.

Residential Tenancy Branch

