



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

A substantial amount of documentary evidence, photo/video evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

At the hearing the applicant requested that I view some photo evidence online at a commonly accessible website however I was unable to do this as it is not allowed under the Rules of Procedure (rule 11.8).

I gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order in the amount of \$1210.94.

Background and Evidence

The applicant testified that:

- The tenant painted the front of the refrigerator with a metallic paint that could not be removed, and the cost of refinishing the refrigerator would have been very expensive, and therefore they replaced the refrigerator with a used refrigerator.
- The tenant failed to return the mailbox key and therefore she had to get a new key from Canada Post.
- The tenant left the carpets in the rental unit dirty and as a result they had to be professionally cleaned.
- The linoleum in the bathroom was damaged and badly stained as a result of negligence on the part of the tenant allowing water to sit on the floor. As a result the flooring had to be replaced.
- The tenant tampered with a lighting fixture in the rental unit and the lighting fixture was left hanging loose and partially disconnected. As a result she called an electrician who stated that it had been improperly reconnected by someone damaging the fixture. As a result the fixture had to be replaced.
- The tenant failed to clean the rental unit and as a result the whole unit had to be cleaned.
- The door the rental unit with scratched through, and as a result it has to be repaired and repainted.
- The tenant painted the kitchen without the authority to do so and as a result the kitchen had to be repainted.
- The tenant also painted a bedroom with very dark paint without the authority to do so and as a result the bedroom had to be repainted.
- The tenant also left the smoke detectors without batteries and as a result the batteries had to be replaced.

The applicant is therefore requesting an order as follows:

Cost of used refrigerator	\$300.00
Pickup and delivery of used refrigerator	\$50.00
Replace mailbox key	\$32.48
Carpet cleaning	\$146.89
Repair and replace damaged bathroom floor	\$282.61
Repair and replace disconnected lighting fixture	\$116.25
Cleaning the rental unit	\$180.00
Repair damaged entrance door	\$50.00
Repaint Kitchen	\$150.00
Repaint bedroom	\$215.00
Replace smoke detector batteries	\$9.51
Postage to serve hearing packages	\$10.68
Filing fee	\$50.00
Total	\$1593.42

She further requests an order allowing her to keep the full security deposit towards the claim and request a monetary order be issued for the difference.

The respondent testified that:

- The refrigerator door was rusty and in very poor condition, and she and her pets were frequently getting scraped by the rough door. She therefore painted the door to improve the condition.
- She gave the mailbox key to the landlord along with all the other keys.
- The carpets did not need cleaning as she had just cleaned the carpets in August of 2012.
- The bathroom flooring was a scrap piece of flooring that was already damp on the backside when it was installed, as well the wall leaked and drained down to

the floor. The damage to the flooring was not caused by any negligence on her part as she did not allow water to pool on the floor.

- At no time did she ever disconnect and reconnect a light fixture, the light fixture was left hanging as it was found when she moved in.
- She left the rental unit completely cleaned when she vacated.
- She is not aware of any damage to the exterior door, other than the fact of the door was in poor shape from normal wear and tear. Further the rental unit had probably not been painted in the past 20 years and was in need of painting anyway.
- It's the landlord's responsibility to replace batteries in the smoke detector, and therefore she does not believe she should be charged for the cost of these batteries.

Analysis

First of all is my decision that I will not consider the photo evidence supplied by the landlord, because the landlord did not give color copies of that photo evidence to the respondent, and in fact only gave poor quality photocopies.

Refrigerator

It is my decision that it was not reasonable for the tenant to paint the refrigerator door a metallic color, and I accept that this would make it very difficult to return the door to the normal color. I therefore allow the landlords claim for the cost of a used refrigerator. I will not allow the claim for delivery however as the landlord has supplied no evidence to show that there were any delivery costs involved.

Bathroom flooring

It is my finding that the landlord has not met the burden of proving that the flooring damage was a result of any negligence on the part of the tenant. Landlord claims that the flooring installer said it was likely caused by neglect; however she has provided no evidence from the flooring installer to support that claim.

Mailbox key

It's my finding that the landlord has not met the burden of proving that the tenant did not return a mailbox key. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Carpet cleaning and general cleaning

Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlord has not shown that the tenants failed to meet the "reasonable" standard of cleanliness required. Again it is just the landlord's word against that of the tenants and that is not sufficient to meet the burden of proving the landlords claim that the rental unit was left in need of cleaning.

Lighting fixture

I also deny the landlords claim for replacing the lighting fixture because again the landlord has not met the burden of proving that the tenant damaged this lighting fixture.

The invoice from the electrician states that the lighting fixture was removed and replaced however it does not state why.

Door damage

The landlord claims of there was damage to the door in the rental unit however again it is just her word against that of the tenant, and that is not sufficient to meet the burden of proving that the tenant cause damage to the exterior door.

Kitchen and bedroom painting

I deny the landlords claim for repainting both the kitchen and the bedroom as its not unreasonable for landlord to expect to have to paint approximately every three years. Therefore since it is most likely that this unit has not been repainted for quite some time, the landlord should expect to have to repaint anyway.

Smoke detector batteries

I will allow the landlords claim for replacing the smoke detector batteries that were missing. It's the tenant's responsibility to replace things such as light bulbs and smoke detector batteries during the term of the tenancy, and if the tenant fails to do so the landlord does have a reasonable claim for the cost of replacing those items.

Registered mail costs

This is considered a cost of the dispute resolution process, and I have no authority to award costs other than the filing fee.

Filing fee

I will only allow one half the \$50.00 cost of the filing fee, and as I have only allowed a small portion of the landlords claim.

Conclusion

I have allowed the \$334.51 of the landlords claim, and I therefore order that the landlord may retain \$334.51 of the tenant's \$375.00 security deposit, and I have issued an order for the landlord to return the remaining \$40.49 to the tenant.

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: February 22, 2013

Residential Tenancy Branch

