



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with applications by the tenants and the landlord. The tenants applied for double recovery of their security deposit. The landlord applied for monetary compensation for damage to the rental unit. The hearing convened on two dates, January 14, 2013 and March 7, 2013. The landlord and both tenants participated in the teleconference hearing on both dates.

Both parties submitted substantial amounts of documentary and photographic evidence. At the outset of the hearing the landlord stated that he did not serve the tenants with documentary evidence regarding a previous tenant, and I therefore did not admit that evidence. All of the other evidence submitted by the landlord and the tenants was admitted. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Are the tenants entitled to double recovery of the security deposit?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on May 1, 2005. The rental unit is a single-family dwelling. On April 2, 2005 the landlord received from the tenants a security deposit of \$700. The tenancy ended on November 30, 2012.

Tenants' Claim

The tenants stated that the landlord did not do a move-in inspection with the tenants, and therefore the landlord extinguished his right to claim against the security deposit for

damage done to the rental unit. The tenants provided evidence that they gave the landlord their forwarding address in writing on October 26, 2012. The landlord made his application for monetary compensation on December 10, 2012, but he did not apply to keep the security deposit. The tenants stated that for the above reasons, they are entitled to double recovery of the security deposit.

The landlord's response to the tenants' claim was that he did do a move-in inspection with the tenants, complete a condition inspection report and provide a copy of the report to the tenants. However, by the end of the tenancy he could not find a copy of the move-in condition inspection report. The landlord scheduled a time for the move-out inspection, but the tenants refused to complete the move-out inspection. At the time that the landlord made his application, he was told not to apply to retain the security deposit. In the hearing, the landlord stated that he submitted a copy of the previous tenant's condition inspection report, and served the tenants with a copy of that document, to show the condition of the unit at the outset of this tenancy. This was the document that I deemed inadmissible at the outset of the hearing based on the landlord's testimony that he did not serve this document on the tenants.

Landlord's Claim

The landlord claimed monetary compensation of \$4992 for the following damage to the rental unit:

- 1) \$1,100 for 25 percent of value of carpets damaged by pet stains in the entryway and living room. The landlord stated that the carpets were new in October 2004. Professional carpet cleaners attempted to remove the stains but could not. The landlord provided photographs of the stained carpets.
- 2) Kitchen (photos provided)
 - a. \$45 for 3 hours of labour and \$10 for materials to repair holes from removal of picture frames and wall coverings
 - b. \$22.50 for 1.5 hours to clean stove
 - c. \$120 for four broken window coverings
 - d. \$90 for priming and labour, \$40 for primer – walls painted dark blue and writing in felt on walls. Tenants painted without authorization.
 - e. \$172 for replacement of 43 cabinet hinges that had been painted white without authorization
- 3) Living Room (photos provided)
 - a. \$45 for 3 hours of labour and \$10 for materials to repair holes from removal of picture frames and wall coverings
 - b. (carpet replacement, as noted in item 1)
 - c. \$22.50 for labour and \$10 for materials to clean dirty fireplace

- d. \$200 for ripped drape lining
- e. \$180 for priming and labour, \$80 for primer – walls painted bright blue and writing in felt on walls. Tenants painted without authorization.
- 4) Dining Room - \$45 for 3 hours of labour and \$10 for materials to repair holes caused by removal of picture frames and wall coverings
- 5) Stairwell and Hall (photos provided)
 - a. \$45 for 3 hours of labour and \$10 for materials to repair holes caused by removal of picture frames and wall coverings
 - b. \$600 for cracked ceiling from unauthorized storage of heavy items in attic
 - c. \$180 for priming and labour, \$70 for primer – walls painted bright blue and writing in felt on walls. Tenants painted without authorization.
- 6) Bathroom - \$500 for excessive hair plugging drain (invoice, dated September 23, 2012, shows charge of \$800 for 2 jobs: remove and re-install dishwasher; and clear clogged drain including break drywall, remove old piping, install new drain piping and replace drywall. No breakdown of costs on invoice).
- 7) Master Bedroom (photos provided)
 - a. \$45 for 3 hours of labour and \$10 for materials to repair holes caused by removal of picture frames and wall coverings
 - b. \$80 to replace door – hole in door from unauthorized install of deadbolt, hole cannot be filled due to likelihood of cracking filler of such a large opening
- 8) Bedroom 1 (photos provided)
 - a. \$45 for 3 hours of labour and \$10 for materials to repair holes caused by removal of picture frames and wall coverings
 - b. \$90 for priming and labour, \$40 for primer – walls painted bright pink and writing in felt on walls.
 - c. \$45 for painting and priming doors – writing on doors
- 9) Bedroom 2 (photos provided) - \$90 for priming and labour, \$40 for primer – walls painted bright blue and writing in felt on walls.
- 10) Other
 - a. \$120 for two 100-foot garden hoses not returned
 - b. \$50 for lawn mower not returned
 - c. \$300 for two inside deadbolts and two entry knobs that the tenants rekeyed without authorization and did not return keys
- 11) Basement (photos provided)
 - a. \$90 for priming and labour, \$20 for primer – bathroom, bedroom and entry doors painted dark brown. Tenants painted without authorization.
 - b. \$180 for priming and labour, \$40 for primer – bedroom and living room walls painted dark brown. Tenants painted without authorization.
 - c. \$80 for replacement of 4 damaged blinds

The landlord also submitted receipts for some of the materials and labour.

The tenants' response to the landlord's claim was as follows.

The tenants stated that as there was no move-in inspection report, the landlord has no evidence to show that the damage was done during the tenancy. Further, the landlord did not contact the tenants regarding a move-out inspection until three days after the tenancy ended, and by that time the landlord had already started doing work on the unit. The tenants stated that they do not know when the landlord's photos were taken, as there are no dates on them.

In regard to the carpets, the tenants stated that they had lived in the rental unit for seven and a half years, and any damage to the carpets was normal wear and tear. The landlord had ripped out the carpets before the tenants attended the unit for the move-out inspection. The tenants also stated that the carpets were in poor condition at the outset of the tenancy, and they did not feel that the landlord's claim for carpet replacement was reasonable.

In regard to window blinds, the tenants stated that the blinds were old and yellowed when they moved in, and the tenants continued to use the blinds for eight years. In regard to the drapes, the tenants stated that the landlord knew that the drapes were in poor condition, and the older linings in one set of drapes shredded from washing. The drapes were 21 years old and had exceeded their useful life.

The tenants acknowledged that they did not wipe out the self-cleaning stove, but it is not reasonable for the landlord to claim 1.5 hours of labour to wipe out the bottom of the stove. In regard to the fireplace, the tenants stated that they never used the fireplace, and therefore should not have to pay for the landlord to clean it.

In regard to the landlord's claims for priming and labour for painting, the tenants stated acknowledged that one bedroom was pink, and they had not had time to paint it. They denied that there was any writing in felt on the kitchen walls. The tenants stated that the landlord knew when the tenants were painting, and he commented on several occasions on how nice a job was done. The walls that were painted soft blue would not have required primer. The landlord has claimed for the cost of repainting the kitchen but has not claimed to repaint the bathroom, which was painted the same colour as the kitchen. In regard to the kitchen cabinet hinges, the tenants stated that the hinges that they painted white were the original hinges, and they therefore were beyond their useful life.

The tenants acknowledged that they put some nails in the walls to hang pictures; however, the tenancy agreement did not forbid the use of nails in the walls and therefore the nail holes were normal wear and tear. The tenants acknowledged that there was one rather large hole in the wall of the master bedroom. The tenants also felt that it would have been easy to repair the holes left from a shelf installed on the wall in the second bedroom.

The tenants stated that there is nothing in the tenancy agreement forbidding the tenants from putting items in the attic, and the landlord never told the tenants not to store anything in the attic. The tenants rented the entire house, including the attic. The tenants' position was that any cracks on the ceiling were caused because it is an old house, not due to any negligence on their part.

In regard to the landlord's claim for the bathroom, the tenants stated that the landlord was aware that there were ongoing problems with the drainage for the rental unit because it was an old house with incorrectly installed plumbing, and it was the landlord's responsibility to address those problems. The tenants also submitted that there was no breakdown of the costs on the invoice dated September 23, 2012.

The tenants stated that they returned all keys at the end of the tenancy, including keys for the deadbolts, and they did not rekey a single lock.

The tenants stated that there were no hoses at the rental unit at the start of the tenancy, and they used their own hoses. The tenants returned the lawn mower to the landlord's sister's house, at the landlord's request.

In regard to the landlord's claim for the basement, the tenants stated that the carpet in the downstairs suite belonged to the tenants, and the landlord authorized and paid for the paint for the basement.

Analysis

Tenants' Claim

I find that the tenants are entitled to double recovery of the base amount of their security deposit. I find that the landlord received the tenants' forwarding address in writing on October 26, 2012, and the tenancy ended on November 30, 2012. The landlord did not return the security deposit or make an application to keep the security deposit.

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

Regarding the question of extinguishment, a tenant may extinguish their claim to return of their security deposit if they fail to participate in a move-in or move-out inspection as required under the Act. In this case, the tenants did not extinguish their right to claim return of the deposit, as the landlord did not provide the tenants with two opportunities, in writing, to carry out the move-out inspection. Further, I find that the landlord did not provide sufficient evidence to establish that he complied with the requirements regarding the move-in inspection, including providing the tenants with a copy of the move-in inspection report, and he therefore extinguished his claim against the security deposit for damage to the rental unit.

I therefore find that the tenants have established a claim for the security deposit of \$700, accrued interest of \$24.78, and double the base amount of the security deposit in the amount of \$700, for a total of \$1424.78.

Landlord's Claim

Based on the evidence, I find the following.

The landlord is not entitled to compensation for any of the following items:

- 1) Carpets – the landlord could not establish what the condition of the carpets was at the outset of the tenancy, and he removed the carpets before the tenants had an opportunity to see their condition at the end of the tenancy. The landlord submitted a copy of an invoice for carpet cleaning, but he did not provide any report indicating that the stains could not be removed by cleaning.
- 2) Blinds and drapes – the landlord did not provide the age of any of the blinds or drapes, and I accept the evidence of the tenants that the blinds and drapes had all exceeded their useful life.
- 3) Stove and fireplace – the landlord may have had to spend a short time wiping out the bottom of the stove, but he did not deny that it was a self-cleaning oven. The oven did not appear excessively dirty in the landlord's photograph. The landlord did not provide any photographs or other evidence of the dirty condition of the fireplace.

- 4) Kitchen cabinet hinges – the landlord did not provide evidence of the age or condition of the hinges, or show that the aesthetic value of the hinges was reduced by painting.
- 5) Ceiling damage –the landlord did not provide any evidence to show the condition of the ceiling at the outset of the tenancy; nor were the tenants forbidden from storing items in the attic. I accept the evidence of the tenants that any damage to the ceiling most likely occurred due to the age of the rental unit, not due to any negligence of the tenants.
- 6) Plugged bathroom drain – the landlord did not provide evidence of the breakdown of the work done for the dishwasher and the drains. Moreover, the landlord did not provide evidence that the drains were clogged by excessive hair, rather than simply due to the age of the plumbing.
- 7) Hoses and mower – the landlord did not provide any evidence that the hoses were included with the rental unit or that the mower had not been returned to the landlord's sister.
- 8) Deadbolts, damage from deadbolt and rekeyed knobs – the landlord did not provide any evidence of which keys had or had not been returned to him; nor did he provide evidence of which knobs he was referring to that he believed were rekeyed. In regard to a hole in the door of the master bedroom caused by unauthorized installation of a deadbolt, the landlord did not provide photographic or other evidence to show this damage.

I find that the landlord is entitled to some compensation for labour, priming work, primer and repairs to holes in the walls. The tenants did not have written authorization to paint the walls different colours from the original, and they did not restore the walls to their original colour at the end of the tenancy. The landlord's photos show that some damage was done to the walls when nails were removed, such that filling and sanding would have been required. The total amounts the landlord has claimed for this work are \$270 for labour and \$60 for materials to repairs holes in the walls; and \$945 for labour for priming and painting and \$350 for primer.

I find that the landlord is not entitled to the full amounts claimed, as he did not provide evidence of felt markings in all the rooms claimed; he did not show how much damage was done by the nails in the walls; and he did not clearly identify in his claim whether part of the claim for labour was in fact for the labour of painting rather than priming. The landlord would have had to incur the costs for materials and labour for one coat of paint if the paint was more than four years old. I therefore find that the landlord is entitled to half of the amounts claimed for labour and materials to repair holes in walls and labour for priming and the cost of primer, for a total of \$812.50.

The remainder of the landlord's application is dismissed.

Filing Fees

As the tenants were successful in their application, they are entitled to recovery of the \$50 filing fee for the cost of their application.

As the landlord was only partially successful in his application, I find he is entitled to partial recovery of his filing fee, in the amount of \$10.

Conclusion

The tenants are entitled to a monetary award of \$1474.28. The landlord is entitled to a monetary award of \$822.50. I therefore grant the tenants an order under section 67 for the balance due of \$.651.78. This order may be filed in the Small Claims Court and 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: March 28, 2013

Residential Tenancy Branch

