



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for alleged damage to the rental unit, for compensation under the Act and the tenancy agreement, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matters

The address for service of documents on the Landlord was set out on the front page of her Application. Instead of using this address, the Tenants sent their evidence for the Landlord to the address of the rental unit. The Landlord testified she did not receive the evidence. I found during the hearing that the Tenants had not served the Landlord with their evidence in accordance with the Act, and therefore, this evidence was not considered.

I note the parties were involved in two prior dispute resolution hearings. In August of 2012 the Tenants applied for, and were successfully granted, the cancellation of a one month Notice to End Tenancy issued by the Landlord. In October of 2012, in an application made by the Tenants to cancel a two month Notice to End Tenancy for the use of the rental unit by the Landlord, the parties mutually agreed to end the tenancy on December 31, 2012, and to terms of compensation to the Tenants. For reference

purposes I have added the file numbers for the two prior hearings on the front page of this decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

The hearing before me involved the claims of the Landlord against the Tenants for not painting the rental unit properly, for removing debris left on the property by the Tenants, for carpet cleaning, and for power washing.

The Landlord testified that the Tenants asked her if they could paint the interior of the rental unit. The Landlord testified that the interior had not been painted for 15 years. The Landlord testified that she agreed to allow the Tenants to paint if they could do the work properly and use neutral colours. The Landlord agreed to pay the Tenants for the paint and supplies, if they provided the labour.

The Landlord testified that after the Tenants started painting she heard that the work was not being done properly and the Tenants were not using neutral colours. The Landlord emailed the Tenants and ordered them to stop work immediately.

The Landlord testified that the tenancy agreement between the parties provided the Tenants could have a pet with the Landlord's prior consent. The Landlord testified that she informed the Tenants they could have a small dog if they got a pet. The Landlord testified she was very upset when she learned the Tenants had a Great Dane dog as a pet and did not ask her in advance for permission for a pet. The Landlord stated she requested a pet damage deposit of ½ of one months' rent.

The Tenants testified that instead of paying the pet damage deposit, they provided the Landlord with the bills and receipts they had from purchasing the paint and supplies, and this totaled the amount of the pet deposit, less \$10.86. They apparently provided the Landlord with a cheque for the balance in the amount of \$10.86, which the Landlord testified she was returning to them.

The Landlord claimed an estimate of **\$1,500.00** to paint the interior of the rental unit. At the hearing the Landlord claimed the actual amount was far in excess of this to paint the interior. After the hearing, the Landlord sent a statement in with the revised amount for the painting. I note I do not allow this evidence, as it was provided after the hearing

without permission of the Arbitrator and therefore, not in accordance with the rules of procedure.

The Landlord testified that she did not agree that the Tenants could pay the pet damage deposit by offsetting the cost of paint and supplies.

The Landlord alleges the Tenants did not remove “junk” from the rental unit and claims she has an estimate of **\$300.00** to remove the debris. No estimate was provided in evidence, aside from the testimony of the Landlord.

The Landlord alleges the carpets in the rental unit were left with the smell of dog on them. The Landlord claims the carpets will cost **\$200.00** to clean. No estimate was provided in evidence, aside from the testimony of the Landlord. In any event, the Landlord testified that the carpets had been ripped out of the rental unit and replaced.

The Landlord alleges that the front porch and back deck were left covered in mud and dirt, and not cleaned by the Tenants. The Landlord estimates **\$150.00** for power washing of the front porch and back deck. No estimate was provided in evidence, aside from the testimony of the Landlord.

In reply, the appearing Tenant testified they do not agree with any of the Landlord’s claims.

The Tenants’ next submission was that since the Landlord did not perform condition inspection reports in accordance with the Act, the Landlord’s right to claim against the deposit for damages has been extinguished, and she must now pay the Tenants double the security deposit and pet damage deposit.

The Tenant testified that they did the painting in good faith and had not completed the job at the time the Landlord ordered them to stop painting. The Tenant testified that the paint in the rental unit was in poor shape and in dire need of repainting and touch-ups.

In regard to the alleged debris in the yard, the Tenant testified that this “junk” was in the yard when they moved in, and was not theirs.

In regard to the carpets, the Tenant testified that when the carpets were discussed with the Landlord the Tenants believed that the Landlord had every intention to remove the carpets at the end of the tenancy as the rental unit was for sale. They saw no need for carpet cleaning if the carpets were being replaced.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I dismiss all the claims of the Landlord, without leave to reapply, for the following reasons.

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 sections 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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did everything possible to minimize the damage or losses that were incurred.

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.

In regard to painting; I do not find the *Act* grants me jurisdiction over the dispute regarding painting at the property. There is no evidence before me that painting the rental unit was a term of the tenancy agreement. This was a different arrangement, outside of the tenancy, and therefore it was a contract for services between the parties and the *Act* does not grant me jurisdiction for this type of contract. If the painting was being used in exchange for rent, that would have brought it under the *Act*, as the painting could then be defined as consideration in exchange for the payment of rent. This was not the case here. Therefore, I find I have no jurisdiction over this portion of

the dispute. The parties may attend to a court of proper forum for resolution of this dispute, if they so choose.

In the alternative, even if I had jurisdiction over the painting (which I find I do not), I still would have dismissed the Landlord's claims for painting, as the interior paint of 15 years had long past its useful life expectancy. Pursuant to policy guideline 40, the useful life of interior paint is four years. The Landlord's testimony was that the interior paint was 15 years old, and therefore, the Landlord could not prove she suffered a loss due to painting. Regardless, the painting dispute between the parties is beyond my jurisdiction as described above.

This also leads me to conclude that there is no evidence before me that the Tenants paid the Landlord a pet damage deposit in accordance with the Act. The Tenants had no evidence that they had the prior consent or the agreement of the Landlord for a pet, or that the Landlord would accept the paint supplies and materials in exchange for a pet damage deposit. The Tenants attempted to unilaterally impose the Landlord with this. As described above, I find that this is a portion of the claim I have no jurisdiction over and the parties may attend to a court of proper forum for resolution of this dispute, if they so choose.

The Landlord provided an estimate for removing debris; however, the Tenants submit this debris was not theirs. I find there was insufficient evidence, such as a condition inspection report, to prove the condition of the yard at the outset of the tenancy. This leads me to find the Landlord has not proven the debris was that of the Tenants, and therefore, there is insufficient evidence the Tenants breached the Act or tenancy agreement.

The Landlord also had little evidence to support her claim the Tenants left the porch or deck muddy, and provided her own estimate for power washing. I find there was insufficient evidence to prove the Tenants left these areas muddy, or that supports this estimate, as the Landlord had insufficient evidence to show the extent of the cleaning required, or what the normal cost of such washing would be. Therefore, I find that the Landlord has failed to prove the Tenants breached the Act, and failed to verify that an actual loss was suffered.

The Landlord provided her own estimate for cleaning the carpets; however, the Landlord could not prove she had cleaned the carpets herself, and in fact, she did not dispute the Tenant's testimony that the carpets had been removed and replaced. Therefore, I find the Landlord has failed to prove a loss due to a breach of the Act or tenancy agreement by the Tenants in regard to the carpets.

For these reasons, I dismiss the Application of the Landlord without leave to reapply.

Lastly, in regard to the security deposit, I note that by failing to perform an incoming or outgoing condition inspection report, the Landlord extinguished her right to claim against the deposit for damage to the rental unit, pursuant to sections 24(2) and 36(2) of the Act. In fact, this was one of the first submissions made by the Tenants, when they requested double the deposit at the hearing.

Policy guideline 17 sets out, at page 17-2, that:

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing [*on the Application of a landlord*], the arbitrator will order the return of double the deposit:

...

- If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

...

[*Emphasis added.*]

Therefore, in this instance, I find I must order the Landlord to return double the security deposit to the Tenants.

I order that the Landlord pay the Tenants **\$1,974.00** and grant and issue the Tenants a monetary order in those terms. The Landlord must be served with a copy of this order.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord's claims are dismissed without leave. I found that I had no jurisdiction on portions of the Landlord's claim, as the parties had established a contract for services for the painting. I dismiss the other portions of the Landlord's claims, due to insufficient evidence.

Lastly, pursuant to section 38 of the Act and the policy guidelines, I find the Landlord extinguished any right to claim against the security deposit, and therefore, must return double the deposit to the Tenants. The Tenants are granted and issued a monetary order, enforceable in Provincial Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 24, 2013

Residential Tenancy Branch

