



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 the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by one of the landlords and the tenant.

While the landlords' original Application for Dispute Resolution indicated a financial claim totalling \$9,688.84 the landlord clarified that this amount was based primarily on estimates and that since some of the work has been completed she has revised the claim to reflect actual costs totalling \$5,209.87. I amend the landlords' Application to reflect the lesser amount of the claim.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on May 1, 2009 as a 1 year fixed term tenancy that converted to a month to month tenancy on May 1, 2010 for a monthly rent of \$1,400.00 due on the 1st of each month with a security deposit of \$700.00 paid on May 1, 2009. The parties also agree the tenancy ended on March 4, 2013.

The landlord seeks compensation for damage to the rental unit and cleaning required at the end of the tenancy as follows:

1. Locks Rekeyed - \$176.98. The landlord submits that the tenant failed to return all keys to the rental unit. The tenant submits that she had advised the landlord that when she returned the keys at the end of the tenancy she still had one that she would send to her when she sent her forwarding address to the landlord.

2. Bi-fold door replacements - \$123.18. The landlord seeks replacement of these bi-fold doors because the tenant painted them despite instruction not to. The tenant submits that she asked permission to paint a couple of the bedrooms when she first moved in and the landlord did not specify that the doors should not be painted.
3. Paint Supplies - \$288.97. The landlord seeks compensation to repaint the bedrooms the tenant was granted permission to paint. The landlord states the agreement was that the tenant could paint the rooms as long as they were returned to neutral colours prior to the end of the tenancy. The landlord also submits the tenant was not given permission to paint the trim. The tenant believes that since the landlord was going to repaint the entire house it was not the tenant's responsibility to paint these two rooms.
4. Scratches in bathtub - \$134.40. The landlord submits there were deep scratches in the tub glazing. The tenant submits she only noticed this when it was pointed out to her at the end of the tenancy but that she has no idea how it occurred with the exception of the possibility that the landlord's husband had tools hanging from his belt when he was in the tub make some repairs.
5. Countertop burns - \$201.60. The tenant agrees she is responsible for this repair.
6. Cleaning (\$302.12 – professional cleaners; \$76.07 – landlord's cleaning; \$29.00 removal of garbage). The landlord submitted photographic evidence showing areas requiring cleaning. The tenant states she thoroughly cleaned the entire house, with the exception of one window track in her son's bedroom.
7. Laminate floor damage - \$80.00. The landlord submits that there was damage to the flooring but they were unable to find matching replacement so they dismantled the flooring and reconfigured it to replace the damaged area with laminate that had been located in less visible areas. The tenant acknowledges a "small spot" where the finish had worn.
8. Broken down spot - \$15.55. The landlord has provided a photograph of a damaged downspout. The tenant submits that the damage was likely caused by wind or a storm.
9. Damaged/missing window screens - \$168.17. The landlord seeks compensation for 3 missing window screens and 2 damaged screens. The tenant acknowledged damage to the dining room screen as a result of a break in during the tenancy. The tenant submits that while the screens had been removed during the tenancy they were all accounted for at the end of the tenancy.
10. Carpets - \$3,229.22. The landlord seeks replacement carpets because of damage including chewing gum; paint and miscellaneous staining. The landlord testified the carpets had been installed in 1998 or 1999. The tenant submits she steamed cleaned the carpets at the end of the tenancy.
11. Deck Repair - \$143.41. The landlord seeks compensation to repair vinyl decking material due to staining and rust marks.
12. Garage Door Opener - \$67.19. The parties agree the tenant lost the original garage door opener and she replaced it. The landlord submits that as a result the coding was altered and now the landlord's other existing opener does not work. The tenant submits she bought a universal opener and set it to the current opener's code.
13. Miscellaneous – (\$20.00 laundry shelf; \$111.99 replacement curtains; \$23.68 light bulbs; \$14.99 missing sink plugs; \$3.35 bathroom cabinet knob). The tenant

submits she was not aware of the damage to the shelf; that she could have provided replacement curtains for \$6.00 but that she did not do so; that there were some missing bulbs; that she had the sink plugs that had been packed in error; and that she was not aware of a missing knob in the bathroom.

In support of her claim the landlord has provided several pages of photographic evidence; receipts for all amounts claimed; and a copy of a Condition Inspection Report signed by both parties both at move in and move out.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

While I accept the tenant failed to return all of the keys to the landlord on the day the tenancy ended, I find the landlord was not restricted from accessing the rental unit in anyway and there was no need to have the locks replaced. If the landlord required the final key she could have had one key cut and claimed for that cost. I dismiss this portion of the landlord's claim.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

I accept that the parties had a verbal agreement that would allow the tenant to paint a couple of the bedrooms and that it was required for the tenant to return the rooms back to neutral colours prior to the end of the tenancy. As the parties dispute where or not specific instruction was given to not paint the trim or bi-fold doors, the burden rests with the landlord to provide corroborating evidence to confirm this direction and she has failed to do so.

However, I find based on this verbal agreement and the testimony provided by both parties the tenant failed to return the bedrooms to neutral colours and she is responsible for painting them back to those neutral colours.

In regard to the landlord's claim to replace the bi-fold doors I find that since the replacement doors are primed white then the replacement is not addressing the damage of painting wood finished doors. As such, I find the landlord could have mitigated this loss by painting the bi-fold doors white. I dismiss this portion of the landlord's claim.

I am not persuaded by the tenant's suggestion that landlord may have scratched the tub when he was repair other issues in the bathroom and I find the tenant responsible for the repairs to the bath tub.

I accept the agreement of both parties that the tenant is responsible for the repairs to the kitchen counter.

I find, based on the landlord's photographic evidence and the Condition Inspection Report that the rental unit and residential property required substantial cleaning and garbage removal. As such, I find the tenant responsible for the costs for this work.

I find the landlord has established, based on the Report and the photographic evidence, that the tenant is responsible for the costs associated with repairing the damage to the laminated flooring and the downspout.

As the landlord has provided one photograph of a damaged screen but has provided no photographs of any other damaged or any windows showing missing screens and based on the tenants disputing testimony I find the landlord has failed to establish the tenant caused damage to anymore than one screen or that the tenant lost any screens. I therefore grant the landlord a portion of this claim in the amount of \$20.00 for the repair of one broken screen.

In relation to the landlord's claim for carpet replacement, I accept based on the photographic evidence that the tenant caused damaged to the carpet, at least in some of the rooms of the rental unit. However, Residential Tenancy Policy Guideline #40 lists the useful life of carpeting to be 10 years. As such, and based on the landlord's testimony that the carpets are at least 14 years I discount the landlord's claim for replacement carpets by 100%.

In regard to the garage door opener, I find the landlord has failed to provide sufficient evidence to establish that the new door opener has caused an inability of the landlord's existing door opener. I accept that the tenant had lost the door opener and replacement it with a "universal" opener and has therefore met her obligation to return the opener. I dismiss this portion of the landlord's claim.

Based on the testimony and written submissions of both parties I find the landlord has established the need for deck repairs; laundry shelf replacement; replacement curtains; light bulbs; sink plugs and bathroom cabinet knobs.

I find the landlord has provided receipts to establish the value of all goods and services purchased to complete the cleaning and repairs and where the work was completed by the landlord I accept the rates and costs as reasonable.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the tenancy ended on March 4, 2013 and the landlord filed her Application for Dispute Resolution seeking to claim against the deposit on March 14, 2013 I find the landlord has complied with Section 38(1) of the *Act*.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,515.13** comprised of \$1,465.13 compensation and \$50.00 of the \$100.00 fee paid by the landlord for this application as she was only partially successful.

I order the landlord may deduct the security deposit held in the amount of \$700.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$815.13**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 14, 2013

Residential Tenancy Branch

