



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANDMARK REALTY MISSION LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord permitted to keep the tenants security deposit?

Background and Evidence

The parties agree that this tenancy started on September 01, 2012 for a fixed term ending on February 28, 2013. Rent for this unit was \$1,050.00 per month due on the

first day of each month. The tenant paid a security deposit of \$525.00 on August 15, 2012. Both parties attended a move in and a move out condition inspection of the unit and the tenant provided the landlord with a forwarding address on March 05, 2013.

The landlord testifies that at the start of the tenancy the laminate flooring had been brand new; however at the end of the tenancy, six months later, the landlord found significant marks on the flooring in one bedroom and the living room. The landlord does not want to replace the whole flooring due to the costs but seeks to recover some compensation for the depreciation value of the flooring from the tenant. The landlord has calculated this as five percent worth of damage in the bedroom and seeks to recover the amounts of \$36.00 for the depreciated value of the bedroom flooring. The landlord has calculated the percentage of damage to the living room floor as 20 percent and seeks to recover the amount of \$180.00 for the depreciated value of the living room floor.

The landlord testifies that there was one damaged slate in a blind in the master bedroom. The blinds were new at the start of the tenancy and the landlord feels it would be unreasonable to charge the tenant for the cost of replacing the entire blind. The landlord therefore seeks the depreciated value of this blind at \$10.00.

The landlord testifies that at the start of the tenancy the front deck was very dirty and had some rust spots but there was no evidence of any burn marks. The landlord had the deck pressure washed at that time. At the end of the tenancy the landlord testifies that there were a significant number of small burn holes in the vinyl on the front deck. The landlord obtained an estimate to replace the front deck of \$2,828.50, The landlord testifies that as they have calculated that the deck is approximately one eighth burnt and the deck is halfway through its useful life the landlord limits their claim to \$100.00.

The landlord testifies that the tenant had repaired and painted marks on the walls in the unit. However the tenant had used a lead pencil to circle the damage prior to painting and the lead marks have since bled through the paint. The landlord testifies that there

was also a small patch of wax on the wall from a melted candle and there was some damage to a door. The landlord testifies that they had to repaint the marks on the walls, and paint over the marks on the door. The landlord seeks to recover the cost for this work of \$90.00 and has provided an invoice in evidence.

The landlord testifies that there was some minor cleaning required at the end of the tenancy for example the light fixtures and some cleaning in the kitchen. The landlord testifies there is a minimum charge for two hours applied from their cleaner and the landlord therefore seeks to recover the amount of \$40.00 for this work. An invoice has been provided in evidence.

The landlord testifies that in October, 2012 the tenant notified the landlord that the toilet in the unit was not flushing correctly. The landlord sent in a plumber who removed the toilet and snaked the lines to ensure the toilet work correctly. The landlord testifies that in January, 2013 the tenant again contacted the landlord about the toilet not flushing. The landlord sent in the plumber again who removed the toilet and the plumber found a plastic object blocking the toilet. This was removed and the toilet replaced. The landlord testifies that they bore the cost for the plumbers first visit but feel the tenants is responsible to pay for the second visit as the object found was due to the tenant or a guest of the tenants actions. The landlord seeks to recover the amount of \$115.36 and has provided an invoice in evidence.

The landlord testifies that the tenant is required to have the carpets professionally cleaned at the end of the tenancy as per the addendum to the tenancy agreement. The landlord testifies that the tenant was sent a warning letter about keeping an unauthorised dog in the unit and therefore even though the tenancy was less than a year the tenant should have had the carpets professionally cleaned. The landlord testifies that the tenant has provided no evidence that the carpets were cleaned and the landlord seeks to recover the amount of \$50.00 for this work. An invoice has been provided in evidence.

The landlord requests an Order to keep the security deposit of \$525.00 and requests a Monetary Order for the balance of the landlord's costs. The landlord also seeks to recover the \$50.00 filing fee from the tenant.

The tenant disputes the landlords claim for \$216.00 to compensate the landlord for the depreciation to the laminate floors. The tenant testifies that the landlord has spare slats and could replace the damaged parts of the flooring.

The tenant agrees with the landlords claim for \$10.00 for the damage to the blinds in the master bedroom.

The tenant disputes the landlords claim concerning the burn marks on the front deck. The tenant testifies that the deck was in a dirty condition at the start of the tenancy and there was a mat on the deck. After the landlord had the deck pressure washed the tenant testifies that she did not notice the burn marks as the deck was in a poor condition. The tenant testifies that she did not use the front deck and denies doing anything to damage the deck.

The tenant disputes the landlords claim for painting the walls. The tenant agrees that she did use a pencil to mark the walls but these were only visible in the bedroom and two marks in the living room. The tenant agrees there was a small wax stain on the wall and agrees that the damage to the door was caused during the tenancy. The tenant testifies that she did offer to repaint the walls herself but the landlord wanted to use their own painters.

The tenant disputes the landlords claim for cleaning. The tenant testifies that her pictures show how clean the unit was left and the tenant testifies that she cleaned the entire unit but did miss a spot on the oven and one thing behind the stove.

The tenant disputes the landlords claim for the toilet repair. The tenant testifies that from the outset of the tenancy the toilet did not have a powerful flush and the tenant had to

use a plunger a few times in the toilet. The tenant agrees that the plumber came out in October and again in January after the tenant had notified the landlord. The tenant testifies that she does not know whether or not something was stuck in the toilet and the landlord did not inform the tenant that it was the tenant's responsibility.

The tenant disputes the landlords claim for carpet cleaning. The tenant testifies that her husband has a professional grade carpet cleaning machine and the tenant had cleaned the carpets with this. The tenant testifies that during the walkthrough one of the landlords agents commented that they could smell that the carpets had been cleaned. The tenant agrees that she did have her small dog in the unit about eight times during the course of the tenancy.

The tenant testifies that when the landlord's agent did the move in walk through inspection it took 20 minutes however at the end of the tenancy two agents for the landlord conducted a much more thorough inspection which took one and a half hours. The tenant testifies that this does not seem fair. The tenant testifies that during the move out inspection one of the agents commented that the burn marks on the deck looked as if they were caused by a campfire or fireworks. The tenant testifies that she would never have a campfire or fireworks on a deck.

The landlord testifies that she did make a comment about campfire or fireworks however in retrospect as the tenant was an outside smoker the burn marks could have been caused by cigarettes. The landlord testifies that the move in inspection was faster because the unit was all new; at the end of the tenancy it took longer because the agents had to note damage and engage in conversations about it. The landlord testifies that she does not recall making a comment about the smell of carpet cleaning at the move out inspection but did comment on the smell of cigarette smoke.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for damages to the rental unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I have considered the landlords claim for \$216.00 for damage to the laminate flooring. I have considered whether or not this damage would constitute normal wear and tear; however, after a tenancy of only six months I find that this damage is more than would be considered normal wear and tear. I further find the landlord has mitigated the loss by not charging the tenant for the replacement costs of the individual slats or the entire floor as the labour costs to do this work would far exceed the amount claimed by the landlord for the depreciation in value of the floor. I therefore find the landlords claim for **\$216.00** to be fair and reasonable.

With regard to the landlords claim for the damaged blind; as the tenant does not dispute this section of the landlord claim I uphold the landlord's claim for the sum of **\$10.00**.

With regard to the landlords claim for damage to the front deck; I have considered both arguments in this matter and find that both parties agree that the deck was in a dirty condition at the start of the tenancy. However, the parties also agree that the deck was power washed by the landlord at the start of the tenancy. After this work took place the tenant has testified she did not notice any burn marks as the deck was in a poor condition. I find from the documentary evidence provided that the burn marks are very visible and if they showed up after the deck was power washed then I have doubts that the tenant would not be able to see them and inform the landlord. Consequently, I find the landlords evidence more credible that the burn marks were caused during the tenancy and I therefore grant the landlord the amount of **\$100.00** for the depreciated value of the deck which I consider to be fair and reasonable due to the age of the deck.

With regard to the landlords claim for painting the walls and door; a tenant is required to repair any damage caused during the tenancy. This would include ensuring that any marks on the walls were covered. The tenant agrees that the marks on the door were her responsibility and has testified that the landlord did not let the tenant repaint the walls. A tenant must do this work before the inspection as the tenancy is deemed to end and the landlord does not have to let a tenant return to a unit to do remedial work. I therefore uphold the landlords claim for painting the wax stain, the pencil marks and the door to an amount of **\$90.00**.

With regard to the landlords claim for \$40.00 for cleaning; Under the *Residential Tenancy Act* section 32 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 landlords have not

shown that the tenants failed to meet the "reasonable" standard of cleanliness required and this section of the landlords claim is dismissed.

With regard to the landlords claim for the toilet repair, I have considered both arguments in this matter and find that the landlord instructed a plumber to attend the unit to repair a problem with the toilet in October 2012, the tenant then asked the landlord to send the plumber again in January 2013. The tenant argues that the toilet had always had a problem but the tenant has provided no evidence of this. The plumber's second visit determined that a foreign object was blocking the toilet. It is therefore my decision that as this blockage occurred during the tenancy that the tenant is responsible to pay for the cost of the plumbers work. I therefore uphold the landlords claim for **\$115.36**.

With regard to the landlords claim for carpet cleaning; the tenant agreed that she had a dog in the unit on at least eight occasions. A tenant is therefore required to ensure the carpets are shampooed at the end of the tenancy. The tenant argues that she did clean the carpets with her husband's professional grade carpet cleaner and argues that one of the landlord's agents remarked on this at the end of the tenancy. The landlord agrees that the carpets were not stained and argues that the tenant has not provided any proof that the tenant did clean the carpets and does recall either agent stating that they could smell that the carpets had been cleaned. If the tenant did clean the carpets the tenant should have provided some evidence as to this cleaning or asked her husband to attend the hearing to provide a sworn statement. As I have no evidence from the tenant that the carpets were cleaned at the end of the tenancy I must find in favour of the landlords claim to recover the cost of **\$50.00** for carpet cleaning.

The landlord has requested an Order to keep the security deposit of **\$525.00**. as the landlords claim for damages has been largely successful I find the landlord is entitled to keep the security deposit pursuant to s. 38(4)(b) of the *Act*.

I further find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord as follows:

Flooring damage	\$216.00
Damage to blind	\$10.00
Damage to deck	\$100.00
Painting	\$90.00
Toilet repair	\$115.36
Carpet cleaning	\$50.00
Subtotal	\$581.36
Plus filing fee	\$50.00
Less security deposit	(-\$525.00)
Total amount due to the landlord	\$106.36

Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$106.36** pursuant to s. 67 of the **Act**. The order must be served on the respondent and is enforceable through the Provincial Court 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: June 20, 2013

Residential Tenancy Branch