Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit and pet damage deposit; and
2. To recover the cost of filing the application.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. To keep all or part of the security deposit and pet damage deposit; and
3. To recover the cost of filing the application.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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

Issues to be Decided

Is the tenant entitled to return of double the security and pet damage deposits?
Is the tenant entitled to a monetary order for loss under the Act?
Is the landlord entitled to a monetary order for loss or damages to the unit?
Is the landlord entitled to retain all or part of the security deposit and pet damage deposit?

Background and Evidence

The tenancy began on February 15, 2011. Rent in the amount of $850.00 was payable on the first of each month. A security deposit of $425.00 and a pet damage deposit of $425.00 were paid by the tenant. The tenancy ended on March 15, 2013.

The parties agreed a move-in condition inspection report was completed.

Tenant's application

At the outset of the hearing the tenant withdrew her claim for return of March 2013, rent.

The tenant testified that the landlord was given her forwarding address in writing, when she provided notice to end the tenancy on February 18, 2013. The tenant stated that address was also provided a second time on March 15, 2013.

The landlord acknowledged receiving the tenant forwarding address on February 18, 2013. The landlord stated that the tenant abandoned the rental unit on March 15, 2013 and on March 15, 2013, the tenant was asked to participate in the move-out condition inspection and the tenant refused.

The landlord testified on March 16, 2013, the tenant was served with a notice of final opportunity to schedule a condition inspection report. The landlord stated that her partner served the tenant by attending her new residence and placing a copy of the document under the door. The final date that was scheduled for the move-out condition inspection was for March 17, 2013 at 6:30pm.

The tenant denied that the landlord asked her to participate in a move-out condition inspection on March 15, 2013. The tenant denied that she received from the landlord a notice of final opportunity to schedule a condition inspection.

Landlord's application

The landlord claims as follows:

a.	Cleaning	$ 112.50
b.	Repairs to walls	$ 337.50
c.	Primer and paint	$ 405.00
d.	Replacing carpets	$1,362.67
e.	Filing fee	$ 50.00
	Total claimed	**$2,267.67**

Cleaning

The landlord testified that the tenant did not clean the window, window tracks and cupboards and light fixtures in the rental unit. The landlord stated the tenant did turn the self cleaning cycle on the stove, however, did not wipe out the inside of the stove after the cleaning cycle was completed. The landlord stated that the tenant did not wipe out the inside of the refrigerator. The landlord stated the tenant also left the walls dirty and they had to be wiped down with a cleaner called “TSP”. The landlord stated she paid to have the unit cleaned and it took 7.5 hours at the rate of $15.00 per hours. The landlord seeks to recover the amount of $112.50. Filed in evidence are photographs of the unit. Filed in evidence is an invoice dated March 17, 2013, for cleaning and repairs to the rental unit.

The tenant testified that the photographs the landlord has taken were taken between March 5 and March 8, 2013, not after the tenancy had ended. The tenant stated in support of her position she is relying on the landlord’s photograph on page 3 of the grey book, which shows a cigarette butt left in the toilet and page 9, showing a dismantled smoke detector. The tenant stated she received a written warning for these items on March 6, 2013. Filed in evidence is a copy of the written warning by the landlord dated March 6, 2013.

The tenant stated she had cleaned the entire rental unit and the only things that were remaining were to wipe the inside of the stove, wipe the refrigerator and there may have been a spot or two in the kitchen sink.

The tenant testified that she questions the validly of the landlord invoice as she was unable to locate this property management company to ask them questions about the invoice as the landlord had blacked out the contact information on her copy. Further, the tenant question the date of the invoice as it is dated March 17, 2013, and is the same date that the landlord alleged the final move-out inspection was scheduled for at 6:30pm and the invoice claims 7.5 hours was completed.

The landlord responded that the photographs were taken after the tenancy ended. The landlord stated the invoice submitted as evidence is dated March 17, 2013, as that was the date she contacted the cleaning company, not the actual date the work was completed. The landlord stated she blacked out the contact information on the invoice as she felt she was entitled to protect personal information.

The tenant testified that there was a fire in the unit on March 19, 2013, in the afternoon, which caused damage to the unit and led her to question if any of the work was actually done or paid for by the landlord. The tenant alleged the landlord has fabricated the invoice. Filed in evidence is a copy of a printed news report of the fire that occurred on March 19, 2013.

Repairs to walls

The landlord testified that the tenant's cat scratched the walls and that all of the window sills in the rental unit were scratched and had to be filled, sanded and painted as a result. Filed in evidence are photographs of the windows and walls.

The landlord testified that the tenant also left two painted decorative quotes on the walls, one was in the bathroom and the other quote was in the bedroom. The landlord stated that the painted quotes were required to be sanded off the walls, and the walls required to be primer and painted. Filed in evidence are photographs of the two decorative quotes.

The landlord testified the tenant left 57 nail holes and large screw holes that had to be filled.

The landlord testified that the tenant also cause damage above the tub surround from the shower curtain rod. Filed in evidence is a photograph of the shower curtain rod damage.

The landlord testified the tenant cause damage to baseboard in the hallway from the kitchen to the bedroom. When the tenant questioned the landlord why the flooring underneath the baseboard was different than what was in the hallway, the landlord could not remember where the baseboard was located in the rental unit.

The tenant testified that she agreed her cat scratched the walls and window sills, and the tenant stated that she had filled and sanded the scratches and painted the walls that were the lighter colour as she was provided the paint by the landlord. The tenant stated she did not paint the walls that were of the darker color as she did not have the paint colour to match. The tenant stated that the photographs were not taken after the tenancy ended but taken during the week of March 5 to March 8, 2013, and do not reflect the repairs that she had completed on the walls.

The tenant denied placing any nail holes or screw holes in the wall and stated that she only ever use "3M hangers", which were described as adhesive and they were all removed from the walls leaving no damage.

The tenant testified that she did not remove the decorative quotes from the two walls. The tenant stated that the quotes were vinyl stickers and had raised sharp edges and they had a slightly gritty texture and would have been easy to remove from the walls by peeling them off.

The tenant testified that she denied damaging any baseboard in the rental unit.

Primer and paint

The landlord testified that due to the damage to the walls, they had to paint the entire suite and extra primer was required to cover up the patch marks.

The tenant testified that she had painted all the areas that her cat caused damage with the lighter colour paint, which the landlord supplied. The tenant stated she was unable to paint the darker walls as she was not provided the paint that matched that colour. The tenant denied the unit was required to be fully painted.

The tenant reiterates that the she believes the landlord has falsified the invoice that was submitted as evidence and does not believe that any of the work was completed prior to the fire that occurred on March 19, 2013, and believed the unit would have to be painted due to smoke damage.

Carpet

The landlord testified that she had the carpets professional cleaned and that they were unable to get the stains out of the carpets and she was told that the carpets would have to be replaced. The landlord stated the photographs submitted of the carpets were taken after the carpets were cleaned. Filed in evidence are photographs of the carpets.

The landlord testified after the carpets did not come clean she contacted a carpet company and they came to the residence and looked at the carpets and took measurement and provided her an estimate for the cost of replacing the carpets with the same materials. Filed in evidence is an estimate dated March 18, 2013.

The tenant testified that she did not have the carpets cleaned at the end of the tenancy. The tenant stated that the only stain on the carpet was from a previous water leak. The tenant stated the photographs the landlord appears to have submitted are not the same carpets that were in her unit as these appear to be two different carpets and all the carpets were the same in her unit.

The tenant testified that she went to the carpet company that submitted the estimate to the landlord and she was told by them that this estimate was not created or completed by their company as the letter head is not correct. The tenant stated she was told by the carpet company that this residence had an insurance claim and that was for 30 yards of carpet, rather than the 40 yards which is noted in this estimate.

The landlord argued that the estimate was provided by email and that the carpets are not covered by the insurance claim as they were removed from the unit prior to the fire on March 19, 2013. The landlord also stated that the company should not be providing the tenant with any information about her insurance claim.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, both parties have the burden of proof to prove their claim.

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.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Tenant's application

In this case, the landlord claims the tenant had abandoned the rental unit, however, the tenant paid rent for the month of March, 2013, and the tenancy was to end on March 31, 2013. However, on March 15, 2013, the tenant returned to the landlord legal possession of the rental unit. I find the tenant did not abandon the rental unit, rather the tenant gave possession of the unit to the landlord prior to the original agreed upon vacancy date.

The evidence of the landlord was that the tenant was given two opportunities to participate in the move-out condition inspection. The tenant denies that the landlord requested her to participate in any move-out condition inspection.

The evidence of the landlord was that the notice of final opportunity to schedule a condition inspection was served on the tenant by placing the document under the door of her new residence. The tenant denied receiving such a document.

Even If I accept the landlord's testimony that the document was placed under the door, Section 12 of the Residential Policy Guideline, service of documents general, provides a number of service methods,
While the Act allows a document to place in a conspicuous place that is clearly visible and likely to attract notice or attention, such as taping the document to the door, the legislation does not allow a document to be placed under a door. Therefore, I find the landlord has failed to prove that the tenant was served with a notice of final inspection as required by the Act. As a result, I find the landlord has failed to prove that two opportunities were provided to the tenant and that the tenant failed to participate on either occasion.

In this case, the landlord acknowledged that they received the tenants forwarding address on February 18, 2013, and that the tenancy ended on March 15, 2013. The landlord had 15 days after the tenancy ended to file for dispute resolution. The landlord filed their application on May 27, 2013, which is outside the time limit permitted under the Act. As a result, I find the landlord breached section 38(1) of the Act.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security and pet damage deposit. The legislation does not provide any flexibility on this issue.

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of **$1,750.00**, comprised of double the pet damage deposit ($425.00)and security deposit ($425.00) on the original amounts held and the $50.00 fee for filing this Application. This monetary award may be off-set with the landlord's application, should the landlord be successful with their claim.

Landlord's application

Cleaning

The evidence of the landlord was that the tenant did not clean the rental unit at the end of the tenancy, which included window, window tracks, cupboards and light fixtures. The evidence of the tenant was that all these items were cleaned.

In support of the landlord's positions is an invoice for cleaning and repairs, however, the tenant questioned the validly of the invoice on several grounds, first the tenant was unable to locate the company as the landlord blacked out the contact information, and second, the date on the invoice which is dated March 17, 2013, claiming 7.5 hours for cleaning. The evidence of the landlord was that the work was not completed on March 17, 2013; the landlord during her testimony did not stated when the cleaning was completed and the invoice does not specify any other date, other than March 17, 2013.

The tenant also questioned the landlord's photographs as the landlord alleged they were taken after the tenancy had ended. The tenant claimed they were taken between March 5 and March 8, during a showing of the rental unit. The tenant's position is

supported by the landlord's photographs in the grey book as page 3 the photograph of a cigarette butt left in a toilet, and page 9, the photograph of a dismantled smoke detector, were taken on March 6, 2013 as the landlord noted these were found during a showing and issued the warning letter dated March 6, 2013.

I further question the photographs on page 15 of the grey book of photographs, as the landlord hand wrote,

> " livingroom as left by tenant 2 small cabinets and lots of garbage/debris".
>
> [Reproduced as written.]

However, the evidence by both parties was that these two cabinets were removed by the tenant on March 15, 2013.

Also, the photographs on page 16 of the grey book the landlord typed,

> "these photos are proof renter had all her furniture moved out and was no longer residing at this address on March 15, 2013"
>
> [Reproduced as written.]

However, after the grey book was produced the landlord hand writes on the same photograph, as mentioned above,

> "photo of dining area and kitchen after mt property management"
>
> [Reproduced as written.]

These photographs and the suggested dates provided by the landlord are conflicting. If they were taken on the date the landlord typed of March 15, 2013, then it would show the tenant left the unit reasonable cleaned as claimed by the tenant.

The landlord did not provide any photographs of windows, window track or cupboards, which would have been reasonable when claiming compensation for cleaning these items.

Further, I find it was unreasonable for the landlord to black out the business contact information on the invoice which put the tenant at a disadvantaged as the tenant was unable to verify any information on the invoice and to validate the validity of the invoice. As a result, I find that the invoice submitted as evidence by the landlord is not admissible. The landlord did not provide any proof of payment to support the invoice was paid, such as a cancelled cheque.

In light of the above, I find the landlord has provided insufficient evidence to support that the tenant left the unit in an unreasonable state of cleanliness.

However, in this case the evidence of the tenant was that they did not to wiping out the inside of the stove and the refrigerator. Therefore, I will allow a nominal amount for cleaning those items in the amount of **$15.00.**

Repairs to walls

The evidence of the landlord was that the tenant's cat scratched the walls and window sills in the rental unit, causing extensive damage which required the scratches to be filled, and sanded. The evidence of the tenant was that she agreed her cat had scratched the window sills and walls; however, the evidence of the tenant was that she repaired the walls prior to the tenancy ending and had painted all the light color walls as the landlord provided her with paint. The evidence was she did not paint the darker walls as the paint was not provided to match the color.

The evidence of the landlord was that there were 57 nail holes and two decorative painted quotes on the walls, which had to be sanded and filled. The evidence of the tenant was that she never used any nails during the tenancy and only used M3 hangers, which are adhesive and removed prior to vacating. The tenant admitted that the two decorative quotes were left on the walls, however, the evidence was that they were vinyl and easy to be removed.

In support of the landlord's position is the invoice date March 17, 2013, claiming for this portion of the claim 11.25 hours of work for repairs to the walls. However, I have previously found that the invoice is not admissible as the tenant was not given the opportunity to contact the company to ask questions or validate the invoice as the contact information was blacked out by the landlord.

Further in support of the landlord's position are photographs of the scratched walls, these photographs are not digital date by the camera. The landlord did not submit any photographs of the 57 nails holes that they allege the tenant left in the rental unit and would have been reasonable to submit photographs when claiming compensation for these items.

The evidence of the tenant was that these photographs were taken during the week of March 5 to 8, and does not reflect the repairs that she completed on the walls, which included painting the lighter colour of paint. The landlord did not deny proving the tenant with the lighter colour paint.

In light of the above, I find the landlord has failed to prove a loss or damage existed. Therefore, I dismiss this portion of the claim due to insufficient evidence.

Primer and paint

The evidence of the landlord was due to the damage cause by the tenant the entire unit had to be painted and extra primer was required. The evidence of the tenant was that

she had painted all the areas that used the lighter color paint and it was the only darker walls that need to be painted.

In support the landlord position is the invoice dated March 17, 2013, which alleges it took 13.5 hours to paint and primer. However, I have previously found that the invoice is not admissible as the tenant was not given the opportunity to contact the company to ask questions or validate the invoice as the contact information was blacked out by the landlord.

In this case, the tenant admitted that she did not paint the darker area color of the walls. Therefore, I find the tenant has breached section 37 of the Act, when they failed to repaint those portions of the walls, when they vacated the rental unit

However, in this case, the final move-out inspection was scheduled for March 17, 2013 at 6:30 pm and on March 19, 2013, the news report filed in evidence confirms that there was a fire in the unit and the call was report at 4:00pm. In the report it stated that the damage was contained to the bedroom but there was significant smoke damage to the rest of the structure.

In this case, I find that is highly unlikely that the landlord was able to have all the walls repaired, which included filling 57 nail holes and scratches, sanding and the having the walls primed and painted, which totals 24.75 hours of work. When in less than 48 hours of the final condition inspection was scheduled a fire occurred, causing significant smoke damage to the rental unit. Further, I find it is just a likely as suggested by the tenant that this was covered by the landlord insurance company and the landlord has not provided any evidence from the insurance company to confirm otherwise.

Therefore, I find the landlord has failed to prove that a loss exists. This portion of the landlord's claim is dismissed due to insufficient evidence.

Carpets

In this case, the tenant acknowledged that they did not clean the carpets at the end of the tenancy. The evidence of the landlord was that she had the carpets cleaned, however, the stains would not come out and she was told the carpets would have to be replaced. The evidence of the landlord was that a carpet company attended the residence measured the carpets and provided her with an estimate for replacement. The evidence of the landlord was the carpets were then removed prior to the fire as a result the insurance company would not pay for their replacement.

The tenant questions the photographs of the carpets as each room appeared to have a different carpet. The tenant also questioned the validity of the estimate provided by the landlord from the carpet company as she personally took the invoice to the carpet company and was told that they did not provide this estimate to the landlord. I note the estimate does not provide a name of an employee or signature that you would normally expect to see on such a document.

Further, the evidence of the tenant was she was told by the carpet company that there was a filed insurance claim for the same residence and the square footage of carpet is not the same.

In this case I find the tenant has breached section 37, when they failed to have the carpets cleaned when they vacated the rental unit as the Residential Tenancy Branch Policy Guidelines require a tenant to have the carpets cleaned after a tenancy of one year.

However, in this circumstance there was a fire in the rental unit on March 19, 2013, less than 48 hours after the final move-out condition inspection was scheduled. I find that the timeline provide by the landlord appears to be unlikely, as there was alleged to have be extensive repairs to the walls being made, which would create large amounts of dust and it would be unlikely to have the carpets professional cleaning during this time period and then removed. Further, there was no documentary evidence such as an invoice or receipt to support that the carpets were cleaned.

The tenant has alleged that the loss of the carpet is part of an insurance claim. While the landlord disputes that the carpets are part the insurance claim, the landlord did not deny that this company had received an insurance claim, as she was more concerned about the company providing the tenant with her personal information. I find in this case, it would have been reasonable for the landlord to provide from the insurance company, a letter to confirm at the time of the fire there were no carpets in the rental unit and that this loss is not covered by the insurance claim.

In light of the above, I find the landlord has failed to prove that a loss exists due to the action of the tenant and it is just as likely the carpets were damaged in the fire. Therefore, I dismiss this portion of the landlord claims due to insufficient evidence.

I find that the landlord has established a total monetary claim of **$65.00** comprised of the above described amount and the $50.00 fee paid for this application.

I order that the landlord's monetary claim ($65.00) be off-set from the tenant's monetary claim of (**$1,750.00).** I order a formal order to the tenant for the balance due of **$1,685.00.**

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

Conclusion

The tenant was granted a monetary award for the return of double the security deposit.

The landlord was granted monetary ward, this monetary award was off-set from the tenant's award. The tenant is granted a formal order for the balance due.

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: July 8, 2013

Residential Tenancy Branch