



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WENDEB PROPERTIES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave 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.

Preliminary issues

At the outset of the hearing the landlord's agent identified that she had not received any evidence from the tenant. The tenant confirmed that they served the landlord with their evidence which was sent by registered mail five days prior to the hearing.

Residential Tenancy Branch Rule of Procedure 4.1 requires a respondent, in this case the tenant, to serve all evidence they intend to rely upon at least 5 days prior to the hearing. "At least" excludes the day the evidence is received; the day of the hearing; and any weekend days or statutory holidays in between. As a result, I find the tenant did not comply with the rules of procedure and their evidence was excluded.

On May 16, 2013, the parties were before me on an application for dispute resolution filed by the tenant. At that hearing, I granted the tenant a monetary order for the return of double the security deposit. I find that due to the legal principal of Res judicata, I cannot grant the landlord's request to hear the issue of the security deposit as this matter was already heard and decided upon at the hearing of May 16, 2013.

Additionally, section 80 of the Act sets out the time frames in which a Review of a decision can be applied for. The landlord did not file for a Review as required by the

Act. As a result, I find the landlord application to retain the security deposit cannot proceed at today's hearing.

The landlord's application for a monetary order for damages was permitted to proceed.

Issues to be Decided

Is the landlord entitled to monetary order for damages to the unit?

Background and Evidence

The tenancy began on April 1, 2012. Rent in the amount of \$800.00 was payable on the first of each month. The tenancy ended on August 31, 2012.

The parties agreed that a move-in condition inspection report and a move-out condition inspection report were not completed in accordance with the Act.

The landlord claims as follows:

a.	New Carpet	\$ 1,575.77
b.	New Countertops	\$ 340.00
c.	Cleaning	\$ 165.00
d.	Filing fee	\$ 50.00
	Total claimed	\$ 2,080.77

New Carpet

The landlord's agent testified that the carpets were replaced at the beginning of the tenancy and that when the tenant vacated the rental unit the carpets were in horrible condition and needed to be replaced. Filed in evidence are photographs of the carpets. Filed in evidence is a receipt for carpet replacement dated October 1, 2012.

The tenant testified that the carpets were not stained at the end of the tenancy. The tenant stated that the photographs submitted by the landlord are not of the carpets of his rental unit as his carpets were a different colour. The tenant stated that there are other units in the building and alleged that these are from one of those units.

The witness for the tenant testified that the photographs submitted by the landlord of the carpets are not the same colour carpets as the tenant had in his rental unit.

New Countertops

The landlord's agent testified that the tenant damaged the countertop by placing a hot pot on the counter which burned the laminate. Filed in evidence is a photograph of the countertop.

The tenant testified that the burn was in the counter when he took possession of the unit.

Cleaning

The landlord's agent testified that the tenant did not clean the entire rental unit and seeks compensation in the amount of \$165.00. Filed in evidence is a photograph of a fan.

The landlord's agent testified that the tenant also left an ottoman on the balcony and it was required to be removed. The agent stated this amount was included in the total amount for cleaning and believed it to be \$20.00. Filed in evidence is a photograph of the ottoman.

The tenant testified that he a friend clean the entire unit, and the rugs. The tenant stated that he did not cleaned the inside of the oven as at no time during the tenancy did he use the oven as his meals were either provided by "meals on wheels" or that he purchased prepared meals at the local deli and they were reheated in the microwave oven. The tenant stated the oven was left in the same condition as it was received.

The tenant testified that the fan was not dusted as he was told not to use the fan during the tenancy.

The tenant testified that the ottoman was provided to him by the previous landlord at the start of the tenancy for him to use. When questioned further, the tenant acknowledged that the ottoman was likely given to him by the previous landlord.

The witness for the tenant testified that the tenant had not used the oven. The witness stated that the tenant only used the microwave to reheat meals that have been prepared for him. The witness stated that he had helped the tenant move his belongings from the rental unit and the entire unit was cleaned by a friend of the tenant.

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, the landlord has 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.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

New Carpet

The evidence of the landlord's agent was that the tenant left the carpets damaged and submits photographs to support her position. The evidence of the tenant was that the photographs submitted are not of the carpets that were in his rental unit and that he left the carpets in a reasonable condition. The evidence of the witness for the tenant was that the photographs of the carpets are not the same carpets that were in the tenants rental unit.

I find in the absent of any further evidence, such as a move-out condition inspection report, competed in accordance with the Act, that the landlord has failed to prove the condition of the carpet at the end of the tenancy. Therefore, I dismiss this portion of the landlord's claim.

New Countertops

The evidence of the landlord's agent was that the tenant damaged the laminate on the countertop by placing a hot pot on the surface. The evidence of the tenant was that the burn was on the countertop when there when he took possession of the rental unit.

I find in the absent of any further, such as a move-in condition inspection report that the landlord has failed to prove that the damage was caused by the tenant. Therefore, I dismiss this portion of the landlord's claim.

Cleaning

The evidence of the landlord's agent was that the entire unit was required to be cleaned. The evidence of the tenant was that he had a friend clean the unit. The evidence of the tenant was that the dust on the fan was not removed as he was told not to use the fan. The evidence of the tenant was that he did not clean the oven as it was not used during the tenancy and it was left in the same condition provided to him. The evidence of the tenant was that the ottoman was provided to him by the previous landlord.

In this case, the landlord claims that the entire unit required cleaning, however, the only photographed submitted to support their position is a photograph of a fan which shows some dust. Under the Act, the tenant is only required to leave the unit reasonable clean, I find without further evidence, such as photographs of the entire rental unit that the landlord has failed to prove the tenant left the unit that does not comply with section 37 of the Act.

However, I am satisfied that the landlord incurred a cost to remove the ottoman that was left behind by the tenant as this was given to him by the previous landlord. The evidence of the landlord was that it cost \$20.00 to remove and dispose of this item. I find that amount to be reasonable. Therefore, I find the landlord is entitled to compensation in the amount of **\$20.00**.

I find that the landlord has established a total monetary claim of **\$20.00** comprised of the above described amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court

As the landlord has been largely unsuccessful with their application, I decline to grant the cost to recover the filing fee from the tenant.

Conclusion

The landlord is granted a monetary order in the above amount.

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: September 24, 2013

Residential Tenancy Branch

