



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MND, MNSD, MNDC, FF

Introduction

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

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 landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on March, 1, 2007. Current rent in the amount of \$975.00 was payable on the first of each month. A security deposit of \$445.00 was paid by the tenant. The tenancy ended on June 30, 2013.

The landlord stated a move-in condition inspection report was completed with the tenant. However, they both failed to sign the report. The tenant denied every participating in a move-in condition inspection.

The landlord claims as follows:

| | | |
|----|---|--------------------|
| A. | Taken -TV HD Digital Set Top Boxes | \$ 343.82 |
| | Taken Bedroom Ceiling light | \$ 45.62 |
| | Missing smoke detector \$42.40 +Gst | \$ 44.52 |
| | Taken wire tray dividers for kitchen cupboard | \$ 26.18 |
| | missing bottom cap of hall light fixture | \$ 3.35 |
| | Total claimed for missing items | \$ 463.49 |
| B. | Carpet cleaning | \$ 372.59 |
| | | |
| C. | Replace stove element bowls | \$ 36.92 |
| | Replace light bulbs | \$ 11.89 |
| | Replace toilet bolt cap | \$ 2.33 |
| | Replace brass knob for kitchen cupboard & paint | \$ 20.14 |
| | Broken kitchen ceiling light fixture | \$ 167.75 |
| | Broken kitchen ceiling tract light | \$ 43.60 |
| | Replace bathtub drain & labour | \$ 74.25 |
| | | |
| D. | Installation cost for light fixtures/smoke detector | \$ 160.02 |
| | | |
| E. | Cleaning suite | \$ 285.00 |
| F. | Re-key locks | \$ 104.41 |
| G. | Landlord labour & cost of paint for chips in stove | \$ 126.47 |
| H. | Printing photographs pertinent to claim | \$ 41.33 |
| I. | Rent discount to new tenant | \$ 300.00 |
| | Filing fee | \$ 50.00 |
| | Total claimed | \$ 2,215.49 |

Group A

The landlord testified at the end of the tenancy the tenant had taken items from the rental unit. The landlord stated the items taken, were the TV digital boxes, the bedroom ceiling light, the smoke detector , the wire tray dividers in the kitchen cupboard and there was a missing bottom cap on the hall light fixture. The landlord stated all items have been replaced. Filed in evidence are receipts.

The tenant testified that he took the TV digital boxes as he felt entitled to them as he was paying rent on them. The tenant stated he returned them to telus and the landlord should have a credit. The tenant stated that they agreed that they accidentally taken the other items.

The landlord argued the TV boxes were her personal property and the tenant had not right to remove them or return them to telus. The landlord stated she has received nothing from telus.

Item B

The landlord testified that the tenant left the carpets extremely soiled and she had to have them cleaned.

The tenant testified that he did not have the clean the carpets at the end of the tenancy.

Group C

The landlord testified at the end of the tenancy several items were required to be replaced. The landlord stated the stove elements bowls were extremely damaged, light bulbs were burnt out, a toilet bolt cap was missing. Filed in evidence are photograph and receipts.

The landlord testified, a brass hexagonal knob was missing from the kitchen and she had a unable to find one that matched so she used a glass knob and sprayed the know with brass paint. Filed in evidence are photographs and receipts.

The landlord testified that the tenant had removed the kitchen ceiling light fixture that was made of capiz shells and it was left behind broken. The landlord stated the ceiling tract light was also damages as the light bulb no longer hung properly with the fixture. Filed in evidence are photographs and receipts.

The landlord testified that the bathtub drain was extremely damaged and had to be replaced, the landlord stated she is not sure how the damage occurred but would guess it may have been from some type of chemical being poured down the drain. The landlord stated she had to hire a plumber to make the necessary repair. Filed in evidence is a photograph of the drain. Filed in evidence are receipts.

The tenant testified that the stove elements were used and does not dispute the photographs which depict there condition. The tenant stated he agreed to the cost of replacing the light bulbs. The tenant stated he does not know anything about a missing toilet bolt cap and believes that cap may have never been in there.

The tenant testified that that the replaced the missing knob on the kitchen cupboard. The tenant stated he went through considerable effort to find a hexagonal knob however, was not able to find one as a result, he replaced it with a round brass knob.

The tenant testified that he took down the capiz shell light fixture, however, it is in the same condition as when the tenancy started. The tenant stated the tract light was not damage by him as it appears that the fixture must be faulty as the clasp does not appear to function properly.

The tenant testified that he has never use the bathtub during the entire tenancy and believes the tub drain was in the same condition as when he moved in. The tenant state the unit had a separate shower.

Item D

The landlord testified that she had to hire an electrician to installed the new kitchen ceiling light fixture, the tract light and to install the smoke detector that was taken by the tenant.

The tenant testified that is responsible for the cost of having the smoke detector installed. The tenant does not believe he should be responsible for any of the cost associated to the other two lights. The tenant stated that he also does agree with the invoice as it has a journeyman electrician and his apprentices receiving an hourly wage.

Item E

The landlord testified the tenant made no attempt to clean the rental unit. The landlord testified that she hired a cleaning company and they cleaned the appliances, the entire kitchen, the floors had to swept and washed, baseboard need to cleaned, windows, window sills and tracks need to be washed. The landlord stated the cleaner has provided a detail list of the items cleaned on the receipt filed as evidence. Filed in evidence are photographs of the rental unit.

The tenant testified that the landlord harassed him and he was not able to have the unit properly cleaned. The tenant stated do to his age he relies on the help of others.

Item F

The landlord testified that the tenant failed to return all keys at the end of the tenancy. The landlord stated she provided one set of keys at the start of the tenancy, however, the tenant had keys cute for his wife and those keys were not returned and she had to have the rental unit rekeyed. Filed in evidence is a receipt.

The witness for the landlord testified that he has seen the tenant wife with her own set of keys. The witness stated he has seen the tenant leave the unit and locking the unit behind him and driving away and then just minutes later his wife would be returning home in a separate vehicle and unlocking the door with a key on her key chain. The witness stated it would have been impossible for them to exchange the key, when they were not even in the presents of each other.

The tenant testified that they have only ever had one key and that they are almost always together. The tenant stated he has provided his key to his wife when necessary.

The witness for tenant testified that she was annoyed by the key situation as she had provided her keys to her husband that was for her home that she had separate at the time. The witness stated she never had a key.

Item G

The landlord testified that she seeks compensation for her labour, as they had to repair several items. Two missing baseboard had to be replace, repair the wall in the bedroom where the cable was added during the tenancy and fill and sand various holes in the walls from the tenant using screws. The kitchen window sill was damage from the piece of carpet scratching the paint surface as the cat used the window to enter the rental unit. The landlord stated they also had to install the new wire dividers in the kitchen that were taken by the tenant and to paint the chips in the stove.

Item H

The landlord testified they seek compensation for printing photographs pertinent to their claim.

Item I

The landlord testified that due to the condition of the rental unit the new tenants were unable to move-in. The landlord stated the furniture movers had to store the new tenant's belongings in the garage and then return after the unit was clean and again move their belongings into the rental unit. The landlord stated the after the tenants moved in they were subject to trades people coming in and they also were without a television as the tenant had taken the TV boxes. The landlord stated that the tenant was provided a rent abatement of \$300.00. Filed in evidence is a letter from the new tenant.

The tenant testified that it is unreasonable for the landlord to have new tenants ready to move the day after he had moved out. The tenant did not have any further comments on this issue.

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 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

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.

Group A

In this case, the tenant does not deny removed items from rental unit as listed above. The tenant stated that the TV digital boxes were returned to telus and the landlord should have a credit. The tenant has provided no confirmation from telus. Further, the tenant was not entitled to remove the TV boxes as they were the landlord property. I find the tenant breached the Act, when they took items from the rental unit that were not there belongs and this caused losses to the landlord. The landlord has provided receipts to support her claim. Therefore, I grant the landlord for the cost of the items that were taken by the tenant in the amount of **\$343.82**.

Item B

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is generally expected to clean the carpets if vacating after a tenancy of one year.

In this case, the evidence was that they did not clean the carpet as required. The photographs support the carpets were heavily soiled. As a result, I find the tenant has breached section 37 of the Act, when they failed to clean the carpets. Therefore, I find the landlord is entitled to compensation for the cost of having the carpets cleaned in the amount of **\$372.59**.

Group C

In this case, the tenant admitted the photographs depict the condition the stove element bowls were left in. I find the tenant breached the Act, when they failed to leave the bowls in a reasonable condition and that caused losses to the landlord.

Under the Residential Policy Guideline #40, if an item was damaged by the tenant, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement. As, I have determined that the stove bowls had a useful life span of 15 years, and the bowls were 8 years old, the landlord is entitled to the depreciated value of forty percent. The evidence of the landlord's agent was it cost \$36.92 to replace the bowls. Therefore, I find the landlord is entitled to compensation for the cost of replacing the bowls in the amount of **\$17.22**.

The agreed to there were light bulbs burnt out at the end of the tenancy and agreed to the amount of \$11.89. Therefore, I find the landlord is entitled to compensation for the cost of replacing the light bulbs in the amount of **\$11.89**.

The landlord seeks compensation for a toilet bolt cap, however, as the believed the fixture was the original fixture installed when the house was built, I find the useful life span of the items has exceeded as a result, the landlord has failed to prove a loss exists.

The landlord seeks compensation for replacing a brass hexagonal knob, however, the tenant replaced the knob with a brass circular knob as he was unable to find a hexagonal shape. The landlord's evidence supports that specific knob was no longer available as she had replaced it with a glass knob and covered it with paint. Under the Act, the tenant is only required to make the repair. I find the tenant made the repair when he replaced the knob with a brass circle knob as a brass hexagonal knob was unavailable. I find the landlord has failed to prove a loss exists.

In this case the tenant had removed from the kitchen capiz shell light fixture; the tenant claimed the light fixture was damaged at the start of the tenancy. I find on the balance of probabilities that the damage was caused by the tenant storing the fixture in a careless

manner as all the before pictures show the rental unit was in pristine condition even though the before picture does not fully show the entire light. I find the tenant breached the Act, when they failed to repair the light fixture and the landlord suffered a loss. Under the Residential Policy Guideline #40, if an item was damaged by the tenant, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement. As, I have determined that the light had a useful life span of 15 years, and the fixture was 8 years old, the landlord is entitled to the depreciated value of forty percent. The evidence of the landlord's agent was it cost \$167.75 to replace the fixture. Therefore, I find the landlord is entitled to compensation for the cost of replacing the bowls in the amount of **\$78.26**.

The evidence of the landlord was the tenant damaged the kitchen track light. The evidence of the tenant was the fixture was faulty as the light has simply popped out. While I accept the photographs show the bulb slightly hanging in the fixture. I find the tenant's version to be probable as a result; I find the landlord has failed to prove the damage was caused by neglect. Therefore, I find the landlord is not entitled to compensation.

The landlord seeks compensation to replace the bathtub drain and labour, however, as they believed the fixture was the original fixture installed when the house was built, I find the useful life span of the items has exceeded as a result, the landlord has failed to prove a lost item.

Item D

In this case, the tenant removed the smoke detector and damaged the kitchen light fixture when it was likely stored carelessly. However, I also found the landlord failed to prove the tenant damaged the track light. As the landlord paid \$160.02 for the three fixtures to be reinstalled the only fair way to divide the cost is by 1/3 for each item. As the tenant was responsible for two items of the cost, I find the appropriate amount for compensation to the landlord is **\$106.68**.

Item E

In this case, the tenant did not clean the rental unit, while the tenant alleged he was harassed and was unable to get the cleaning completed, I find that is not supported by any evidence. I find the tenant breached the Act, when they failed to leave the unit reasonably cleaned at the end of the tenancy and this caused losses to the landlord. This is supported by the photographs submitted into evidence and the receipt. Therefore, I find the landlord is entitled to compensation for cleaning in the amount of **\$285.00**.

Item F

In this case, the landlord had the rental unit rekeyed as she claimed the tenant failed to return the keys he had made for his wife. The tenant denies that they made another set

of keys and claimed they merely share on set. Both parties provided witness on this issue.

After hearing from both witnesses I prefer the evidence of landlord witness as they were clear that they saw the tenant exit and lock the rental unit and leave the premises in a vehicle only to have the wife appear in a different vehicle to unlock the door. I find the tenant's witness to be lacking credibility as she was very defensive when I simply was asking her legal name so it could be recorded for the hearing. I also find it highly unlikely that an extra set would not be provided to one's wife. I find it highly likely that the tenant felt justified in keeping the keys if he paid for them. I find the tenant breached the Act, when all the keys to the rental unit were not returned and this caused loss to the landlord. Therefore, I find the landlord is entitled to compensation for having the locks rekey in the amount of **\$104.41**.

Item G

In this case, the landlord seeks to recover her labour cost for making repairs to the rental unit. While I accept that the tenant did not fill all the screw holes or sand all the holes sufficient and took the kitchen wire dividers and the landlord was required to make these repairs.

I also find compensation for repairs of the baseboards not appropriate as this is likely normal wear and tear; I am also not satisfied that one of the baseboards even existed. While I accept the window sill likely had to be painted due to a cat door being installed. I find the useful lifespan of the paint exceeded. Therefore, as the work seemed to be divided equally between both findings, I find it appropriate for the landlord to receive compensation equal to have claimed. Therefore, I find the landlord is entitled to compensation for labour in the amount of **\$63.23**.

Item H

In this case, the landlord seeks to recover the cost of printing her photographs that were submitted as evidence. However, I find there is no provision under the Act, that allows compensation for preparing their claim. Therefore, I find the landlord is not entitled to compensation this portion of her claim.

Depreciated value

In this case, the evidence of the landlord was the tenant damaged the ***** by *****.
The evidence of the tenant was *****

While I accept that the evidence of the tenant that ***** , I find that the damage does not constitute normal wear and tear, as normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. I find the tenant has breached section 37 of the Act, when they failed to repair the ***** at the end of the tenancy.

Under the Residential Policy Guideline #40, if an item was damaged by the tenant, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement. As, I have determined that the **had a useful life span of ** years, and the ** was ** years old, the landlord is entitled to the depreciated value of *** percent. The evidence of the landlord's agent was it cost \$** to replace the ***. Therefore, I find the landlord is entitled to compensation for the cost of replacing the *** in the amount of \$***.

The evidence of the landlord('s') agent/landlord(s) was the tenant(s) did not

I find the tenant(s) has/have breached section 37, when they failed to *****clean/repair the *****when they vacated the rental unit and this has caused losses to the landlord. Furthermore, I find that due to the condition the rental unit was left in by the tenant(s), and the landlord(s) have/has suffered a loss of rent for one month.

I find that the landlord(s) have/has established a total monetary claim of \$*****comprised of the above described amount(s) and the \$50.00 fee paid for this application.

I order that the landlord(s) retain the security deposit and interest of \$ ***** in partial satisfaction of the claim and I grant the landlord(s) an order under section 67 for the balance due of \$*****.

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

Conclusion

The landlord(s) are/is granted a monetary and may keep the/a portion of the security deposit in partial satisfaction of the claim and the landlord(s) are/is granted a formal order for the balance due.

Dated: December 11, 2013

Residential Tenancy Branch

