



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation under the Act and the tenancy agreement, for damage and cleaning of the rental unit, for an order to retain the deposits in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on September 1, 2009, with the parties entering into a written tenancy agreement. The rent was \$1,800.00 at the outset of the tenancy and the Tenant paid a security deposit of \$900.00 and a pet damage deposit of \$450.00. The tenancy agreement required the Tenant to pay for utilities.

The parties acknowledge that the Landlord did not do an incoming condition inspection report at the start of the tenancy. The parties dispute that an outgoing condition inspection report was performed in accordance with the Act. The Tenant vacated the rental unit on July 31, 2013.

The Landlord's Claims

The Landlord is claiming he has incurred or will incur substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenant.

The Landlord claims as follows:

a.	Carpet replacement	1,873.74
b.	Driveway repairs	450.00
c.	Fireplace tools	89.98
d.	Rental unit cleaning	423.00
e.	Drywall repair	200.00
f.	Deck repair	100.00
g.	Utilities outstanding	110.98
h.	Filing fee	50.00
	Total claimed	\$3,297.70

The Landlord claims the Tenant and his pet caused damage to the carpets in the rental unit. He claims there was an area in the master bedroom which was heavily stained; there was a red stain in the living room area, and yellow stains in various areas. The Landlord testified he found wax on the carpet. The Landlord claims that an area of the rug had been so soiled by cat feces that it would need to be cut out and removed. The Landlord claims they could not get the smell out of the carpet, even after the cleaning had been performed. The Landlord claims there was a hole created in the carpet in the master bedroom. The Landlord claimed the carpet had been installed, brand new in May of 2009 and was four months old when the tenancy started. The Landlord supplied numerous photographs in support of this claim and an invoice from a carpet company.

The Landlord claims for repairs to the driveway. The Landlord claims the Tenant damaged the driveway. The Landlord testified that he was not sure if the driveway asphalt was damaged by the carpet cleaning company or if it was diesel leaking from the Tenant's truck. The Landlord testified he was not sure what caused the damages, but claims against the Tenant for \$450.00.

The Landlord claims the Tenant damaged fireplace tools at the rental unit and it will cost \$89.98 to replace these.

The Landlord claims for deep cleaning at the rental unit. He had an estimate from a cleaning company; however, he did not use this company to clean the rental unit. The Landlord testified that it actually cost him more to get the cleaning done by the other company. The Landlord alleges the Tenants had not cleaned the kitchen well, that there was food left in the fridge, and there were large deposits of cat hair in different places in the rental unit. The Landlord has submitted numerous photographs of the rental unit condition.

The Landlord alleges the Tenant did not clean the window sills, sliding door tracks, or air intakes or heat registers. The Landlord also alleges the Tenant failed to clean the bathroom to a reasonable degree.

The Landlord claims the Tenant damaged the drywall in the rental unit around the dining room window by leaving large holes caused by screws into the wall. There were nails left in walls and the corner bead was damaged where the blinds were. The Landlord claims the Tenant damaged other portions of the wall by installing a baby gate. The Landlord claims \$200.00 for his work for these repairs.

The Landlord claims the Tenant damaged the deck by using a power washer, which harmed the surface of the deck. The Landlord estimated the cost of him doing this repair.

The Landlord also claims for unpaid utilities at the rental unit. The Tenant agrees to pay the Landlord the sum of \$110.98 for this.

The Landlord testified he attempted to have the Tenant appear for the outgoing condition inspection report; however, he alleged the Tenant told him he was not getting his security deposit back anyhow, so he was just leaving or words to that effect.

The Tenant's Reply to the Claims

The Tenant testified that the Landlord is trying to make them look like they were absolute slobs in the rental unit. The Tenant testified that since there was no incoming condition inspection report so it is difficult to remember what condition the rental unit was in at the outset of the tenancy. The Tenant challenged the Landlord to prove what damages they had done, in the absence of an incoming condition inspection report.

The Tenant testified that many of the pictures taken by the Landlord were accurate depictions of the rental unit. The Tenant stated that the Landlord must have used a high pixel camera to take some of the close-ups though, as he did not see many of the items in the pictures.

The Tenant admitted that maybe they did not clean one or two of the rooms using the correct attachment for the vacuum cleaner. He acknowledged there was a hole in the carpet and wax on the carpet in places as well.

The Tenant testified that these were repairable damages though, and the entire carpet did not need to be replaced as this was "overkill". The Tenant testified he had the carpets sanitized and cleaned at the end of the tenancy.

The Tenant testified that the carpet cleaning company may have leaked some fluid on the driveway, but he doubted these were corrosive in nature. He testified that if his

truck did leak some oil, it would not harm the driveway, as it would only be one or two drops.

The Tenant testified he did not recall the fireplace tools when he moved in.

The Tenant testified he spent two entire days cleaning the rental unit. He testified they cleaned the window wells as best he could, which included kitchen cupboards, washing walls and pressure washing the deck.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

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.

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

I find the Tenant breached section 37 of the *Act* and the tenancy agreement by failing to clean the rental unit to a reasonable standard, or by making necessary repairs, and this breach has caused losses to the Landlord.

I accept the evidence of the Landlord that the Tenant and the Tenant's pet or pets harmed the carpets to an extent that they had to be replaced. The photographs indicate many areas of stains and carpet damage that would not allow "spot repairs". However,

under Policy Guideline 40 to the Act, the useful life of carpeting is 10 years. I find that the carpets have depreciated by four years or 40% and accordingly I allow the Landlord **\$1,124.24** or 60% of the remaining value of the carpets.

Policy guideline 40 sets out that,

“When applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement.”

[Reproduced as written.]

I dismiss the claim of the Landlord regarding the driveway without leave to reapply. The Landlord was unable to prove that the Tenant caused damage to the driveway. The Landlord’s own testimony was that he did not know if the Tenant’s truck damaged this or the carpet cleaning truck damaged this. Combined with the lack of an incoming condition inspection report, I find the Landlord has insufficient evidence to prove who or what caused this damage.

I dismiss the claim for replacing the fireplace tools. I find the Landlord had insufficient evidence to show the condition of these tools at the start of the tenancy and could not prove the Tenant damaged these.

I accept the evidence of the Landlord regarding cleaning at the rental unit. I find the photographic evidence proves there were many areas which were not cleaned to a reasonable standard. I found the photographs of many of these areas indicated a lack of reasonable cleaning. While it would be preferable for the Landlord to have submitted the actual invoice from the company that did the cleaning, I find the estimate provided in evidence is reasonable as it sets out the work to be done, the size of the rental unit and the rates to be charged. I allow **\$423.00** for this cleaning.

I also find there were several areas of the unit where the drywall or walls need to be repaired, as a result from damage by the Tenant. While the Tenant disputed the amounts claimed for these, the Tenant was able to make these repairs himself up until the end of the tenancy, although appears he chose not to do so. Therefore, I allow the Landlord **\$200.00** for these repairs.

I dismiss the claim of the Landlord regarding the deck, without leave to reapply. I find the Landlord failed to prove the Tenant was cautioned or warned that cleaning the deck

in certain ways might cause damage to the deck. I accept the evidence of the Tenant that he washed the deck in order to clean it and did not realize this would he damage it.

The parties agreed the Tenant owes **\$110.98** for utilities.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

The above leads me to find that the Landlord has established a total monetary claim of **\$1,908.22**, comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the Landlord retain the deposits of **\$1,350.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$558.22**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I note that while the Landlord had extinguished his right to claim against the deposits by failing to perform the incoming condition inspection report, section 72 of the Act allows an Arbitrator to offset an award made to a Landlord from any deposits held. I also note that the Tenant did not participate in the outgoing report, and that the Landlord filed this Application within the required 15 days.

I also note that the Landlord claimed for GST on items where it was not included in the price of the estimate. For example taxes were included in the carpet invoice, but not on the estimates. Therefore, as the Landlord did not have evidence the GST was paid on the estimated items, I do not allow this portion of the claim.

Conclusion

The Landlord has been partially successful in his claims. The Landlord is granted a monetary order, may keep the deposits in partial satisfaction of the claims, and is granted an order for the balance due of **\$558.22**.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 29, 2013

Residential Tenancy Branch

