



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' 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 tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

During the hearing the landlords withdrew their application for money owed or compensation for damage or loss

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlords were permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep the security and pet deposit?

Background and Evidence

The parties agree that this tenancy started on August 01, 2010 for a fixed period of one year. The tenancy then reverted to a month to month tenancy and ended on July 31, 2013 after notice was given by the tenants. Rent for this unit was \$2,100.00 per month and was due on the 1st day of each month. The tenants paid a security deposit of \$1,050.00 on July 02, 2010 and a pet deposit of \$500.00 on August 10, 2012. The parties also agree that the landlords did not conduct a move in condition inspection of the unit at the start of the tenancy.

The landlord testifies that the unit was a nearly new immaculate executive townhouse which had been built a year prior to this tenancy and had had one other tenant residing in it for a year. The landlord testifies that at that time they were not aware that they were required to do a move in inspection of the property. The landlord has however provided documentary evidence from the cleaning person who did a final clean after the last tenant moved out. The cleaner has confirmed in her statement that all areas of the house were clean and the carpet was not stained. The landlord has provided evidence to show that the carpets were new in August 2009 and cost \$5,578.80.

The landlord testifies that this unit had been advertised as a 'NO Pet' unit however the tenants did get a puppy without prior consent of the landlords in 2012. The landlord testifies that she did relent and allow the tenant to keep the puppy as their young daughter was already in love with the puppy. The tenants paid a \$500.00 pet deposit at that time and the lease addendum was changed however the tenants did not sign this when they returned it to the landlords.

The landlord testifies that at the end of this tenancy they found the carpets were heavily stained with an overpowering smell of urine. As the landlords were showing the unit to prospective tenants they could also smell the urine and see the many stained areas particularly in the loft area, the master bedroom and the tenants' daughter's bedroom. The landlords contacted a carpet company and were told that if these were dog urine

stains that cleaning would not remove them and the smell would come back through. The landlord testifies that they had no option but to rip up the carpets in three rooms. The landlord testifies that the smell was unbelievable and the staining had gone through the carpets the backing and the underlay. The only carpets which were not replaced were the stair carpets. The landlord testifies that they decided to replace the carpets with hard wood flooring as this was a cheaper option than to replace the carpets and underlay. The landlords have provided an invoice from the carpet fitter who has documented that the smell was unbearable and they had to wear protective gear and masks to remove the carpet due to the staining and smell being so toxic. The carpet fitter has stated that he has been a restoration expert for 25 years and the carpet and underlay were unsalvageable. The landlord seek to recover the amount of \$2,940.00 for the hard wood flooring including \$300.00 to remove and dispose of the old carpet and labour costs. The landlord has provided an invoice for this amount in evidence.

The landlord testifies that he had met the tenant at the unit with a painter. Prior to the landlords' arrival the tenant had agreed to pay the painter \$400.00 to paint the tenants' daughter's bedroom which the tenants had painted purple. The landlord testifies that the tenants had repaired other marks on the walls but painted them with mismatched paint. The painter agreed to paint these walls and charged the landlord \$400.00. The landlord testifies that the tenant did not pay the painter and agreed the landlord could deduct the cost of painting of \$400.00 from the security deposit. The landlords therefore seek to recover \$800.00 from the tenants for painting. The landlords have provided an email from the painter in evidence showing the work completed.

Then landlord testifies that the tenants had hired a cleaner but at the end of the tenancy the landlord found areas such as the stove, fridge and cupboards had not been cleaned. The landlord engaged the services of a two cleaners to do more work. This also included dusting after the new floors were laid. This cleaning bill came to \$140.00 however the landlord only seeks \$40.00 for the areas missed by the tenants.

The landlord testifies that the unit was fitted with a garbrator. This was fixed once during the tenancy and rocks from an aquarium were found in it. Once these rocks were cleaned out the garbrator worked fine again. After the new tenant moved in they complained that the garbrator was not working. The landlord sent a repairman around and the repairman found some broken scissors in the garbrator. These had damaged the motor and the garbrator had to be replaced. The landlords seek to recover \$202.22 and have provided an invoice for this amount.

The landlords testify that the tenant damaged the shower bracket. As just this part could not be replaced the landlords had to also replace the bar. The landlords had estimated this cost to be \$100.00. However, the landlords now amend their claim to \$35.92. An invoice has been provided in evidence for this amount.

The landlords seek an Order to keep the security and pet deposit in partial satisfaction of their claim and a Monetary Order for the balance.

The tenant disputes the landlords claim. The tenant testifies that they agree that their dog did cause some staining on the carpet but when they moved into the unit the carpets had not be professionally cleaned and there was an odor on the first floor. The landlords were asked to clean the carpet but they did not do so. The previous tenant did have a white fully cat at the unit when they viewed the unit and the tenant suspect that that cat had urinated on the carpets as the puppy will pee on another smell. The tenant disputes that the puppy was allowed in the bedrooms and testifies that the doors were kept closed. When the tenants went to work a gate was put at the stairs to prevent the puppy going up.

The tenant testifies that they were willing to pay for professional carpet cleaning however the landlord told them not to bother as they were going to replace the carpets with wooden flooring. The tenant testifies that he had called several carpet cleaning companies who said they would guarantee their work and the staining would not come back.

The tenant testifies that there were some scratches on the walls in the dining area, kitchen and entrance. When the tenants gave notice to end the tenancy they asked the landlord for some paint to touch up the walls but the landlord said he didn't have any. The tenant testifies that he got some matching paint and touched up the damage. The tenant agrees they had painted a bedroom purple and testifies that he had agreed to pay the painter \$400.00. The tenant agrees at the hearing that the landlord may deduct the sum of \$400.00 from the security deposit for this work.

The tenant disputes the landlords claim for cleaning. The tenant testifies that they hired a cleaner to clean the entire house and the cleaner spent 10 hours doing this work on July 24, 2013. The tenant paid \$210.00 and the tenant checked the unit after it was cleaned and found a good job had been done.

The tenant disputes the landlords claim for the garbrator. The tenant testifies that the garbrator never worked properly and got stuck making a loud noise. The landlord sent a handyman in who fixed this several times. The tenant testifies that a few weeks before they moved out it stopped working again; the landlord sent someone round but he did not have his tools with him so was supposed to return but failed to do so. The tenant testifies that he does not know anything about a pair of scissors being in the garbrator.

The tenant disputes the landlords claim about the shower fixture. The tenant testifies that when they moved in the shower in master bedroom was leaking from the hose. A repairman came and replaced the hose and at that time this holder was also cracked but the repairman did not have a part to fix that. As this holder was under pressure from holding the shower head it eventually broke but not through the tenants' actions or neglect.

The landlord asks the tenant if the tenants ever notified the landlords about the smell or carpet stains when they moved into the unit or when the garbrator was not working. The tenant testifies that he would call the female landlord about repair issues. And the female landlord said she would have the carpets cleaned at the start of the tenancy.

The landlord asks the tenant if the tenant ever notified the landlord that the shower holder was broken. The tenant responds that the female landlord wanted the tenant to call the repairman directly and so the tenant would follow up with him.

The landlord testifies that the carpets did not smell and were not stained at move in. The loft area was the worse area as shown in the landlords' photographic evidence. However the daughter's bedroom had many stains all around the area here her bed was placed and there were also spots on the master bedroom carpet. The landlords dispute the tenants' testimony that the puppy was not allowed in the bedrooms. The landlords also dispute that there was a cat in the unit with the previous tenant.

The female tenant testifies that she would walk the dog before work, at lunch time and again in the evening at other times the dog was restricted to downstairs by a baby gate

The tenant testifies that they had provided the landlord with a forwarding address verbally and by text message.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 32(2) and 32(3) of the *Act* which states:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I have reviewed the photographic evidence and the invoice from the carpet cleaner. This clearly indicates that the carpets were heavily stained with what appears to be dog urine stains due to the smell of urine in the home. The landlords failed to do the move in condition inspection report at the start of the tenancy; however, the landlords have provided further corroborating evidence from the cleaner that cleaned the unit when the previous tenant vacated. That cleaner has stated that the carpets were unstained and clean. Consequently, I find that the tenants are responsible for the dog urine stains on the carpet. Dog urine stains are notoriously difficult if not impossible to remove fully and as the stains and smell continue to come back through the carpets I must find in favour of the landlords claim for replacement flooring. However, as the carpets were four years old at the end of the tenancy I must deduct some percentage for depreciation of the carpets as the normal life span of carpets is considered to be 10 years. I accept that the landlords went with a cheaper option of flooring and therefore did not incur as much cost as they would have if they had replaced the carpets with a like for like carpet; therefore, I will limit the depreciation accordingly. Consequently, it is my decision that the landlords are entitled to a monetary award for **\$2,200.00** for the new flooring, tax and labour costs and **\$315.00** for the removal and disposal, plus tax of the old carpets.

In response to the landlords' claim for painting; as stated under s. 32 of the *Act* a tenant must remedy any damage. This includes damage to the walls and if a tenant has painted a wall in a different colour then the tenants should have restored this to the original colour at the end of the tenancy. The tenant agreed that the landlord may deduct \$400.00 from the security deposit and I therefore award the landlord a further **\$400.00** for the additional painting.

In response to the landlords' claim for cleaning; under the *Residential Tenancy Act* 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 their claim for \$40.00 is dismissed.

In response to the landlords' claim for the garbrator; the landlord failed to inspect the unit at the end of the tenancy to determine whether or not the garbrator was functioning correctly. The landlord argues that the new tenant complained that the garbrator was not working when they moved in. However, as no inspection was carried out the landlords have insufficient evidence to show that the garbrator was damaged and scissors placed in the garbrator by the tenants and not by the incoming tenants, or another person permitted on the property by the landlords. Consequently, this section of the landlords' claim is dismissed.

In response to the landlords' claim for the shower bar replacement; the tenants argue that this was already cracked at the start of the tenancy and eventually broke due to the pressure of holding up the shower. The landlord did not do an inspection at the start of the tenancy so there is no way to determine how the shower bar became broken or whether it was broken through the actions or neglect of the tenants. In this matter it is one person's word against that of the other and consequently the burden of proof has not been met. This section of the landlords' claim is therefore dismissed.

In response to the landlords' claim to keep the security and pet deposit; I refer the parties to sections 23(4) of the Act which requires a landlord to complete a condition inspection report at the beginning of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection report when the tenants moved in, I find the landlords contravened s. 23(4) of the Act. Consequently, s. 24(2)(a) of the Act says that the landlords' right to claim against the security and pet deposit for damages is extinguished.

When a landlords' right to claim against the security and pet deposit has been extinguished he is not entitled to file a claim to keep the security and pet deposit and if

the deposits have not been returned to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord a forwarding address in writing the landlord must pay double the security deposit to the tenant.

However, I have no evidence before me that the tenant ever provided a forwarding address to the landlords in writing. Verbal and text messages or e-mails are not considered to be “in writing”. The tenant agrees at the hearing that the address on the application is their forwarding address so I accept that from today’s date the landlords have now received the tenants’ forwarding address in writing. The landlords therefore have 15 days from today’s date to return the security and pet deposit less the amount of \$400.00 the tenant has agreed at the hearing that the landlords may keep for painting.

As the landlords have been partially successful with their claim I find the landlords are entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords for the following amount pursuant to s. 67 and 72(1) of the *Act*:

Replacement flooring	\$2,200.00
Removal and disposal of old carpets	\$315.00
Painting	\$400.00
Filing fee	\$50.00
Total amount due to the landlords	\$2,965.00

Conclusion

I HEREBY FIND in partial favor of the landlords’ monetary claim. A copy of the landlords’ decision will be accompanied by a Monetary Order for **\$2,965.00**. The order must be served on the respondents 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: November 18, 2013

Residential Tenancy Branch

