



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords 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 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

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began November 2010. Current rent in the amount of \$1,400.00 was payable on the first of each month. A security deposit of \$650.00 was paid by the tenants. The tenancy ended on August 31, 2013.

The landlords claim as follows:

a.	Broken bi-fold door	\$ 75.00
b.	Yard Maintenance	\$ 70.00
c.	Painting	\$ 500.00
d.	Cleaning	\$ 80.00
e.	Vinyl siding	\$ 300.00
f.	Light fixture	\$ 68.14
g.	New refrigerator	\$ 900.00
h.	Filing fee	\$ 50.00
	Total claimed	2,043.14

Broken bi-fold door

At the outset of the hearing the tenants agreed that they are responsible for the cost of the bi-fold door and agreed to pay the amount of \$75.00.

Yard Maintenance

The landlord testified that the tenants damaged the lawn by not watering, and that they hired someone to give the lawn some extra attention and trimming. The landlord seeks to recover the amount of \$70.00. Filed in evidence is a photograph of the lawn.

The tenants testified that they kept excellent care of the yard, as it was weeded, seeded and mowed regularly. The tenants stated that the browning of the lawn was due to a very hot summer and an insect problem. The tenants stated that the photograph submitted by the landlord is of a horrible quality and what looks like a dark area on the lawn is a tree shadow. Filed in evidence to support the tenant position are photographs of the yard.

Painting

The landlord testified that the tenants damage the walls in the rental unit. The landlord stated that the tenants did some patching of the walls prior to vacating the rental unit. The landlord stated that it cost them \$1,600.00 to have the unit painted, however, they seek compensation in the amount of \$500.00. Filed in evidence are photographs of the walls.

The tenant testified that the nicks and holes in the walls were minor and due to the natural wear and tear of living in a home for nearly three years. The tenants stated that they used a high quality filler/primer to repairs the marks and sanded them leaving them ready for painting. The tenant stated that they are not responsible for any painting costs.

Cleaning

The landlord testified that they incurred additional cleaning cost as the tenant did not properly clean the oven or the refrigerator. The landlord stated that the oven had to be scrubbed with an SOS pad. The landlord stated there was also a red substance on the ceiling that had to be removed. The landlord stated that they seek to recover the amount they paid to have these items cleaned in the amount of \$80.00. Filed in evidence are photographs of the appliances and ceiling.

The tenants testified that the oven is self cleaning and that they had turned the self cleaning program on, however, they did forget to wipe the oven out after the cycle had completed. The tenant stated that they were contacted by the landlords' agent and they came back and finished cleaning the oven. The tenants stated that they hired a professional cleaner to help clean the rental unit, however, the refrigerator in the basement was an oversight on their part. The tenants stated that based on the photograph submitted by the landlord that it would have taken no more than 10 to 15 minutes to clean the spots that were left in the refrigerator. The tenants stated that they have no idea about any red substances being on the ceiling and have no idea were on the ceiling the picture was taken. The tenant stated that it is very possible that this mark was on the ceiling when the tenancy began. Filed in evidence are photographs of the rental unit at the end of the tenancy.

Vinyl siding

The landlord testified that the tenants melted the vinyl siding with their barbeque. The landlord stated that they seek to recover the cost of 4 panels, plus the installations in the amount of \$300.00.

The tenants deny that they melted the vinyl siding. The tenants stated there were two panels that had some minor dimpling and when they talked to the landlords' agent they were informed that they had additional siding and it was not an issue.

Light fixture

The landlord testified that the tenants broke the light fixture in the bedroom upstairs. The landlord stated that while the tenants replaced the fixture, it was not the same quality as the other fixtures in the home. The landlord seeks compensation in the amount of \$68.14.

The tenants testified that they accidentally broke the light fixture and they were asked to replace the fixture by the landlord's agent. The tenants stated that they did their best to find a similar light fixture and there was no issue with light fixture when it was given to the landlords' agent. Filed in evidence is a photograph of the box of the light fixture, which displays a picture of the fixture.

New refrigerator

The landlord testified that the tenant damage the dairy compartment door in the refrigerator and the freezer door had an extreme amount of deep scratches. The landlords seek to replace the refrigerator in the amount of \$900.00. Filed in evidence are photographs of the door and dairy compartment.

The tenants testified that the cracked plastic in the dairy compartment door does not interfere with the function of the refrigerator and the scratches on the door are minor and also does not interfere with the function of the refrigerator.

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 landlords have the burden of proof to prove their claim.

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 tenants are required to return the rental unit to the landlords 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.

Broken bi-fold door

At the outset of the hearing the tenants agreed that they are responsible for cost of the bi-fold door. Therefore, I find the landlords are entitled to compensation in the amount of **\$75.00**.

Yard Maintenance

The evidence of the landlord was that the tenants damaged the lawn by not watering, and that they hired someone to give the lawn some extra attention and trimming. The evidence of the tenants was that they kept excellent care of the yard, as it was weeded, seeded and mowed regularly. The evidence of the tenants was that the browning of the lawn was due to a very hot summer and an insect problem.

In this case, both parties have submitted photographs to support their position. However, upon my review of the photographs, I find the landlords' photograph does not accurately capture the condition of the lawn as the color of the photograph is distorted.

The tenants' photographs are undistorted and supports that the tenants maintained the lawn as required by the tenancy agreement. As a result, I find the landlords have failed to prove that the tenants have violated the tenancy agreement, by not maintaining the yard. Therefore, I dismiss the landlords' claim for compensation for yard maintenance.

Painting

The evidence of the landlord was that the tenants damaged the walls and as a result the tenants did some patching of the walls prior to vacating the rental unit. The evidence of the landlord was it cost them \$1,600.00 to have the unit painted, and seeks compensation in the amount of \$500.00. The evidence of the tenants was that the nicks and little holes in the walls were minor and are wear and tear of living in a home for nearly three years. The evidence of the tenants was that they used a high quality filler/primer to repairs the scratched and holes and sanded them leaving them ready for painting.

In this case, the landlords have alleged that they paid \$1,600.00 for painting the unit and seek to recover a portion of that amount. However, the landlords have not provided any receipt. As a result, I am unable to determine if a loss exists. Therefore, the landlords' claim for painting is dismissed.

Cleaning

The evidence of the landlord was that they incurred additional cleaning cost as the tenant did not properly clean the oven or the refrigerator and there was a red substance on the ceiling that had to be removed and some other general cleaning. The evidence of the tenants was that the oven is self cleaning and that they had turned the self cleaning program on and that they forgot to wipe the oven out after the cycle completed. The evidence of the tenants was that after receiving a telephone call from the landlords' agent, they went back and cleaned oven. The evidence of the tenants was that the refrigerator in the basement was an oversight and believed it would have taken 10 to 15 minutes to clean the spots that were left in the refrigerator. The evidence of the tenants was that they have no idea about any red substances being on the ceiling and have no idea were on the ceiling the picture was taken. The tenant stated that it is very possible that this mark was on the ceiling when the tenancy began.

In this case, both parties have provided photographs. Upon my review of the photographs submitted by both parties, I find based on the totality of the photographs that the tenants left the rental premises reasonable clean as the items claimed by the

landlord are very minor in nature. I find the landlords have failed to prove a violation of the Act by the tenants. Therefore, the landlords' claim for cleaning cost is dismissed.

Vinyl siding

The evidence of the landlord was that the tenants melted the vinyl siding with their barbeque and seek to recover the cost of 4 panels, plus the installations. The evidence of the tenants was that they deny that they melted the vinyl siding and stated that there were two panels that had some minor dimpling.

In this case the landlord has provided no photographs of the alleged damage to the vinyl siding and has not provided any receipt for the cost of the repair. As a result, I find the landlords have failed to prove a loss exists. Therefore, I dismiss the landlords' claim for compensation for the vinyl siding.

Light fixture

The evidence of the landlord was the tenants broke the light fixture in the bedroom upstairs and the replacement fixture was not the same quality of the rest of the fixtures in the house. The evidence of the tenants that they did their best to find a similar light fixture and there was no issue with light fixture when given to the landlords' agent.

In this case, the tenants purchased a light fixture at the request of the landlords' agent. The landlords' agent did not provide the tenant with specific details of the light they want the tenants to purchase and when the fixture was given to the landlords' agent there was no dispute of the quality of the fixture provided by the tenants. I find the tenants repaired the damage that they caused when they replaced the light fixture. I find the landlords have failed to prove a loss exists or a violation of the Act, by the tenants. Therefore, I dismiss the landlords claim for compensation for the light fixture.

New refrigerator

The evidence of the landlord was that the tenant damaged the dairy compartment door in the refrigerator and the freezer door had an extreme amount of deep scratches. The evidence of the tenants was that the cracked plastic in the dairy compartment door and the scratches on the freezer does not interfere with the function of the refrigerator.

In this case, the landlord seeks to recover the cost of a new refrigerator. I find that position unreasonable as the dairy compartment door is likely a replaceable part and while the scratches on the freezer door are visible they appear to be minor.

While I accept the landlords' position that cracking a compartment door in the refrigerator would not be considered normal wear and tear and the tenants were required to repair the damaged compartment door, I find the landlords have not provided any evidence on the actual cost of replacing the compartment door. I find the landlords have failed to prove the actual amount required to be compensated. Therefore, I dismiss the landlords' claim for compensation for replacing the refrigerator.

I find that the landlords have established a total monetary claim of **\$75.00** comprised of the above described amount.

As the landlords were largely unsuccessful with their application, the landlords are not entitled to recover the cost of filing fee from the tenants.

I order that the landlords retain the amount of \$75.00 from the tenants' security deposit in full satisfaction of the claim and I grant the tenants a monetary order for the balance due of their security deposit in the amount of **\$575.00**.

Should the landlords failed to comply with this order, the order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlords are granted a monetary award and may keep a portion of the security deposit in full satisfaction of the claim and the tenants are 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: November 14, 2013

Residential Tenancy Branch

