



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with cross applications. The landlords applied for a Monetary Order for damage to the unit and authorization to retain all or part of the security deposit. The tenants applied for return of the security deposit, less an amount for an agreed upon deduction. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation from the tenants for the amounts claimed?
2. Disposition of the security deposit.

Background and Evidence

The tenancy commenced May 1, 2012 and the tenants paid a security deposit of \$475.00. The tenancy ended August 31, 2013. The landlord prepared condition inspection reports at the beginning and end of the tenancy with the tenant present. The tenant had been provided a copy of the condition inspection reports.

On the move-out inspection report the tenant indicated she did not agree with the landlord's assessment of the condition of the rental unit. The tenant provided a forwarding address on the report and the landlords filed their Application for Dispute Resolution within 15 days. The landlords continue to hold the security deposit.

Below, I have summarized the parties' respective positions regarding the amounts for which the landlord are claiming against the tenants.

Grass repair: \$21.15

The landlords requested and the tenant agreed to pay compensation of \$21.15 for grass seed to repair the grass where a sandbox had been located.

Cleaning: \$252.00

The landlords paid a cleaning service \$252.00 for cleaning for which the landlords seek to recover from the tenants.

The landlord submitted that the rental unit required additional cleaning in the following places:

1. Window tracks
2. Tops of kitchen cupboards
3. Entrance to crawl space
4. Hot water tank area

In support of this claim the landlord provided a receipt from the cleaning service. The receipt does not describe the specific tasks performed by the cleaners or the address at which the cleaning was performed. Rather, the receipt merely indicates three hours at \$84.00/hour were charged for “cleaning services”. The landlord testified that two cleaning ladies attended the unit for 3 hours.

The tenant submitted that she is a professional cleaner and that the rental unit was left in a condition that far exceeded their requirement to leave the unit “reasonably clean”. The tenant indicated she could not comprehend how the unit required an additional six hours of cleaning.

The tenant submitted that the landlords provided her with a list of items to clean on a document entitled “Information for Vacating Tenants” and that she followed it; however, the tenant acknowledged the top of the hot water tank was not cleaned and the tenant neglected to clean a shelf in the master bedroom vanity. The tenant also acknowledged that a couple of window tracks may have required additional cleaning as this term was not used specifically on the Information for Vacating Tenants. The tenant stated she cleaned the tops of the cabinets with a cleaning solution and the entrance to the crawl space had a stain that was there when she moved in.

The tenant provided several photographs of the unit taken on August 30 and 31, 2013 including close ups of the blinds that the landlord had indicated were dusty on the move-out inspection report.

Plumbing: \$138.61

The landlord submitted that two drains were clogged at the end of the tenancy and that a plumber attended the property after the tenancy ended. The plumber's invoice indicates that the "P/O and drain" in the ensuite basin were cleaned and the "P/O" in the main bathroom basin was cleaned and replaced. The plumber charged the landlords one hour of labour plus materials in the total amount of \$138.61.

The tenant submitted that the basins in question drained at the same pace as they did when the tenancy began. The tenant claimed the plug that was replaced was not broken by the tenants as they did not use the plug in that sink.

The tenant pointed out that the plumber's invoice does not indicate what was found in the drains or any indication that the drains or plugs were vandalized.

The landlord submitted that the rental unit was constructed approximately 5 years ago. The landlord appearing at the hearing stated he did not know what the plumber found in the drains.

Vacuum crawl space: \$8.50

The landlord submitted that there is a crawl space under the rental unit of approximately 1,000 square feet. After the tenancy ended the landlord spent ½ hour vacuuming dirt in the crawl space. The landlord claimed the dirt was not there when the tenancy began.

The tenant submitted that the crawl space was constructed of wood and concrete and used by the tenants to store items but that those items were not dirty. The tenant submitted that the nature of the construction could have resulted in some dust on surfaces but denied responsibility for bringing dirt into the crawl space.

The tenant also pointed out that the requirement to vacuum the crawl space was not identified on the Information for Vacating Tenants she was given by the landlords.

Blind cord repair: \$8.50

The landlord submitted that he spent approximately ½ hour to splice the blind cord so as to reinstall the pull knob that was broken.

The tenant submitted that she was unaware of a broken blind pull and that during an inspection the landlords conducted in July 2013 the blinds were tested and no damage was noted. Nor is a broken pull noted on the move-out inspection performed on August 31, 2013.

Near the end of the hearing, the landlord stated the property has been sold.

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 section 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. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

As the tenant did not agree with the landlord's assessment of the property as recorded on the move-out inspection report, the landlords bear the burden to prove the tenants left the unit damaged and unclean. It is important to note that 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.

Another consideration in claims for damage is that awards for damage are intended to be restorative. Thus, where an item has a limited useful life, it is appropriate to reduce the replacement cost by factoring in depreciation of the original item.

Below, I have analyzed the landlords' claims against the tenants.

Grass repair

As the tenant was agreeable to this claim the landlords are awarded and authorized to deduct \$21.15 from the security deposit.

Cleaning

The Act requires a tenant to leave a rental unit "reasonably clean". Where a landlord wishes to bring the standard of cleanliness higher than "reasonably clean" the cost for doing so shall be assumed by the landlord. The gap between reasonably clean and "perfectly clean" or "impeccably clean" is often seen where a landlord intends to sell the unit or re-rent the unit and wants to show the unit in its best condition. Thus, the

landlords bear the burden to prove the tenants failed to leave the rental unit “reasonably clean”.

The landlords largely relied upon a receipt from the cleaning company to prove their position. I have given little evidentiary weight to the cleaning receipt as it does not provide an address where the cleaning took place or a description of the services performed. In contrast, the tenants provided photographic evidence of the rental unit at the end of their tenancy. I find the tenants’ photographs depict a rental unit that appears very clean. While there may have been a few specific items that required additional cleaning, I find that the landlords did not satisfy me that the tenants left the unit in a condition that was less than reasonably clean, overall, and certainly not in need of six hours to bring the unit up to the standard of “reasonably clean”. Therefore, I find the tenants are not obligated to compensate the landlords for additional cleaning in the amount of \$252.00 and I dismiss this portion of the landlords’ claim.

Plumbing repairs

The Act provides that a tenant must leave a rental unit undamaged. The Act also provides that normal wear and tear is not damage. This is to recognize that components of a building wear out, degrade, and/or break due to the normal aging process and reasonable use of the item.

While I accept that two sink drains in the rental unit may have been “mildly clogged”, as described on the move-out inspection report, considering a plumber was called to the unit after the tenancy ended; I find the landlords have not proven the tenants’ actions or negligence caused the drains to become clogged or that their actions caused the plug to break. I make this finding based upon the following considerations:

- The tenant testified the drains were draining at the same pace as at the beginning of the tenancy;
- The plumber did not indicate what was found in the drains;
- The unit is five years old and debris in the drains may have existed prior to the tenancy or accumulated during the past five years when the unit was occupied by the tenants and other people; and,
- A five year old plug is likely at or near the end of its useful life.

In light of the above, I find the landlords failed to establish their claim against the tenants for plumbing repairs and I dismiss this portion of their claim.

Vacuum crawl space

Although the crawl space was not specifically identified on the Information for Vacating Tenants document, I find the tenants are required to leave the crawl space “reasonably clean” as they had exclusive use of this area. However, I find the disputed verbal testimony in the absence of other evidence insufficient to conclude the tenants left the crawl space less than “reasonably clean”. Therefore, I deny this portion of the landlords’ claim.

Blind repair

I was provided disputed verbal testimony that the blind pull was damaged by the tenants and no other evidence to corroborate the landlord’s submissions. Even if the landlord spent time repairing the blind cord I am unable to conclude this was the result of damage as opposed to wear and tear without more evidence. For these reasons, I deny this portion of the landlords’ claim.

Monetary Order

I make no award for recovery of the filing fee to either party. The landlords were largely unsuccessful in their Application for Dispute Resolution. The tenants’ application was unnecessary since the balance of a security deposit shall be ordered returned to a tenant where a landlord's request to retain it is dismissed.

In light of my findings, I order the landlords to return the balance of the security deposit of \$453.85 [\$475.00 – \$21.15] to the tenants without further delay. Provided to the tenants with this decision is a Monetary Order the tenants may serve upon the landlords and enforce in Provincial Court should the landlords fail to return the balance of the security deposit as I have ordered.

Conclusion

The landlords have been ordered to return \$453.85 of the security deposit to the tenants without further delay. The tenants have been provided a Monetary Order in this amount to serve and enforce as necessary.

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: December 20, 2013

Residential Tenancy Branch

