



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

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 on June, 1, 2006. Rent in the amount of \$1,085.00 was payable on the first of each month. A security deposit of \$487.50 was paid by the tenants. The tenancy ended on October 1, 2013.

The landlords claim as follows:

a.	Inside Cleaning	\$ 250.00
b.	Outside Cleaning	\$ 100.00
c.	Replace Stove	\$ 200.00
d.	Replace Range hood	\$ 30.00
e.	Replace Toilet	\$ 200.00
f.	Replace Blinds	\$ 100.00
g.	Filing fee	\$ 50.00
	Total claimed	\$ 930.00

Inside Cleaning

The landlords testified that the tenants did not clean the unit and they spent a considerable amount of time cleaning the entire unit, which included cleaning the cupboards, bathrooms, blinds and carpets. The landlords seek to recover the amount of \$250.00 for their labour. Filed in evidence are photographs.

The tenants testified that it was unfortunate that they were not ready, but they did as much cleaning as they could. The tenant stated when they did the walk thru, the landlord agreed that they would return the security deposit if they paid the waiter bill.

Outside Cleaning

The landlords testified that the tenants did not clean the outside of the property and they took one load of wood, bricks and other items to the dump. The landlord stated the tenants also left an incinerator that was full of dog feces.

The tenants denied leaving any garbage, except for two pieces of burnable firewood. The tenants stated that the bricks and the incinerator were on the property at the start of the tenancy and were left in the same condition.

Replace Stove and Range hood

The landlords testified that the tenants did not clean the stove or the range hood at the end of the tenancy. The landlord stated that they did not attempt to clean either of the appliances and purchased a second hand stove for \$200.00 and range hood for \$30.00. Filed in evidence are photographs of the stove and range hood.

The tenants acknowledged that they did not clean the stove at the end of the tenancy. The tenant's dispute they are responsible for the cost of the landlord purchasing another stove as the oven could have been cleaned using the self clean cycle which worked satisfactory on the appliance.

The tenants acknowledged that they did not clean the range hood, but stated that what the pictures depict are spots of rust and those spot were there at the start of the tenancy and they should not be responsible to pay for the cost of a range hood.

Replace Toilet

The landlords testified that they had to replace the toilet as it was heavily stained that could not be removed. The landlord seeks to recover \$200.00. Filed in evidence is a photograph of the toilets.

The tenants testified that they admit their three young boys often do not flush the toilet. The tenants stated they have had no problems cleaning the toilet in the past removing the calcium built when using the proper products. The tenants stated they are not responsible for purchasing a new toilet.

Replace Blinds

The landlords testified that there were 4 blinds that had to be replaced because they were either broken or so dirty that they would not come clean. The landlord seeks to recover \$25.00 per blind. Filed in evidence are photographs of the blinds.

The tenants acknowledge that they damaged one blind, the tenants deny and further damage and deny that the other blinds had to be disposed as they were merely dusty. The tenants agreed the cost of \$25.00 per blinds is a reasonable amount.

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 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 landlord(s) 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.

Inside Cleaning

The photographic evidence supports that some cabinets, blinds, toilets and carpets were not cleaned at the end of the tenancy. I find the tenants breached the Act, when they failed have these items cleaned at the end of the tenancy and as result the landlord suffered a loss.

In this case, the landlord seeks to recover the amount of \$250.00. However, they did not provide a detailed calculation of time for me to consider, in order for me to determine if the amount is reasonable and they did not provided photographs of the entire unit.

I find based on the documentary evidence that a reasonable amount to be compensation is 8 hours at the rate of \$15.00 per hour. Therefore I find the landlords are entitled to recover the cost of cleaning the unit in the amount of **\$160.00**.

Outside Cleaning

In this case, I find the landlords have failed to provide sufficient evidence as there were no photographs or move-in inspection from the start of the tenancy and there were no photographs of the condition of the outside at the end of the tenancy. I find the landlords have failed to prove a violation of the Act. Therefore, I dismiss this portion of their claim.

Replace Stove & Range hood

In this case, I find the tenants breached the Act, when they failed to clean the stove and range hood. However, I find the landlord failed to mitigate their loss as they made no attempt to clean the stove or range hood and it was highly likely, using the self clean cycle and some clean produced that the these appliance would have likely come clean. Therefore, I dismiss this portion of their claim.

Replace Toilet

In this case, I find the tenants breached the Act, when they failed to clean the toilet. However, the photographic evidence does not support that the toilet was required to be replaced, as the stains inside the toilet are minimal and it is highly likely that the stains could have been removed with the right cleaning product.

Further, the landlords have not provided any documentary evidence, such as receipts to support their claim. As a result, I dismiss this portion of their claim.

Replace Blinds

The tenants acknowledged that they caused damage to one of the blinds and that they left the blinds dusty. I find the tenants breached the Act, when they failed to repair and clean the blinds.

However, the landlords have not provided photographs that support all four blinds were damaged or any photographs of the blinds after they were cleaned, to prove cleaning was insufficient. The landlords have not provided any documentary evidence such as receipts to support their claim.

In this case, the tenants admitted that they damaged one blind and agreed \$25.00 was a reasonable replacement cost. Therefore, I grant the landlords the cost of replacing one blind in the amount of **\$25.00**.

I find the landlords have established a total monetary claim of **\$235.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlords retain the amount of \$235.00 for the security deposit and interest (\$503.73) in full satisfaction of the claim and I grant the tenants an order under section 67 for the balance due of their security deposit in the amount of **\$268.73**.

Should the landlords fail to return the balance due, this 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 of the security deposit and interest.

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: February 18, 2014

Residential Tenancy Branch

