



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord 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.

Preliminary matter

In this case, the landlord has filed a summation of cost; however, the total on that summation is greater than the amount requested in their application. As the landlord's application was not amended in accordance with the Residential Tenancy Rules of Procedure, the maximum allowable for compensation should the landlord be successful with their application is \$399.40 as claimed in the application.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy which began on May 1, 2012, and was to expire on August 31, 2012. The parties entered into a month-to-month thereafter. Rent in the amount of \$930.00 was payable on the first of each month. A security deposit of \$460.00 was paid by the tenant.

The parties agreed a move-in and move-out condition inspection report was completed, however, the tenant did not agreed to the move-out condition inspection and did not sign the report.

The landlord claims as follows:

a.	Curtain and blind cleaning	\$ 158.55
b.	Suite cleaning	\$ 45.00
c.	Painting	\$ 87.50
d.	Replace stove drip trays	\$ 40.61
e.	Replace shower rod	\$ 14.27
f.	Staff costs	\$ 80.00
g.	Filing fee	\$ 50.00
	Total claimed	\$ 475.93

Curtain and blind cleaning

The landlord's agent testified that clause 23 of the tenancy agreement provides that the tenant is required to have the curtains and blinds professional cleaned at the end of the tenancy. The agent stated the tenant was aware of this as it was included in the check out procedures documents that were given to the tenant on October 1, 2013. Filed in evidence is a copy of the tenancy agreement and check out procedures documents.

The tenant testified that she did clean the curtain and the blinds as required. However, they were not professional cleaned because they were not professional cleaned when she moved in. The tenant stated there was no evidence or discussion about the curtains being profession cleaned at the start of the tenancy and she would have disputed that because there were a couple of marks on the curtains at that time. Filed in evidence are photographs of the curtain and blinds at the end of the tenancy.

Suite cleaning

The landlord's agent testified that the tenant did not leave the rental unit reasonable clean as the grease screen of the range hood, and the oven and stove drip trays were not clean and the window track and bathroom fan grate were not cleaned. Filed in evidence are photographs. Filed in evidence is a receipt.

The receipt in part reads,

"vacuumed out and cleaned the bathroom fan and re-installed in ceiling, sprayed down and re-cleaned stove element liners, cleaned the stove fan grease splatter screen, wiped out the oven more thoroughly after cleaning from tenant, cleaned window troughs in kitchen, bedroom and living room sliding door, 1.5 hrs= 45 total charge"

[Reproduced as written]

The tenant testified that she spent hours cleaning the stove and oven and that her photographs support that she left the appliance reasonable clean. The tenant stated the landlord's photograph only show a small amount of dripping of oven cleaner inside the oven and the top inside panel. Filed in evidence are photographs.

The tenant testified that the stove drip trays were cleaned. The tenant stated the marking in the tray is from heat being vent from the oven and that is from normal use and is normal wear and tear.

The tenant testified she did not remove the ceiling fan to clean inside.

Painting

The landlord's agent testified that the tenant caused damage to 2 kitchen drawers, as there was some type of "Mack tack" installed and when it was removed it left some type of residue, which had to be sanded, primed and two coats of paint had to be applied. The agent stated there were also several holes in the walls that needed to be patched and painted and there was also some type of adhesive used on the window frame. Filed in evidence is a photograph of the draw. Filed in evidence is a photograph showing what is alleged to be adhesive on a window frame.

The tenant testified that she is having a difficult time trying to defend herself, as the holes in the walls and adhesive were not discussed at the move-out condition inspection. The tenant stated the holes are merely where she hung items on the walls, which is normal wear and tear. The tenant stated she has no idea about any adhesive as she never used any during her tenancy. The tenant stated the kitchen drawer was not damaged as the marks could have been removed by cleaning.

Replace stove drip trays

The landlord's agent testified that two of the stove drip trays were required to be replaced. The agent stated he only supplied a photograph of one of the drip trays. The agent stated the drip trays were at least 5 to 7 years old, however, has no information to support this.

The tenant testified that the stove drip trays were cleaned and she should not be held responsible for the landlord purchasing new ones as the marks are from normal wear and tear on the tray from heat being vented from the oven and from normal use of the appliance.

Replace shower rod

The landlord's agent testified that the tenant took the shower rod at the end of the tenancy.

The tenant testified she was not provided with a shower rod at the start of the tenancy and she had several conversations with the landlord's agent about this issue at the start of the tenancy. The tenant stated that she was told by the agent if she purchased a shower rod that they would reimburse her for the cost. The tenant stated she was not reimbursed for the shower rod that she purchased.

Staff costs

The landlord's agent stated that they seek to recover their staffing costs for having to remove, drop off, pickup and re-hang the curtains. The agent stated they also seek to recover their staff's time for having to purchase drip trays and a shower rod.

The tenant stated that she does not agree that she is responsible for any cost related with these items.

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 landlord has 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 tenant is required to return the rental unit to the landlord 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.

Curtain and blind cleaning

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, The tenant is expected to leave the internal window coverings clean when he or she vacates.

The landlord refers to clause 23 of the tenancy agreement, which stated that professional cleaning is recommended, if the window covering were new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy. However, I find it is not clear if the windowing covers were professionally cleaned at the start as there are no details on the contract or the move-in condition inspection report that indicated the parties had agreed that the window covering were professional cleaned at the start of the tenancy.

In this case, the evidence of the tenant was that she cleaned the curtain and the blinds and this is supported by the photographic evidence. I find the landlord has failed to prove a violation of the Act, by the tenant. Therefore, I dismiss this portion of the landlord's claim.

Suite cleaning

Under the Residential Policy Guideline 1, the tenant is expected to clean the vent of screens or fans, to clean the major appliances and clean the inside tracks of the windows.

In this case, the bathroom fan vent was not cleaned. The tenant's photograph #16 of the window sill, shows the sill clean, however the window track in that photograph is not sufficiently clean. I find the tenant breached the Act, when she failed to clean these items.

Further, I accept the tenant made an attempt to clean the oven and left minor deficiencies; however, cleaning the appliance was the tenant's responsibility. I find the landlord is entitled to recover the amount they paid for cleaning. Therefore, I grant the landlord compensation in the amount of **\$45.00**.

Painting

In this case, the landlord has failed to prove the tenant caused damage to the walls that were beyond normal wear and tear. Further I accept the evidence of the tenant was that she did not use any adhesive as this was not an issued at the move-out condition inspection.

However, I accept the evidence of the landlord regarding the kitchen drawers because if it was cleanable, it would have been reasonable for the tenant to have it cleaned prior to vacating the rental unit. Therefore, I find the tenant breached the Act, when they failed to repair the damage caused to the drawers. I find the landlord is entitled to compensation for the painting the kitchen drawers.

As the landlord's invoice also included items that I have found the tenants is not responsible to pay. Based of the details provided in the invoice, I find a reasonable amount for compensation for the repair of the kitchen drawers to be \$40.00. Therefore, I find the landlord is entitled to compensation in the total amount of **\$40.00**.

Replace Stove drip trays

In this case the tenant denied causing damage to the stove drip trays and believed this is caused by normal wear and tear as the oven exhaust vents through this particular tray. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. I find the tenant's position to be possible and reasonable, as the landlord has only provided a photograph of one of the drip trays and as a result, I have nothing to compare. I find the landlord has failed to prove the damage was caused by the action or neglect of the tenant. I find the landlord is not entitled to compensation for the stove drip trays. Therefore, I dismiss this portion of their claim.

Replace shower rod

In this case, both parties have provided a different version. The landlord's agent stated a shower rod was provided at the start of the tenancy. The tenant denied that one was provided and she purchased her own shower rod.

As the burden of proof is the landlords, I find in the absent of any further evidence, such as a notation on the move-in condition inspection report, that the landlord has failed to prove a shower rod was provided at the start of the tenancy. Therefore, I dismiss this portion of their claim.

Staff costs

As I have previous found that the tenant was not responsible to have, the curtain/blinds professional cleaned, for the cost of the stove drip trays or the cost of the shower rod, I

find the landlord is not entitled to compensation for their staffing costs. Therefore, I dismiss this portion of their claim.

I find that the landlord has established a total monetary claim of **\$135.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$135.00** in full satisfaction of the claim and I grant the tenant an order under section 67 for the balance due of their security deposit in the amount of **\$325.00**.

Should the landlord fail to return the balance owed, this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary award and may keep a portion of the security deposit in full satisfaction of the claim and the tenant is granted a formal order for the balance due of their security deposit.

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: March 5, 2014

Residential Tenancy Branch

