



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.

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 tenancy began on August, 1, 2011. Rent in the amount of \$850.00 was payable on the first of each month. A security deposit of \$425.00 was paid by the tenant. The tenancy ended on November 25, 2013. The landlord stated they received the tenants forwarding address on December 4, 2013.

The landlord claims as follows:

a.	Carpet cleaning	\$ 75.00
b.	Cleaning	\$ 80.00
c.	Broken door	\$ 80.08
d.	Visitor parking passes \$25 x 2	\$ 50.00
e.	Wall repair/painting	\$ 177.50
f.	Replace dairy bin in refrigerator	\$ 22.40
g.	Filing fee	\$ 50.00
	Total claimed	\$ 534.98

Carpet cleaning

At the outset of the hearing the tenant agreed to pay the landlord for the cost of the carpet cleaning.

Cleaning

The landlord's agent testified that the tenant did not leave the rental unit cleaned, and they had to clean the following items, all light fixtures, the blinds, the dishwasher, the stove/oven, underneath the kitchen sink, behind the refrigerator, the fronts of all the appliances, all the floors need to be vacuumed/washed, and some scuff and marks on the walls. The landlord seeks to recover the amount of \$80.00. Filed in evidence are photographs of the rental unit and of a receipt for cleaning.

The tenant testified that she disagreed that it would take four hours to clean the rental unit as she had cleaned the majority of the unit. The tenant stated the cabinet door was cleaned but the glass panel had a smear. The tenant stated the appliances were clean; however, they needed to be polished with a stainless product. The tenant stated under the kitchen sink was yellow because the garbage dispose had leak causing a stain and she had to keep towels to catch the water, until the landlord made the required repaired. The tenant testified that all the carpets were vacuumed and questioned the receipt submitted as there was not requirement for the carpets to be vacuumed again.

The tenant testified that she agreed the light fixtures, floors, and the counter/floor behind the appliances required cleaning.

The landlord's agent argued that the invoice is correct, as the carpets need to be vacuumed after they had repaired the damage to the walls caused by the tenant. The landlord stated most of the time was used to remove the light fixtures, wash the light fixtures and replace the light fixtures.

Broken door

The landlord's agent testified that the tenant broke a bi-fold door in the rental unit. The landlord's agent stated the tenant purchased a new door to rectify the damage caused, however, the door was not the correct size. The landlord's agent stated that the tenant paid the amount of \$48.79 plus taxes for the door.

The landlord's agent testified as courtesy they returned the door, at the tenants request, and they were invoiced the amount of \$31.50 for have the door picked up and returned to the store, and they received a credit of \$54.65 from the store. The landlord's agent testified that after these two amounts were offset, the actual credit to the tenant was \$23.15, which was applied to the purchase and installation of the new door which was \$103.23. The landlord seeks to recover the difference in the amount of \$80.08.

The tenant testified that she did break the bi-fold door and attempted to make the repair by purchasing a new door. The tenant stated that she did ask the landlord to return the door. The tenant stated she should not have to pay the cost of \$31.50, as the store is only a few minutes away and the amount claimed for returning the door seems unreasonable.

Visitor parking passes \$25 x 2

The landlord's agent testified that the tenant lost two visitor parking passes and the tenant agreed to pay for the replacement costs of \$25.00 for each card. Filed in evidence is a copy of the move out inspection.

The witness CT testified that she conducted the move-out condition inspection report with the tenant and in the report the tenant agreed to pay for the cost of the visitor parking passes that were not returned.

The tenant testified that she agreed her guest lost two parking passes and the value was \$25.00 for each card, however, she did not agreed to pay for those costs.

Wall repair/painting

The landlord's agent testified the tenant caused damage to the wall, as there were various chips in the walls and window sills that had to be repaired. The landlord's agent stated one window sill had a circular green stain, which had to be painted. The landlord's agent stated that the bi-fold door, which the tenant broke had to be painted as it was only primed. The landlord seeks to recover the amount of \$177.50. Filed in evidence is an invoice for the wall repair and painting.

The tenant testified that she believes the chips and scuffs are normal wear and tear after living in the unit for two and a half years. The tenant stated she does not know what the green circular stain was on the window sill, but believes it was there at the start of the tenancy.

Replace dairy bin in refrigerator

The landlord's agent testified the tenant broke the dairy bin compartment on the refrigerator. The landlord seeks to recover the amount of \$22.40. Filed in evidence is a receipt.

The tenant testified that she thought the dairy bin compartment was cracked at the start of the tenancy. The tenant stated that there is no evidence it was broken at the end of the tenancy.

The landlord's agent argued that the broken dairy bin is noted in the move-out inspection and there is no damage noted at the start of the tenancy.

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.

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.

Carpet cleaning

The tenant agreed to the cost of the carpet cleaning. Therefore, I find the landlord is entitled to recover the cost of carpet cleaning in the amount of **\$75.00**.

Cleaning

The tenant admits the light fixtures were not cleaned, the floors needed to be swept/ and the behind the appliance were not cleaned and the appliances need to be polished. These items are noted in the move-out inspection along with other items noted as dirty.

I find the tenant has breached section 37, when they failed clean the above items when they vacated the rental unit and this caused losses to the landlord.

In case, the evidence of the tenant was the work required should have been less than four hours. The evidence of the landlord was that the majority of the hours were used to remove, clean and replace the light fixtures. Upon my review of the move-out inspection there appears to be approximately 12 light fixtures and the photographs support that they were left dirty.

As a result, I accept the majority of the work was cleaning the light fixture as they had to be removed from the ceiling, washed and re-hung. I find on the balance of probability that it took four hours to clean the unit. Therefore, I find the landlord is entitled to recover cleaning costs in the amount of **\$80.00**.

Broken door

The tenant agreed that she broke the bi-fold door and attempted to make the repair by purchasing a new door. However, the new door was not the correct size. In the attempt to mitigate the loss the landlord paid to have the door returned and they received a credit, these amounts were offset and the difference was applied to the actual cost of the proper door.

The tenant in this case, does not dispute the landlord had to purchase a new bi-fold door or the credit received. The tenant does not agree with the amount of \$31.50, as the tenant believed that the amount charged is excessive.

In this case, the landlord only returned the bi-fold door the tenant purchased as a courtesy. I find the tenant had the choice to either to return the door herself or hire a third party. I find the position of the tenant unreasonable as the landlord was under no obligation to return the door for the tenant in the first place, I find the landlord is entitled to recover the cost she paid to have the door picked up and returned in the amount of \$31.50. Therefore, I find the landlord is entitled to recover the amount claimed for the door in the amount of **\$80.08**.

Visitor parking passes \$25 x 2

In this case, I accept the landlord's agent and the witness CT evidence over the tenants, that that the tenant agreed to pay for the two lost visitor parking passes because the move-out condition inspection reports reads, "2 visitor passes lost by tenant \$25.00 each to replace" which is initialed by the tenant.

Even if I accepted the tenants version that she did not agreed to the cost, (which I do not) the tenant is still responsible to pay for the cost of the lost visitor parking passes as this was neglect on the part of her guests.

Further, upon my review of the documentary evidence, the tenant signed a Form K, on August 11, 2011, which the tenant acknowledged that they must comply with the bylaws and rules of the building. Those Rules included the cost of lost or stolen parking passes.

Therefore, I find the tenant breached the Act, when they failed to return 2 visitor parking passes and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of the passes in the amount of **\$50.00**.

Wall repair/painting

The evidence of the tenant was that the walls repairs and painting should be considered normal wear and tear.

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.

I have reviewed the move-in condition inspection report and the move-out condition inspection report. In the move-in condition inspection report, various chips are noted throughout the rental unit to doors/casings. There was no evidence submitted by the landlord that these various chips were repaired during the tenancy. The move-out condition inspection report notes various chips were found in doors/casing, scuff marks, and the living room wall needs to be painted due to furniture drag mark.

I have further reviewed the photographs submitted by the landlord, which show door/casing chipped and minor scuff marks. I do not find that they show any significant damage other than normal wear and tear.

Even if, I accepted that the living room wall had to be painted due to a furniture drag mark, which would be neglect, the landlord has provided no evidence as to when the rental unit was last painted. The tenant is only responsible to pay the depreciated value of useful life span of an item, which I have determined paint is four years under the Residential Tenancy Branch Policy Guidelines.

As this tenancy was two and a half years, it is just as likely that the useful life span of the paint had expired, as the move-in condition inspection report does not support the rental unit was freshly painted at the start of the tenancy. Therefore, I dismiss the landlord's claim for wall painting and repair.

However, the bedroom bi-fold door was broken by the tenant that is not normal wear and tear, rather caused by neglect and is a breach of the Act. I find the landlord is entitled to compensation for painting and installing the bi-fold door.

I have reviewed the invoice submitted by the landlord. As I have found the tenant is not required to pay for the painting walls and walls repairs, and I have determined the tenant is responsible for the cost of painting and installing the bi-fold door, I have

allowed the landlord to recover 40 percent of the invoice. Therefore, I find the landlord is entitled to recover the amount of **\$71.00**.

Replace dairy bin in refrigerator

In this case, the tenant alleged the dairy bin compartment was cracked when she moved into the rental unit, however, that is not supported by the move-in condition inspection report. Further, the tenant stated it was not listed in the move-out condition inspection report. However, upon my review of the move-out inspection, page one, clearly shows the dairy bin compartment broken.

Section 21 of the Act States a condition inspection report completed in accordance with this section is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

As the tenant has not provided a preponderance of evidence to the contrary, I find the tenant breached the Act, when they failed to repair the broken dairy bin compartment and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of the dairy bin compartment in the amount of **\$22.40**

I find that the landlord has established a total monetary claim of **\$428.48** 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 **\$425.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$3.48**.

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 and may keep the security deposit in partial satisfaction of the claim and the landlord is 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: April 15, 2014

Residential Tenancy Branch

