



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STRATA'S CHOICE PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MND, MNSD, FF

Introduction

This was an application by the landlord for a monetary order for damage to the rental unit and to retain the security deposit in partial satisfaction of any monetary claim and recover their filing fee. Both parties participated in the hearing with their testimony and document evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started in November 2009 and ended November 30, 2013 when the tenant vacated. The landlord currently holds the security deposit in trust in the amount of \$400.00. I have benefit of a tenancy agreement signed by both parties subsequent to the start of the tenancy, as well as the start and end of tenancy condition inspection reports (CIR) mutually conducted. It must be noted that the tenant stated on the CIR they did not agree with the report, but that the landlord could retain the security deposit in full. Their testimony was that they meant for the security deposit of \$400.00 to mitigate all issues or deficiencies the landlord identified.

The landlord claims that the tenant caused damage to the rental unit beyond the scope of *reasonable wear and tear* and left the rental unit unclean - beyond *reasonably clean*. The landlord provided an invoice for a series of repairs identified as: "*minor*

imperfections”, broken kitchen cabinet door, re-attach(ment) of a dryer vent, water-damaged baseboards (in living room), all with paint to match. The landlord also provided some photographs allegedly depicting damages. The landlord testified that *minor imperfections* referred to some scratches, crayon marks, a hole in the drywall, and various screw holes. The tenant disputes the landlord’s claim for this portion of the application, which they refer to as *normal* wear and tear resulting from a 4 year tenancy. The tenant testified that the claimed repaired kitchen cabinet door should also be considered reasonable wear and tear as it simply did not stand up to normal daily use. The landlord claims that this damage seems to have been identified in the CIR but for which they did not provide a photograph of the claimed damage. The landlord testified that the actual owners of the unit selected quotes to remedy those issues in the unit in preparation for re-renting and that the end result is that some items may have been captured which were not fully identified in the CIR. The tenant disputes the landlord’s claim respecting the re-attachment of the dryer vent as they claim it was never unattached from the wall, and the landlord could not fully explain this portion of their claim. The tenant acknowledged that the installation of an air conditioner in the living room likely caused water damage to the baseboard / trim below.

The landlord also provided an invoice for carpet cleaning which was supported by the CIR identification of stained carpeting (“badly stained”). The tenant and landlord testified that the carpeting throughout the unit was cream or white in colour. The tenant claims that as a result the carpeting was difficult to keep clean. The landlord further provided an invoice for cleaning services for general cleaning of the unit, including cleaning of the stove oven and interior of the refrigerator. The tenant testified they meant to clean these particular items but they did not possess the items to do so. The tenant testified, that overall, they determined the landlord’s claims to be excessive in contrast to the work performed. The tenant testified that they disagreed with the landlord’s assessment resulting in their claim.

Analysis

Section 7 of the Act states as follows:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Under the *Act*, the party claiming damage or a loss bears the burden of proof.

Moreover, the applicant must satisfy each component of the following test as prescribed by the provisions of **Section 7** of the *Act*:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs, or replacement. The onus is on the tenant to show that the expenditure is unreasonable or extravagant.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of damage and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage incurred.

Section 37 of the *Act*, in relevant part, states as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

The landlord relies on their determination that the tenant caused the purported damage. The tenant relies on their argument that they did not cause damage, however the rental unit incurred reasonable wear and tear.

On the face of the evidence, I do not wholly accept the landlord's claim for repairs. I find that the reference to "*minor imperfections*" by the landlord's contractor is not

consistent with “damage” to the unit, and in the landlord’s testimony of what constituted *minor imperfections* I find that the unit likely incurred reasonable wear and tear, for which the tenant is not responsible. I further find the inadequately explained *re-attachment of the dryer vent* does not confirm a result attributable to the *actions or neglect of the tenant*. In addition, I do not find the landlord provided sufficient evidence to support their claim a *broken kitchen cabinet door* was the result of *actions or neglect of the tenant*. None the less, I find that the balance of the claimed repairs is damage to the unit, for which the tenant is responsible. As a result, I grant the landlord the set amount of **\$200.00** for repairs of damage to the unit.

On preponderance of the evidence in respect to the carpeting, I accept the landlord’s claim for carpet cleaning, and general cleaning, in the claimed amount **sum of \$672.50**. The landlord is also entitled to recovery of the filing fee. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Repairs for damage	\$200.00
Carpet cleaning	\$472.50
Cleaning	\$200.00
Filing Fees for the cost of this application	50.00
<i>Less Security Deposit</i>	<i>-\$400.00</i>
Total Monetary Award to landlord	\$522.50

Conclusion

I Order that the landlord retain the security deposit of \$400.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$522.50**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 29, 2014

Residential Tenancy Branch