



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlords' application is seeking orders as follows:

1. For a monetary order for damages to the unit;
2. For a monetary order for money owed or damage or loss under the Act;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking order as follows:

1. Return all or part of the security deposit.

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 a monetary order for damages?

Is the landlord entitled to monetary compensation for damages?

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

Is the tenant entitled to the return of double the security deposit?

Background and Evidence

The parties entered into a tenancy which began on September 2012. Rent in the amount of \$650.00 was payable on the first of each month. A security deposit of \$325.00 was paid by the tenants.

The parties agreed a move-in and move-out condition inspection report was not completed.

Landlords' application

The landlord claims as follows:

a.	Cleaning costs	\$ 120.00
b.	Replacement of couch	\$ 223.97
c.	Damage decking do to fire	\$ 250.00
e.	Drywall repair	\$ 70.00
f.	Filing fee	\$ 50.00
	Total claimed	\$ 797.97

Cleaning costs

The landlords testified that the tenants did not leave the rental unit reasonable cleaned and that she and her friend spent six hours cleaning. The landlords stated that they seek to be compensated for the six hours they spent cleaning at the rate of \$20.00 per hour.

The landlords testified the tenants did not clean the refrigerator as they left food behind. The landlord stated the tenant did not clean any of the unit, as they had to clean all the cupboards, the blinds were covered in dirt and mould. The landlords stated that there were also cobwebs throughout the unit and the wall has splatters of food. The landlords stated nothing had been wiped down by the tenants. Filed in evidence are photographs of the unit, which support the landlords' position.

The tenants testified that they did not clean the blinds and the mould was there because of poor circulation. The tenants stated that because the landlord did not do a walk out with them that they were unsure of what cleaning they were required to complete.

The landlords argued that the tenants were still moving their belongings out of the rental unit and they were to notify her prior to leaving as she was right next door and the tenant just left, without doing any cleaning.

Replacement of couch

The landlords testified that the tenants damaged the couch as there was a rip in the fabric, which was not repairable. The landlords stated that they have provided a comparison of the couch and the replacement cost is \$199.97, plus taxes.

The tenants testified that there was no rip in the couch when they vacated the premises. The tenants stated the couch was in the same condition as when the tenancy started.

Damage decking do to fire

The landlords testified that the tenants were careless with their cigarettes and this started a fire on the deck. The landlords stated that the cost to repair the deck was \$250.00. Filed in evidence is invoice for repair. Filed in evidence are photographs showing area on the deck burnt.

The tenants testified that they acknowledge they started the fire and agreed the landlord is entitled to compensation; however, they are unsure if the amount they are claiming is reasonable.

Drywall repair

The landlords testified that the tenants caused damage to the drywall as there was a large dent which had to be repaired. The landlords stated that they paid to have the repaired made and seek compensation in the amount of \$70.00. Filed in evidence is a photograph of a dented wall. Filed in evidence is an invoice for the repair.

The tenants testified that they did not dent the wall during their tenancy and that the dent was there when they moved into the rental unit.

Tenants' application

The tenants claim as follows:

a.	Double the return of the security deposit	\$ 400.00
	Total claimed	\$ 400.00

Double the return of the security deposit

The tenants testified that they did not give the landlords their forwarding in writing as required and acknowledge that they are not entitled to double.

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 each party has the burden of proof to prove their respective 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.

Landlords' application

Section 37 of the Residential Tenancy Act states:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Under section 37 of the Act, the tenants are required to return the rental unit to the landlords 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.

Cleaning costs

In this case, the evidence of the landlords was that the tenants did not leave the rental unit reasonable cleaned. The photographs submitted support the landlord's position. The tenants did not dispute the photographs that were submitted as evidence. I find the tenants breached the Act, when they failed to clean the unit to a reasonable standard and this caused losses to landlord as the landlord was required to use their time to clean the rental unit. I find the landlords are entitled to compensation for clean in the total amount of **\$120.00**.

Replacement of couch

The evidence of the landlords was the tenants caused damage to the couch as it was ripped at the end of the tenancy. The evidence of the tenants was that it was not ripped and the couch was in the same condition as when the tenancy commenced.

I find in the absent of any further documentary evidence, such as a move-in condition inspection report, to prove the condition of the couch at the start of the tenancy, that the landlords have failed to provide sufficient evidence to support that the damage was caused by the tenants. Therefore, I dismiss this portion of the claim without leave to reapply.

Damage decking do to fire

The tenants acknowledge that they cause damage to the decking as a result of a fire. I find the tenants breach the Act, when they failed to repair the damage caused at the end of the tenancy.

In this case, I accept the evidence of the landlords that the repair to the deck cost them \$250.00 as this is support by an invoice. I also find the cost of the repair was reasonable based on the work that had to be completed. Therefore, I find the landlords are entitled to recover the cost to repair the deck in the amount of **\$250.00**.

Drywall repair

The evidence of the landlords was that the tenants damaged the wall by denting. The evidence of the tenants was that they deny causing any damage and stated the dent was there at the start of the tenancy.

I find in the absent of any further documentary evidence, such as a move-in condition inspection report, to prove the condition of the walls at the start of the tenancy, that the landlords have failed to provide sufficient evidence to support that the damage was caused by the tenants. Therefore, I dismiss this portion of the claim without leave to reapply.

I find that the landlords have established a total monetary claim of **\$420.00** comprised of the above described amounts and the \$50.00 fee paid for this application

Tenants' application

Although the tenants applied for double the return of the security deposit, the tenants acknowledged they did not provided the landlords with their forwarding address in writing prior to filing their application. I find the penalty provision under the Act, do not apply. Therefore, I dismiss the tenants' application for the return of double the deposit.

Conclusion

The landlords are granted a monetary order in the amount of **\$420.00** and may keep the security deposit of **\$325.00** in partial satisfaction of the claim and the landlords are granted a formal order for the balance due of **\$95.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The tenants' application is dismissed.

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: May 23, 2014

Residential Tenancy Branch

