



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

Although provided to the Residential Tenancy Branch as evidence to support the claims being made in its application, the Landlord did not provide copies to the Tenant of photos and a move-out inspection. Given this evidence from the Landlord and considering the prejudice to the Tenant’s ability to know and respond to the evidence, I find that I may not consider this evidence in making a determination of the Landlord’s claims.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started in November 2009 and ended on March 31, 2014. Rent of \$1,500.00 was payable monthly and at the outset of the tenancy the Landlord collected \$750.00 as a security deposit. The Parties mutually conducted a move-in inspection and completed a report.

The Landlord states that the Tenant was given two offers to complete a move-out inspection but cannot recall how these offers were made. The Landlord states that the Tenants refused to attend the unit to make the inspection on either offers so the Landlord completed the inspection without the Tenant. No copy of this report was provided to the Tenant. The Tenant states that the Landlord did not make any offers and refused the Tenant's request to conduct a move-out inspection on March 31, 2014. The Tenant states that the Landlord only asked if the unit was cleaned when they returned the keys at the end of the tenancy and that the Landlord said she would check the unit and let the Tenant know about the state of the unit.

The Landlord states that the carpets were not left reasonably clean at the end of the tenancy and claim the cost of professional cleaning. The Landlord states that the carpets are 20 years old. The Tenant states that because of the age of the carpets they would not clean properly throughout the tenancy and that at the end of the tenancy a professional cleaner did clean the carpets. The Tenant provided a copy of the cleaning invoice.

The Landlord states that the Tenant failed to leave the unit reasonably clean and that the Landlord spent several hours cleaning the entire unit, including walls that were greasy. The Landlord claims the costs of their cleaning and the cost of supplies. No invoice or receipt was provided for either claim. The Landlord states that the walls in the unit also required painting and claims the cost of supplies. The Tenant states that the walls were damaged by a previous fire in the unit and that the damaged walls were simply painted over leaving them difficult to clean. The Tenant states that they both cleaned the unit themselves and hired a cleaner as well. The Tenant provided a receipt

for the move-out cleaning. The Landlord does not dispute the fire and states that only the kitchen was affected by minimal smoke and that the unit was last painted 8 or 9 years ago.

The Landlord states that the Tenants left the shelves in the closet out of place and left holes inside the closet. The Landlord states that about 12 light bulbs were replaced along with broken 20 year old ceramic tiles on the window sill. The Landlord claims the costs of the supplies to reinstall the shelves, the light bulbs and the tiles. No receipt or invoice was provided for the costs claimed.

The Landlord states that the drapes in the unit were not left clean and claim the cost of \$559.68. No invoice was provided. The Landlord states that the drapes were 20 years old and last cleaned in October 2009. The Landlord states that the chain links in the drapes were also rusted however the Landlord chose not to replace the chain due to the expense and withdraws that claim. The Tenant states that the drapes were made of cloth and that stains could not be removed from the cloth. The Tenant states that they cleaned the drapes with soap and water to the best of their ability and that the life of drapes such as these is 10 years.

The Landlord states that the Tenants damaged the stove to the extent that it needed to be replaced. The Landlord states that the bottom of the stove was rusted. The Landlord states that the stove was purchased as a reconditioned stove in 2007 and does not know how old the stove was at that time. The Landlord states that the oven was not working as told to her by the Tenants at the end of the tenancy. The Landlord states that at the end of the tenancy the Landlord did not know how to make the stove operate so replaced it. The Landlord claims the replacement cost. The Tenant states that the stove was "garbage", was missing the temperature control buttons and that the oven did not work from the onset. The Tenant states that the Landlord was told of the problem during the tenancy and that the Landlord and her brother looked at the stove but did not know how to fix it so left it as is.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the evidence of the age of the stove, I find it more likely that the stove required replacement due to its age and not from any act or negligence of the Tenant. I therefore dismiss this claim. Given the evidence of the age of the carpet and drapes, I find it more likely that their useful life is spent and that the Landlord has not established a loss in relation to these items. I therefore dismiss this claim. Considering the undisputed evidence of prior fire and repairs to the walls, I accept the Tenant's evidence that the walls could not be kept clean. In these circumstances, I find that the Tenant left the unit with reasonable wear and tear. Given the Landlord's evidence of the age of the wall paint in the unit, I find that there was no longer any useful life to the paint and the Landlord has not established any loss. I dismiss the Landlord's claim to paint the walls.

Given the lack of receipts in relation to the shelves and light bulbs, I find that the Landlord has not established the costs claimed and I dismiss these claims. Given the age of the tiles, I find that cracks are the result of reasonable wear and tear and I dismiss this claim.

Given the lack of photos or a move-out condition inspection report and considering the Tenant's evidence of cleaning, I find that the Landlord has not substantiated that the Tenant left the unit unclean and I dismiss the costs claimed.

As none of the Landlord's claims have been successful, I find that the Landlord is not entitled to recovery of the filing fee. As the Landlord still holds the security deposit, I order the Landlord to return the \$750.00 plus zero interest forthwith.

Conclusion

The Landlord's claims are dismissed. I grant the Tenant an order under Section 67 of the Act for **\$750.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: August 08, 2014

Residential Tenancy Branch