



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNR, MND, MNSD, FF

For the tenants - MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit and to recover the filing fee from the tenants for the cost of this application. The tenants applied to recover the security deposit and to recover the filing fee from the landlord for the cost of this application

One of the tenants and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision..

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
is the landlord permitted to keep all or part of the security deposit?

- Are the tenants entitled to recover the security deposit?

Background and Evidence

The parties agree that this tenancy started on August 23, 2013 for a month to month tenancy. Rent for this unit was agreed at \$1,100.00 per month and was due on the 1st of each month. The tenants paid a security deposit of \$550.00 on August 24, 2013. The tenants provided a forwarding address in writing to the landlord on February 07, 2014.

The landlord testified that the tenants vacated the rental unit on February 07, 2014. The tenants did not pay rent for February and the landlord seeks to recover rent from February 01 to February 07 at \$35.50 a day to the amount of \$248.50.

The landlord testified that she did not complete a move in or a move out inspection of the unit however the carpets had been professionally cleaned prior to the tenants taking possession of the unit. At the end of the tenancy the landlord testified that she was on vacation but when she inspected the unit on February 27, the landlord and a witness viewed the unit and found the tenants had not had the carpets professionally cleaned as per their agreement to do so at the start of the tenancy. The landlord testified that the tenants had a dog and a cat in the unit which had made marks on the carpet and there was cat hair. The landlord testified that she had to pay \$160.00 to have the carpets professionally cleaned.

The landlord testified that the tenants had not left the unit in a clean condition, The cupboards had not been wiped out, the fridge had food left in it which had gone mouldy, the oven had not been cleaned and was filthy, the walls had to be wiped down, the windows and doors had to be cleaned and the tenants had left bags of garbage outside the entrance door which had to be removed. The landlord testified that although she has a part time cleaning business she did not want to get involved in cleaning the unit

herself so employed the services of a cleaner. The cleaner came and cleaned for six hours at \$25.00 per hours. The landlord seeks to recover \$150.00

The landlord testified that the tenants had broken a glass shelf in the freezer. The tenants did not replace this shelf so the landlord had to have it replaced at a cost of \$125.00 which includes labour costs.

The landlord testified that when she filed her application she was upset and requested additional sums. The landlord amends her application at this point to only include the amounts detailed above. The landlord has not provided any invoices or receipts in documentary evidence.

The landlord requests an Order to keep the security deposit to offset against the landlords monetary claim for rent and damages. The landlord also seeks to recover the filing fee of \$50.00.

The tenant attending does not dispute the landlord's claim for unpaid rent for the first seven days of February. The tenant agrees the landlord may withhold \$248.50 from the security deposit.

The tenant disputes the landlord's claim for carpet cleaning. The tenant testified that the staining shown on the carpets in one of the tenants' videos was already there at the start of the tenancy. The landlord had insisted that the tenants not clean the carpets at the end of the tenancy and had told the tenants she would look after it. The tenant testified that the carpets were all vacuumed.

The tenant disputes the landlord's claim for cleaning the unit. The tenant testified that they had cleaned the unit including the cupboards, vacuumed the carpets and cleaned the floors. The tenant testified that his wife had unplugged the fridge and pulled it out to clean behind it. The tenant testified that if the landlord did not inspect the unit for

another three weeks after the tenants moved out as the fridge was unplugged this could have caused mould. The tenant testified that he believes his wife did clean the oven.

The tenant disputes the landlord's claim that the tenants broke a shelf in the freezer and testified that the appliances were all left in the same condition as they were in at the start of the tenancy.

The tenant testified that the landlord may deduct \$248.50 from the security deposit however the tenants seek to recover the balance of \$301.50. The tenants also seek to recover their filing fee of \$50.00 from the landlord.

The landlord testified that her witness did take photographs of the kitchen cupboards, the carpets and the fridge, however the landlord agrees she has omitted sending these in evidence. The landlord testified that it was the food left in the fridge that caused the mould and the broken shelve was very visible. The landlord testified that at the beginning of February the tenants said they would clean the carpets themselves however the landlord testified that she told the tenants they had to have the carpets cleaned professionally as they had agreed to at the start of the tenancy or deduct the cost from the security deposit.

The landlord calls her witness. The witness testified that he is a friend of the landlord and he went to the unit with the landlord on February 27, 2014 when the landlord had returned from vacation. The witness testified that he took photographs of the unit. The witness testified that the fridge was mouldy, there was food left in the fridge and a shelve has broken in the freezer; the oven has very dirty and the shelving in the kitchen cupboards had not been cleaned. The skylight was also dirty. The witness testified that the carpets were unclean in the bedroom, living room and at the entrance to the bathroom. The witness testified that he also saw bags of garbage outside the backdoor.

The tenant declines to cross examine the witness and the landlord.

The landlord cross examined the tenant and asked the tenant when the tenant vacuumed the carpets. The tenant responded and stated the carpets were vacuumed on February 07, 2014 after the furniture was removed from the unit.

The tenant makes final submissions and states that the landlord has sought to avoid the *Act* by not providing a written tenancy agreement, by failing to do move in or out inspection reports, by not providing receipts for rent paid in cash. The tenant testified that their video evidence shows the unit was left in a clean condition and counters the landlord's claims.

The landlord makes final submissions and states that she did not want to rent the unit and only rented to these tenants as they needed somewhere to live quickly and they had a dog.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regards to the landlord's claim for unpaid rent; I refer the parties to s. 26 of the Residential Tenancy Act (The *Act*) which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant does not dispute that rent is owed for seven days in February, 2014; consequently, I uphold the landlord's claim to recover unpaid rent of \$248.50.

With regard to the landlord's claim for damages; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I find the landlord did not complete a move in or a move out condition inspection report. The purpose of completing a report is to show the condition of the unit at the start and end of the tenancy to determine what damage, if any, was caused during the tenancy. Furthermore I have no evidence such as photographs showing the alleged damage or cleaning required. However, a tenant is required to shampoo or steam clean the carpets at the end of tenancy if the tenants have a pet that is not caged. The tenants did keep a cat and a dog and while I accept that the landlord had asked the tenants to let the landlord keep part of the security deposit to clean the carpets professional; as this is not required under the *Act* the tenants could have had the carpets steam cleaned or shampooed themselves or professionally if they so choose. As the carpets were not cleaned by the tenants I will allow the landlord to deduct an amount for carpet cleaning from the tenants' security deposit. The landlord claims the carpet cleaning was \$160.00; however, as I have no invoice from the landlord to corroborate this amount I must limit the landlord's claim to \$100.00.

With regard to the landlord's claim for \$125.00 to replace the broken freezer shelf; as the landlord did not complete the move in condition inspection report detailing that this glass shelf was intact at the start of the tenancy; the landlord has provided insufficient evidence to show that the tenants are responsible for the broken shelf in the freezer. Consequently, this section of the landlord's claim is dismissed.

With regard to the landlord's claim for cleaning; as explained to the parties during the hearing, the burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other corroborating evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The tenants have provide some video clips showing areas of the unit clean, The landlord has testified that there were areas left unclean and the landlord's witness has corroborated this claim. The tenants' video clips do not show inside the oven, the kitchen cupboards or the fridge and freezer and therefore it is my decision, on a balance of probability, that these areas were not left to a reasonable standard of cleanliness. The landlord seeks to recover the amount of \$150.00 for cleaning; however, the landlord has insufficient evidence in the form of an invoice to meet the burden of proof of the actual amount charged to clean the unit; I therefore must limit the landlord's claim to \$75.00.

As the parties have both been partially successful with their respective claims I find both parties must bear the cost of filing their own applications.

I Order the landlord to keep part of the security deposit as follows:

Unpaid rent	\$248.50
Carpet cleaning	\$100.00
Cleaning	\$75.00
Less security deposit	(-\$550.00)
Total amount due to the tenants	\$126.50

Conclusion

I HEREBY ORDER the landlord to retain the amount of \$423.50 from the tenants security deposit pursuant to s. 38(4)(b) of the *Act*.

A copy of the tenants' decision will be accompanied by a Monetary Order for \$126.50 pursuant to s. 38(6)(b) of the *Act*. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial Court 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: June 16, 2014

Residential Tenancy Branch

