



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNDC, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords 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.

Preliminary matter – February 25, 2014

In this case, the tenants submitted their documentary evidence on February 13, 2014. On February 19, 2014, the landlords submitted their rebuttal documentary evidence, which are photographs. The tenants indicated that they have not received any photographs from the landlord.

As the photographs are relevant to the issues and the tenants have not had an opportunity to review the photographs. I find an adjournment is appropriate in this matter as the principles of natural justice require that a person given particulars of the claim against them. As result this matter was adjournment to my next available date, which was June 3, 2014.

Preliminary matter – June 3, 2014

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 order for compensation for loss?

Background and Evidence

The tenancy began on April 15, 2013. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$625.00 and a pet damage deposit of \$200.00 were paid by the tenants. The tenancy ended on October 31, 2013.

The parties agreed a move-in condition inspection report was completed.

The landlords claim as follows:

a.	Carpet cleaning	\$ 220.00
b.	Broken Roman Blind	\$ 80.00
c.	6 hours of cleaning at \$30.00 per hour	\$ 180.00
d.	Loss of revenue	\$ 475.00
e.	Filing fee	\$ 50.00
	Total claimed	\$ 1,024.00

Carpet cleaning

At the outset of the hearing the parties agreed that the landlord had permission to retain \$200.00 from the security deposit for carpet cleaning and that the balance of \$625.00 has been returned to the tenants. The tenants agreed to pay the landlords a further \$20.00 for carpet cleaning as that was supported by an invoice for carpet cleaning.

Broken Roman Blind

The landlord testified that the blind was new at the start of the tenancy and that the tenants caused damage as the pulley mechanism was broken and the blind has to be replaced. The landlord stated that they had originally purchased two blinds and they were able to use the extra blind to replace the broken blind. The landlord claims the amount of \$80.00.

The tenants testified that they did not cause any damage to the blind and stated that the move-in condition inspection report noted that there was damage to the blind at the start of the tenancy.

The landlord argued that the tenants have altered the original move-in condition inspection report as they gave the tenants the original copy and failed to keep a copy for their records.

The tenants deny making any alterations and stated that the original document was submitted as evidence for consideration. Filed in evidence is the original move-in condition inspection report.

6 hours of cleaning at \$30.00 per hour

The landlord testified that the tenants failed to clean the windows and the stove at the end of the tenancy. The landlord stated that his wife spent six hours cleaning the rental premises and that she is very particular on how items are cleaned. The landlord stated they seek to recover the amount of \$180.00. Filed in evidence are photographs of the stove, window tracks, and drain.

The tenants testified they left the rental unit cleaned. The tenants stated they have no idea when those photographs were taken but they were not at the end of the tenancy. The tenants stated that they took their own photographs of the rental premises at the end of the tenancy and the unit was left cleaned. Filed in evidence are photographs of the rental unit which support the tenants' position.

The witness for the tenants testified that she helped clean the rental premise and that she cleaned the stove and all the windows. The witness stated she has reviewed the landlord photographs and stated that those photographs were not taken at the end of the tenancy.

Loss of revenue

The landlord testified that because the carpets were not steam cleaned at the end of the tenancy and there was further cleaning required that they were not able to rent the unit until November 15, 2013. Filed in evidenced is a copy of the new renters tenancy agreement, which was signed on November 15, 2013.

The landlord confirmed that they did not have a new renter that was to take possession of the rental premises on November 1, 2013.

The tenants testified that there was no requirement to leave unit empty to have the carpets steam cleaned. The tenants stated they had arranged for the carpets to be cleaned but at the last minute the company was unable to attend. The tenants stated that they told the landlord that if they incurred extra cost for moving furniture that they would be happy to pay those costs.

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 landlords have 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.

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.

Carpet cleaning

At the outset of the hearing the parties agreed that the landlord had permission to retain \$200.00 from the security deposit for carpet cleaning. The tenants agreed to pay the difference between the amount already paid and the invoice. Therefore, I find the landlord is entitled to recover the difference for carpet cleaning in the amount of **\$20.00**.

Broken Roman Blind

The evidence of the landlord was that the blind was brand new at the start of the tenancy. However, I have reviewed the original receipt for the blinds and the blinds were at least four months old at the start of the tenancy.

Further, the landlord alleged that the tenants have altered the move-in condition inspection report. The tenants denied making any changes to the report. I have reviewed the original move-in condition inspection report and I am unable to determine if there is any merit to the landlord allegations, as there is nothing obvious on the report

that would lead me to believe it has been altered. The landlords did not retain a copy of the report.

As a result, I find the landlords have failed to prove sufficient evidence to support that the damage to the blind was caused by the actions or neglect of the tenants. Therefore, I dismiss this portion of their claim.

6 hours of cleaning at \$30.00 per hour

In this case, both parties have provided a different version of events on the cleanliness of the rental property. The evidence of the tenants and their witness was that the photographs submitted by the landlord as evidence were not taken at the end of the tenancy and do not know when they were taken.

The tenants have submitted photographs of the rental unit which were taken at the end of the tenancy, the landlord did not dispute those photographs. As a result, I accept the photographs of the tenants and those photographs support the tenants left the rental reasonable cleaned as required by the Act. The tenants are not required to leave the rental premises to a standard higher than specified in the Act. I find the landlords have failed to prove a violation of the Act, by the tenants. Therefore, I dismiss this portion of their claim.

Loss of revenue

Under the Residential Tenancy Policy Guidelines, even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim for loss of rent.

In this case, the landlords are claiming loss of rent because the carpets were not steam cleaned by the tenants at the end of the tenancy and for additional cleaning. Although the tenants were required to shampoo the carpets, I find this alone is not sufficient enough to delay renting the unit as the photographs do not support the carpets were left in such a stated that left the premises un-rentable. Also any additional cleaning the landlord completed was to bring the rental unit to a higher standard than required by the Act, which I have previous found the tenants were not responsible for.

Further, the landlord had not found a new renter to take over the rental premises on November 1, 2013 and it was not until November 15, 2013, that a new tenancy agreement was signed with the new renter. I find the landlords have failed to prove that the loss they incurred was a result of the actions of the tenants.

In light of the above, I find the landlords have failed proved this portion of their claim. Therefore, I dismiss this portion of their claim.

I find that the landlords have established a total monetary claim of **\$20.00** comprised of the above described amount.

As the landlords have been largely unsuccessful with their application and the only monetary award granted was for the extra cost of carpet cleaning which was agreed to by the tenants and could have been settled without a hearing. I find the landlords are not entitled to recover the cost of the filing fee from the tenants.

Therefore, I grant the landlords a formal monetary order in the above amount under section 67 for the Act.

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

Conclusion

The landlords are granted a monetary order in the above amount.

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 06, 2014

Residential Tenancy Branch

