



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for 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 tenant for the cost of this application. The landlord withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant 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

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy started on September 01, 2010 for a fixed term tenancy of one year. The tenancy then reverted to a move to move tenancy until June 01, 2014 when the tenant vacated the rental unit. Rent for this unit was \$1,500.00 a month due on the 1st of each month. The tenant paid a security deposit of \$500.00 on September 03, 2010. The landlord did not complete a move in or a move out condition inspection report at the start or end of the tenancy although the parties did walk through the unit. The tenant provided a forwarding address in writing on June 15, 2014.

The landlord testified that originally there were two tenants named on the tenancy agreement. The other tenant moved out of the unit in January 2012 and this tenant assumed the tenancy on her own. The landlord testified that the tenant left an old camper at the unit. This camper is very neglected and has a mouse infestation. In order to dismantle the camper to remove it from the property the landlord has to clean the camper to get rid of all mice droppings and urine for make it safe to dismantle. The landlord seeks an amount for his time and labour to do this work of \$224.00. This amount also includes the costs the landlord incurred to remove the stove from the unit that the tenant left behind. The landlord has estimated that this work will take approximately 4.5 hours and the landlord seeks to recover \$40.00 an hour.

The landlord claimed a further amount of \$213.00 to remove the camper from the property plus a skate board ramp. The landlord has based this cost on an estimate from a tow company who would charge the landlord \$110.00 per hour. The landlord testified that he intends to do this work himself and estimates it will take 1.5 hours to tow the camper and the skate board ramp. The landlord therefore adjusts his claim to \$165.00.

The landlord testified that this was a non smoking unit and the tenant was aware of this on the agreement. The landlord testified that the tenant or a person visiting the unit left burn marks on the toilet seat and the lino in the bathroom. The landlord testified that he looked up the cost of replacing the toilet seat and has provided a quote for \$58.87. The

landlord testified the linoleum quote may be approximately \$224.00. However, the quote is actually for \$739.04 which includes installation. The landlord testified that the linoleum is approximately 20 years old.

The landlord testified that the tenant got a dog halfway through the tenancy. The carpet on the main floor was left in an extremely stained condition and has an overpowering smell of dog urine. The landlord testified that he did get a quote to have the carpet cleaned but due to the condition and the smell of the carpet, the carpet cleaner could not guarantee he could get the stains or smell out of the carpet. The landlord determined that the carpet should be replaced instead. The landlord has provided an invoice for carpet replacement for \$2,872.30 which includes underlay and installation. The landlord testified that the carpet is approximately 20 years old.

The landlord testified that he has had to paint the bathroom to rid of the smell of smoke. The landlord did this work himself and seeks to recover the cost of \$224.00 which includes \$43.49 for paint.

The landlord seeks an Order to be permitted to keep the security deposit to offset against the damages and to recover the filing fee of \$50.00.

The tenant disputed the landlord's claims. The tenant testified that she thought her ex-roommate was going to remove the trailer and when he failed to do so the landlord did not give the tenant the opportunity to return to the property to remove the trailer herself or the skate board ramp and stove.

The tenant testified that her mother who came to visit and the tenants ex roommate both smoked in the bathroom. The landlord has often visited the unit and has never complained about the smell of smoke before. The tenant agreed that the toilet seat was probably burnt when her ex roommate throw his cigarettes down the toilet. The tenant also agreed that the linoleum must have been burnt when they smoked in the bathroom

as it is a small room; however, the tenant disputed the landlords claim because the linoleum was very old.

The tenant testified that the staining on the carpet was juice and coffee and not dog urine. The stains were caused over the four year period of the tenancy and are normal wear and tear. The tenant disputed that the carpets were clean when they moved into the unit and the landlord had previously lived there with his dog. The tenant testified that the stained carpet is only in one room. The tenant testified that the landlord evicted the tenant because he wanted to do renovations in the unit and now expects the tenant to pay for these.

The landlord testified that whenever he did come to the unit the smell of smoke was evident and after the tenant moved out it was really obvious. The landlord testified that he wanted to sell the unit so needed to bring it back up to par and to replace the carpets and refinish the floors.

The tenant asks the landlord how the landlord came up with \$40.00 an hour. The landlord responded that this is an hourly rate for contractors. The tenant asks the landlord is he a contractor or a cleaner. The landlord responded that he is not a contractor or cleaner but this is the hourly rate he charges.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. 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 have considered the landlords claim for damages. The parties agreed that the landlord did not complete a move in or move out condition inspection report at the start and end of the tenancy, I therefore have considered other corroborating evidence to determine the condition of the unit at the start and end of the tenancy to proof that any damaged happened through the actions or neglect of the tenant.

The landlord has provided sufficient evidence to show that the tenant abandoned a camper at the property. These photographic also show the mice infestation of this camper which I agree the landlord would have to clean before removing the appliances and dismantling the camper in order to remove it from the property. The tenant argued that she was not given the opportunity to remove the camper. The Residential Tenancy regulations part five deals with the abandonment of personal property at a rental unit. A landlord is only required to store the tenant's belongings for a period of 60 days if it is sanitary to do so. In this case I find, due to the mice infestation, that the camper was not sanitary and the landlord has a right to treat this as abandoned and dispose of it.

However, I find the landlords hourly rate for the cleaning of this trailer to be extreme. I therefore limit the landlords claim to **\$175.00**. I further find the landlord is entitled to recover **\$165.00** to dispose of the trailer, the skate board ramp and the stove.

With regard to the landlords claim for a new toilet seat; I find the landlords evidence along with the tenants testimony concerning people smoking in the bathroom to be relevant to the damage caused to the toilet seat. I find as the evidence shows this replacement seat to be **\$58.87** that this is a reasonable amount claimed. I therefore uphold the landlords claim for a replacement toilet seat.

With regard to the landlords claim for painting the bathroom; the tenant disputed that the bathroom smelt of cigarettes, the landlord has the burden of proof to show that the bathroom did smell of smoke from cigarettes. I find on a balance of probabilities that the bathroom did smell of cigarettes and as the tenant was aware this was a nonsmoking unit and still allowed people to smoke in the bathroom then I must uphold the landlords claim for painting of **\$224.00**.

With regard to the landlords claim for replacement linoleum and carpet; I refer the parties to the Residential Tenancy Policy Guidelines number 40 which deals with the useful life of building elements which includes carpet and linoleum. This guideline states when applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement. If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or

information published by the manufacturer. Parties to dispute resolution may submit evidence for the useful life of a building element.

The landlord has testified that the carpet and linoleum were approximately 20 years old. The useful life table shows that carpets have a useful life of 10 years. Although linoleum does not appear on the table and the landlord has provided no evidence to show the useful life of linoleum I have determined it to be the same as carpets as 10 years. Consequently as the carpets and linoleum are twice their useful life I find the landlord would be responsible for replacement of these items and therefore cannot hold the tenant responsible for their replacement costs. These sections of the landlords claim are therefore dismissed.

With regard to the landlords claim to keep the security deposit; Sections 23(4) and 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the tenant moved in and out of the unit, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(c) and s. 36(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

I find however, that sections 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep \$500.00 from the tenants' security deposit to compensate the landlord for the damages.

As the landlords claim has some merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant. A Monetary Order has been issued for the following amount:

Cleaning of camper	\$175.00
Removal of camper, ramp and stove	\$165.00
Toilet seat	\$58.87
Painting	\$224.00
Filing fee	\$50.00
Less security deposit	(-\$500.00)
Total amount due to the landlord	\$172.87

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$172.87**. The Order must be served on the respondent. If the respondent fails to pay the Order, the Order is enforceable 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: November 18, 2014

Residential Tenancy Branch

