



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant provided documentary evidence to the Residential Tenancy Branch but did not provide this evidence to the landlords. The tenant's evidence has therefore not been considered pursuant to s. 3.17 of the Rules of Procedure. The tenant confirmed receipt of evidence.

Issue(s) to be Decided

Are the landlords entitled to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy started on April 01, 2012. This was originally a fixed term tenancy for a year and reverted to a month to month tenancy at the end of the first year. Rent for this unit is \$1,500.00 per month due on the 30th of each month in advance. The tenants paid a security deposit of \$750.00 and a pet deposit of \$350.00 on March 30, 2012. Both parties attended the move in and the move out condition

inspections of the unit and the tenant received a copy of the report within the landlords' evidence package. This tenant provided a forwarding address in writing on June 30, 2014 when the tenancy ended. There were two tenants residing in this unit however as the landlords have only filed an application against the female tenant this hearing proceeded with this tenant only.

The landlords have applied to keep a portion of the security deposit comprised of the following:

Item 1. Lawn repair	\$50.00
Item 2. Broken tile	\$155.00
Item 3. Burnt deck	\$200.00
Item 4. Cleaning of tub and surround	\$60.00
Item 5. Carpet cleaning	\$200.00
Item 6. Filing fee	\$50.00
TOTAL	\$715.00

SDG testified that the tenants' dog had ruined the lawn at the back of the deck. The landlords were able to repair this by dropping two loads of soil from their farm and spreading grass seed. The landlords seek to recover \$50.00 for the grass seed and their time to do this work.

SDG testified that there was a broken tile at the entrance to the house which was not repaired by the tenants. When asked, the tenants did not appear to know how this broken tile occurred.

SDG testified that the tenants caused some burn marks on the deck. There was also some charring to the deck post. The landlords have had to have the post sanded down and five to six boards cut out and replaced. KB testified that he had seen a bag of ash

left on the deck and assumes that if the tenants had previously put hot ash out on the deck it could have burnt the boards.

SDG testified that the tub was left badly stained. SDG testified that the house uses well water with a softener and if the tenants do not regularly clean the tub and surround it stains the tub yellow. SDG testified that the tub was found to be stained yellow and the landlords had to hire a cleaner to clean the tub and surround. The cleaner charged the landlords \$30.00 an hour and spent two hours doing this work.

SDG testified that the tenants had not left the carpets clean at the end of the tenancy. The tenants had signed a lease agreement and a pet agreement agreeing that the carpets would be professionally cleaned at the end of the tenancy. SDG testified that the tenants had informed the landlords that they owned their own cleaning company and had notified the landlords that the carpets had been regularly cleaned with the last cleaning being completed in the spring of 2014. SDG testified that the carpets reeked of dogs. There was not time to clean the carpets before the new tenant moved in so the new tenant spot cleaned the carpet and deodorized them. The living room carpet was removed and replaced with laminate flooring. The landlords agreed that the new tenant would not be responsible for cleaning the carpets at the end of the tenancy and the landlords' intention is to have them cleaned at that time. The landlords have provided a quote for carpet cleaning for the four bedrooms, two sets of stairs and the hall for \$200.00. SDG testified that this was the lowest of the estimates they had received. SDG testified that the original tenancy agreement stated that the tenants could have one dog. Later the tenants brought in another dog which the landlords reluctantly agreed they could keep and a cat.

The tenant disputed the landlords' claims. The tenant testified that the lawn was damaged but this was from the tenants' log pile and not the tenants' dog. The tenant testified that at the end of the tenancy the landlords said they had the material to repair the lawn and it was not a problem.

The tenant agreed that there was a broken tile at the entrance door and testified that they had no idea how this tile became broken.

The tenant testified that on the move in report there is no indication or place to record exterior issues. The tenant testified that the deck could have already been damaged prior to their tenancy. The tenant disputed that they never put out hot ash on the deck as they have small children. If the tenants had put hot ash into a bag or bucket it would have melted these if it was still hot. The tenant testified that when they moved into the unit the deck was wet and any marks would not have been visible. The post was not charred but did already have some black marks. The tenants just thought that this was how the post was.

The tenant testified that when they moved into the unit SDG was in the tub scrubbing it because it was so yellow. The tub was still yellow after the landlord had finished. The tenant testified that they maintained the tub and cleaned it regularly with an environmental safe cleaning product. The tub was always yellow but the landlord did mention at the inspection that it was improved.

The tenant testified that the landlords were aware that the tenants had a cleaning company and that they had professionally cleaned the carpets. The tenant testified that the carpets were cleaned regularly and were last cleaned on June 25/26, 2014. When they did the move out inspection SDG commented that the carpets looked good and seemed fine. SDG had also mentioned that the new tenant's daughter had allergies to pets and the landlord would let them know if anything else arose as the carpets had passed inspection.

The tenant testified that she did not see the landlord fill in the inspection report as they walked around the unit and everything was discussed verbally. They only received a copy of the report when they got the landlords' evidence package and were not given the opportunity to read or sign it and therefore could not disagree with any of the landlords' comments on the report.

The tenant testified that when they received the landlords' e-mail detailing the amount the landlords wanted to keep from the security deposit, the tenants were shocked as they thought everything with the exception of the broken tile as all good. The tenant disputed that the carpets smelt. The tenant testified that they had requested the landlords do the inspection on June 25 so the tenants could make good any repairs before the end of the tenancy. The landlords were not available on that day and proposed June 26. As the tenants were not available on June 26 the inspection was done on the day the tenants vacated.

KB disputed the tenant's claims concerning the wood pile. KB testified that the wood was not piled on this section of the lawn. This section was where the tenants' dog was tied up by the deck. KB testified that the deck did not have any previous damage or it would have been indicated on the move in report as there is a section for exterior damage to be recorded. KB testified that the carpet did smell musty and had a strong dog odor. SDG testified that there is no evidence that the tenants cleaned the carpets on June 25/26 but the tenants had left the windows open all day and when the landlord closed them and returned the next day the unit smelt horrible. SDG testified that she did fill in the inspection report as they walked around the unit but could not provide the tenant with a copy at that time as the landlords do not have a copy machine. A copy was made and sent to the tenants in the required time frame. SDG testified that she was remiss in forgetting to ask the tenant to sign the report.

The tenant asks KB if there was any indication that the plastic bag KB saw on the deck was melted from hot ash. KB responded that the bag was not melted and was sitting in another place away from the damage on the deck. KB states that he assumed after seeing ash on the deck that the tenants could have left hot ash on the deck before which would have caused the burn marks.

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 claimants have 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.

Section (s) 32(3) of the *Residential Tenancy Act (Act)* states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. With this test in mind I find the landlords' photographic evidence shows the damaged lawn area, the broken tile, the areas of deck marked and the tub; however the pictures do not show that the tub or surround are yellow and there are no pictures of stained or unclean areas of the carpet. I have therefore considered the inspection reports at move in and move out to determine the condition of the bath and carpets at the end of the tenancy. The move out condition inspection report indicates that the

carpets in the front entry, the living room, the dining room, the three bedrooms and den/bedroom require shampooing and smell like dog and the tub is badly stained. The tenant has argued that she was not given the opportunity to disagree with the landlords comments on the move out inspection report as the tenant was not given the report to sign and did not get the report until the tenant received the landlords' evidence package.

The Residential Tenancy Regulations s. 18 states that the landlord must give the tenant a copy of the signed condition inspection report for an inspection made under section 35 of the *Act*, promptly and in any event within 15 days after the later of:

- (i) the date the condition inspection is completed, and
- (ii) the date the landlord receives the tenant's forwarding address in writing.

I therefore find that although the landlords were remiss in not getting the tenant to sign the report on the day the inspection was completed the tenant equally could have asked to see the report and signed to disagree with any of the landlord's comments contained within the report. I further find the report also contain information about the broken tile, damage to the yard and details the damage to the grass and the deck. The landlords did send the report to the tenant within the 15 allowable days and therefore I consider the report to be valid.

I am therefore satisfied that the tenants are responsible for the damage to the lawn, the broken tile, the burn marks on the deck, the stains on the tub and surround.

The tenants are also responsible for carpet cleaning. I refer the parties to the Residential Tenancy Policy Guidelines #1 which includes a section on carpet cleaning and states that the tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises. As the tenants had two dogs and a cat, I find the tenants were responsible to ensure the

carpets were steam cleaned or shampooed at the end of the tenancy. The tenant argued that the carpets had been cleaned on June 25 or 26; however, I have insufficient corroborating evidence to support this claim and therefore I find the landlords' evidence more credible.

The landlords have therefore met the burden of proof in this matter and the test applied for damages. Consequently, it is my decision that the landlords are entitled to retain the amount of **\$665.00** from the security and pet deposits pursuant to s. 38(4)(b) of the *Act*. As the landlords' claim has merit the landlords are also entitled to recover the **\$50.00** filing fee pursuant to s. 72(1) of the *Act* and may deduct that from the security and pet deposit. This leaves a balance of \$385.00 which must be returned to the tenant.

Conclusion

I HEREBY find in favor of the landlords' claim to retain the amount of **\$715.00** from the security and pet deposits.

A copy of the tenant's decision will be accompanied by a Monetary Order for **\$385.00** for the balance of the security and pet deposits pursuant to s. 38(6)(b) of the *Act*. The Order must be served on the landlords. If the landlords fail 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 27, 2014

Residential Tenancy Branch

