



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order to keep the security deposit for the cost of damages to and cleaning of the rental unit.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the Landlords entitled to monetary compensation from the Tenants sufficient to keep the security deposit?

Background and Evidence

This tenancy began in August of 2011, with the parties entering into a written, fixed term tenancy agreement. The Tenants paid the Landlords a security deposit of \$575.00 and at the end of the tenancy the rent was \$1,193.00 per month. The last tenancy agreement between the parties was a fixed term tenancy that was to end on September 1, 2014.

A condition inspection report from August 28, 2011, setting out the condition of the rental unit at the outset of the tenancy was in evidence before me.

On or about May 29, 2014, the Tenants wrote the Landlord an email explaining they were vacating the rental unit by July 1, 2014. The Tenants explain in this correspondence that there is noise from the other units that has caused them to move.

The Tenants vacated the property on or about June 28, 2014, and an outgoing condition inspection report was performed on June 30, 2014.

The Landlords are now claiming they incurred or will incur costs to clean and repair the rental unit due to the condition it was left in by the Tenants.

The Landlords claim the Tenants damaged the stainless steel freezer door. The Landlords claim there are scratches on the door and that they were informed the door would cost \$622.85 to replace. In evidence the Landlords supplied a photograph of the door, which shows more than a dozen scratches or marred areas on the door, and an email quote that it will cost **\$622.85** to replace the door.

The Landlords claim the Tenants damaged a cupboard door by using a kettle or a rice cooker just below it, and the steam damaged the door. The Landlords enquired as to the cost of re-staining the door and were informed that it would cost more to remove the door, then re-stain the door and then re-hang it than simply buying a new one. The Landlords claims **\$188.75** to replace the cabinet door with a new one. In evidence the Landlords supplied a picture of the door showing it is discoloured in places.

The Landlord testified that the above items were four to five years old and that they had been in the rental unit since it was new.

The Landlords claim the Tenants stained the carpets and did not have a professional carpet cleaner clean the carpet. The Landlords claim the carpets were cleaned by the Tenants but were still filthy and they had to re-clean them. They claim **\$120.00** for carpet cleaning. In evidence the Landlord supplied photographs of the stains, which appear in several places on the carpets.

The Landlords provided an estimate of the cost of replacing the carpets, although they have not claimed for this.

The Landlords also claim for cleaning of the rental unit. They claim the Tenants left certain areas of the rental unit dirty, including the laundry room, fridge and other areas.

The Landlords claim \$20.00 per hour for four hours of cleaning, totaling **\$80.00**. In evidence the Landlords supplied photographs of crumbs on a couple of shelves.

In reply to the Landlords' claims the Tenants deny all of their claims. The Tenant's position is that they did not leave the rental unit filthy and that any damage was normal wear and tear. The Tenants claimed they were down on their hands and knees and used a toothbrush to scrub and completely clean the rental unit.

The Tenants testified that a stereo speaker that sat on the carpet from the outset of the tenancy was the cause of four of the carpet stains. They testified that none of the stains were intentional, and felt this was normal wear and tear.

The Tenants testified that they did not maliciously destroy the rental unit. They felt they had taken very good care of it, and that everyone has a different perception of cleanliness.

The Tenants denied using a rice cooker, but agreed they used a kettle on the counter below the cupboard door. They testified that it is normal to use a kettle in the manner they did. They testified that initially the Landlords told them they would just re-stain the cupboard door. The Tenants were surprised when the Landlords claimed for the replacement of the door.

The Tenants disagreed with the amount the Landlords sought to replace the freezer door. They testified that they thought an entire freezer would be cheaper to purchase today, rather than just replacing the door. They agreed they had used a magnet or magnets on the freezer door and believed this was the likely cause of the scratches, but submit this is normal wear and tear.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords took reasonable steps to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants did not clean the rental unit completely, or the carpets in the unit, or make necessary repairs to the cupboard door or the freezer door, and this has caused losses to the Landlords.

Under section 37 of the *Act* the Tenants were required to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.

In regard to the freezer door being scratched and marred, I do not find that it was reasonable wear and tear. The Tenants should have used more caution to prevent these scratches and marks on the freezer door. While it is common to use magnets on these types of appliances, this is usually done to hold up pieces of paper or photographs etc., and these protect the finish of the fridge from the magnets. In this instance, there are many scratches and marks on the freezer door and this has damaged the door.

Likewise, while it is usual to use an electric kettle, it is not usual to have one damage the stain on a cupboard door. In this instance the Tenants should have used more caution rather than letting the steam escape and contact the same door repeatedly during the tenancy.

I also find the evidence indicates that the carpets were not steam cleaned when the Tenant left, as required under the *Act* and the tenancy agreement.

As to cleaning the rental unit, I find the Landlord has shown some minor cleaning was necessary; however, I find the Landlords had insufficient evidence to prove four hours of cleaning was required. I find it more likely than not that to clean the areas indicated in the photographs would take less than an hour.

Lastly, I do not find that the Tenants maliciously caused these damages of that they left the rental unit in a ghastly or filthy state. I find that much of the damage caused was likely due to simply not paying attention. Nevertheless, the Tenants were obligated to make repairs and do the cleaning as suggested by the Landlords, and I find they failed to do so.

Section 7 of the Act states:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

I find the Landlords took reasonable steps to mitigate their losses. I also note that the Tenants could have mitigated their losses by doing the repairs and further carpet cleaning themselves, rather than leaving it for the Landlords.

Policy guideline 40 sets out that,

“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.”

[Reproduced as written.]

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Based on the above, and using the table of useful life expectancy found in Policy Guideline 40, I find that the freezer door had a useful life expectancy of 15 years and that the freezer was five years old, and therefore the Landlords are entitled to approximately a third or 66% of the cost of the door, in the amount of **\$411.00**

Likewise, the cupboard door had a useful life of 25 years and was five years old, and therefore the Landlords are entitled to approximately 80% of the cost of replacing the door, in the amount of **\$151.00**.

I find the Tenants failed to clean the stains out of the carpets and the Landlords are entitled to **\$120.00** for carpet cleaning.

As I have found the Landlords failed to provide sufficient evidence for four hours of cleaning, I allow them one half an hour to clean the crumbs as shown in the photographs, or **\$10.00**.

Therefore, I find that the Landlords have established a total monetary claim of **\$692.00** comprised of the above awarded amounts.

I order that the Landlords retain the security deposit of **\$575.00** in full satisfaction of the claims, under section 67 of the Act. As the Landlords simply applied to retain the security deposit in compensation I make no award for the filing fee for the cost of the Application or for any balance due.

Conclusion

The Tenants breached the Act and the tenancy agreement, by failing to repair damages they made or to clean the carpets to a reasonably clean condition. The Landlords are awarded the costs to repair the damages taking into account the useful life expectancy of the items claimed for, and to clean the carpets.

The Landlords applied just to keep the security deposit towards their losses and did not claim for the filing fee for the cost of the Application, or for the balance due.

Therefore, I allow the Landlords to keep the security deposit in full satisfaction of their claims.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 23, 2014

Residential Tenancy Branch

