



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 tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant, an agent for the landlord and the landlord 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, and the parties were permitted to provide additional evidence after the hearing had concluded. 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

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep the security deposit?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on May 15, 2010 for a one year fixed term tenancy. The tenancy then reverted to a month to month tenancy and ended on June 30, 2014. Rent for this unit was \$875.00 per month due on the 1st of each month. The landlord's tenancy agreement provided in evidence after the hearing concluded, indicated that the tenant paid a security deposit of \$440.00 on May 01, 2010. The tenant's copy of the tenancy agreement provided in evidence after the hearing had concluded corroborates that a security deposit of \$440.00 was paid, but also states a pet deposit of \$400.00 was paid on May 15, 2010.

The landlord has claimed \$1,427.07 comprised of the following:

Item 1. Carpet cleaning	\$105.00
Item 2. New deadbolt and keys	\$26.99
Item 3. Paneling	\$82.95
Item 4. Labour to install paneling	\$95.00
Item 5. Vertical blinds	\$33.57
Item 6. Front door emergency repair	\$290.00
Item 7. New front door	\$226.96
Item 8. Labour to replace/install front door	\$341.60
Item 9. cleaning	\$150.00
Item 10. Filing fee, RCMP fee, registered mail costs	\$75.00
TOTAL	\$1,427.07

The landlord's agent (the landlord) testified that:

- 1) The tenant failed to leave the carpets in a reasonable clean condition. The carpets had been cleaned at the start of the tenancy and should have been left in the same condition at the end of the tenancy. The tenant admitted to the landlord that her boyfriend occasional smoked inside the unit and the carpets had no evidence of either vacuuming tracks or carpet cleaning tracks to show they had been cleaned. The landlord referred to the move out inspection report and photographic evidence showing the condition of the carpets.
- 2) At the end of the move out inspection the tenant returned the keys to the front door but when the landlords tried to lock the front door the key would not fit. The tenant informed the landlord that the door had been like that for the last two years and could only be locked from the inside. The landlord had to go and get a new deadbolt immediately and fit this so the unit could be secured.
- 3-4) The tenant caused damage to a wall panel downstairs. There had been two cracks identified on another wall at the start of the tenancy and this wall paneling was dealt with separately. The landlord engaged a contractor to fit three new panels to the wall damaged by the tenant although only one panel was damaged it could not be matched so all three panels had to be replaced.
- 5) The blinds in the upstairs back bedroom were left in a grimy, sticky and dirty condition. They could not be successful cleaned and had to be replaced.
- 6- 7- 8) The front door had been kicked in by a man and it was the tenant's actions in taking a neighbour's cat that caused this damage to occur. The tenant had taken a neighbour's cat and when the owner came to confront the tenant the tenant would not give the cat back so two men then came to the door and kicked the door in and pepper sprayed the tenant and her son. The landlord has provided a police file number concerning this assault on the tenant. This occurred on April 23, 2011. The front door had to have an emergency repair and then a new door was purchased and fitted.

9) Extra cleaning was required in the unit at the end of the tenancy. During the move out condition inspection the tenant was in a hurry to leave and had friend of the tenants doing some cleaning. This cleaning was not satisfactory and although not all areas found later were documented on the move out report, the landlord did find many areas of the unit required cleaning. This took the landlord's agent at least 10 hours at \$20.00 an hour to clean the unit, although the landlord only seeks to recover \$150.00. The landlord referred to their photographic evidence of the unit.

10) The landlord incurred costs for RCMP fees, registered mail fees and the \$50.00 filing fee.

The landlord seeks an Order to keep the security deposit of \$440.00 to offset against the landlords monetary claim and testified that no pet deposit was ever paid by the tenant as no pets were allowed in the unit.

The tenant disputed most of the landlord's claim. The tenant testified that:

- 1) The carpets had been cleaned by the tenant and the tenant had rented a carpet cleaning machine from work a week before. The stairs, the hallway, the tenant's son's bedroom and part of the basement had been cleaned using this machine. The other bedroom and part of the basement carpet were not cleaned. The tenant did not keep the carpet cleaning receipt to show this work was carried out.
- 2) The tenant does not know what happened to the dead bolt on the door. They just locked the door from the inside and used another door to exit the unit. The key that was returned for that door was the one provided by the landlord in an envelope but that key never worked in the door.

3-4).The paneling at the bottom of the stairs was already cracked. The tenant agreed that the other piece of paneling was cracked by the tenant. The tenant disputed that the invoice provided by the landlord shows that the cost of the repair is

limited just to the wall that the tenant cracked. The tenant agreed that the landlord is entitled to half the costs for the paneling.

5) The tenant agreed that the blinds in the back bedroom were not cleaned and does not dispute the landlord's claim of \$33.57.

6-7-8). When the tenant moved into the unit the tenant had a cat; however, this cat later passed away in June 2010. Another neighbour's cat used to wonder over to visit. The tenant had to return this cat on many occasions so she knew where it lived. A few months later the cat returned to the tenant's unit and when the tenant took it back to its home there were no curtains up and all the furniture had been removed. A neighbour told the tenant that those people had moved out. Due to this the tenant took the cat in and as she had previously had a cat and paid a pet deposit she did not see that it would be a problem for the landlord. The tenant had the cat for about eight months and put a collar on the cat with the tenant's address on it; however, the cat went missing again. Four months later the cat again returned to the tenant's unit. That evening there was a knock on the tenant's front door and an intoxicated woman held up the cat's collar and said the tenant had stolen the cat. There was an altercation and that person left. The tenant locked the door and then someone else came and started kicking the door down. The door caved in and the frame flew off into the living room. The man at the door pepper sprayed the tenant and her son and kicked and punched the tenant. Other neighbours called the RCMP who arrived at the unit with two ambulances. The police asked the tenant if they had somewhere else to stay as the door and frame were broken. The Officer put some screws into the door to secure it. The tenant never invited these men into her unit and did not know them. The tenant claims she is not responsible for the damage to the door.

9) The tenant cleaned the stove, fridge and bathroom prior to moving out and a friend came to help do some other cleaning. The mice dropping shown in the landlord's pictures were in fact guinea pig droppings. The tenant has now seen

the landlord's photographic evidence and does not dispute the landlord's claim of \$150.00 for extra cleaning.

The tenant agreed the landlord can keep \$272.54 of the security deposit to cover the costs of cleaning, the replacement blinds and half the costs claimed for the paneling. The tenant seeks to recover the balance of the security deposit of \$167.45 plus the pet deposit of \$400.00.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties, along with the additional documentary evidence provided after the hearing had concluded. 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 the following:

With regard to claim for carpet cleaning; In the absence of any corroborating evidence from the tenant to show that some of the carpets had been cleaned prior to the end of the tenancy, I am satisfied from the documentary evidence and testimony before me that the carpets were not left in a clean condition. A tenant is required to shampoo or steam clean the carpet if the tenancy exceeds a year or if the tenant has pets that are not caged. I therefore uphold the landlord's claim for carpet cleaning of **\$105.00**.

With regard to claim for a new deadbolt and keys, I am not satisfied that the landlord has shown that the tenant's actions or neglect caused the deadbolt to malfunction or that the original key provided for this lock was the correct key. I must therefore dismiss the landlord's claim for \$26.99.

With regard to the claim for paneling; I am satisfied with the additional evidence provided that the landlord separated the costs for the paneling. There had been six panels purchased and only the cost of three panels and the installation of three panels have been charged to the tenant. I therefore find in favor of the landlord's claim for **\$177.95**.

With regard to the claim for blinds; the tenant has agreed the blinds were not left clean at the end of the tenancy contrary to s. 32 of the *Act*. The tenant has agreed the cost for replacement blinds of **\$33.57** may be deducted from the security deposit and my decision has reflected this.

With regard to the claim for the emergency repair, the replacement door and installation; I have considered both arguments in this matter. I refer the parties to s. 32(3) of the *Act* which states:

(3) 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.

As the tenant did not invite these persons onto the property I cannot find that the tenant is responsible for the costs associated to the emergency repair of the door or for the replacement door. The tenant was attacked by persons unknown and just because the tenant took in a stray cat this should not warrant an attack of this nature or warrant these persons to cause damage to the door. A tenant can only be held responsible for damage if it is caused through the tenant's actions or neglect or the actions or neglect of a person permitted on the property by the tenant. The landlord's claim to recover the total cost of 858.56 for the damage to the door is therefore dismissed.

With regard to the claim for cleaning; the tenant has agreed the cost for additional cleaning of **\$150.00** may be deducted from the security deposit and my decision has reflected this.

With regard to the claim to recover the filing fee, RCMP fees and registered mail fees; the only fee permitted under the *Act* is the cost for filing this application. There is no provision under the *Act* for fees to be awarded for the RCMP or for registered mail costs. As the landlord's claim has some merit the landlord is entitled to recover the **\$50.00** filing fee. The remainder of this section of the claim is dismissed.

I find there is sufficient evidence to show that a pet deposit was paid by the tenant of \$400.00. The tenant's copy of the tenancy agreement shows that this amount was paid on May 15, 2010. It appears to have been written in the same hand as the amount shown for the security deposit and appears to have been initialed with two initials although it is difficult to make out what they are. Consequently, I Order the landlord to retain the following amounts from the tenant's security and pet deposit.

Carpet cleaning	\$105.00
Paneling	\$177.95
Blinds	\$33.57
Cleaning	\$150.00

Filing fee	\$50.00
Subtotal	\$516.52
Less security and pet deposits	(-\$840.00)
Amount of pet deposit to be returned to the tenant	\$323.48

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord may retain the amount of **\$516.52** from the security and pet deposit.

A copy of the tenant's decision will be accompanied by a Monetary Order for **\$323.48**. The Order must be served on the landlord. If the landlord 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: January 16, 2015

Residential Tenancy Branch

