



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for a monetary order for unpaid rent, for damages to the unit and for an order to retain the security deposit and pet damage deposits 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.

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 unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security and pet damage deposits in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on March 1, 2014, and was to expire on October 31, 2014. The tenancy continued on a month-to-month basis thereafter. Rent in the amount of \$1,050.00, was payable on the first of each month. The tenant paid a security deposit of \$525.00 and a pet damage deposit of \$525.00. The tenancy ended on May 15, 2014, based on a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord claims as follows:

a.	Outstanding rent for May 2014 and utilities	\$ 1,350.27
b.	Broken light fixture	\$ 51.40
c.	Broken dishwasher	\$ 511.00
d.	Repair and replace carpet	\$ 513.20
e.	Carpet cleaning	\$ 168.00
f.	Cleaning rental unit	\$ 450.00
g.	Yard clean up	\$ 380.10
h.	Garbage removal	\$ 354.88
i.	Filing fee	\$ 50.00
	Total claimed	\$ 3,828.85

Outstanding rent for May 2014 and utilities

At the outset of the hearing the tenant agreed that they owed rent for May 2014 and the utilities in the total amount of \$1,350.27.

Broken light fixture

At the outset of the hearing the tenant agreed that they are responsible for the cost of the broken light fixture in the amount of \$51.40.

Broken Dishwasher

The landlord's agent testified that the tenant caused damage to the dishwasher as the heating element under the utensil rack was dislodged and when the appliance was used it caused the inside of the dishwasher to burn. The agent stated that the dishwasher was approximately three to five years old at the time. The landlord stated that the cost to replace the dishwasher was \$325.00 and the installation of the appliance was \$140.00, plus taxes. The landlord seeks to recover the total amount of \$511.00 for the dishwasher. Filed in evidence is a photograph that shows the inside of the appliance burnt and a receipt for replacement of the appliance.

The tenant testified that they did cause the damage to the dishwasher. The tenant stated that they were prepared to replace the appliance; however, they did not receive a response from the landlord. The tenant stated that they believe the dishwasher the landlord purchased is a better model than the one that they broke and that they could have purchased a dishwasher at a lower cost.

Repair and replace carpet

The landlord's agent testified that the tenant's cat caused damage to the carpet downstairs as it was shredded by the door. The agent stated that the carpet in that room had just been replaced in March 2014, which was two month prior to the tenancy ending. The agent stated that the carpet in the master bedroom, hallway and a second bedroom upstairs were also damaged by the cat shredding the carpet. The landlord stated that the upstairs carpets were approximately 5 years old at the time.

The landlord's agent testified that in order to repair the carpets they had to replace the master bedroom carpet and use that carpet to patch the hallway and second bedroom. The agent stated the carpet in the basement was repaired by moving the transition strip. The landlord seeks to recover the cost of the carpet and the repairs in the amount of \$513.20. Filed in evidence are photographs of the carpets which show the carpet damaged and the invoice from the carpet company.

The tenant testified that they do not deny the damage to the carpet was caused by their cat. The tenant stated that they contact a carpet company prior to vacating and they were told the repair would cost approximately \$90.00. The tenant stated that although they agreed with the damage to the carpets upstairs, they don't agree that they caused damage to the carpet downstairs as it was damaged in an earlier septic flood.

On cross-examination of the tenant, by the landlord, the tenant acknowledged the carpet downstairs was replaced in March 2014, after the flood occurred.

The tenant's witness BJ testified that the downstairs carpet was damage by septic. The witness stated that they have no knowledge that the carpet was replaced in March 2014, as they had vacated the rental unit by that time.

Carpet cleaning

The landlord's agent testified that the tenant did not shampoo or steam clean the carpets at the end of the tenancy. The agent stated that the tenant had a pet and that they had to pay to have the carpets cleaned in the amount of \$168.00. Filed in evidence is a receipt for carpet cleaning.

The tenant testified that they had vacuumed the carpets and purchased some canned carpet spray; however, they did not have the carpets shampooed or steam cleaned before they vacated the premises.

Cleaning rental premise

The landlord's agent testified that the rental unit is 2000 square feet and the tenant did not leave the rental unit reasonably cleaned. The agent stated that they had to pay to have the entire premise cleaned. The agent stated that the kitchen was a mess, and all the cupboards, floors, and appliance required cleaning. The agent stated that the bathrooms were not cleaned and the window ledger, windows and window tracks had to be cleaned. The landlord seeks to recover the amount of \$450.00 for cleaning costs. Filed in evidence are copies of the receipt for cleaning and photographs of the rental unit.

The tenant testified that they did clean; however, they left furniture and items in bags and placed in the corner for the co-tenant to pick up. The tenant stated that the co-tenant did not come back and remove these items. The tenant stated that they did wipe the refrigerator, clean the stove and cupboards and left the rental unit clean.

The tenant's witness RS testified that most of it was clean and tidy, the appliance and cupboards were wiped down. RS stated that they would have likely wiped down the appliances again. The RS stated that there were bag left behind.

On cross-examination of RS, by the landlord. RS agreed that were bags of garbage left behind, and that the appliance could have been cleaned better. When asked by the landlord if they believe the rental unit was left reasonable clean or if it was reasonable to leave garbage behind the witness answered "no" to both of these questions.

Garbage removal

The landlord's agent testified that the tenant left a lot of bags of garbage, recycling and furniture items behind. The agent stated that there were two kitchen chairs left in the garage, a large airbed with a foam topper left in the basement and various furniture items left through the premises. The agent stated that the tenant also left a lot of garbage left underneath the exterior deck. The agent stated that they had to pay to have the garbage removed. The landlord seeks to recover the cost of garbage removal in the amount of \$354.88. Filed in evidence are photographs of the garbage, furniture left behind and an invoice for removal and disposal.

The tenant testified that did not leave any garbage under the deck.

The tenants witness SR, testified that they walked underneath the deck and does not recall seeing any box spring and mattress or other items under the deck. SR stated that there were a couple of garbage bag outside and a plant which they picked up

Yard clean up

The landlord's agent testified that the tenant was responsible to cut the grass. The agent stated that at the end of the tenancy the grass was over a foot tall and there were garden hose buried in the grass. The agent stated that they had to pay to have the grass cut, which took the person 8 hours to complete due to the length of the grass. The landlord seeks to recover the amount of \$380.10. Filed in evidence are photographs of the grass and a copy of the invoice.

The tenant testified that they did not cut the grass at the end of the tenancy. The tenant stated that 8 hours to cut the grass is unreasonable. The tenant stated that they have let the grass grow that long before and it only took them three hours to complete.

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 landlord has 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.

Outstanding rent for May 2014 and utilities

The tenant agreed at the beginning of the hearing that they owed rent for May 2014 and the outstanding utilities. Therefore, I find the landlord is entitled to recover unpaid rent and utilities in the amount of **\$1,350.27**.

Damages

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit 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.

Broken light fixture

The tenant agreed at the beginning of the hearing that they are responsible for the cost of the broken light fixture. Therefore, I find the landlord is entitled to recover the amount of **\$51.40**.

Dishwasher

The tenant agreed that they caused damage to the dishwasher when the heating element was dislodged burning the inside of the dishwasher. I find the tenant breached the Act, when they failed to have the appliance repaired or replaced as this is not normal wear and tear.

Although the tenant alleged they could have replaced the dishwasher for a lower amount that was their responsibility to do prior to the tenancy ending. I find the amount of \$325.00, plus taxes are on the lower scale and not an unreasonable amount to replace the dishwasher.

The Residential Tenancy Policy Guideline 40 defines the useful life of building elements. If the tenant damaged an item, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement.

I have determined based on the guideline that the dishwasher had a useful life span of 10 years. The appliance was 3 to 5 years old at the time of replacement. I find the landlord is entitled to the depreciated value of 50 percent, as I have based this on the oldest age of the appliance provided by the landlord.

The evidence of the landlord's agent was it cost \$325.00 plus taxes of \$39.00 to replace the dishwasher. Therefore, I find the landlord is entitled to compensation for the cost of replacing the item in the depreciated amount of **\$182.00**.

As the landlord further incurred an installation fee of \$140.00 plus taxes of \$16.80, I find the landlord is entitled to recover the full amount of this service in the amount of **\$156.80**

Carpet repair

The tenant agreed that their cat caused damage to the carpets. The tenant alleged the damage to the carpet downstairs was due to the early septic flood; however that carpet was replaced in March 2014, after the septic flood. Further, the damage shown in the photographs show the carpet shredded by the door, which is consistent with the other photographs filed in evidence.

Although the tenant alleged they could have made the necessary repairs for \$90.00, there was no documentary evidence, such as statement from a carpet repair person to support this claim. The tenant did not contact the company in the landlord's evidence to determine that the method of repair, by using the master bedroom carpet to repair the hallway and second bedroom, was unnecessary or unreasonable. Rather, I find the repair was likely done in this manner to mitigate the loss, as it would have cost substantially more money had the landlord replaced the damage carpets with new carpet. I find the tenant breached the Act, when they failed to repair the damage that was caused by their pet cat and this caused losses to the landlord.

In this case the landlord stated that the carpet that was replaced in the master bedroom was approximately 5 years old. I have determined based on guideline 40, that the carpet had a useful life span of 10 years. The carpet was 5 years old at the time of replacement. I find the landlord is entitled to the depreciated value of 50 percent.

The evidence of the landlord's agent was it cost \$513.20 to replace, install and repair the carpet. In this case, the invoice does not separate the cost of the carpet from the installation and repair fee. Therefore, I find it reasonable to grant compensation at the depreciated value of the entire invoice in the amount of **\$256.60**.

Carpet cleaning

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is generally expected to clean the carpets if they had pets, regardless of the length of the tenancy.

The evidence of the tenant was they vacuumed and sprayed the carpets. The tenant did not have the carpets steam cleaned or shampooed at the end of the tenancy as required. I find the tenant has breached section 37(2) of the Act, when they failed to

clean the carpets and this caused losses to the landlord. Therefore, I find the landlord is entitled to compensation for the cost of having the carpets cleaned in the amount of **\$168.00**.

Suite cleaning

I accept the landlord's agent testimony that the rental unit was not reasonable cleaned by the tenant at the end of the tenancy. The photographic evidence supports this as there is garbage and furniture left through the premises. The invoice the landlord's agent has submitted as evidence is very detailed by the cleaner, which indicated the kitchen, bathrooms, window, window tracks, vent, heat registers and appliances had to be cleaned. It further states that cat feces had to be removed from under the stairs and the floors required to be mopped. Further, when the landlord cross-examined the tenant's witness SR, the witness agreed that the rental unit was not left reasonable cleaned.

Under the Residential Tenancy Policy Guideline 1, the tenant is generally expected to clean all the above mentioned items. I find the tenant breached the Act, when they failed to leave the rental unit reasonable clean and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover cleaning costs the amount of **\$450.00**.

Garbage removal

The photographic evidence support a large amount of garbage was left behind in the rental unit and under the exterior deck. The move-in condition inspection indicated the grounds and walks were in good condition at the start of the tenancy.

Although the tenant denied there was garbage left under the deck, I find it highly unlikely that the landlord would place these items under the deck simply to have to pay to have them hauled away. Further, the photographic evidence show that these items have been there for some period of time, as the grass which was over a foot tall at the end of the tenancy appears to be undisturbed and growing around some of the items that were left. I find the tenant breached the Act, when they failed to remove their belongings and garbage from the rental unit and property. This neglect caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of having the garbage and furniture items removed and disposed of in the amount of **\$334.95**.

I note the invoice indicated \$354.88, however, it appears \$18.98, plus taxes were for the purchase of a new light. A new light was also indicated in a separate invoice and it appears the landlord may have paid for the new light twice. This amount was deducted for the invoice.

Yard clean up

Both parties agreed the lawn was overgrown and not cut at the end of the tenancy. I find the tenant breached the Act, when they failed to maintain the grass. The evidence of the tenant was that it should have only taken someone three hours to cut the grass.

However, I find that to be highly unlikely as the photographic evidence supports the grass was too high to mow. I find it would have been reasonable that the grass had to be first trimmed, raked and then mowed to bring the lawn to a reasonable standard. I find eight hours not unreasonable. Therefore, I find the landlord is entitled to recover the cost to have the lawn maintained as set out in the receipt in the total amount of **\$380.10**.

I find that the landlord has established a total monetary claim of **\$3,380.12** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$525.00** and pet damage deposit of **\$525.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,330.12**

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

Conclusion

The landlord is granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: April 23, 2015

Residential Tenancy Branch

