



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order authorizing her to retain part of the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Should the landlord be permitted to retain part of the security deposit?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2013, at which time the tenants paid an \$847.00 security deposit, and ended on August 31, 2014. They further agreed that on the morning of September 1, 2014, the parties inspected the unit together. A condition inspection report was submitted which the landlord claimed to have filled out on the morning of September 1, but the notes on the report state that the tenants were required to finish cleaning on September 1 and listed items which needed to be cleaned.

The parties further agreed that the landlord is entitled to withhold \$80.00 from the security deposit for the cost of painting.

The landlord seeks to recover \$275.00 as the cost of hiring professional cleaners to clean the unit at the end of the tenancy. The landlord claimed that the unit was unclean at the end of the tenancy and that the tenants did not do the cleaning she required of them. The landlord provided a photograph of the control panel on the stovetop and stated that it was greasy, although this cannot be detected in the photograph, a photograph of yellow wax in front of the fireplace and a photograph of a glass bathtub door which has soap residue and mildew. She claimed that these photographs were representative of the entire unit, which had not been cleaned. The landlord testified that

she always arranges for a cleaning service at the end of a tenancy just in case the unit is not adequately cleaned and if the unit is sufficiently cleaned, she arranges for the service to clean her own home.

The condition inspection report lists the following items which the landlord expected the tenants to clean before surrendering the unit on September 1 (I have only listed those items related to cleaning):

- Vacuum [sic] stairs
- Remove webs from ceiling and clean floor in J's room
- Clean specific areas on living room

The report also noted other cleaning deficiencies:

- Clean black footsteps [sic] on floor of bathroom
- Remove black marks on living room floor
- Remove black marks and wax on small bedroom floor
- Drips between glass [on oven door]. Must remove door to clean

The tenants testified that they cleaned the unit as they were packing their belongings and claimed that the unit was given to them at the beginning of the tenancy in an unclean condition. They argued that they left the unit in better condition than when they found it. They stated that they performed all of the cleaning about which the landlord complained on the condition inspection report and when she arrived on September 1 to complete the inspection of the unit, they were finishing removing shelf paper from the kitchen cupboards, which was the last of the required cleaning. They stated that the shower door was irreparably stained when they moved into the unit and could not be cleaned.

The landlord also seeks to recover \$50.00 as the cost of her labour for approximately 90 minutes of work to clean the glass on the oven door. She testified that grease or some sort of moisture was between the double glass panes of the oven door and that the door had to be dismantled and the glass removed in order to clean and after cleaning, the door had to be reassembled. The tenants claimed that they offered to clean the oven door but the landlord told them not to worry about it. The landlord stated that she was concerned about the tenants dismantling the oven door as she was concerned that if they damaged something, there would be a significant cost to repair the door.

The landlord also seeks to recover the \$50.00 filing fee paid to bring her application.

Analysis

As the parties agreed that the landlord is entitled to \$80.00 for the cost of painting, I award the landlord \$80.00.

The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent’s action or inaction;
3. Proof of the value of that loss; and
4. (if applicable) Proof that the applicant took reasonable steps to minimize the loss.

Tenants are obligated under section 37(2) of the Act to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. It is not an effective defence for tenants to claim that the rental unit was unreasonably clean at the end of the tenancy because even if this were the case, and I make no finding on that issue, this does not excuse the tenants from cleaning before they surrender the unit.

The landlord’s photographs show that the tenants left wax on the tile in front of the fireplace and that the shower door required cleaning. The condition inspection report mentions wax in a bedroom but is curiously silent on the condition of the shower door.

I find it more likely than not that the bulk of the condition inspection report was filled out on the evening of August 31 as it gives instructions for items to be completed by September 1. The tenants testified that they cleaned as they packed their belongings and that the only additional thing they did on September 1 was to remove shelf paper in the kitchen. Although the tenants claimed that they cleaned everything noted by the landlord on the condition inspection report, because they said they did not do any additional cleaning on August 31 as they were packing and moving, there would not have been time for them to complete the cleaning specifically noted on the report.

I find that the report accurately reflects the condition of the unit on the last day of the tenancy. The landlord claimed that there was considerable cleaning to be done and that she did not write most of it on the condition inspection report because she expected the tenants to complete it prior to September 1. I do not accept that the unit was in as poor condition as is claimed by the landlord. The landlord was very comprehensive in filling out the report and specifically noted items which required cleaning. I find it unlikely that had other items required cleaning, she would have left those off of the

report. The one exception is the failure to report the condition of the shower door. I do not accept that the shower door could not be cleaned and I find that the photograph of it shows that it was in an unclean condition at the end of the tenancy. I am not persuaded that the stovetop required cleaning as it appears clean in the photograph supplied by the landlord. I find it more likely than not that wax had to be removed from in front of the fireplace and in the small bedroom as the photograph and condition inspection report indicate that it had to be done.

I find that there were certain areas of the rental unit which were not left reasonably clean and that the tenants therefore breached their obligation under the Act. I find that the landlord had to incur some cost to perform the cleaning. However, I am not persuaded on the evidence that a full 2 ½ hours of cleaning was required. The few items mentioned on the condition inspection report and shown in the photographs should have taken no more than half an hour to clean. However, instead of just cleaning those areas which were problematic, the landlord chose to completely clean the unit. I find that the tenants should not be held liable for the full cost of cleaning as I am not persuaded that fully cleaning the entire unit was required.

The landlord's cleaning service charged her \$85.714 per hour plus GST. I find the landlord is entitled to recover 30 minutes of that time which is \$42.86 plus \$2.14 for GST for a total of \$45.00. I find that the tenants should not be responsible for the "Move In/Out Fee" charged by the cleaning service as a full cleaning of the house was not required. I award the landlord \$45.00.

I find that the landlord specifically told the tenants that they should not clean the oven door. The tenants were obligated to leave the oven door reasonably clean and did not do so, but because the landlord told them not to perform that cleaning, I find she is estopped from claiming the cost of cleaning. While I appreciate that the landlord was concerned that the door would be broken during the cleaning process, she assumed not only the risk of breaking the door by cleaning it herself but also the cost of cleaning as she would not let the tenants do the cleaning they offered to do. I therefore dismiss the claim.

As the landlord has been only partially successful in her claim, I find she should recover just one half of the filing fee and I award her \$25.00.

The landlord has been awarded a total of \$150.00 which represents \$80.00 for painting, \$45.00 for cleaning and \$25.00 for the filing fee. I order the landlord to retain \$150.00 from the \$847.00 security deposit in full satisfaction of her claim and I order her to return the balance of \$697.00 to the tenants forthwith. I grant the tenants a monetary order

under section 67 for \$697.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is awarded \$150.00 which she will retain from the security deposit. The landlord is ordered to return the balance of \$697.00 to the tenants.

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 15, 2015

Residential Tenancy Branch

