



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords – MND, MNSD, FF

For the tenant – MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords applied for a Monetary Order for damage to the unit, site or property; for an Order to be permitted to keep all or part of the security deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover the security deposit and the filing fee for the cost of this application from the landlords.

The tenant and the female landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing; the tenant applied for dispute resolution on November 07, 2014 but did not send the landlords his hearing package until June 16, 2015. The tenant had three days in which to serve the landlord with his hearing documents pursuant to rule 3.1 of the rules of procedure and evidence must be received seven days before a hearing pursuant to rule 3.3 of the rules of procedure. I have not considered the tenant's application or evidence pursuant to rule 3.11 as I find it was not submitted as soon as reasonable possible and the tenant unreasonable delayed serving and submitting their evidence in accordance with rule 3.15 of the rules of procedure. The tenant's application is therefore dismissed and I have dealt with the matter of the security deposit under the landlords' application. 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 Decide

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the security deposit

Background and Evidence

The parties agreed that this tenancy started on October 01, 2013 for a fixed term tenancy of one year. The tenancy ended on October 01, 2014. Rent for this unit was \$1,650.00 per month due on the 1st of each month in advance. The tenant paid a security deposit of \$825.00 on September 04, 2013. The tenant also paid a pet deposit of \$825.00 which has since been returned by the landlords.

The landlord attending testified that the parties attended the move in and the move out condition inspection of the property although the tenant did not sign the move out section of the report. The landlord testified that they found a one inch burn mark in the carpet upstairs and a six by four inch scorch mark on the carpet downstairs. The carpets were only a year old. The landlords had three quotes done to repair the burn and scorch marks and is prepared to go with the lessor quote. The landlords suggested to the tenant that he obtain another quote himself but the tenant declined to do so. The landlords have provided the different quotes in documentary evidence. The landlords seek to recover the lessor of the quotes to an amount of \$362.47 to repair these sections of the carpet. The landlords have not yet had the work done as they need to receive a Monetary Order to do the work.

The landlord testified that during the tenancy the tenant sublet the unit to other tenants. The landlords did not know exactly how many other occupants resided in the unit and whether or not the tenant had given them keys to the unit. At the end of the tenancy the tenant did not return all the keys to the landlords. The landlords understood that the tenant did give some keys to the landlords' new tenants who had originally been subletting from the tenant. The landlord testified that the new tenants requested that the landlords change the locks as they did not know if the tenant or other occupants still had keys as the tenant had only returned two keys to them. The landlords seek to recover the cost incurred to change the locks of \$163.45 and has provided a copy of the invoice in documentary evidence.

The landlord testified that she spent five hours running around getting prices for blinds and meeting companies to provide quotes for the carpet repairs. The landlords seek to recover \$15.00 an hour for five hours to an amount of \$75.00 for this time.

The landlord testified that the tenant or a person permitted on the property by the tenant caused damage to two of the blinds. There were some missing slats, one blind would not open or close and one would not go up and down. The landlord testified that these were only a year old and in good working order at the start of the tenancy. The landlord testified that this is documented on the move out report and the landlord referred to her photographic evidence and quotes for replacement costs. The landlords seek to recover \$12.97 for one blind and \$9.97 for the other.

The landlords seek to recover \$4.80 for the costs incurred to develop photographic evidence. The landlords also seek to recover \$20.00 for the landlords' gas in running around and the costs incurred for more photographs and copying of evidence.

The landlord testified that at the end of the tenancy there was a small stain left on the carpet after the tenant had had the carpets professionally cleaned. The landlords thought at first that this was just a soap mark from the carpet cleaning machine. However, the mark would not come out and the landlords obtained a quote to have it professionally removed of \$25.00. The landlords have provided a photograph of this mark and a quote in documentary evidence.

The landlord testified that when they did the move out inspection the landlord noticed a mark on the linoleum in the bathroom by the shower door. The landlord thought it was a dirt mark but the next day when she did the move in inspection report with the new tenants this mark did not come out and the landlord found it was a dark stain on the linoleum which could not be removed by cleaning. The landlord testified that the linoleum was only a year old and will have to be replaced. The landlords have provided a quote for replacement costs of \$510.23 in documentary evidence and a photograph showing the stained area.

The landlord testified that the tenant was responsible for yard work at the property as per the tenancy agreement. The City sent the tenant a letter saying that the slopes needed to be cut back as they constituted a fire risk. The tenant did not inform the landlords of this letter. The landlords were going to obtain some quotes for this work however the tenant agreed to do the work. The tenant only partially cleared these areas and the landlords then had to get a quote to clear the slopes. This quote came in at \$309.75. The landlord testified that the new tenants actually did this work as per their tenancy agreement and the landlord did not suffer a financial loss.

The landlords seek an Order to keep the security deposit in partial satisfaction of their claim. The landlords also seek to recover the \$50.00 filing fee from the tenant.

The tenant agreed that the burn and scorch mark on the carpet is the tenants responsibility and agreed the landlords could keep the amount of \$362.47 from the security deposit.

The tenant disputed the landlords' claim for locks. The tenant testified that they received two keys from the landlords and had a further key cut to the unit. All three keys were returned to the new tenants at the end of the tenancy. There was no need for the landlords to change the locks as the new tenants were also occupants of the rental unit and should not have had any concerns concerning the tenant or other

occupants having keys to the unit. The tenant testified that if the landlords choose to have the locks changed then the landlords must pay for this work.

The tenant disputed the landlords' claim of \$75.00 and testified that if the landlords had to spend time doing anything to the unit it is a cost of doing business as a landlord.

The tenant disputed the landlords' claim for new blinds. The tenant testified that the downstairs blind was damaged and did not work at the start of the tenancy although the landlords did not document this on the move in inspection report.

The tenant disputed the landlords' claim to clean the stain of the carpet. The tenant testified that it was a small soap stain left by the carpet cleaning machine and the tenant cleaned this up prior to leaving the unit.

The tenant disputed the landlords' claim to replace the linoleum. The tenant testified that it was not noted on the inspection report and the tenant cannot imagine what type of stain could not be removed from linoleum. The tenant testified that this is a stand-up shower and whenever they got out of the shower the floor would get a little wet. If the seal around the flooring was broken then water could have seeped underneath the linoleum. The landlord had the linoleum professional fitted and if it was not fitted properly water could have got in underneath.

The tenant disputed the landlords' claim for yard work. The tenant testified that they did maintain the yard but some banks had been left to grow. The letter from the City arrived when the tenant was out of town and when he was informed of this he brought back a Weed Wacker to do one of the banks. The other bank was very steep and the tenant was not aware that this was also his responsibility.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords' claim for damage to the unit, site or property; 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.

The tenant agreed he is responsible for the burn and scorch mark on the carpets I therefore uphold the landlords' claim to recover **\$362.47**.

With regard to the landlords' claim for the new blinds. I am satisfied from the evidence before me that the blinds were likely to have been damaged during the tenancy. There is no indication that the blinds were in a damaged or non-working condition at the start of the tenancy. I therefore uphold the landlords' claim to recover **\$22.94** from the tenant.

With regard to the landlords' claim to recover carpet cleaning costs of \$25.00; I am satisfied that at the end of the tenancy a small stain remained on the carpet. The tenant testified that he removed this as it was a soap stain from the carpet cleaner; however, the landlord testified that the stain was still in place when she took the photographs after the tenant had vacated. Consequently, I find the landlords are entitled to recover the cost of **\$25.00** to have this stain removed.

With regard to the landlords' claim for new linoleum; the landlords' photographic evidence shows some staining on the linoleum outside the shower stall. There is insufficient evidence to show that this stain could not be removed by some means or that it was caused through the tenant's actions or neglect in the normal use of the shower. I find therefore that the landlords have not met the test for damage or loss and this section of the landlords' claim for \$510.23 is dismissed.

With regard to the landlords' claim for \$309.75 for yard work; I accept that the tenant was responsible for yard work and that one or more of the banks were not maintained sufficiently during the tenancy; however, the landlord agreed that the new tenants completed this work at no cost to the landlords. If the landlords have not suffered a loss then the landlords are not entitled to recover this amount from the tenant. This section of the landlords' claim is therefore dismissed.

With regard to the landlords' claim for \$75.00 to cover the landlords' time spent getting quotes and prices and sourcing items. I find there is no provision under the *Act* for an award of this nature and it is more in

line with the cost of doing business as a landlord to ensure the rental unit is in a good condition for new tenants. This section of the landlords' claim is therefore dismissed.

With regard to the landlords' claim for the new locks; I am not satisfied that the landlords are entitled to charge the tenant for replacement locks. Under the *Act* the tenant is required to return the keys to the unit; while I accept that the tenant did not return the keys directly to the landlords, the tenant did give the keys to the tenants that took over the unit and formed a tenancy with the landlords. If these tenants requested that the landlords change the locks without evidence that the tenant or other occupants continued to hold keys to the unit then the landlords must bear the cost to change the locks for the new tenants. This section of the landlords' claim is therefore dismissed.

With regard to the landlords' claim to recover the costs to develop photos, make copies of evidence and for the cost of gas; there is no provision under the *Act* for costs of this nature to be awarded. These sections of the landlords' claim are therefore dismissed.

As the landlords' claim has some merit I find the landlords are entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

I Order the landlord to keep part of the tenant's security deposit to an amount of **\$460.41** pursuant to s. 38(4)9b) of the *Act*. The balance of the security deposit of **\$364.59** must be returned to the tenant.

Conclusion

For the reasons set out above, I grant the landlords a monetary award of **\$460.41**. This amount has been deducted from the tenant's security deposit.

I grant the tenant a Monetary Order pursuant to Section 38(6)(b) of the *Act* in the amount of **\$364.59**. This Order must be served on the landlords and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the landlords fail to comply with the Order.

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: June 22, 2015

Residential Tenancy Branch

