



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD, MNR, O

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a monetary order for return of their full security deposit/pet deposit in the amount of \$1650.00 and a request for recovery of their \$50.00 filing fee.

The landlord's application is a request for a monetary order for \$4940.00 and a request for recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All parties were affirmed.

Issue(s) to be Decided

The issues are whether or not the landlord has established a monetary claim against the tenants, and if so in what amount, or whether or not the tenants have the right to the return of any or all of their security/pet deposit.

Background and Evidence

The tenants paid a security deposit of \$825.00 and a pet deposit of \$825.00 on July 31, 2012 and this tenancy began on September 1, 2012 with a monthly rent of \$1650.00.

A move out inspection report was completed on August 31, 2012.

The tenancy ended on September 1, 2014 and the move out inspection report was done at that time; however the tenants checked off the box stating that they did not agree with the move out inspection report.

The tenants gave the landlord a forwarding address in writing on the move out inspection report.

Landlord is claiming the following:

Window cleaning	\$170.00
Replace carpet	\$450.00
Bio Absorb air freshener	\$65.00
Replace damaged counters and paint damaged covered doors	\$1500.00
Cleaning	\$400.00
Toilet damage	\$50.00
Refurbish the grounds	\$1000.00
Remove tenants wet camping gear	\$80.00
Repair holes in drywall and installation of door knobs	\$600.00
Repair broken doorknob and repair bathtub	\$50.00
Replace damaged kitchen flooring	\$200.00
Broken garden chairs	\$75.00
Damaged irrigation	\$300.00
Total	\$4940.00

Window cleaning

The landlord claims that the windows were clean when the tenants moved into the rental unit; however they required cleaning when the tenant vacated.

The tenants claim that the windows were not clean when they moved into the rental unit, and they left them just as clean when they moved out.

Replace carpet & Bio Absorb air freshener

The landlord claims that the carpets in the rental unit smelled badly of dog urine and as a result had to be replaced. The landlord further stated that the carpets were approximately 8 years old and the actual cost a replacement was \$2433.00 however she is only asking for \$450.00 of that cost.

The landlord also claims that they had to put a bio-absorb air freshener in the rental unit to get rid of the smells.

The tenants claim that the carpets were old and in poor condition when they moved in and that they left them in a cleaner condition than they had found them. They referred to numerous photos in support of these claims.

The tenants also claim that the smell was not from the carpets in the rental unit, and was in fact coming from attic eaves where the landlord had stored items that gave off a smell when the weather heated up that area. The tenants also referred to numerous photos in support of this claim.

Replace damaged counters and paint damaged covered doors

Landlord claims that the kitchen counter and cabinets were in perfect condition when the tenants moved in but there were chipped kitchen counters and scratches in the cabinets when the tenants moved out. The landlord further stated that the cabinets were eight years old and therefore although the estimate to repair the cabinets was \$2795.00, she is only asking for \$1500.00.

The tenants testified that they did no damage whatsoever to the kitchen counters or cabinets and that they were left in the same condition when they moved out as they were when they moved in.

Cleaning

Landlord claims that the tenant left the rental unit in need of significant cleaning and as a result she had to pay cleaners to have the rental unit brought back to reasonable clean condition.

The tenants testified that they left the rental unit in a very clean condition, and state that their photo evidence clearly shows that the condition in which they left the rental unit.

Damage to toilet

The applicant testified that the toilet seat in the rental unit was damaged during the tenancy and as a result had to be replaced.

The respondents testified that they are not aware of any damage to the toilet seat as it was not ripped on the day they moved out, and if there was any damage it was just the result of normal wear and tear.

Refurbishing the grounds

Applicant testified that the grounds were in good condition and well landscaped when the tenants moved into the rental property however the tenants did not take care of the grounds and left the grounds in poor condition on move out. The tenants also put rocks all around the fence that she had through have someone remove.

The tenants testified that it's obvious from all the photos they provided that they left the grounds in as good condition as they receive them.

Removing wet camping gear

The applicant stated that there was a smell in the yard and when she opened the hatch to the crawlspace she found it stuffed with wet cushions and wet camping supplies, and as a result she had to pay to have someone remove those items.

The respondents testified that they had some items stored in the closed, covered crawlspace which they had taken out of the shed when the landlord wanted to do an upgrade to the shed, and they believe that the crawlspace area was flooded by people the landlord had working in the backyard.

Repair drywall

The landlord further testified that the tenants left some large holes in the walls from drapery rods and from attaching something else to the wall, perhaps a chin up bar and the holes were not repaired properly. There were also chips on the walls and the oak threshold to the bathroom was broken. There were also broken door handles that had to be replaced.

The respondents testified that this is a 40-year-old house and was in poor condition when they moved in as can be seen from numerous photos are provided. They did not

cause any damage beyond normal wear and tear and they believe the landlord is trying to upgrade the house at their expense.

Replace broken doorknob and repair bathtub

The landlord also testified that the tenants damaged a door lock during the tenancy and that the key in the door did not work. She further testified that the tenants failed to tell her about this damage. As a result lock had to be replaced.

The landlord further testified that the tenants had hidden a chip on the bathtub by painting over it and as a result the damage was not found during the moveout inspection but was found later when cleaning the bathtub, as the paint came off.

The respondents testified that the lock was approximately 50 years old and broke under normal use and was not a result of any negligence on their part. Respondents further testified that they did not damage the bathtub or paint over any chip. The bathtub was left in the same condition as when they moved in.

Kitchen flooring

The landlord stated that the tenants also damaged the eight-year-old linoleum in the rental unit and as a result the linoleum had to be replaced. She is therefore asking for a portion of the replacement cost.

The tenants testified that they did no damage whatsoever to the linoleum, the only problem with the linoleum was it had yellowed with age.

Garden chairs

The landlord testified that two garden chairs were broken by the tenants during the tenancy and the cushions were destroyed by being left in the entrance to the crawlspace soaked with water.

The tenants testified that there were old garden chairs in the shed which they did not use and certainly did not break. Further, as they testified earlier, that the entrance to the crawlspace was flooded when they were away, when the landlord was having work done in the backyard.

Irrigation damage

The landlord also testified that at the end of the tenancy she had to have an irrigation company come and repair the irrigation system. The irrigation company stated that the system had been turned off and unhooked.

Tenants stated that the irrigation was not set up properly since the beginning and it was the landlord that was to arrange for the blowouts of the irrigation system. The system had been turned off by the landlord not by them.

Analysis

Window cleaning

During the tenancy the tenants are required to maintain a reasonable state of cleanliness, and this includes cleaning the interior windows. The tenants are not however required to clean the exterior Windows and this is something that the landlords are required to do. In this case it is my finding that the landlord has not met the burden of proving that the tenants did not leave the interior of the Windows in a reasonable state of cleanliness and I therefore deny the claim for window cleaning.

Replace carpet & Bio Absorb air freshener

I also deny the landlords request for a portion of the cost of replacing the carpet and installing a Bio Absorb air freshener as I am not convinced that the tenants caused any damage to the carpets in the rental unit. The photo evidence provided by the tenants clearly shows that the carpets were left in similar condition, if not better condition than they were in at the beginning of the tenancy.

Further, I am also not convinced that the alleged urine smell was caused by the tenants. The tenants claim that the smell was coming from items left in unfinished eve area by the landlord and the landlord has provided no evidence to refute that claim.

Replace damaged counters and paint damaged covered doors

It is my finding that the landlord has shown that the tenants cause damage to the kitchen counters and cabinets during the tenancy beyond normal wear and tear and therefore I will allow the landlords \$1500.00 claim for a portion of that repair.

The tenants claim that they did no damage, however the only evidence in support of that claim is one photo of one mark on the cabinets when they moved in; however the evidence supplied by the landlord shows that there was significantly more damage than that.

Cleaning

I deny the landlords claim for cleaning. Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required.

Damage to toilet

I will allow the landlords \$50.00 claim for damage to the toilet because, although the tenants claim they did no damage, the landlord's photo evidence clearly shows that the toilet seat has been torn.

Refurbishing the grounds

I deny the landlords claim for refurbishing the grounds at the rental property as it's my finding that the landlord has not met the burden of proving this portion of the claim.

Although the landlords claim that the tenants left the rental property in poor condition than when they moved in, the photo evidence provided by the tenants shows that the rental property was left in similar condition at the end of the tenancy as it was found at the beginning of the tenancy.

Removing wet camping gear

I also deny the landlords claim for removing wet camping gear. I accept the tenants claim that their camping gear was stored in this area to allow the landlord access to refurbish the storage shed and although it's not clear how the camping gear became soaked with water, I'm not convinced that it was as a result of any negligence on the part of the tenants.

Repair drywall

I will allow a portion of the landlords claim for repairing the drywall and installing new door handles for handles that were broken, however the receipt supplied by the landlord

is only for \$320.00, and that is the amount that I will allow. The landlord is claiming that there are repairs still needed that will bring the cost of higher, however she has provided insufficient evidence in support of that claim.

I do not accept the tenants claim that they did not put unreasonably sized holes in the walls as the landlords evidence clearly shows that they did.

Replace broken doorknob send repair bathtub

I deny the landlords claim for replacing a broken doorknob and repairing a chip bathtub as I am not convinced of these damages occurred during the tenancy. Neither of these damages was reported on the moveout inspection report and the tenants deny causing this damage. Therefore in this case it is basically just the landlord's word against the tenants and that is insufficient to meet the burden of proving a claim. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met.

Kitchen flooring

Is my finding that the landlord has shown that the linoleum in the rental unit was damaged during the tenancy and therefore, I allow the landlords prorated \$200.00 claim for replacing that damaged linoleum.

The tenants claim that the only problem with the linoleum was that it had yellowed; however the tenant's photo evidence does not show close-ups and the landlord's photo evidence clearly shows damage to the linoleum.

Garden chairs

I will not allow the landlords claim for damage to garden chairs as it's my finding that the landlord has not met the burden of proving that the tenants damaged these chairs. In this case, again it is basically just the landlord's word against that of the tenants.

Irrigation damage

I also deny the landlords claim for irrigation damage because again it's my finding that the landlord is not met the burden of proving that the tenants damaged the irrigation system, or that it was the tenants who turned off or disconnected irrigation system.

Therefore the total amount of the landlords claim that I have allowed is as follows:

Kitchen counter and covered repair	\$1500.00
Toilet repair	\$50.00
Drywall repair	\$320.00
Kitchen flooring	\$200.00
Filing fee	\$50.00
Total	\$2120.00

Since the total amount of the landlords claim I have allowed exceeds the amount of security/pet deposit held, the tenants application is dismissed in full and I order that the landlord may retain the full security/pet deposit of \$1650.00 towards the above claim. I have issued a monetary order for the tenants to pay the difference to the landlord.

Conclusion

The tenant's application has been dismissed in full without leave to reapply.

As stated above I have allowed the landlord to keep the full security/pet deposit and I have issued a monetary order in the amount of \$470.00.

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 04, 2015

Residential Tenancy Branch