



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Agents for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agents testified that they served the Notice of Hearing and Application for Dispute Resolution on each of the Tenants by registered mail, sent on November 12, 2014. In evidence are copies of the mail receipts. Under the Act documents served this way are deemed served five days later. Furthermore, the Agents testified that the tracking information from Canada Post indicates both mail packages were picked up the Tenants. Therefore, I find the Tenants were duly served under the Act.

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 Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began on April 1, 2013, under a written tenancy agreement signed by the parties on March 6, 2013. The tenancy had an initial fixed term of one year and then became month to month. The monthly rent was \$1,400.00 and the Tenants paid a security deposit of \$700.00 on March 3, 2013.

The Landlord performed an incoming condition inspection report at the start of the tenancy with the Tenants.

The Tenants provided the Landlord with a written Notice to End Tenancy to be effective on October 31, 2014. At the end of the tenancy the Landlord and the Tenants performed an outgoing condition inspection report, although the Tenants did not agree with the Landlord's assessment of the rental unit and refused to sign the outgoing report.

The Tenants vacated the property, however, the Landlord claims it has incurred costs to clean and repair the rental unit due to the condition it was left in by the Tenants.

The Landlord is claiming against \$610.00 of the deposit as they have already returned \$90.00 to the Tenants. The Landlord claimed against this portion within the required 15 day statutory time limit.

The Landlord is claiming for **\$100.00** for cleaning the suite. In evidence the Landlord supplied an invoice for cleaning the rental unit. The Agent for the Landlord testified that the Tenants were using a deep fryer in the kitchen and there was significant grease buildup on some surfaces which the Tenants did not clean. The invoice indicates they had to clean walls for two hours, light fixtures for one hour, floors in the house and garage for one hour, and the kitchen cupboards and exhaust hood over the stove, and charged \$20.00 per hour for this work.

The windows and blinds also had to be cleaned and the Landlord claims **\$45.00** for this, for three hours work. There was also significant cleaning to be done on the patio, front steps and there were stains on the garage floor and the Landlord is claiming **\$75.00** for this. An invoice for these two items was supplied in evidence.

The Landlord also claims for carpet cleaning for the three bedroom townhouse in the amount of **\$173.25**. The Landlord has supplied an invoice from a carpet cleaning company.

The Landlord has also claimed **\$197.42** for repairing the siding and corner piece around the garage door. In evidence there were photographs of the siding around the garage door, which show dents in the corners, and one of a corner piece, which was cracked. The Agents for the Landlord testified that the Tenants operated a restaurant. The Tenants had moved five or six deep freezers into the rental unit garage in order to store food and supplies for the restaurant. The Agents testified that the Tenants moved food

in and out of the freezers on a daily basis. The Agents allege that the Tenants damaged the vinyl siding around the door when moving things in and out of the garage. The Landlord supplied an invoice for repairs and photographs of the damages around the door frame and siding.

The Landlord had also claimed for repair to a bathroom door, but withdrew this claim during the hearing.

As well as the invoices and photographs, the Landlord supplied copies of the tenancy agreement, condition inspection reports, the Notice to End Tenancy from the Tenants and some correspondence in evidence.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

Based on all of the above, the undisputed evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants did not clean the rental unit, or make necessary repairs to the garage door. I accept the testimony and evidence of the Landlord on these issues. The

testimony and condition inspection report clearly sets out that areas of the rental unit required additional cleaning, and this is supported in evidence.

I also find that it is more likely than not that the garage door was damaged during the tenancy by the Tenants. The dents in the edges of the siding and the crack in the corner piece around the door are very noticeable, such that I find it unlikely these would not have been noticed and recorded in the condition inspection report at the outset of the tenancy had these damages been there already.

I also find it more likely, due to the locations of the dents and bangs, that these edges were damaged by items being moved in and out of the garage on many occasions. Furthermore, there is a large crack in the edge of a corner moulding. I find on a balance of probabilities that these damages occurred during the tenancy.

Section 37 of the Act requires the Tenants to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.

I find the damages are beyond reasonable wear and tear. I further find the Tenants did not clean the rental unit and other portions of the property to a reasonable standard. Therefore, I find the Landlord has shown the Tenants breached section 37 of the Act.

Section 7 of the Act states:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

Having made the above findings, I find the Tenants must compensate the Landlord for its losses. I further find that the Landlord acted reasonably in mitigating their losses. The amounts charged and work done was reasonable and minimized the losses the Tenants must compensate the Landlord for.

For these reason I allow the Landlord's claiming for cleaning in the amount of **\$393.25**

However, I find the amount charged by the Landlord for the repair to the siding around the garage door must take into account the depreciated value of the siding, as the Agents testified the door was 17 years old now, or approximately 15 years old at the start of the tenancy. Under policy guideline 40 dealing with depreciated values, the siding had a useful life of 25 years. Therefore, I allow the Landlord **\$80.00** of the \$197.42 claimed, for the remainder of the useful life,

Policy guideline 40 sets out that,

“When applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement.”

[Reproduced as written.]

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director’s authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Having made the above findings, I find that the Landlord has established a total monetary claim of **\$523.25** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the Landlords retain the amount of \$523.25 from the remaining deposit held of \$610.00 and I order under section 67 that the Landlord return the balance due of **\$86.75** to the Tenants. The Tenants will have a monetary order in this amount.

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

Conclusion

The Landlord has proven that the Tenants breached section 37 of the Act. The Landlord is awarded \$523.25 in compensation for losses and must return the balance of the deposit to the Tenants in the amount of \$86.75.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 19, 2015

Residential Tenancy Branch

