



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The parties provided evidentiary material to the Residential Tenancy Branch and to each other, however during the course of the hearing it was determined that I did not have all of the landlord's evidence, but all of it had been provided to the tenants. By consent, the tenants provided a copy of the pages that were missed after the hearing had concluded. I have received all pages.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on November 15, 2012 and ended on January 31, 2015. Rent in the amount of \$850.00 per month was originally payable, but was increased annually and was \$870.00 per month by the end of the tenancy, which was payable in advance on the 1st day of each month and there are no arrears. On November 7, 2012 the landlord collected a security deposit from the tenants in the amount of \$425.00 which was returned to the tenants with the Landlord's Application for Dispute Resolution and the hearing package. A copy of the tenancy agreement has been provided. No move-in or move-out condition inspection reports were completed, and the landlord moved into the rental unit the same day that the tenants moved out.

The landlord has provided a Monetary Order Worksheet and the claim for damages includes the following:

- \$60.00 for snow removal – when the landlord tried to move in she had to get someone to come in to remove snow and her father had to chip away at the stairs with a shovel because they were packed with snow and ice and were a hazard. No receipt has been provided, but that amount is shown on the landlord's bank statement which has been provided.
- \$47.03 for a door track and hardware for a closet which required replacing at the end of the tenancy. Photographs have been provided.
- \$156.79 for a sliding closet door in the bedroom which was left by the tenants with a big dent in it. Photographs have been provided.
- \$1,620.78 for new carpet which was left by the tenants with dog urine and feces on the door ledge and hallway which is one piece with the living room, and other stains. The tenants weren't allowed to have a dog and the landlord doesn't know how long the dog was there, but the carpets were really dirty. The landlord believes the carpets were new when she purchased rental unit in 2007. They were newer than the ones in the bedrooms and appeared to be new when she purchased. The tenants didn't clean them at all.
- \$341.25 for suite cleaning. The landlord had a cleaner attend at the rental unit on March 7, 2015, after the landlord moved in and the landlord showed the cleaner photographs. The cleaner provided an estimate for that amount, which the landlord claims as against the tenants. All walls were very dirty, cabinets were very dirty, dried ketchup and splatters of food remained on counters, the oven was not cleaned

and there was so much burnt food under food elements and the oven, they smoked. Floors, carpets, ceiling fan, window ledges, and window sills were very dirty, and bathrooms had not been cleaned. Photographs have been provided, which the landlord testified were taken on February 1 and 2, 2015.

- \$81.75 to replace a bedroom door which was off its hinges. The landlord had asked the tenants about it on a prior visit and the tenants said they didn't know how it happened. One of the tenants said he'd fix it but it still was not done when the landlord moved in. The top hinges are stripped, and now neither top nor bottom will stay in place. The holes for the hinges in the door itself are too large and the door had to be replaced.
- \$83.36 for painting the hallway because the tenants' children colored on them. The landlord tried to wash it but it wouldn't come off and had to paint the hallway portion.
- \$70.53 to replace the blinds for the deck door which was left broken at the end of the tenancy. A quote and a photograph have been provided.
- \$73.90 matching towel bars. When the landlord moved in, only 1 of the 3 were remaining. The landlord found the cost on-line from Home Hardware, and actually purchased them for that amount after the evidentiary material had been filed.
- \$450.00 to clean the deck which is an estimate the landlord obtained to pressure wash because of dog feces. The landlord cleaned off the deck and scrubbed it because she couldn't afford to pay someone that amount to do it.
- \$4,454.73 for new laminate due to it separating in the kitchen and entry and a lot of nicks and dents remained in the kitchen hallway at the end of the tenancy. Photographs have been provided, and the landlord testified that the flooring had been installed in 2010 and was in great condition when the tenants moved in.
- \$125.00 for carpet cleaning and an estimate has been provided for the 2 spare bedrooms and living room. The landlord testified that the tenants didn't clean them at all.

The landlord also testified that the tenants had told her that the dog was only there for 3 or 4 days, but judging by the mess on deck it was a lot longer than that. The deck door also had dirty paw prints and smears on the door and glass. Photographs have been provided.

The landlord's application for dispute resolution specifies a claim of \$9,000.00, however the claims on the Monetary Order Worksheet total \$7,565.12 which the landlord claims against the tenants as well as the \$100.00 filing fee.

The first tenant testified that the parties ultimately agreed to end the tenancy on January 31, 2015 and the tenant asked the landlord to write up an addendum respecting damages. The addendum is dated December 31, 2014 and states that the tenants will not make any claims against the landlord for any reason, and that the

landlord agrees to not file for dispute resolution for damage to the flooring in the kitchen and the hall in front of the door. The laminate was coming apart for awhile and believing that the roof had leaked close to those spots, which was acknowledged by the landlord, the damage was not caused by the tenants. The agreement also released the tenants from any liability from the roof.

The tenant agrees that the landlord returned the security deposit, but the tenants have not yet cashed the cheque. The tenants agree to the cleaning and carpet cleaning and re-painting the hallway, but the parties communicated back and forth by email trying to come to an agreement, but the landlord was over-inflating things.

The tenant disagrees to the cost of snow removal due to a recent snowfall which started on January 31, 2015 and snowed a lot. The tenants moved out during the storm. The tenant also disagrees that the tenants are responsible for the door track and hardware on the closets, or for a new bedroom door which were damaged prior to the beginning of the tenancy. The tenants tried to fix the bedroom door which was already off the hinge, but it wouldn't stay because, as the landlord testified, the screws were stripped in the door itself. The tenant didn't see any damage to the blind for the back door. The tenants did not cause any damage to the carpet and disagrees that the tenants should enrich the landlord for any flooring costs. The tenants took care of a dog for 4 days which did not do any damage to flooring.

The second tenant testified that when they moved out, there was not much time because the tenants didn't get the keys to their new place until midnight, and the landlord wanted them out by 2:00 p.m. They moved all through the night and it snowed all through the night. The tenant cleared snow with his snow blower all winter but not that day because there was no time. Some belongings that were stored outside remained there because it was under snow. Because of discussions that the parties had previously, the tenant believed that he would be residing in the rental unit until spring.

The tenant agrees that the rental unit wasn't cleaned very well, but should only have cost \$100.00, not \$341.25.

The towel bars fell off the wall, and the tenant believes he left the parts and pieces on the sink. He believes they were poorly installed because they simply fell off. Further, the bedroom door was off its hinges ever since the beginning of the tenancy. That was the bedroom of the tenant's child who left the door open so it wasn't used much during the tenancy. The sliding closet door kept coming off the tracks during the tenancy, not caused by the tenants, and the tenant kept putting them back.

Although the tenant does not agree that the tenants should pay to renovate the landlord's house, the tenant agrees that they should compensate the landlord for painting the hallway and cleaning, but the tenant believes that the security deposit, which he agrees the landlord can retain, covers the cost of cleaning and all damages that the tenants are responsible for. All other claims are unreasonable and were existing damages or normal wear and tear for over 2 ½ years of the tenancy.

Analysis

The *Residential Tenancy Act* puts the onus on a landlord to ensure that move-in and move-out condition inspection reports are completed at the beginning and end of the tenancy and the regulations go into great detail of how that is to happen. The reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. In this case, the landlord failed to do either report with the tenants, and therefore that crucial evidence is missing.

Where a party makes a claim against another party for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss, and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

Also, any award for damages must not put the claiming party in a better financial situation than that party would be if the damage or loss had not occurred during the tenancy.

In this case, the tenants have both testified that the snow was an act of nature and one of the tenants also testified that they believed they would be in the rental unit until spring in any event and that he did regular snow blowing. I accept that, and I find that the landlord would have had to clear snow in order to move in due to the storm that day, and the landlord's claim for \$60.00 is dismissed.

With respect to the landlord's claim for compensation for damaged blinds, door track and hardware, a sliding closet door, a new bedroom door, and new matching towel bars, the tenants deny that any damage was caused during the tenancy. Where it boils down to one person's word over another, the claim has not been proven and the landlord's application for compensation for those items is dismissed.

With respect to laminate replacement, I accept the evidence of the tenants that the landlord agreed in writing that the damage existed due to a leak in the ceiling and it is reasonable to assume that the damage increased over time. The landlord has failed to establish element 2 in the test for damages.

Similarly with respect to carpet replacement, I see no evidence that the carpets needed replacing at the end of the tenancy and the landlord's claim to clean and then replace carpets is overinflated. The tenants agree to carpet cleaning, and I find that the landlord has established a claim for \$125.00.

With respect to the landlord's claim for suite cleaning, the landlord simply showed photographs to a cleaner and then obtained an estimate of the cost. That process does not compensate for the lack of move-in and move-out condition inspection reports. The tenants, however, do not disagree that the landlord is entitled to some compensation, but suggested that \$100.00 would be a reasonable amount, not the \$341.25 as claimed. I have reviewed the estimate which states that the landlord did a wonderful job and that judging from the photographs the cleaner would have charged that amount. Although that method is not sanctioned by the *Act*, I have also reviewed the photographs provided by the landlord, and I find that the landlord has established the claim.

With respect to the landlord's claim for painting the hallway the tenants do not deny the claim, and the landlord is entitled to compensation in the amount of \$83.36.

With respect to the landlord's claim for cleaning the deck, I do not find it sufficient for a landlord to get an estimate from a contractor who would be providing such things as a pressure washer and perhaps other tools and equipment, and then complete the work herself and claim that estimated amount. I find that cleaning has been awarded, which is included in the claim for suite cleaning, both completed by the landlord and not paid to another contractor.

In summary, I find that the landlord has established a claim for \$125.00 for carpet cleaning, \$341.25 for cleaning, and \$83.36 for painting the hallway, for a total of \$549.61. Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

The tenants currently have the \$425.00 security deposit but have not yet cashed the cheque. The tenants are entitled to do so, and the landlord is entitled to a monetary order in the amount of \$649.61.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$649.61.

This order is final and binding and may be enforced.

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: July 31, 2015

Residential Tenancy Branch

