



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD,MNDC, MND, FF

Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

1. Return of double the security deposit; and
2. To recover the cost of filing the application.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages to the unit;
2. For a monetary order for money owed or damages under the Act;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issues to be Decided

Is the tenant entitled to double the security deposit?

Is the landlord entitled to a monetary order for damages to the rental unit?

Is the landlord entitled to a monetary order or money owed or compensation for damages or loss under the Act?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on October 1, 2013 and was to expire on September 15, 2014. Rent in the amount of \$2,400.00 was payable on the first of each month. The tenant paid a security deposit of \$1,200.00. The tenant vacated the premises on or about September 12, 2014.

A move-in inspection report was completed. A move-out inspection report was not completed. Although the landlord indicated the tenant was give two opportunities to complete the report.

Tenant's application

The tenant claims as follows:

a.	Double the security deposit (\$1,200.00)	\$2,400.00
b.	Filing fee	\$ 50.00
	Total claimed	\$2,450.00

The tenant testified that they gave the landlord written notice of their forwarding address on September 30, 2014. The tenant seeks to recover the penalty of double the security deposit.

The landlord stated their application was made within the statutory time limited as their application was filed on October 7, 2014. Filed in evidence is a letter dated September 30, 2014, which provides the tenant's forwarding address.

Landlord's application

The landlord claims as follows:

a.	Carpet replacement	\$1,455.00
b.	Repair Hardwood Floor	\$1,157.63
c.	Replace bathroom marble	\$1,030.00
d.	Filing fee	\$ 50.00
	Total claimed	\$3,692.63

The landlord testified that the tenant breached clause #6 of the tenancy agreement as they misused the rental unit as they were operating a commercial business, rather than for residential use. The landlord stated that there were four office desks that were used by 5 to 6 office staff. The landlord stated that as a results the carpets were stained, the hardwood floor scratched and scuffed and the marble countertop in the bathroom stained.

Carpet replacement

The landlord testified that the carpets were heavily soiled prior to the tenant vacating the premises. The landlord stated that even after the tenant had the carpet cleaned the high traffic areas, such as the areas by the doorways were heavily stained. The landlord stated that the carpets were new in 2008. The landlord stated that they have provided an estimate for replacement of the carpets and seek to recover the amount of \$1,455.00. Filed in evidence are photographs of the carpets that show the carpets heavily soiled during the tenancy. Filed in evidence are photographs after the tenancy ended showing some staining. Filed in evidence is an estimate for replacement of the carpets.

The tenant testified that the carpets were not in new condition when they took possession of the rental unit. The tenant stated that the move-in condition inspection report shows the main bedroom carpet had a large bleach stain and the other bedroom had small minor stains.

The tenant testified that they lived and had a home office in the rental unit. The tenant stated that they had people in and out. The tenant stated that the photographs the landlord has provided do not support how the carpets were left at the end of the tenancy. Filed in evidence are photographs of the carpets.

Repair Hardwood Floor

The landlord testified that the tenant caused damage to the hardwood floor as it was scuffed and scratched. The landlord stated that they have not had the floor refinished as of yet, as they were able to have a person come and polish the hardwood floor; however, the scratches still need to be repaired in the future. The landlord stated that they seek to recover the cost to have the wood floors refinished in the amount of \$1,157.63. Filed in evidence are photographs which show the floor dirty, and scuffed. Filed in evidence is a estimate to refinish the hardwood floor.

The tenant testified that the hardwood floor was scratched when they moved into the rental unit. The tenant stated that the photographs that the landlord has submitted were taken prior to them having the wood floors cleaned, as you can still see their cleaning supplies. The tenants stated that the floor was left undamaged and clean at the end of the tenancy.

Replace bathroom marble countertop

The landlord testified that the tenant caused damage to the bathroom marble countertop by burning candles, which caused wax to penetrate the marble surface causing staining. The landlord stated that they have not had the countertop replaced as of yet. The landlord seeks to recover the cost to replace the counter in the amount of \$1,030.00. Filed in evidence is an estimate for replacement.

The tenant testified that they never used any candles during the tenancy.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, despite the landlord indicating that they gave the tenant two opportunities to complete the move-in inspection report, I find insufficient evidence was given by either party as to whether the tenant participate in the move-out inspection on September 30, 2014, as the Act requires, as both parties were at the rental unit on that date. Therefore, I am unable to determine if either party extinguished their rights under the Act.

Tenant's application

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, the tenant seeks double the amount of the security deposit. However, I find the tenant has failed to prove a violation of the Act by the landlord, as the landlord's application was filed within 15 days of receiving the tenant's forwarding address in writing. I find the tenant is not entitled to double the security deposit.

As the tenant was not successful with their application for double the security deposit, I find the tenant is not entitled to recover the filing fee from the landlord.

Landlord's application

Damages

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, I accept the landlord's testimony that the tenant was not using the premises for which it was rented, residential use. Rather, the photographs support a commercial business was being conducted out of the premises, contrary to the tenancy agreement.

Carpet replacement

I accept the tenant caused damage to the carpets by using the rental unit for commercial purposes by causing some staining in the high traffic areas, as this is support by the landlord's photographs.

The move-in condition inspection report shows that there was minor staining in bedroom #2 and a large bleach stain in the master bedroom at the start of the tenancy.

In this case the landlord is claiming for the full amount of the carpet replacement from the tenant. I find that to be unreasonable as the carpets were approximately 6 years old at the end of the tenancy and had minor stains and a large bleach stain at the beginning of the tenancy. I find it would be unfair for the tenant to pay for the full amount requested as the depreciated value must be considered as well any prior damage.

However, I find the tenant contributed to causing further staining to the carpets by not protecting the carpets in the high traffic area as the before photographs show the carpets heavily soiled, which I find the action of the tenant was neglect and not normal wear and tear. Therefore, I find it appropriate to grant the landlord a nominal award in the amount of **\$100.00**.

Repair Hardwood Floor

In this case, the parties have provided different version of events as to the state of the hardwood floor at the end of the tenancy. The evidence of the landlord was the tenant left the floor scratched and scuffed. The tenant denied causing any damage to the floor.

Although the landlord provided photographs of the hardwood floor showing large amounts of scuff marks, those photographs were taken prior to the floors being cleaned by the tenant.

The evidence of the landlord was that the tenant's photographs support that there were scratched on the floors at the end of the tenancy, I find the photographs do not show any significant scratches. I have reviewed the move-in condition inspection report, the report indicated that there was 9 scratches and minor scuff on the hardwood floor at the start of the tenancy. I find the landlord has failed to prove the tenant caused damage to the hardwood floors. Therefore, I dismiss this portion of the landlord's claim.

Replace bathroom countertop marble

In this case, both parties have provided a different version of events. The evidence of the landlord was the tenant caused damage to the countertop by using candles. The tenant denied using any type of candles during the tenancy.

While I accept the countertop appears to have minor stains close to the basin, I find the landlord has failed to prove the stains were caused by that action or neglect of the tenant, as this minor staining could simply be from normal wear and tear.

Further, if the marble countertop required special treatment such as not to use any substances that contain wax, such as candles, it was the landlord responsible to provide the tenant with those instructions in writing at the beginning of the tenancy. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$150.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the amount of \$150.00 from the tenant's security deposit in full satisfaction of the claim.

Therefore, I order the landlord to return to the tenant the balance of their security deposit in the amount of **\$1,050.00**.

I grant the tenant a monetary order pursuant to section 67 of the Act should the landlord fail to comply with my order. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed. The landlord's application for a monetary order was granted and the landlord was authorized to retain the above amount from the security deposit.

The tenant is granted a monetary order for the balance due of their security deposit.

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: August 10, 2015

Residential Tenancy Branch

