



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 in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. A Monetary Order for damages to the unit – Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord states that an evidence package consisting solely of photos, including photos of the carpet and fireplace was mailed to the Tenant and the Residential Tenancy Branch on July 30, 2015. The Landlord states that the photos are better and clearer images of the photos that were previously provided in an evidence package. These photos were not available to the Arbitrator at the time of the hearing but were since obtained and reviewed for this Decision.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on May 1, 2011 and ended on February 1, 2015. At the outset of the tenancy the Landlord collected \$1,100.00 as a security deposit. The Parties mutually conducted both a move-in and move-out condition inspection and reports were completed.

The Landlord states that the Tenant left the oven and kitchen cupboards unclean and claims \$250.00 for the Landlord's own labour. The Landlord states that 5 hours were spent cleaning at a rate of \$50.00 per hour. The Landlord states that better rates were not investigated.

The Tenant states that the cupboards were cleaned and that the oven was cleaned with oven cleaner as it was not self-cleaning. The Tenant states that the oven was not used very often and was cleaned during the tenancy about once every two years. The Tenant states that the stains are from normal use of the oven that is close to 15 years old. The Tenant states that the claim is excessive and the Landlord provided no invoice with the materials.

The Landlord states that the tenancy agreement requires the Tenants to have the carpets professionally cleaned at the end of the tenancy. The Landlord states that the carpets did not appear to have been cleaned and that a stain was left in the master bedroom carpet. The Landlord states that they hired a company to remove the stain and claim \$105.00. The Landlord states that the carpets are 15 years old but in pristine condition. The Landlord states that they were told by the carpet technicians that the stain on the carpet was caused by the placement of wood furniture on the freshly cleaned carpet and that the stain leached into the carpet. The Landlord provided the name of the carpet company that carried out the work.

The Tenant states that the carpets were aged and white in color and that the Tenants did steam clean the carpet themselves with a rented machine. The Tenant states that the carpets were cleaned during the tenancy as well but never got clean.

The Landlord states that at the end of the tenancy a barbeque mat from the deck was missing. The Landlord states that a stain was left where the mat had been placed. The Landlord states that the mat was purchased in 2010. The Landlord claims \$47.79 in compensation based on the estimated new costs of a new mat from a home store. The Landlord states that it has not been replaced as the new tenant does not have a barbeque but may in the future and at that point the Landlord would purchase the mat.

The Tenant states that there was no mat present on the deck. The Tenant also states that even if there were they would have no reason to take an old barbeque mat. The Tenant states that the stain was left from the Tenant's cupboard that had been situated in that spot.

The Landlord states that the Tenant removed the unit's 15 year old G.E. dishwasher and replaced it with a used stainless steel Bosch without the consent of the Landlord. The Landlord states that the original dishwasher was removed to some unknown place likely the dump. The Landlord states that the Tenant's machine does fit the space and does not match the other white appliances. The Landlord claims the cost of the replacement and installation of a new white dishwasher in the amount of \$760.00. The Landlord states that the replacement will occur when the current tenancy ends or if required sooner. The Landlord states that the new tenant is using the machine and that there are no complaints about either the look or operation of the machine. The Landlord states that they will return the Tenant's dishwasher to the Tenant when it is replaced.

The Tenant states that the Landlord had knowledge of the replacement as they had been to the unit on a couple of occasions, saw the machine and made no comments. The Tenant states that the old machine was removed as it was leaking and the Tenants acted to reduce the damage to the floor. The Tenant states that they simply replaced it with a newer and better machine at no cost to themselves or the Landlord. The Tenant states that they never asked the Landlord reimburse them.

The Landlord states that the Tenants left the shower tiles damaged by the replacement of the existing spring form curtain rod with a curved rod that was attached to the shower walls. The Landlord states that the Tenant's rod was removed and reinstalled to correct a plug error and that the shower tiles are now in good condition and no longer appear damaged but that the entire tile for the bathtub now requires replacement. The Landlord claims \$840.00 and states that this will be done when it is reasonable to do for the new tenant.

The Tenant states that the shower rod was not returned to the Tenant and is still in use. The Tenant states that there were only two tiles affected by two attachment holes in each. The Tenant states that if the Landlord were to remove the rod, all the tiles would not have to be replaced as it should only take two tiles to patch the area. The Tenant states that the amount claimed by the Landlord is excessive.

The Landlord states that the Tenant had placed two cup holder hooks in front of a cabinet without any authority and contrary to the tenancy agreement. The Landlord claims \$250.00 to restore the cabinet. The Landlord states that this amount is based on the Landlord's internet research on how to repair the cabinet and would include the removal and replacement of veneer along with repainting the cabinet. The Landlord did not obtain any other estimate and states that the estimate for \$250.00 is made up of \$50.00 in parts or supplies and anywhere from \$150.00 to 200.00 for labour.

The Tenant states that the two holes are on a shelf below the microwave and not in any cabinetry. The Tenant states that the Landlord's claim is excessive.

The Landlord claim damages to a fireplace but agrees that there was no mention of any damage to a fireplace in the application, monetary worksheet or documentary materials. The Landlord states that this claim was included in the evidence package sent to the Tenant. The Tenant does not wish to address this claim at the hearing and asks that the Landlord's claim be dismissed, with leave if necessary.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

The Landlord's photos of the kitchen, cupboards and stove indicate some minimal cleaning was required however I consider the amount being claimed to be excessive as it bases the hourly cost on the Landlord's own determination of the Landlord's value and not on any market standard. Further, the hours claimed are not supported by the minimal amount of cleaning indicated by the photos. I find therefore that the Landlord has only substantiated a nominal amount of **\$50.00** for the cleaning.

I accept that the Tenants did clean the carpet and that a stain was left. Although the Landlord did not provide an invoice for the amount claimed, given the identification of the company that did the work I accept that the Landlord incurred the cost claimed. Given the undisputed evidence of the age of the carpet I cannot accept that the carpets were in pristine condition however I accept that the professional company was able to remove the stain regardless of the age. As a result I find on a balance of probabilities that the Landlord has substantiated an entitlement to the costs of the stain removal in the amount of **\$105.00**.

I consider the Tenant's evidence that they would have no reason to take an old barbeque mat to be believable. However even if the Tenants removed the mat the Landlord provided no evidence of any loss as the mat has not been replaced and the

evidence of the likelihood of that happening was vague. As a result I dismiss the claim for its replacement.

Policy Guideline #40 Useful Life of Building Elements provides that the useful life of a dishwasher is 10 years. Based on the undisputed evidence of the age of the original dishwasher, I find that no value was lost by its removal. There is no evidence of loss with the current tenancy either. There may be some aesthetic change but I accept that the value of the replacement dishwasher exceeds any loss to the Landlord for that change. I therefore find that the Landlord has not substantiated the loss claimed. I dismiss the claim in relation to the dishwasher.

I accept that the Tenant installed a shower curtain without permission and in doing so created holes in two tiles. Given the photos and considering the Landlord evidence of the current state of the bathroom tiles, I find that the damage done was minimal while the Landlord's claim is excessive. As a result I find that the Landlord is only entitled to a nominal amount of **\$50.00** in compensation for the damage to the bathroom tiles.

While I am not convinced that generally the installation of cup holder hooks could be considered more than reasonable wear and tear, I consider that in this case the hooks are on the exterior of the cupboard and not in a less noticeable area such as inside a cupboard. I find therefore that the Landlord has substantiated on a balance of probabilities that the Tenant did damage the cupboard. However, the evidence also indicates that the holes are minor and I find that the amount being claimed is excessive in contrast. I also note that there is no evidence of mitigation efforts. As such I find that the Landlord has only substantiated a nominal amount of **\$50.00**.

Rule 2.2 provides that "the claim is limited to what is stated in the application." The Landlord did not include any particulars in relation to a claim for damages to the fireplace in the current application. This claim may not therefore be considered.

Rule 2.9 of the RTB Rules of Procedure provides that an applicant may not divide a claim. Although it was indicated at the hearing that the Landlord could have leave to reapply for the damages to the fireplace, upon further consideration that damages to the fireplace would be included within the scope of damages to a unit and therefore not available for division to separate claims, I find that the Landlord may not reapply for damage to the fireplace.

As the application was found to have some merit, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$305.00**. Deducting this amount from the security deposit of **\$1,100.00** plus zero interest leaves **\$795.00** to be returned to the Tenant forthwith.

Conclusion

I Order the Landlord to retain **\$305.00** from the security deposit plus interest of \$1,100.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$795.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: September 11, 2015

Residential Tenancy Branch

