



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlords for a monetary order. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on August 1, 2013 and ended on August 1, 2014. The tenants were obligated to pay \$1300.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$650.00 security deposit which has been returned to the tenants. A condition inspection report was not conducted at move in. The landlords conducted a condition inspection report at move out on their own without the tenants being present.

The landlords stated that the tenants left the unit with some damage. The landlords stated that the tenants held onto a set of keys until August 22, 2014. The landlords stated that they want the tenants to pay for all the cleaning costs, repair costs, pro-rated rent from August 1-22, 2014 and their filing fee.

The tenants' testimony is as follows. The tenants stated that they were shocked when the landlords served them the notice of hearing documents. The tenants stated that they were friends with the landlords prior to moving in. The tenants stated that they adamantly dispute the landlords claim except for a nominal charge for the fence. The tenants stated that they would have gladly returned the keys sooner but the landlords

didn't return to the property until August 22, 2014. The tenants stated that the landlords claim is outrageous.

The landlord is applying for the following:

1.	Screen Door (Estimate)	\$13.96
2.	Locks	\$64.98
3.	JSK – Bar Stool	\$44.80
4.	Blind	\$74.97
5.	Carpet	\$241.92
6.	Paint and Supplies	\$133.26
7.	Hedges/Garden (Estimate)	\$160.00
8.	Pressure Wash Driveway (Estimate)	\$150.00
9.	Rent – August 1-22, 2014	\$922.58
10.	Platform/Fence	\$328.96
11.	Flooring (Estimate)	\$100.00
12.	Filing Fee	\$50.00
13.	Tax Amount	\$73.94
	TOTAL	\$2359.37

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the following; a) The existence of the damage or loss, b). That it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established and only then, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. **In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.**

I address the landlords' claims and my findings as follows.

1. Screen Door - \$13.96

The landlords stated that he has yet to repair this item. The tenants dispute this claim. The tenant stated that the screen had a tear in at move in and that it was just through general wear and tear. The landlords have not incurred any "out of pocket costs" for this item. In addition, the landlords have failed to satisfy me that the damage was beyond wear and tear.

2. Locks - \$64.98

The landlords stated that the tenants did not return the keys on August 1, 2014. The landlords stated that the tenants had access to the unit until August 22, 2014. The landlords stated that he had to change the locks and have provided a receipt. The landlords stated that his sister in law attended on August 1, 2014 to pick up the keys and received a set from the male tenant. The landlords stated that it was when they contacted the tenants at a later date about the poor condition the home was left in; they became aware that the tenants had another set of keys.

The tenants dispute this claim. The tenants stated that there wasn't anyone to give the keys to beyond August 1, 2014. The tenants stated that the landlord was fully aware that the tenants were returning to the home to conduct final cleaning and weeding of the yard as the landlords were returning to move back into the home. The tenants provided text messages that support their position that the landlords were aware that they were still accessing the unit and that it wasn't a problem. Based on the text messages provided by the tenant I find that the landlords were aware that the tenants still had keys and were authorized to have them to finish preparing the property for them. Based on the above and on a balance of probabilities, I dismiss this portion of the landlords claim.

3. Bar Stool - \$44.80

The landlords stated that the bar stools were purchased a year prior to the tenants moving in and that they were in perfect condition. The landlords submitted a receipt for this claim.

The tenants dispute this claim. The tenants stated that the bar stool had a rip in it when they moved in. The tenants stated that the rip became larger due to everyday use and regular wear and tear.

The landlords provided a photo of the damaged bar stool at the end of the tenancy. The landlords did not provide photos of the bar stool at the beginning of the tenancy or a checklist of furniture items and their condition at the beginning of the tenancy. Without having a reference point or "snapshot" of the condition of the item at move in versus

move out, I am unable to ascertain changes in condition, if any. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

4. Blinds - \$74.97

The landlords stated that the blinds were two years old when the tenants moved in. The landlords stated that the blinds were bent and damaged that required him to replace them.

The tenants dispute this claim. The tenants stated that the blinds had some bent pieces when they moved in. The tenants stated that any deficiencies were due to everyday use and regular wear and tear.

The landlords provided a photo of the blinds at the end of the tenancy. The landlords did not provide specific photos of the blinds at the beginning of the tenancy, but some rather far range shots that do not clearly depict condition. The landlords did not conduct a move in condition inspection report at the start of the tenancy. The landlords stated that this was the first time that he had rented the home and was not aware of his responsibilities. It was explained in great detail to the landlords the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlords have not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

5. Carpet -\$241.92

The landlords stated that when the tenants moved in they complained that the carpets had a bad odor that could not be shampooed away even after multiple attempts. The landlords gave the tenant permission to replace the carpet. The landlords reimbursed the tenant for the amount he spent on replacing the carpet. The landlords stated that after the tenants moved out he inspected the carpet that the tenant replaced and wasn't happy with the installation of it. The landlords stated that they removed the carpet and had the flooring redone by professionals. The landlords stated that the tenants should pay return the money back to them.

The tenants stated that the carpet purchased was a temporary carpet and that they did the landlords a favour by going to the Home Depot, purchasing it, and installing it the best they could. The tenants stated that the previous carpet was so disgusting that they could not even store any items in the room because of the smell.

In the landlords own testimony, they acknowledged this was their first experience in renting a home and weren't aware of the scope of their responsibilities. I fully accept the landlords attempted to do their best during this tenancy, however the landlords clearly lacked the experience and the knowledge required on certain issues. Residential Tenancy Policy Guideline 1 outlines the responsibilities for a landlord and tenant. The landlord often deferred his responsibilities to the tenant, and when the tenant did meet the landlords' standards, he became unhappy. Based on the documentary evidence supplied by both parties, I am satisfied that the landlord entrusted the tenant to deal with the carpet and reimburse him for the costs of the carpet and I am also satisfied that the tenant did his best to keep the costs as low as he possibly could.

Section 32 of the Act stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, and makes the unit suitable for occupation by a tenant. It is clear to me that the landlords chose not address the carpet issue and that they gave the tenants the "go ahead" to do it. The landlords cannot turn around and then state the work wasn't done to their standards after they deferred their responsibility. Based on all of the above I dismiss this portion of the landlords claim.

6. Paint\Paint Supplies – \$133.26

The landlords stated that the unit was painted prior to the tenants moving in. The landlords stated the tenants requested to change the color of several of the rooms. The landlords stated that they gave their permission to do so with no conditions to the tenants to return the walls back to the original colour. The landlords stated that they were not pleased with the quality of the painting and that they had to buy paint to cover the poor paint job and some crayon marks on the wall.

The tenants dispute this claim. The tenants stated that they had a professional paint the suite and that they left extra paint in the suite for the landlords. The tenants stated that similar to the previous claim, the landlords were unhappy with the standard of work after they had given permission to do so. My finding in this claim is that of claim #5. The landlords gave the tenant the go ahead to paint and did not follow up on the work or quality until the tenancy was over and the relationship had broken down. The landlords could have said no to the tenants when they requested the walls to be painted since he had just had them done or worked out an arrangement to have a painter that they both could agree on conduct the work. The landlord chose neither of those options. Based on the above I dismiss this portion of the landlords claim.

7. Hedges/Garden - \$160.00

The landlords stated that the tenants didn't leave the garden and hedges in a neat and clean condition. The landlord stated he cleaned up the property on his own and it took about 4-5 hours. The landlord stated that he received a quote from a landscaper that it would cost \$160.00 to do the work.

The tenants dispute this claim. The tenants stated that they cut the grass and weeded the yard prior to the landlords moving back in. The tenants stated that the tenancy agreement didn't address the hedges and garden. The tenants stated that they went above and beyond by trimming the hedges at least two times during the tenancy.

Residential Tenancy Policy Guideline 1 states that when a tenant lives in a single family dwelling, they are responsible for routine yard maintenance which includes cutting the grass and clearing snow. The landlord has made a claim about the garden and hedges which is beyond routine yard maintenance. In addition, the landlord has not provided any proof of "out of pocket costs". Based on the above the landlord has not provided sufficient evidence to support this claim and I therefore dismiss it.

8. Pressure washing driveway - \$150.00

The landlord stated that the tenants left grease stains in the driveway. The landlords obtained an estimate that it would cost \$150.00 to have it cleaned. The landlord stated that he rented a machine and did it on his own. The landlord stated it took about 4-5 hours to clean.

The tenants dispute this claim. The tenants stated that they power washed the driveway at move out. The landlords have not provided any evidence to show the change in condition of the driveway from move in versus move out. In addition, the landlords have not provided any proof of "out of pocket costs". Based on the above the landlords have not provided sufficient evidence to support this claim and I therefore dismiss it.

9. Rent – August 1-22, 2014 \$922.58

The landlords stated that the tenants had a spare set of keys until August 22, 2014. The landlords stated that the tenancy ended on August 1, 2014 and that since they still had access to the property they should pay the rent for that time.

The tenants dispute this claim. The tenants stated that the landlords were moving back into the property so there is no loss of rent. The tenants renewed their argument from claim #2 that they did indeed vacate by August 1, 2014 and that the reason they had the keys was to do some further cleaning as requested by the landlords. The tenants stated that they had the owner's permission to access the property to do the cleaning.

As I found in claim #2, I find in this claim as well, the tenants had the permission of the landlord to be on the property to address the issues that were mentioned during the “final walk thru” on August 1, 2014 with the landlords’ sister in law. As the landlords were not in the jurisdiction, the only logical way the tenants could access the unit to clean was to retain a set of keys. Based on the above I find that the landlord is not entitled to rent for this time period and dismiss this portion of the landlords claim.

10. Platform/Fence - \$328.96

The landlords stated that the platform and fence was damaged by tenants. The landlords stated that the fence was five years old. The landlords stated that they did their best to keep the costs down and are only asking for the lumber and supplies to fix it, but not any labour costs.

The tenants stated that they agree to this claim in part. The tenants stated that they believe that they may have damaged the fence during one of their children’s birthday party but feel it should only be a cost of about ten dollars to repair.

Policy Guideline 40 addresses the “useful life” of building elements and lists a fence to have a useful life of 15 years. Based on the testimony of the tenants and the evidence before me I am satisfied that the tenants are partially responsible for some of the damage to the fence. I find that the landlords are entitled to some compensation but not the amount as sought. Based on the age of the fence, the relatively poor condition of the other portions of the fence and the rather small scope of work required to repair it, I find that the landlords are entitled to \$100.00.

11. Flooring - \$100.00

The landlords stated that the tenants caused a big scratch in the floor. The landlords stated that they received a quote from a contractor that it would cost \$100.00 labour to repair the floor if the landlords could provide the flooring. The landlords stated that they decided to redo the entire flooring and did not have the floor repaired.

The tenants acknowledge that they damaged the floor when moving a piece of furniture from one room to another. The tenants stated that they informed the landlord and that he told them “not to worry about it”. The tenants stated that this was just normal living and that it should be attributed to wear and tear and not malice or intent to damage the property.

As the landlords decided to redo the entire flooring and did not conduct the repairs and did not suffer any “out of pocket costs” in relation to the scratch in the floor, I dismiss this portion of his application.

12. Tax Amount – \$73.94

The landlords have separated the amount of tax they spent from the principal amount of purchases. As I have not found in favour of those amounts and awarded a “fixed amount” on claim #10, I dismiss this portion of his claim.

13. RTB Filing Fee - \$50.00

As the landlords have been partially successful in their claim I find that they are entitled to the recovery of the \$50.00 filing fee.

Conclusion

I grant the landlords an order under section 67 for the balance due of \$150.00. This order may be filed in the Small Claims Division of the Provincial 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: October 06, 2015

Residential Tenancy Branch

