



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting her to retain the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary award as claimed?

Background and Evidence

The parties agreed that the tenancy began on June 1, 2014 at which time the tenant paid a \$525.00 security deposit and a \$525.00 pet deposit and that it ended in May 2014. They further agreed that the tenant was responsible under the terms of the tenancy agreement to pay for 50% of the utilities charged for the residence.

The parties agreed that the tenant owes the landlord \$295.35 for utilities.

The landlord testified that at the end of the tenancy, there was on the linoleum in front of the entrance a pink stain which measured approximately 2' x 2'. Although the Residential Tenancy Branch did not receive a photograph of the area, the parties agreed that one of the landlord's photographs showed a pink stain on the linoleum at the end of the tenancy and a second photograph showed the linoleum at a time when it was not stained. The landlord testified that the tenant had a burgundy coloured mat in front of the door and theorized that the colour from the mat bled into the linoleum. She provided a letter from a party who performed work on the rental unit prior to the commencement of the tenancy who stated that the linoleum was not stained prior to the tenancy and also provided a copy of the condition inspection report from the previous tenant which did not reflect a stain on the linoleum. She testified that when she brought the stain to the attention of the tenant, he acknowledged that he had caused it and he attempted to remove it but was unsuccessful.

The landlord seeks to recover the \$8.93 cost of a product she purchased in an unsuccessful attempt to remove the stain as well as the estimated \$620.56 cost to replace the floor and the \$157.50 cost to remove and reinstall the gas oven to permit the installation of new linoleum. She testified that the linoleum was approximately 10 years old.

The tenant testified that the mat was in place at the beginning of the tenancy and that the stain was on the linoleum when the tenancy began. He claimed that he discovered the stain approximately 3 weeks into the tenancy, but didn't bother to report it to the landlord because they were already engaged in a dispute over utilities and he was certain she would simply blame him for the stain. He stated that he did not offer to remove the stain because he had caused it. Although the tenant acknowledged that the landlord's pre-tenancy photograph showed unstained linoleum, he argued that the picture does not have a date on it and could have been taken long ago. The landlord responded by saying that it was taken approximately 1 month prior to the beginning of the tenancy as she had put the house on the market.

The landlord also seeks to recover the \$50.00 filing fee paid to bring her application.

Analysis

As the parties have agreed that the tenant owes the landlord \$295.35 for utilities, I award the landlord that sum.

The *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

Section 37(2) of the Act provides that tenants are obligated to leave the rental unit in reasonably clean and undamaged condition, except for reasonable wear and tear.

Although the tenant claimed that the linoleum was stained at the beginning of the tenancy, the preponderance of the evidence leads me to find that it is more likely than not that the linoleum was not stained at that time. The landlord had a photograph which she claims was taken just before the tenancy began and shows unstained linoleum, the landlord was able to provide a statement from a third party who could confirm that the

linoleum was not stained prior to the tenancy and the condition inspection report of the previous outgoing tenant does not comment on a stain. I find that the tenant caused the stain and that it goes beyond what may be characterized as reasonable wear and tear. I therefore find that the tenant breached his obligation under section 37(2) of the Act. However, the landlord is not entitled to recover the replacement cost of the linoleum, but only the value of what was lost. I find that linoleum has a useful life of 10 years and was already at the end of its useful life, although it seems to have been in excellent condition, and therefore had virtually no value. I find that the landlord is entitled to recover the cost of the cleaning product and a nominal amount to reflect the damage to the linoleum. I award the landlord \$58.93.

As the landlord has enjoyed some success in her claim, I find she should recover the \$50.00 filing fee paid to bring her application and I award her \$50.00 for a total entitlement of \$404.28. I order the landlord to retain this amount from the security deposit and I order her to return forthwith to the tenant the \$525.00 pet deposit and the \$120.72 balance of the security deposit. I grant the tenant a monetary order under section 67 for \$645.72. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord will retain \$404.28 from the security deposit and is ordered to return the pet deposit and the balance of the security deposit to the tenant. The tenant is granted a monetary order for \$645.72.

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 26, 2015

Residential Tenancy Branch

