



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's Application for a Monetary Order for compensation for damage and cleaning; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

In filing the Application, the landlord indicated he was seeking compensation totalling \$450.00; however, the landlord's written submission indicated he was seeking compensation for individual items that when added together totalled \$518.81. Discussion ensued as to the discrepancy between the Application and the written submission and as a result the landlord's claim was limited to \$450.00 I continued to hear whether the landlord has established entitlement to compensation in that amount.

The hearing took place over two dates. An interim decision was issued after the first hearing date and should be read in conjunction with this decision.

During the period of adjournment, I received printed photographs from the tenants which were numbered and included a brief description, as I had ordered at the first hearing. During the reconvened hearing, the landlord confirmed receipt of the same. In making this decision I have considered the printed photographs.

At the reconvened hearing of September 24, 2015 the male tenant confirmed that the female tenant was available but that he would be representing both of them.

Issue(s) to determine

1. Has the landlord established an entitlement to recover the amount claimed from the tenants?
2. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The tenancy commenced June 1, 2013 and ended November 30, 2014. The tenants paid a security deposit of \$325.00 and were required to pay rent of \$650.00 on the 1st day of every month.

A move-in inspection report was prepared on May 31, 2013 and a move-out inspection report was prepared on November 30, 2014. In signing the move-out inspection report the tenants indicated they did not agree with the landlord's assessment of the property.

Over the two hearing dates I heard a considerable amount of testimony from the parties. With a view to brevity, I have summarized the landlord's claims against the tenants and the tenants' responses below.

Wall damage

The landlord submitted that the tenants damaged the drywall in the "storage" area and the kitchen wall during the tenancy. The landlord indicated that the cost to purchase drywall compound and paint and supplies would amount to \$69.86 based upon prices marked at a home improvement store. The landlord seeks to recover this amount from the tenants.

The landlord pointed to the move-out inspection report that describes the "storage" wall as being broken and the kitchen wall as being chipped and scratched. The landlord testified that the rental unit was last painted at the beginning of 2013.

The tenant submitted that the "storage" area referred to by the landlord on the move-out inspection report was recorded as the closet on the move-in inspection report and that it had pre-existing wall damage. The tenant submitted that the walls in the kitchen also had pre-existing scratches and that they did not cause any further damage to the kitchen walls. The tenant submitted that the rental unit was well worn and showed evidence of years of wear and tear.

I noted that on the move-in inspection report, there are a number of walls in the rental unit that are recorded as being in fair condition and chipped or damaged. The landlord asserted that he is only seeking compensation for the damage caused by the tenants. For instance, damage was pre-existing on the upper half of the closet wall but that at the end of the tenancy the damage was at the bottom of the wall. The tenant asserted that there was pre-existing damage at the bottom of the closet wall and pointed to his photographs to demonstrate his position.

The parties presented arguments as to the best evidence of the rental unit at the start of the tenancy. I have recorded their respective arguments under the sub-heading "Evidence" below.

Carpet stain

The landlord requested compensation of \$57.97 to clean a stain on the living room carpet caused by the tenants.

The tenant was agreeable to this claim.

Bi-fold closet door

The landlord asserted that the tenants damaged the pivot hole(s) at the top of the closet door in the main bedroom which has resulted in the door not closing properly. The acknowledged that the closet door remains in place for the current tenants but that a new closet door was estimated to cost \$135.98. The landlord submitted that the closet door is approximately 7 years old; however, he has no receipts to establish its age. The landlord stated that the house is approximately 30 years old and that he has owned it for approximately 20 years.

The tenant stated the closet door was "very old" and that it was wiggly when the tenancy started.

Living room blind

The landlord asserted that the tenants damaged the top of a vertical vane in the living room blinds and that new blinds cost approximately \$150.00. The landlord submitted that the blinds were new in 2013 although he acknowledged that he had no receipt for the purchase of the blind as he had paid cash. The landlord acknowledged that the blinds remain in place and functional as there is a piece of tape covering the crack at the top. Nevertheless, the landlord was of the position the tenants should pay for new blinds.

The tenant acknowledged that a vertical vane fell out during the tenancy and that it was re-inserted. The tenant stated that there was tape and cracked vanes when he returned to the property for the move-out inspection and found that the landlord had taken the blinds down and put them on the floor.

Bedroom blind

The landlord submitted that the blind in the second bedroom would not stay up at the end of the tenancy. The landlord claimed the blinds were new in January 2013 but he did not have a receipt for its purchase. The landlord submitted a new blind will cost

\$75.00 to replace. The landlord was of the position that the only reason the blind no longer stays up is because the tenants abused them.

The tenant stated that they did not use the blind in the second bedroom as it was a storage area for them. Also, the very old window latch in that room broke during the tenancy so the tenants had no reason to open the blind.

Oven cleaning

The landlord seeks \$30.00 as compensation for additional cleaning of the oven. The landlord submitted that the tenants left the oven dirty. Despite the move-in inspection report showing the oven as being dirty and stained at the start of the tenancy the landlord was of the position that the tenants remained obligated to leave the rental unit reasonably clean at the end of the tenancy.

The tenant testified that he purchased oven cleaner and used it as directed near the end of the tenancy. The tenant was of the position that the oven was already dirty and stained, as reflected on the move-in inspection report.

Other damaged items

The landlord also indicated other items were damaged in the rental unit but he had not indicated he was seeking any amount for those items. As such, I did not hear further submissions concerning those items.

Evidence

The landlord largely relied upon the condition inspection reports and 11 photographs he took in support of his claims.

The tenants largely relied upon over 100 photographs they provided in an effort to establish the condition of the rental unit at the start of the tenancy. The tenant described how after the move-in inspection report was completed the tenants took numerous photographs to establish the condition of the rental unit as the information contained in a condition inspection report is somewhat limited.

The landlord questioned whether the tenant's photographs were taken at the beginning of the tenancy as they were not taken in his presence and the landlord submitted that the tenant's photographs could have easily been taken after the tenants caused damage to the rental unit.

In response, the tenant pointed to a few photographs in particular in an effort to demonstrate they were taken at the start of the tenancy and not at the end of the tenancy. The examples provided by the tenant included:

1. A photograph of a kitchen sink where the backyard, including a picnic table on the grass, is visible. The tenant submitted that shortly after the tenancy commenced the picnic table had been moved to another location where it remained throughout the tenancy. Also, the picture shows green grass yet it has snowed at the end of the tenancy. Also, the picture shows a bar of soap on the edge of the kitchen sink and the tenant submitted that the tenants did not use a bar of soap at the kitchen sink and that it was left there after the landlord's wife had cleaned the unit prior to the start of their tenancy.
2. A photograph of a dimmer style light switch without a knob. The tenant stated that a new switch was installed during the tenancy.
3. A photograph of a broken electrical outlet that was changed during the tenancy.

The landlord was asked to respond to the examples given by the tenant and the landlord simply stated he could not recall such details. Rather, the landlord maintained that the best evidence as to the condition of the rental unit at the start of the tenancy was the move-in inspection report.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The Act provides that at the end of the tenancy a tenant is required to leave a rental unit reasonably clean. The Act also provides that a tenant is responsible for repairing any damage that he causes by way of his actions or neglect; however, the Act also provides that reasonable wear and tear is not damage.

Awards for damages are intended to be restorative. Accordingly, where a damaged item is replaced it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of a replaced item I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

The Residential Tenancy Regulations provide that a condition inspection report provides the best evidence as to the condition of a rental unit for a dispute resolution proceeding unless there is a preponderance of evidence to the contrary. I found the tenant provided clear and plausible submissions to demonstrate the photographs the tenants provided were taken at the beginning of the tenancy which I preferred over the landlord's inability to recall any details when prompted. Therefore, I accept that the tenants' photographs were taken at the beginning of the tenancy and I have considered the move-in inspection report and the tenants' photographs in determining the pre-existing condition of the rental unit at start of the tenancy.

With respect to the move-out inspection report, the tenants signed the report indicating they did not agree with the landlord's assessment. Accordingly, the move-out inspection report does not hold much evidentiary value and the landlord bears the burden to establish the condition at the end of the tenancy to support his claims against the tenants.

Upon consideration of everything before me, I provide the following findings and reasons.

Damage to walls

The move-in inspection report notes that several walls in the rental unit are described as having damage including the living room, the main bedroom, the bathroom and a closet closet. As such, one would expect that the purchase of drywall compound, paint and supplies would be necessary to remedy pre-existing damage. Nevertheless, I proceed to consider the landlord's claims that the tenants caused additional damage to the walls during the tenancy.

As pointed out by the tenant, the move in inspection report notes damage to the closet wall and there is no mention of a storage space on the move-in inspection report. Rather, a storage area is only noted on the move-out inspection report. Thus, I find the tenant's explanation that the closet and the storage area are one in the same to be likely and I accept that position. The landlord's photograph depicts damage at the bottom of the closet wall. However, the tenant's photograph, which I have accepted as being taken at the start of the tenancy, shows similar damage at the bottom of a closet.

I find that the parties provided me with photographs of the same closet wall. Although the damage in the landlord's photograph appears slightly worse than the damage appearing in the tenants' photograph, I find that the drywall was already significantly compromised at the start of the tenancy based upon the tenant's photograph. I find the worsening of the damage easily attributable to continued use of the space. As such, I find the landlord did not establish to my satisfaction that the tenants damaged the closet that was not already pre-existing or beyond wear and tear.

The move-in inspection report shows the kitchen walls being in "fair" condition at the start of the tenancy. The tenants provided photographs of scuffs in the kitchen wall at the start of the tenancy. The landlord did not provide photographs of the kitchen wall at the end of the tenancy. Considering the tenants disputed the landlord's assessment of the kitchen wall at the end of the tenancy and the landlord has the burden of proof I find the landlord did not meet the burden with disputed verbal testimony. Therefore, I am not persuaded that the tenants damaged the kitchen wall as asserted by the landlord.

Considering all of the above, I find the landlord failed to establish that the tenants are responsible for compensating him for the cost to purchase drywall compound, paint and supplies and I dismiss this portion of the landlord's claim.

Carpet stain

As the tenants acknowledged and agreed to pay for the stain removal, I grant the landlord's request to recover \$57.97 from the tenants.

Bi-fold closet door

Residential Tenancy Policy Guideline 40 provides that closet doors have an average useful life of 20 years. The tenant described the bi-fold door as being "very old". The landlord's photograph of a closet door depicts a brown colored veneer bi-fold door that was popular many years ago. Accordingly, I find it likely that the door in question is at least 20 years old given its appearance and lack of evidence demonstrating it is only 7 years old. I find the tenant's assertion that the pivot hole was sloppy at the start of the tenancy to be likely given its apparent age. Therefore, I find this bi-fold door likely to be at the end of useful life due to age and natural deterioration and I do not hold the tenants responsible for compensating the landlord for a new bi-fold door.

Living room blind

I heard undisputed evidence that the living room blinds were taken down and on the floor when the tenants attended the property for purposes of the move-out inspection. While there is a photograph of a damaged vertical vane, I cannot determine whether this was done during the tenancy or when the landlord took the blinds down. I further

find the landlord's assertion that the blinds have a value of \$150.00 to be questionable given they appear to be vertical vinyl blinds and the landlord did not provide documentary evidence to establish their value. Therefore, I find the landlord did not meet his burden to establish that the tenants' actions caused the landlord to suffer a loss of \$150.00 as claimed.

Bedroom blind

I heard undisputed evidence that the bedroom blind would not stay up. The tenant denied damaging the blind; however, I find the landlord's logic that blinds can only be damaged by abuse to be unreasonable considering blinds stay up by way of a mechanical operation. As with anything mechanical, it is subject to breaking due to many reasons including abuse, wear and tear, or faulty construction. I find it the reason the blind no longer stays up has not been established. Of further consideration is that the landlord did not present a photograph of the blind and did not present evidence to establish that the blind has a value of \$75.00. For all of these reasons, I find the landlord did not establish that the tenants' actions resulted in damage to the blinds that caused the landlord to suffer a loss of \$75.00 as claimed.

Oven cleaning

I was provided a photograph of the oven taken by the landlord at the end of the tenancy and the tenants provided a photograph taken at the start of the tenancy; however, the photographs depict different areas of the oven. The landlord's photograph appears to be of the inside of the door whereas the tenant's photograph is concentrated on the interior of the oven. The move-in inspection report does indicate the oven was dirty and stained at the start of the tenancy; however, the tenants remain obligated to leave the rental unit "reasonably clean" at the end of the tenancy and this obligation is not dependant on the level of cleanliness at the start of the tenancy. That being said, I am of the view that the landlord has established that the oven was not left reasonably clean at the end of the tenancy and I find his request to recover \$30.00 for oven cleaning to be reasonable. Therefore, I grant this portion of the landlord's claim.

iling fee, Security deposit and Monetary Order

The landlord has established an entitlement to compensation of \$57.97 and \$30.00 for carpet and oven cleaning. Given the landlord's limited success in this Application I question whether this proceeding would have been necessary had the landlord proposed reasonable deductions from security deposit to the tenants at the end of the tenancy. As such, I make no award for recovery of the filing fee.

As the landlord is still holding the tenants' security deposit, I authorize the landlord to deduct \$87.97 from the security deposit and I order the landlord to return the balance of \$237.03 to the tenants without further delay.

As provided in Residential Tenancy Policy Guideline 17: *Security Deposit and Set-Off*, I provide the tenants' with a Monetary Order in the sum of \$237.03 to ensure the landlord returns the balance of the security deposit to the tenants as so ordered.

Conclusion

The landlord has been authorized to deduct \$87.97 from the tenants' security deposit and has been ordered to return the balance of \$237.03 to the tenants without further delay.

The tenants are provided a Monetary Order in the amount of \$237.03 to ensure the landlord refunds the balance of the security deposit as so ordered.

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 21, 2015

Residential Tenancy Branch

