



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for damage and cleaning of the rental unit, for an Order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the fee paid to file her application for dispute resolution?

Background and Evidence

This tenancy began March 2013, initially as a fixed term tenancy following which it was a month to month. The Tenants paid monthly rent of \$2,000.00 as well as a security deposit in the amount of \$1,000.00 which the Landlord continues to hold.

The Landlord testified that a move in condition inspection report was done on February 27, 2013 and a move out was done on May 5, 2015.

The tenancy ended on May 5, 2015.

The Tenants vacated the property, however, the Landlord claimed she has incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenants.

On her Monetary Orders Worksheet the Landlord claimed \$1,501.30 as follows:

37 hours and 10 minutes of cleaning by the Landlord at \$20.00 per hour	\$744.00
Garbage removal	\$60.00
Hay removal	\$56.00
Removal of Tenants' vegetable garden patch, fencing and wire	\$56.00
Removal of the wood stove and repair of the furnace duct	\$187.25
Touch up painting of Styrofoam which was applied by Tenants to outside faucets and exterior of rental unit	\$25.00
Carpet cleaning	\$167.53
Light bulb replacement	\$8.00
receipt for photo development	\$21.15
Cost of paint and time associated with painting rental unit	\$114.15
Filing fee	\$50.00
Total claimed	\$1,489.08

As noted in the above table, the total of these items is \$1,489.08.

The Landlord provided receipts for all of the above claimed expenses as well as photos of the areas of the rental unit, garage and garden which relate to her claim. She also provided a detailed timeline of the time she claims she spent cleaning.

The Tenant, M.A., testified that he attended the rental unit at an agreed upon time to complete cleaning and participate in the move out condition inspection. He further

stated that he was cleaning the rental unit and attending to repairs when the Landlord became very agitated and told him that if he didn't leave she would call the police. He stated she refused to do the move out condition inspection with him, even though he was available to do so and they had agreed upon the time. He also stated that the rental unit was spotless at the time, and that he had cleaned the rental unit to the best of his ability, but that he did leave some garbage in the corner of the garage when he was told to leave by the Landlord.

The Tenant confirmed that had created a little garden area, but that the Landlord agreed to this and did not at any time tell him to remove it.

The Tenant confirmed that he sealed the areas beside the faucets to prevent freezing.

In reply, the Landlord stated that she insisted that M.A.'s wife, J.A., be in attendance at the move out condition inspection as she felt threatened by M.A. She testified that he sent her an email wherein he wrote, "You better put the damage deposit in the mail or there is going to be trouble." This alleged email was not in evidence.

The Landlord further stated that said she gave the Tenants two opportunities to do the move out condition inspection including later in the day on Thursday and the following Monday. She also stated that the Tenant did fix the holes, but that there were "things left to be done after he left" and stated, "maybe I am a fanatic but I was there until midnight." She also confirmed the Tenants did not return to complete the cleaning.

The Landlord also stated that she never gave the Tenant permission to install the wood stove, which was in the storage area. She said that her insurance policy prohibited installation of the wood stove while the rental unit was tenanted and as such she was forced to remove the wood stove after the tenancy ended.

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 sections 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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises provides as follows:

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises)², or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).

At the end of a tenancy a rental unit must be left in a reasonable standard of cleanliness. The Tenant, M.A., testified he left the rental unit "spotless"; however, he also conceded that he was not able to complete the cleaning and repairs as the

Landlord insisted he leave. The photos submitted by the Landlord support a finding that some cleaning was required; however, I find the amounts claimed by the Landlord to be excessive. The Landlord admitted that she was a “fanatic” about cleaning. She also claimed 37 hours and 10 minutes of cleaning on her Monetary Order Worksheet. At the same time, she testified at the hearing that she cleaned until midnight on the date scheduled for the move out condition inspection. In all the circumstances and on a balance of probabilities I find the Landlord is entitled to compensation for four hours of cleaning at \$20.00 an hour for a total of **\$80.00**.

The Tenants admitted they left garbage in the rental unit; accordingly, I award the Landlord the **\$60.00** claimed for garbage removal.

The Tenants failed to dispute the Landlord’s claim for compensation for the cost of removing the hay from the shed; as this was undisputed, I award the Landlord the **\$56.00** claimed.

Policy Guideline 1 also provides that any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.

With respect to gardens, the *Guideline* provides as follows:

PROPERTY MAINTENANCE

- 1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.*
- 2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.*

The Tenants failed to provide any evidence which would show the Landlord agreed to the installation of the wood stove or garden plot. Accordingly, I find that the Tenants must compensate the Landlord for the cost of removing the wood stove (**\$187.25**), repairing the ducts, and removing the garden area (**\$56.00**).

The Tenants also failed to submit any evidence which would support a finding that the Landlord agreed to the application of Styrofoam around the faucets. While it may be the case that such an application benefitted the Landlord in terms of protecting the faucets from freezing, the Tenant is not permitted to make such alterations/repairs without the

Landlord's consent. Accordingly, I award the Landlord the **\$25.00** claimed for touching up the painting around the faucets.

Policy Guideline 1 also provides that tenants are responsible for the cost of carpet cleaning when a tenancy is for longer than a year. As such the Tenants must compensate the Landlord for the **\$167.57** claimed.

I accept the Landlord's undisputed testimony that a lightbulb required replacement at the end of the tenancy and award the Landlord the **\$8.00** claimed.

The \$21.15 for developing photos is a cost of dispute resolution that is not recoverable under the *Residential Tenancy Act* and I therefore dismiss this claim.

Policy Guideline 1 also provides as follows:

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises provides that a Tenant may be required to paint when the work is necessary due to damage caused by the Tenant. This tenancy began in March of 2013 and there was no evidence the rental unit was painted during the 26 month tenancy. In reply to the Tenants' submissions, the Landlord conceded that the Tenants repaired all holes in the wall. Further, the photos of the rental unit provided by the Landlord depict normal wear and tear. For all of the above reasons, I deny the Landlord's claim for \$114.14 for painting of the rental unit.

As the Landlord's application had merit, I also award her recovery of the **\$50.00** filing fee.

In total, I find that the Landlord has established a total monetary claim of **\$689.78** comprised of the following:

4 hours of cleaning by the Landlord at \$20.00 per hour	\$80.00
Garbage removal	\$60.00

Hay removal	\$56.00
Removal of Tenants' vegetable garden patch, fencing and wire	\$56.00
Removal of the wood stove and repair of the furnace duct	\$187.25
Touch up painting of Styrofoam which was applied by Tenants to outside faucets and exterior of rental unit	\$25.00
Carpet cleaning	\$167.53
Light bulb replacement	\$8.00
Filing fee	\$50.00
Total awarded	\$689.78

I order that the Landlords retain \$689.78 from the Tenants' security deposit and I Order the Landlord return the balance of \$310.22 to the Tenants. The Tenants are granted an Order under section 67 for the balance due of **\$310.22**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord established a monetary claim for \$689.78. The Landlord is authorized to retain \$689.78 from the Tenants' security deposit and must return the \$310.22 balance.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 20, 2015

Residential Tenancy Branch

