



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for a monetary order for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on November 29, 2013. Rent in the amount of \$1,100.00 was payable on the first of each month. The tenants paid a security deposit of \$550.00 and a pet damage deposit of \$550.00 (the "Deposits"). The tenancy ended on the last day of April 2015.

The parties agreed a move-in condition inspection report was completed. The parties agreed the move-out condition inspection report was not completed as the inspection became heated and the tenant left.

The landlord testified that the tenants' dog caused damage to the door casing by chewing or scratching. The landlord indicated they had to purchase new casing and had them installed. The landlord stated that the cost to replace the casings was \$8.85, plus taxes. Filed in evidence is a receipt. Filed in evidence is a photograph of the door casing.

The landlord testified that the tenants had vehicles that left oil stains on the driveway. The landlord stated that they purchased a cleaner to clean the driveway. The landlord seeks to recover the cost of the cleaner in the amount of \$14.99, plus taxes. Filed in evidence is a receipt. Filed in evidence is a photograph of the driveway.

The landlord testified that the tenants did not properly clean the rental unit, as the oven had to be cleaned and there were dishes left in the dishwasher. The landlord stated that the bathroom was filthy. The landlord stated that all the walls needed to be washed as they smelled of marihuana smoke and the bedroom was left dirty. The landlord seeks to recover cleaning supplies in the amount of \$22.63. Filed in evidence is a receipt. Filed in evidence are photographs of the rental unit.

The landlord testified that the tenants also caused damage to the drywall as there was on scratch that was approximately 2" and several smaller ones which had to be repaired. The landlord stated that because someone was smoking marihuana in the rental unit and they could not get rid of the smell by washing the walls. The landlord stated that they had to remove the textured ceiling and the entire unit had to be painted with special sealer to seal in the smell and then they had to paint the walls with standard paint. The landlord seeks to recover the cost of the paint and supplies \$406.93. The landlord seeks to recover the labour cost of \$660.00. Filed in evidence are photographs of the walls. Filed in evidence are receipts for supplies.

Filed in support of the landlord is a witness statement of RY, a person hired by the landlord to make repairs and paint, which in part reads,

"At my first visit to the above noted address, the home was occupied and present in the home there was an overwhelming smoke smell.

During my second visit on or around May 4, 2015, the home was vacant and unoccupied. A heavy smoke smell was still present and obvious staining was visible on the textured ceiling surfaces. At that point ... and I discussed options to help with the stains and odors.

When I arrived at the property on May 15, 2015, I observed that the walls had been washed with TSP and the textured ceiling scraped. However, a very strong unpleasant odor still remained.

... I suggested that the only way to get rid of the odor was to use a sealer and then repaint the walls and ceiling."

[Reproduced as written]

The tenants testified that the casing damaged could have been caused by moving furniture and they were going to come back and fix the casing.

The tenants testified that they are not responsible for the staining on the driveway. The tenants stated that during their tenancy they spent four hours pressure washing the pavers and the prior stains came to the surface of the pavers.

The tenants testified that there was a mould issue as there were two windows leaking inside the unit as the seals were broken. The tenants stated that the oven was wiped out and left in the same condition it was received.

The tenants denied that they caused any damage to the drywall by smoking as they are nonsmokers and are not responsible for painting.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, the move-in condition inspection report shows that there was no damage to the door casings at the start of the tenancy. The photographs support that the door

casing were damaged by what appear to be scratches from an animal. I find the tenants breached the Act, when they failed to make the repair prior to their tenancy ending and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of the new casing in the amount of **\$9.91**. (\$8.85+\$1.06 taxes)

I accept the landlord's evidence over the tenants' evidence that they failed to clean the driveway pavers. Although the tenants claimed that this was prior staining which appeared after they pressure washed the driveway, I find that highly unlikely. Further, the photographs show lots of dark oil stains which would lead me to believe oil was still present on the surface of the driveway and not a simple stain. I find the tenants breached the Act, when they failed to clean the driveway and this caused losses to the landlord. I find the landlord is entitled to recover cleaning supplies in the amount of **\$16.78** (\$14.99+\$1.79 taxes)

In this case, the move-in condition inspection report shows the appliances were in satisfactory condition at the start of the tenancy. I find the report does not support the tenants' testimony that the stove was left in the same condition as it was at the start of the tenancy. Because it would have been reasonable to use the coding "C=Needs Cleaning" which is a code noted on the report if the oven was provided dirty at the start of the tenancy. Further, the photographs support that the oven, doors and the floors were left dirty. Therefore, I find the landlord is entitled to recover cleaning material in the amount of **\$22.63**.

In this case, the evidence of the landlord was that the tenants had smoked marijuana in the rental unit causing the rental unit to smell, and the smell would not go away after the walls were washed. As a result the walls and ceilings had to be painted with special sealer to seal the smell. The tenants denied ever smoking in the rental unit.

However, the landlord has provided a witness statement, which indicated they were in the rental unit while it was occupied by the tenants and there was an overwhelming smoke smell. The witness again attended the property after the tenants vacated and after the walls were washed by the landlord and a very strong unpleasant odor still remained. Although the tenants deny smoking they did not provide any other evidence to the contrary, such as their own witness statement or any explanation of what the smell was. As a result, I accept the landlord's version of events. I find the tenants breached the Act when they failed to remove the smell of smoke in the rental unit and this caused losses to the landlord.

The Residential Tenancy Policy Guideline 40 defines the useful life of building elements. If the tenant damaged an item, the age of the item may be considered when determining the portion the tenants are responsible for.

I have determined based on the guideline that the paint had a useful life span of four years. The paint was 3.5 years old at the time of replacement, which is almost at the end of the useful lifespan.

While in normal circumstance the landlord would only be entitled to the depreciated value of the paint; however, in this case a special sealer was required to be used prior to painting. I find the tenants are responsible for the full cost of having to paint the walls and ceilings with the sealer. Since the material and labour is not defined for each coat of paint, I find it appropriate and reasonable to grant the landlord half of the cost they paid (\$1,066.93). Therefore, I find the landlord is entitled to the cost of painting in the amount of **\$533.46**.

I find that the landlord has established a total monetary claim of **\$632.78** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the amount of \$632.72 from the Deposits, in full satisfaction of the claim and I grant the tenants an order under section 67 of the Act for the balance due of their Deposits in the amount of **\$467.22**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order and may keep a portion of the Deposits in full satisfaction of the claim and the tenants are granted a formal order for the balance due of their Deposits.

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: November 13, 2015

Residential Tenancy Branch

