



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNR, MNSD, FF
Tenants: MNSD, FF

Introduction

This hearing dealt with the cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

During the hearing the landlord could not confirm if the upstairs resident had received payment from the tenants for the utility charges. He requested the opportunity to check with her and provide some confirmation. I allowed the landlord to submit confirmation from the upstairs resident. The landlord submitted this additional information on November 24, 2015. I have attached the landlord's typewritten statement to the tenant's copy of this decision.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities; for compensation for damage and cleaning; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on May 1, 2014 for a 1 year fixed term tenancy beginning on June 1, 2014 for a monthly rent of \$770.00 due on the 1st of each month with a security deposit of \$385.00 paid. The tenants vacated the rental unit on or before May 31, 2015.

The tenancy agreement included that the tenants were responsible for 45% of utility costs. While there was nothing specific in the tenancy agreement the parties agreed in the hearing that the utilities were in the upstairs resident's name and these tenants were to pay her the utilities.

Clause 9 of the tenancy agreement also stipulated that the tenant must have the carpets professionally cleaned at the end of the tenancy.

The landlord submits the tenants failed to pay the upstairs resident \$150.56 for the final utility costs. The tenants submit that they had paid the upstairs resident's boyfriend on June 12, 2015.

I note the landlord's typewritten statement states the upstairs resident reported to him that neither she nor her boyfriend received any monies from the tenants for the subject utility costs.

The landlord also seeks the following compensation for repairs required to and cleaning of the rental unit:

Description	Amount
Carpet cleaning	\$135.45
Carpet inspection and replacement (discounted by 50% by landlord)	\$581.13
Carpet damage (bedroom)	\$50.00
Cabinet door repair	\$30.00
Closet door repair	\$75.00
Countertop repair	\$50.00
Painting (supplies and labour)	\$259.17
Cleaning (supplies and labour)	\$176.56
Light bulb replacement	\$5.40
Total	\$1,362.71

In support of his claim the landlord has submitted into evidence a copy of a Condition Inspection Report signed by both parties. The tenants signed the Report agreeing that it "fairly represents the condition of the rental unit" both at the start and at the end of the tenancy.

The tenants also signed the Report, on May 31, 2015, agreeing the landlord could deduct \$150.00 for carpet cleaning; \$162.14 for hydro; \$75.00 for repairs to the closet door. The tenants had also provided their forwarding address in the Report. During the hearing the tenants

The landlord also submitted into evidence receipts; invoices and estimates for costs claimed; copies of several text messages between the landlord that tenants who moved into the rental unit after these tenants vacated it; and several photographs of the rental unit at the end of the tenancy.

The landlord submits that the tenants failed to have the rental unit carpets professionally cleaned so he had them cleaned. He further submits that after the carpets had been cleaned they still had an offensive odour. He stated he had the carpets inspected and it was determined that there was a substantial amount of urine in the carpets and they should be replaced. The landlord replaced the carpets and seeks compensation equivalent to ½ the cost of the replacement in consideration for the age of the carpets - 3 years old.

The landlord suggested that the tenants' children may have been responsible for the urine in the carpets.

The tenants submit that the carpets smelled from the start of the tenancy. The tenants submit their children had not urinated on the carpets but that it was just as possible that it had been the cat from upstairs that had gotten into the rental unit by an open window.

The landlord submits that a cabinet door was damaged during the tenancy. He testified that it may have been caused by the tenant's children hanging on the door. The tenant submits that the cabinets were cheaply made and the door "just fell off". The tenants did not indicate when or if they reported the door to the landlord when it occurred.

The landlord submits that during the tenancy whenever he attended the property the tenants had several dirty dishes on the countertops and that as a result the countertops had moisture on them that was not removed which caused damage to them.

In support of his assertion the landlord submitted into evidence an email he sent to the tenants on October 15, 2014 in which he states:

"Kitchen Sink Countertop – must be kept dry. On my visit there was standing water around the sink, especially around the back side. Standing water will find its way under the sink and ruin the countertop. It has already done some damage. I've silicone around the sink which will help but standing water will still do damage. Please ensure water is wiped up after every time you use the sink. And no water is left under the dish rack." [reproduced as written]

The tenants submitted that she did not leave dirty dishes on the countertop but that her practice was to pre-rinse the dishes and place on the countertop.

The landlord seeks compensation to have the walls painted as a result of the condition of them at the end of the tenancy. The landlord submits the tenants had several pictures on the walls during the tenancy and the walls had been painted just prior to the start of this tenancy. The tenant accepted responsibility for the marks on the walls.

Analysis

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

I note the landlord has provided statements from the upstairs resident and her boyfriend stating the tenants had not paid her boyfriend any monies for the subject utilities and the tenants have not provided any documentary evidence to confirm such a payment.

Further, the tenants had signed the Condition Inspection Report agreeing the landlord could withhold the subject utility amounts from the security deposit. Based on these items, I find, on a balance of probabilities, that the tenants have not paid the subject utilities to the upstairs resident. I accept the landlord's undisputed submission that he has paid the upstairs tenants the amount claimed.

As such, I find the landlord has suffered a loss in the amount claimed for the subject utilities.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the tenants' testimony I accept the tenants are responsible for the marking of the walls and the landlord is therefore entitled to compensation for repainting of the rental unit. I find the landlord has established these costs to be \$259.17 for labour and supplies.

I find, despite the tenants' testimony that the landlord has provided sufficient evidence to establish that the tenants had failed to clean the rental unit specifically in regard to general cleaning, carpet cleaning, and the repairs to the cabinet door; the closet door; the countertop; and the bedroom carpet damage.

I find the tenants' testimony in regard to all of these items provides an explanation as to why these things were in this condition rather than a denial that they had been left in the condition claimed, with the exception of one item – the cabinet door.

The tenant submitted that the damage to the cabinet door occurred only because the door was cheaply made. However, the tenant has provided no evidence to support this position, as such, regardless of how it occurred I find the landlord has established the damage to the cabinet occurred during the tenancy and as such the tenants are responsible for compensation to the landlord.

As to the landlord's request for ½ the cost to replace the carpets in the rental unit, the tenants submit that the smell in the carpet was there from the beginning of the tenancy

and that their guests would often comment on the smell. I note there is no notation of such an issue in the Condition Inspection Report

Despite the landlord's submission of substantial communication between the parties during the tenancy, specifically dealing with problems in the rental unit such as high humidity and mould, there is no mention of any smell problems at all, let alone with regard to the carpeting. I also note the tenants did not provide any evidence that they had identified this issued to the landlord during the tenancy.

I accept the landlord's evidence that the damage to the carpet was caused by urine, and that it occurred during the tenancy, in the absence of any evidence that it was a pre-existing condition of the rental unit.

I also accept the Condition Inspection Report that stipulates a number of light bulbs being out at the end of the tenancy. The tenants did not dispute this issue.

Based on the above, I find the landlord has established the tenants failed to fulfil their obligations under Section 37 and as a result the landlord has suffered a loss. I find the landlord has establish the value of those losses and note that with regard to the replacement of the carpet the landlord discount the loss to represent the age of the carpet.

Based on the above, I find the landlord has established entitled to the full claim present in the amount of \$1,513.27.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the tenants provided their forwarding address to the landlord on May 31, 2015, the same date as the last date of the tenancy, I find the landlord had until June 15, 2015 to either return the deposit or file an Application for Dispute Resolution seeking to claim against the deposit. As the landlord submitted his Application on June 14, 2015 I find the landlord has complied with Section 38(1) and the tenants are not entitled to double the amount of the deposit.

Further, as I have determined the landlord has established a claim in excess of the security deposit held I dismiss the tenants' Application for Dispute Resolution for Return of the security deposit. As the tenants were not successful in their Application I also dismiss their claim to recover the filing fee from the landlord.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,563.27** comprised of \$1,513.27 described above and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$385.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,178.27**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 7, 2015

Residential Tenancy Branch

