



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit and pet damage deposit (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

Both tenants attended the hearing. The landlord's agent attended the hearing. All in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The parties admitted service of all evidence before me.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the witnesses, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 15 June 2014 and ended 30 June 2015. Monthly rent was \$1,600.00. At the beginning of the tenancy, the landlord collected a security deposit in the amount of \$800.00 and a pet damage deposit in the amount of \$800.00. The rental unit is a three-bedroom duplex.

The parties entered into a written tenancy agreement. Clause 1 of the agreement sets out that the tenant is responsible for lawn care. Clause 10 sets out that the carpets are to be steam cleaned at the end of tenancy.

The tenant AK attended the condition inspection on 30 June 2015. The agent testified that the condition inspection lasted approximately twenty to thirty minutes. The agent testified that when it came time to sign the condition inspection report the tenant viewed the inspection as unfair, became emotional and left. The agent testified that the tenant AK was present for the condition inspection.

The condition inspection report created 15 June 2014 is unremarkable with the exception of a notation that a closet door required adjustment. The condition inspection report created 30 June 2015 contains the following relevant notations:

- most areas are marked as dirty;
- the condition of the unit was noted as very dirty;
- the living room walls contained screw holes;
- various walls were damaged;
- the master bedroom wall contained screw holes;
- the master bedroom closet door was off its track;
- the carpet required steam cleaning; and
- the lawn needed to be mowed.

The agent testified that the rental unit was left in a state that required a thorough cleaning. The agent testified that there was garbage remaining in the rental unit. The agent testified that the carpets were not steam cleaned at the end of the tenancy. The agent testified that there was a significant amount of wall damage including nail holes, stickers, and scratches. The agent testified that all walls except the walls in the

bathroom required repair and repainting. The agent testified that the lawn was not in too bad condition and just required a trim. The agent explained that was why the charge was minimal. The agent testified that although the lawn was not in bad repair, it was a task that needed to be completed before the new tenants could begin occupancy.

I was provided with a summary invoice from the landlord. I was not provided with the individual invoices that substantiate the summary invoice.

The agent testified that the cleaning and repairs were done by a third party contractor. The agent testified that the landlord only charged a portion of these costs to the tenants. the agent testified that the invoice for cleaning and repairs totaled \$1,500.00. Of this \$800.00 was charged to the tenants. The agent estimated that the charged amount broke down as \$300.00 for cleaning, \$300.00 for painting and wall repair, and \$200 for repairs to the closet doors. The agent testified that two closet doors needed repair: one in the entry way and a second in the master bedroom. The agent testified that the closet was pulled off its top hinge, the slider needed to be repaired, the door need to be glued and touch up painting applied. The agent testified that the walls needed to be cleaned from top to bottom, the appliances needed to be cleaned, and the rental unit required more detailing.

The steam cleaning was done by a third party. The direct cost to the landlord was \$150.00.

The lawn care was conducted by an agent of the landlord. The amount to be charged to the tenant was based on that agent's time.

The tenant AK questioned how the landlord arrived at the costs it did. The tenant AK testified that she and her partner spent eight hours each cleaning. The tenant AK testified that she cleaned the oven twice, pulled out the appliances to clean behind, washed the floors, cleaned the windows, cleaned in the sink, and cleaned the cupboards. The tenant AK testified that she washed the walls and vacuumed. The tenant AK testified that she did not believe that it would take an additional twelve hours to clean an already empty home. The tenant AK testified that she rented a carpet cleaner from a grocery store to clean the carpets.

The tenant AK testified that she mowed the lawn three days prior to move out. The tenant AK admitted that she did not trim around the edges as she did not have the correct device. The tenant AK testified that the walls were marked when she moved in. the tenant testified that the rental unit needed to be repainted when she moved in.

The tenant AK testified that the closet door and pantry door came off the hinges. The tenant AK testified that she reported the issue to the landlord during the tenancy and asked the landlord to fix the issue. The landlord informed the tenant that she would have to pay for the repairs. The tenant AK testified that the door in the bedroom was just difficult to close, but not broken.

The tenant AK testified that she has never had amounts deducted from her security deposit. The tenant AK testified that she does not agree with the amount that she is being charged.

The agent testified that she went through the proper procedure with the tenants for move out. The agent testified that she gave the tenants time to correct the deficits and communicated the landlord's expectations to the tenants. The agent testified that the tenant AK was not in a state to deal with the issues.

The agent testified that the rental unit is five years old and that the paint and closet doors are original to the rental unit.

The landlord has not provided any photographs of the condition of the rental unit at the end of the tenancy.

The landlord claims for \$1,050.00:

Item	Amount
Cleaning	\$300.00
Repainting and Repair of Walls	300.00
Carpet Cleaning	150.00
Repairs to Closet and Cabinets	200.00
Lawn	100.00
Total Monetary Order Sought	\$1,050.00

Analysis

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline, 1. Landlord & Tenant – Responsibility for Residential Premises” (Guideline 1) sets out the tenant’s responsibilities:

... 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), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*...

[footnote removed]

This dispute relates to the condition of the rental unit at the end of the tenancy.

The landlord claims costs of \$300.00 for cleaning the rental unit. The agent testified that the rental unit was left dirty. The agent testified that the rental unit required more detailing. The tenant AK testified that she and her partner spent a considerable amount of time cleaning the rental unit. The agent testified that she provided the tenants with time to remedy the deficits that remained; however, the tenants declined to use this time.

On balance I prefer the evidence of the landlord over that of the tenant AK. In particular, I found that the agent’s testimony was more probable. Accordingly, I find that the rental unit was left in a condition that did not comply with the standard established by subsection 37(1) of the Act.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant’s duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The agent testified that the landlord paid \$1,500.00 to a third party for cleaning and repair services. The agent apportioned \$300.00 of this cost to cleaning. I find that the landlord has established a cost to remedy the tenants' breach in respect of cleaning in the amount of \$300.00. I find that the landlord attempted to mitigate this loss by providing the tenant with an opportunity to fix the deficits. The landlord is entitled to recover \$300.00 for cleaning.

The landlord seeks the cost of repainting and repairing the walls in the amount of \$300.00. The landlord has not apportioned the cost between wall repairs and painting.

Residential Tenancy Policy Guideline "40. Useful Life of Building Elements" provides me with direction in determining damage to capital property. This guideline sets out that the useful life expectancy of interior paint is four years. The landlord testified that the interior paint was five years old. As such, the capital value of the interior paint has fully depreciated and has no value. On this basis, I find that the landlord is not entitled to recover the cost of repainting the rental unit.

The landlord's evidence is that walls required repairs for holes in the walls from hanging items.

Guideline 1 provides helpful instruction in determining this application:

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

...

[emphasis added]

The tenancy agreement does not set any limits on the methods by which the tenants were permitted to affix items to the walls. The landlord has not provided any photographic evidence of the damage purportedly caused by the wall hangings. Without more evidence, I am unable to determine whether or not the number of nails was excessive. The landlord has provided evidence that there were screw holes in the walls. I accept that this is compensable damage. The landlord has not apportioned the costs between repair and painting. Where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. On this basis, I award nominal damages for the screw-hole repairs in the amount of \$50.00.

Guideline 1. states:

Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

The landlord provided evidence that the carpets required cleaning at the end of the tenancy. The tenancy agreement provided that the tenant would steam clean the carpets at the end of the tenancy. Further, as the tenancy lasted longer than one year, the tenants were required to have the carpets shampooed at the end of the tenancy. The tenant AK testified that she rented a carpet cleaner from a grocery store. On the basis of the landlord's testimony I find that the tenants' efforts were insufficient to clean the carpet to the standard required by subsection 37(1) of the Act. The landlord provided evidence that the cost of carpet cleaning was \$150.00. I find that the landlord is entitled to recover this amount from the tenant.

The landlord seeks to recover \$200.00 from the tenants for repairs of closet doors. I find on a balance of probabilities that the damage to the doors was the result of normal wear and tear. In particular, I found the tenant's evidence that the doors broke as a result of normal use to be credible. Further, the condition inspection report completed at the beginning of the tenancy notes that a closet door required adjustment. This indicates to me that the doors have been problematic over the tenancy. I find that the landlord has failed to establish that the damage to the doors was the result of any misuse by the tenants. On this basis, the landlord is not entitled to recover the cost of these repairs.

Guideline 1 establishes that:

Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

The agent testified that the lawn required a trim. The tenant testified that the tenants had mowed the lawn three days prior. On the basis of this evidence, I find that the lawn was sufficiently mowed so as to meet the tenants' obligations under the tenancy agreement. The tenant admitted that she did not perform edging because she did not have the necessary tool. I find that edging is routine yard work. I find that as edging is routine yard work, the tenants were obliged to perform this task. I find that the landlord is entitled to recover the cost of the edging but not the lawn mowing. On this basis, I award the landlord one half of its costs of lawn maintenance.

The landlord has proven its entitlement to a monetary award in the amount of \$600.00 calculated on the following basis:

Item	Amount
Cleaning	\$300.00
Screw Holes	50.00
Carpet Cleaning	150.00
Yard Work	50.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Entitlement	\$600.00

The landlord's total award is less than the total amount of the tenants' security deposit. *Residential Tenancy Policy Guideline*, "17. Security Deposit and Set off" provides guidance in this situation:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

There is no evidence before me that indicates that the tenants' right to the deposits has been extinguished. As there is a balance, I order that the balance of the tenants' deposits shall be returned to the tenants forthwith.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,000.00 under the following terms:

Item	Amount
Deposits Amount	\$1,600.00
Less Landlord's Entitlement	-600.00
Total Monetary Order	\$1,000.00

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 22, 2016

Residential Tenancy Branch

