



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD FF

Introduction:

Both parties attended the hearing and confirmed the landlord's Application for Dispute Resolution was served by registered mail. I find this is legal service pursuant to section 89 of the Act. The landlord is applying pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Section 67;
- c) An Order to retain the security and pet damage deposits pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant damaged the property beyond reasonable wear and tear and the cost to cure the damage? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced April 1, 2014, a security deposit of \$450 and a pet damage deposit of \$450 were paid and rent was \$900 a month. The tenant vacated August 14, 2015.

The landlord is claiming damages as follows:

\$100 to replace a missing fan blade on an approximate 10 year old fan. The landlord was unsure of its age.

\$209.99 for carpet cleaning including cat spots.

\$600 for paint and wall repair; the whole house was painted but the landlord is charging only this portion for damage she believes attributable to this tenant.

\$57.53 to replace or fix blinds that were new six months before the tenancy which would be November 2013. She said there were bite marks on the blinds and cords were tangled.

A condition inspection report in evidence was done at move-in. At move-out there were problems with meeting as the landlord was detained on the island because of family illness so the move-out report was done by her agent. She said it was done on the 19th of August due to tenant delay in not wanting to accept her agent had authority but the tenant said she did it on August 17, 2015 but there were already painters working in the suite so it was difficult to see anything. She contended the landlord had not told her the carpet must be cleaned and she had a lower quote; the landlord said she attempted to act on this information but the store had no record of a lower quote and would not reduce their price.

The tenant said she had painted the kitchen but contended there were no splotches and she repainted it in a neutral colour as requested. The landlord said the main problem with the paint was that the hallway bulkhead was damaged and patched so it was bumpy and painted in the wrong colour. The tenant said she used paint in the house and after it dried saw it was the wrong colour but could not get the right colour from the landlord in time to repaint it.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

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.

This test must be satisfied:

1. Proof the loss exists
2. Proof the loss occurred solely because of the actions or neglect of the Respondent in violation of the tenancy agreement or the *Act*

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the damage or loss.

As explained to the parties in the hearing, Residential Policy Guideline 40 assigns a useful life to items in rented premises which is designed to account for reasonable wear and tear. I find items such as stoves and hood fans are assigned a useful life of 15 years. As the landlord was unable to recall the age of this stove fan (and guessed 10 years or more) and the tenant testified it was very noisy, I find it was most probably at the end of its useful life so I find the landlord not entitled to compensation for its replacement.

I find the landlord entitled to recover \$209.99 as invoiced for carpet cleaning. Although the tenant contended that it was not pointed out as her responsibility, I find Policy Guideline 1 states that cleaning carpets at the end of a tenancy, especially if there are pets, is a tenant responsibility. I find insufficient evidence to support her allegation that it could have been done for less. Although the tenant argued that her pet damage deposit should only be used for damage caused by the pet, I find the Act section 72((2) states that the amount of a security or pet damage deposit may be deducted from any amount ordered to be paid to the landlord. I find the legislation takes precedence over any forms or guidelines that may be published. Accordingly the pet damage deposit will be deducted from any monetary award made to the landlord.

In respect to the painting, I find the weight of the evidence is that the landlord paid \$1600 to have the house painted at the end of the tenancy. The condition inspection report at move-in shows many dents, scratches and nail and screw holes in the walls. Damage acknowledged on the move-out report is 'kitchen needs painting, bulkhead damage in hallway' and also noting a lot of the work had been done at the time of inspection. The tenant wrote a letter to the landlord dated August 14, 2015 in which she noted she was responsible for painting some items the wrong colour but also noting she had fixed up many of the holes and painted other areas correctly. The photographs in evidence show many touch ups in non matching colours and damage to the bulkhead.

The landlord said some painting was done in 2013 and some in April 2014. However, judging from the move-in report, the walls already had a lot of dents in them when the tenant moved in so I will estimate the age of the paint to be at least 2 years old when the tenant moved out in August 2015. Paint is given a useful life of 4 years in the Guidelines so I find the landlord entitled to recover 50% or \$300 of her \$600 claim.

Blinds are assigned a useful life of 10 years in the Guidelines so I find the landlord entitled to recover \$48.32 for the 8.4 years of useful life remaining in this 18 month old blind.

I find the landlord supported her claim well with invoices, the condition inspection reports and photographs. The tenant had some telephone battery problems but it was at the end of the hearing and she had the opportunity to provide her evidence and support her arguments well. I note the landlord filed her Application on August 26, 2015 to claim against the deposits which complies with section 38 of the Act to avoid the doubling provision.

Conclusion:

I find the landlord is entitled to compensation as calculated below and to retain a portion of the security and pet damage deposits to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application. The monetary order as calculated is in favour of the tenant so she will receive an Order for refund of the balance of her deposits in the amount of \$291.69.

Calculation of Monetary Award:

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| Carpet cleaning | 209.99 |
| Allowance for painting | 300.00 |
| Allowance for blind replacement | 48.32 |
| Filing fee | 50.00 |
| Less security deposit | -450.00 |
| Less pet damage deposit | -450.00 |
| Total Monetary Order in favour of tenant | -291.69 |

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: February 04, 2016

Residential Tenancy Branch

