



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD

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?

Background and Evidence

The parties agreed that the tenancy began November, 2013. Rent in the amount of \$700.00 was payable on the first of each month. The tenant paid a security deposit of \$350.00. The tenancy ended on August 31, 2015.

The landlord claims as follows:

a.	Missing smoke alarm	\$ 65.00
b.	Carpet replacement	\$ 350.00
c.	Repair holes in wall	\$ 120.00
d.	Repair baseboard	\$ 90.00
e.	Replace Broken blind	\$ 45.00
f.	Cleaning	\$ 120.00
g.	Filing fee	\$ 100.00
	Total claimed	\$ 890.00

Missing smoke alarm

The landlord's agent testified that in March 2015, the smoke detector was replaced in the rental unit and it was missing when the tenant vacated the rental unit three months later. The landlord seeks to recover the amount to replace the smoke detector in the amount of \$65.00. Filed in evidence is a photograph.

The tenant testified that they did not remove the smoke detector and it was there at the end of the tenancy.

Carpet replacement

The landlord's agent testified that the bedroom carpet was dirty and had to be replaced, as the tenant had cats and the urine smell was unbearable. The agent stated that the photographs submitted of the subfloor shows staining. The agent stated that they believe the carpet was new when the tenancy started. The landlord seeks to recover the amount of \$350.00. Filed in evidence are photographs of the subfloor and a receipt.

The tenant testified that they did have cats in the rental unit; however, deny the cats caused damage to the carpet. The tenant stated that the carpet was not new at the start of the tenancy and they believe the carpet was about seven years old. The tenant stated that the photographs of the subfloor, does not prove they caused damage to the carpet.

Repair holes in wall

The landlord's agent testified that the tenant caused damage to the walls as their where holes in the walls. The landlord seeks to recover the cost of the repair in the amount of \$120.00. Filed in evidence is a photograph and a receipt.

The tenant testified that the holes in the walls are from hanging picture, which is normal wear and tear.

Repair baseboard

The landlord's agent testified that the tenant caused damage to the baseboard, by excessive scratching. The landlord seeks to recover the amount of \$90.00. Filed in evidence are photographs of the baseboard and a receipt.

The tenant testified that the baseboards are in a high traffic area and with furniture moving around, can get scratched. The tenant states that this is normal wear and tear.

Replace broken blind

The landlord's agent testified that the tenant caused damage to the blind, which had to be replaced. The agent stated that they did not submit a photograph of the blind or a receipt.

The tenant testified that their cat would sit on the window ledge and a couple of the blind slates were slightly bent. The tenant stated that they fixed the blind at the end of the tenancy.

Cleaning

The landlord's agent testified that the tenant did not properly clean the rental unit as the stove was left dirty and the kitchen and the bathroom cupboard draws were not properly cleaned. The agent stated that it took 6 hours to clean the rental unit. The landlord seeks to recover the amount of \$120.00. Filed in evidence are photographs of the oven and cabinet draws.

The tenant acknowledged that the stove needed additional cleaning and values that work at \$50.00. The tenant stated that they do not agree that to wipe out the few cupboards as show in the photographs that it would take six hours. The tenant stated they left the rental unit clean.

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.

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.

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.

Missing smoke alarm

In this case, the evidence of the landlord was that the smoke detector was missing at the end of the tenancy. The evidence of the tenant was that it was not missing when they vacated the rental unit. I find both versions are probable.

While the landlord has provided a photograph of a missing detector, I find there is no way for me determine if the photograph was taken on the date of the tenant vacated the rental premise. I find the landlord has failed to provide sufficient, such as a move-out condition inspection report. Therefore, I dismiss this portion of the landlord's claim.

Carpet replacement

In this case, the evidence of the landlord was that the tenant's cat caused damage to the carpet by urinating on them and that the smell was overwhelming, which required the carpet to be replaced. The tenant denied this.

While the landlord has provided photographs of the concrete floor that was underneath the carpet there is no way for me to determine based on these photographs that there was damage caused by the tenant. The landlord did not provide any documentary evidence such as a move-out condition inspection report, photographs of the carpet, nor did the landlord provide a witness statement from the flooring company stating that the only reasons for replacing the carpet was the smell of cat urine. I find the landlord has not met the burden of proof. I find the landlord has failed to prove a violation of the Act, by the tenant. Therefore, I dismiss this portion of the landlord's claim.

Repair holes in wall

The tenant does not deny there were a few holes in the walls from hanging pictures.

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, it is not considered damage when the tenant put up pictures, mirrors, wall hangings in the rental unit. It is considered normal wear and tear, unless the tenant caused damage by using large nails or by excessive nail holes.

In this case, the photographs filed in evidence by the landlord does not support that the damage to the wall is excessive and it appears to be normal wear and tear from hanging items on the walls. I find the landlord has failed to prove a violation of the Act, by the tenant. Therefore, I dismiss this portion of the landlord's claim.

Repair baseboard

In this case, the tenant does not deny the photographs of the baseboards. The evidence of the tenant was that the damage was caused due to a high traffic area and is normal wear and tear.

However, I find even if this is in a high traffic area that does not give cause to damage the baseboards as that is not normal wear and tear due to reasonable use and the aging process.

Rather it is caused by neglect, which was the tenant's responsibility to repair at the end of the tenancy. I find the tenant breached the Act when they failed to make the necessary repair. Therefore, I find the landlord is entitled to recover the amount of **\$90.00**.

Replace broken blind

The evidence of the landlord's agent was the tenant caused damage to the blind. The evidence of the tenant was that they repaired the bent slats in the blind at the end of the tenancy. Both versions are probable.

However, I find without further evidence from the landlord, such as a move-out condition inspection report, photographs or receipt, that landlord has not met the burden of proof. I find the landlord has failed to prove a violation of the Act by the tenant. Therefore, I dismiss this portion of the landlord's claim.

Cleaning

In this case, the photographs show that some additional cleaning was required to the stove and cabinets. , I find the tenant breached the Act, when they failed to leave these items reasonable clean.

However, I am not satisfied that stove and cabinets would take six hours to clean. There were no other photographs of the rental unit, to prove addition items required to be cleaned such as the windows. Therefore, I grant the landlord \$50.00 for cleaning the stove and \$20.00 for cleaning the cabinets for a total amount of **\$70.00**.

I find that the landlord has established a total monetary claim of **\$210.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the amount of **\$210.00** from the tenant's security deposit in full satisfaction of the claim and I grant the tenant a monetary order for the balance due of their security deposit in the amount **\$140.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court, should the landlord fail to return the balance to the tenant.

Conclusion

The landlord is granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim. The tenant is granted a monetary order for the balance due of their security deposit.

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: March 31, 2016

Residential Tenancy Branch