



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid utilities, for damages to the unit, for money owed or compensation 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.

Preliminary matters

On December 8, 2015, the parties were present at a dispute resolution hearing. On January 16, 2016, the final decision was made granting the tenants a monetary order for the return of the security deposit. Therefore, I find it appropriate to dismiss the landlords’ request to retain the security deposit as a decision has already been made and rendered on that issue.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid utilities?
Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2012. Rent in the amount of \$1,975.00 was payable on the first of each month. The tenants paid a security deposit of \$987.50. The tenancy ended on February 28, 2015.

The parties agreed a move-in condition inspection report was completed.

The landlords claim as follows:

a.	Washing machine repair	\$ 245.28
b.	Baseboard replacement	\$ 157.50
c.	Repair Alarm	\$ 420.00
d.	Carpet replacement	\$ 952.00
e.	Wash garage 2 hours at \$25 and pet odor supplies	\$ 100.35
f.	Interior painting	\$4,500.00
g.	Repair walls	\$ 159.20
h.	Replace garage panel	\$ 682.50
i.	Cleaning	\$ 175.00
j.	Repair concrete driveway	\$1,044.75
k.	Unpaid utilities	\$ 804.40
l.	Filing fee	\$ 100.00
	Total claimed	\$9,340.98

Washing machine repair

The landlord testified that when the new renters took possession of the rental unit on March 1, 2015, they discovered a leak in the washing machine. The landlord stated that when they asked the appliance repair person the cause, they were told it was from the previous renter overloading the machine. The landlord seeks to recover the amount of \$245.28.

The tenant testified that on December 17, 2014, there was a previous leak with the washing machine, which the landlord was made aware of. The tenant stated they made the repair and there were no further leaks. The tenant stated that they are not responsible to maintain and repair the appliance.

Baseboard replacement

The landlord testified that the tenants violated the tenancy agreement by having cats, as there was a no pet clause. The landlord stated that the baseboard in the master bathroom was saturated with cat urine which caused the wood to rot. The landlord stated the cost to repair the damage was \$157.50. Filed in evidence is a photograph of the baseboard and a receipt.

The tenant testified that they took care of their friend's two cats. The tenant stated that the damage was not caused by the cats, it was caused by the water splashing on the baseboard causing the baseboard to swell as the material used was a poor quality wood.

Repair Alarm

The landlord testified that the security alarm was tampered with and it was not working at the end of the tenancy, and it was working when the tenancy started. The landlords seeks to recover the cost to repair the alarm system was \$420.00. Filed in evidence is a photograph and a receipt dated April 25, 2015.

The tenant testified that they did not tamper with the alarm system. The tenant stated that the alarm was going off, due to a lighting strike and the fire department and RCMP came and disconnected the device. The tenant stated that they did not inform the landlord during their tenancy as they were not using the alarm system.

Carpet replacement

The landlord testified that the carpet on the stair landing was damaged by the tenants' cat, as the cat had dug holes in the carpet. The landlord stated that were unable to find the same carpet that was on the stairs. The landlords seek to recover the cost of replacement carpet in the amount of \$952.00. Filed in evidence is a photograph and a receipt dated September 1, 2015.

The tenant testified that there was no cat damage to the carpet on the stairs. The tenant stated that the rug was unravelling and fraying under normal wear and tear. The tenant stated that the carpet was also fraying at the top of the stairs.

Wash garage and pet odor supplies

The landlord testified that the new renters complained about cat urine in the garage and they spent two hours washing the garage and seek compensation at the rate of \$25.00 per hour. The landlord stated that they purchased special pet odor cleaners in the amount of \$50.35. The landlord seeks to recover the total amount of \$100.35. Filed in evidence is a receipt dated September 20, 2015.

The tenant testified that there was no cat smell in the garage.

Interior painting

The landlord testified that the tenant caused damage to the walls at the end of the tenancy when they painted the walls with the wrong paint. The landlord stated that the paint was two and half years old at the time of replacement. Filed in evidence is a photograph of a bucket of paint labelled ceiling.

The tenant testified that the paint that was provided was from the landlord and it was not marked ceiling it was marked with the proper room name. The tenant testified that the photographs taken simply show the paint on the wall still wet, which will darken when dried. The tenant stated that the landlord insisted that they paint the walls touching up any marks, which was not their responsibility.

Repair walls

The landlord testified that the tenant caused damage to the corner of the wall in the laundry room, which had to be repaired. The landlord seeks to recover the amount of \$159.20. Filed in evidence are a receipt and a photograph.

The tenant testified that the corner was in a high traffic area, as it accesses both the kitchen and the garage. The tenant stated that they repaired all chips with drywall filler and repainted. Filed in evidence is a photograph of the laundry room.

Replace garage panel

The landlord testified that the tenant caused damage to the garage door panel, as it appears the panel was dented by a hockey buck, when the children were playing hockey. The landlord stated that the metal skin of the door cannot be repaired. The landlord seeks to recover the estimated amount of the replacement in the amount of \$682.50.

The tenant testified that the dent is normal wear and tear. The tenant stated that the dents is about ½ inch long and does not have any impact on the door.

Cleaning

The landlord testified that when the tenants vacated the premises it was not ready for the next tenant to move into. The landlord stated that the blinds were left dirty, the cabinet was dirty and there was juice stains on the wall of one of the bedrooms. The landlord seeks to recover 7 hours of cleaning at the rate of \$25.00 for a total amount of \$175.00. Filed in evidence are photographs.

The tenant testified that they hired help to clean the rental premises and the premises was left clean. Filed in evidence are photographs of the unit and a letter from the cleaner.

Repair concrete driveway

The landlord testified that the tenants caused damage to the driveway when they had a moving container placed on the concrete, scratching the driveway. The landlord stated that they have not made the repair; however, have submitted an estimate for the repair. The landlord seeks to recover the amount of \$1,044.75. Filed in evidence is an estimate dated November 12, 2015. Filed in evidence is a photograph.

The tenants testified that they did not cause any damage to the driveway concrete. The tenants stated the scratches are superficial.. The tenants stated that the scratched likely could be removed by power washing.

Unpaid utilities

The landlord testified that the tenants did not pay their portion of the outstanding utilities at the end of the tenancy. The landlord stated that the tenants' portion is 66.7%.

The landlord testified that the utilities were last reconciled in April 2014. The landlord stated that when you combine all the utilities and calculate the tenants' portions, the tenants have a balance outstanding of \$688.75. Filed in evidence is a detailed calculation of the amount of the utilities. File in evidence are invoices for utilities.

The tenant testified that they do not deny utilities are owed; however, the amount the landlord is claiming is wrong because the utilities were last reconciled for the time period of April 2014 to August 2014, as that is when they entered in to a new tenancy agreement and the landlord wanted to ensure the utilities were paid prior to entering into that agreement.

The tenant testified at that time they made two withdraws from their account and gave the landlord the amount of \$785.00, in cash. The tenant stated that they have not calculated the amount from August 2014 to February 2015.

The landlord argued that the tenant's submission is not reasonable and not supported by the evidence. The landlord stated that the tenant's email dated February 27, 2015, stated the tenant was unaware of when they last reconciled the statements. The landlord stated that also the amount the tenant stated they paid is not supported by the ledger as they would not owe the amount that they claimed to have paid, when you calculated their portion with the credits and debits.

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 landlords have 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.

Washing machine repair

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

In this case, there was a previous leak in the washing machine which the landlord was aware of. The landlord did not make the repair, it was repaired by the tenant. While a leak was discovered after the tenants had vacated, I find the landlord has failed to prove it was caused by the neglect of the tenants; rather than due to the lack of maintenance. I find the landlord has failed to prove a violation of the Act, by the tenants. Therefore, I dismiss this portion of the landlords' claim.

Baseboard replacement

In this case, although I cannot determine the exact cause that damaged the baseboard as both parties have provided a different version. However, I am satisfied that the damage was caused by the tenant.

Even, if I accept the tenant's version that the damage was caused by water splashing on the baseboard that is not normal wear and tear as it was the tenant's responsibility to ensure water did not leave the tub area by using appropriate protection, such as a bathmat. I find the tenants have breached the Act, when they failed to make the necessary repair and this caused a loss to the landlord. Therefore, I find the landlords are entitled to recover the amount of **\$157.50**.

Repair Alarm

If a security system is provided in the premises when the tenant moves in, the landlord is responsible for maintaining and repairing the security system unless the security system is damaged by the tenant or a person permitted in the premises by the tenant, in which case the tenant shall be responsible for the cost of repair.

In this case, the evidence of the landlord was the tenants tampered with the alarm system causing damage. The evidence of the tenant was that the fire department and RCMP attending and disconnected the system when lightning struck.

I accept the landlord's evidence over the tenants because if such an event occurred it would have been reasonable for the tenants to contact the landlords to notify them that a problem existed. Further, the tenants provided no documentary to support their version of events, such a letter from the fire department or RCMP, stating that they had to disengage the alarm system due to a lightning strike, which would have been reasonable in the circumstances. I find the tenants' have breached the Act, when they failed to repair the alarm system at the end of the tenancy and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover the amount of **\$420.00**.

Carpets

In this case, both parties have provided a different version of events regarding the carpets. The evidence of the landlord was it was cat damage. The evidence of the tenant was the carpet was fraying in two spots. I find both versions are probable and the photographs support both versions.

In this case, the landlords have provided a receipt dated September 1, 2015, seven months after the tenancy ended. I find that to be an unreasonable delay, and there is no way for me to determine if other damage occurred after the tenancy ended. I find the landlords have failed to prove a violation of the Act by the tenants. Therefore, I dismiss this portion of the landlords claim.

Wash garage – pet odor supplies

In this case, the tenants vacated the rental unit on February 28, 2015, and the new renters moved in on March 1, 2015. Even if there was a smell of cat urine at the time, I am not satisfied that materials purchased on September 20, 2015, seven months after the tenancy ended, are related to this tenancy. As I find it unreasonable that it would take the landlords seven months to purchase such supplies and then indicate that they used those supplies they used in September 2015, if a problem existed on March 1, 2015. I find the landlords have failed to prove a violation of the Act, by the tenants. Therefore, I dismiss this portion of the landlords' claim.

Interior painting

I accept the tenants' version that the landlord provided the tenants with the paint and if any error occurred it was the landlord's responsibility as it is the landlord's responsibility when providing paint to ensure it is the correct color given to the tenants.

Although the landlords have provided a photograph of the bucket of paint marked ceiling, I find that photograph is misleading as you can also see two other buckets of paint in the photograph. I find I can place no weight on the photograph submitted by the landlords.

Further, I find it highly unlikely that the new renter on March 1, 2015, would accept a rental unit in such a condition as shown in the photographs. Which I note the letter dated September 2, 2015, from the new renter does not indicate any deficiencies with the paint at the start of their tenancy.

Furthermore, I am not satisfied with the invoice submitted, as it is dated seven months after the tenancy ended. I find the landlord has failed to prove a violation of the Act by the tenants. Therefore, I dismiss this portion of the landlords' claim.

Repair walls

In this case, the evidence of the tenant was that they filled and painted all holes in the laundry room. While the landlord has provided a photograph of a close-up of a corner of a wall, there is no way for me to determine where the photograph was taken, as it does not show the entire room and those damages are not seen in the tenants' photograph. As a result, I find the landlords have provided insufficient evidence, that the tenants caused damage to the wall in the laundry room. Therefore, I dismiss this portion of the landlords' claim.

Replace garage panel

In this case, the tenant's children made a small dent in the garage door panel when playing hockey. The photographs show that the dent appears to be minor. I am satisfied that the dent was caused by the actions of the tenants and not due to normal wear and tear.

However, the landlords are claiming for the estimate loss of the garage door panel, I am not satisfied the landlord has suffered any significant loss. The door panel has not been replaced, and there was no evidence that the small dent had any impact on the integrity of the structure of the door or that it had devalued the rental property.

Further, the estimate that was provided is dated September 18, 2015, long after the tenancy ended.

However, as I have found that the dent was not caused by normal wear and tear and it was the tenants' responsibility to repair. I find the landlord is entitled to a nominal amount to recognize the breach of the Act by the tenants. Therefore, I grant the landlord the amount of **\$50.00**.

Cleaning

Under the Act, the tenants are required to leave the rental unit reasonable clean. The tenants are responsible for paying cleaning costs where the property is left at the end of the tenancy that does not comply with the Act. The tenants are not responsible for cleaning of the rental unit to bring the premises to a higher standard.

I have reviewed the photographs submitted by the respective parties, although the landlords' photographs show very minor deficiencies in some items. The landlords did not provide photographs of the entire rental premises to show the rental unit was not left in its totality reasonably clean.

I accept the tenants' photographs that the rental unit was left reasonably clean. I find the landlords have failed to prove a violation of the Act by the tenants. Therefore, I dismiss the landlords' claim for cleaning.

Repair concrete driveway

In this case, I accept the tenants' evidence that the scratches in the driveway are superficial. While the photographs show some very minor surface scratching, there is no evidence in the photographs of cracking, chipping, or gouges that would impact the structure of the concrete or devalue the rental property. I find it highly likely that minor appearance of surface scratches would have been removed when pressured washed as indicated by the tenant.

Further, I am not satisfied that the estimate filed as evidence by the landlord is reliable, as the inspection date on the estimate was November 12, 2015, eight months after the tenancy ended and there is no way for me to determine if the damage is related to this tenancy or to any event that occurred afterwards, such as new renters moving in on March 1, 2015. I find the landlords have failed to prove a violation of the Act, by the tenants. Therefore, I dismiss this portion of the landlords' claim.

Unpaid utilities

In this case, I accept the evidence of the landlord over the evidence of the tenant for the following reasons. In an email dated September 25, 2015, the tenant did not remember when the utilities were last reconciled, which conflicts with the tenant's testimony that it was reconciled when they entered into a new tenancy agreement in August 2014.

Further, I have calculated the tenants' portion of utilities from the time period of April 2014 to August 2014, based on the ledger provided as evidence. The amount the

tenants alleged to have paid of \$785.00 is not realistic, as by my calculation there would have be a small balance of less than \$100.00 owed to the landlord at that time.

Based on the above, I am satisfied that the tenants owe the amount claimed by the landlords. I find the tenants breached the Act, when they failed to pay the outstanding utilities at the end the tenancy and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover the amount of **\$688.75**.

I find that the landlords have established a total monetary claim of **\$1,416.25** comprised of the above described amounts and the \$100.00 fee paid for this application. I grant the landlords an order under section 67 of the Act. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlords are granted a monetary order in the above amount.

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: April 07, 2016

Residential Tenancy Branch