



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for monetary compensation, as amended, for damage to the rental unit; unpaid utilities; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for the amounts claimed against the tenants?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy started May 1, 2012 and the tenants paid a security deposit of \$712.50. The tenants were required to pay rent of \$1,425.00 on the first day of every month. The rent did not include utilities and the tenants were required to pay the landlord 60% of the oil bill and 70% of the other utilities. The tenancy ended August 31, 2015.

A move-in inspection report was prepared at the start of the tenancy and the tenants were provided a copy of that report. At the end of the tenancy the landlord and the female tenant participated in the move-out inspection. The landlord presented the move-out inspection report to the tenant but she refused to sign it. The tenants provided a forwarding address to the landlord in writing. Since the tenant did not give authorization for the landlord to make any deductions from the security deposit, the landlord filed this application seeking authorization to do so on September 14, 2015.

Below, I have summarized the landlord's claims against the tenants and the tenants' responses.

Heating oil -- \$474.13

The landlord seeks to recover \$474.13 for the tenants' share of a heating oil delivery made to the property in April 2015. This claim was made by way of an amendment because the landlord did not receive a copy of the bill until the fall of 2015, after filing her original Application. The landlord prepared a ledger to show the utility payments made by the tenants during the tenancy and that the last oil bill paid by the tenants was for an oil delivery in November 2014. After hearing the landlord's submissions the tenants conceded that they likely owed this amount to the landlord.

Hydro -- \$85.68

The landlord seeks to recover this estimated amount of hydro consumed for the period of August 8, 2015 through August 31, 2015. The tenants were agreeable to compensating the landlord for this claim.

Water, sewer and garbage bill -- \$114.33

The landlord seeks to recover this estimated amount as being the tenants' share of the water, sewer and garbage bill for the period up to August 31, 2015. The tenants noted that this claim was much less than the amount originally estimated by the landlord and they were agreeable to compensating the landlord for this lesser amount.

Carpet cleaning -- \$250.00

The landlord submitted that the tenants left the carpeting heavy stained. The landlord obtained an estimate to have the carpets cleaned in the amount of \$250.00. The landlord acknowledged that the carpets have not been cleaned since the tenancy ended, explaining that there was insufficient time to do so before the subsequent tenant moved in and because the subsequent tenant has a child and was willing to leave the carpets as they were. The landlord argued that when the current tenancy ends she will proceed to have the carpets cleaned at her expense.

The tenants were not agreeable to this claim. The tenants submitted that they did have the carpets cleaned by a professional carpet cleaning company for which they have a receipt in the amount of \$149.00 plus taxes. The tenants acknowledged that they had

not cleaned the carpets during their tenancy. However, the tenants were of the position that the carpets were stained and not in good condition when they moved in.

The landlord responded by arguing that \$150.00 to clean the carpets is too low and that when her carpet cleaning company inspected the carpets they noted that they were very soiled. The landlord acknowledged one small stain in the carpeting when the tenants moved in and pointed to the move-in inspection report as evidence as to the condition of the carpets at the start of the tenancy.

Grass cutting -- \$30.00

The landlord submitted that at the end of August 2015 the grass needed cutting and that this was an obligation of the tenants. The landlord claimed that she could not recall who cut the grass for her but explained that she is claiming the market rate of \$30.00.

The tenants were not agreeable to this claim. The tenant stated that the grass was last cut in mid-August 2015 and that due to the drought the grass was not growing.

The landlord acknowledged that it was mostly dandelions that had been growing but that mowing was still required. The tenant acknowledged that there were maybe some dandelions that continued to grow.

Painting -- \$80.00

The landlord submitted that repainting was required, mostly in the children's bedrooms. The landlord explained how there had been mirrors attached with sticky tape and that upon pulling off the tape part of the drywall came off and it required repair and repainting. The landlord is claiming \$20.00 for supplies and two hours of labour at \$30.00 per hour.

The tenants were not agreeable to this claim. The tenants of the position that there were pre-existing holes in the walls when they moved in and they had prepped the walls for painting with anticipation the landlord would supply the paint at the end of the tenancy. However, the paint supplied by the landlord was all dried up and not usable.

Blinds -- \$40.00

The landlord submitted that new blinds were required in the front bedroom. The landlord explained that the tenants had taken down the landlord's blinds and replaced them with inexpensive bamboo blinds. The landlord stated that the former blinds did

have a few broken panels, were most likely vinyl, and she could not recall how old they were but explained that the new blinds cost more than the \$40.00 she is claiming.

The tenants were not agreeable to this claim. The tenants submitted that the blinds left by the landlord were old and blew apart. The tenants needed privacy in their daughter's bedroom and the landlord had said she would reimburse them for new blinds but the tenants did not have the money to buy blinds before seeking reimbursement so they purchased inexpensive bamboo blinds at a flea market.

The landlord responded by stating she did not give consent for the tenant to install bamboo blinds.

Evidence before me included photographs taken by the landlord after the tenants vacated the rental unit and copies of the following documentation: the tenancy agreement; the move-in and move-out condition inspection report; carpet cleaning invoice from the tenants and a carpet cleaning estimate from the landlord; utility bills and a ledger showing the utility payments received from the tenants.

Analysis

Upon considering all of the evidence before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 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.

In this case, the landlord bears the burden of proof. The burden of proof is based on the balance of probabilities. It is important to note that 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 21 of the Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the Regulations is the best evidence of the condition of a rental unit during a dispute resolution proceeding, unless there is a preponderance of evidence to the contrary.

I accept the move-in inspection report is the best evidence as to the condition of the rental unit at the start of the tenancy as I found the tenants' disputed verbal testimony did not amount to a preponderance of evidence to contradict the move-in inspection report they signed.

As for the move-out inspection report, since the tenant refused to sign it I find the tenant did not agree with the landlord's assessment of the property. Accordingly, I have not relied upon the move-out inspection report as being the best evidence of the condition of the unit at the end of the tenancy. Rather, I have relied more heavily on other evidence such as photographs, receipts and estimates.

Of further consideration is that awards for damages are intended to be restorative. Accordingly, where an item is damaged or missing and requires replacement it is appropriate to reduce the replacement cost by the depreciation of the original item to recognize that most building elements have a limited useful life. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

Unpaid utilities

In recognition that the tenants were agreeable to paying the utilities claimed by the landlord for heating oil, hydro, and the city's water, sewer and garbage bill, I award the landlord \$474.13, \$85.68 and \$114.33 respectively.

Carpet cleaning

Under section 32 of the Act, a tenant is required to maintain reasonable cleanliness and sanitary standards and under section 37 of the Act a tenant is required to leave a rental unit reasonably clean and undamaged at the end of the tenancy.

The move-in inspection report indicates the carpeting was "clean" at the start of the tenancy and I accept that to be the case for reasons already provided in this analysis.

The issue is whether the tenants left the carpets reasonably clean at the end of the tenancy. I accept the tenants' carpet cleaning receipt as evidence they had the carpets professionally cleaned on the last day of the tenancy; however, I also accept that the carpets remained stained after the tenants had the carpets cleaned based upon the landlord's photographs and the tenants' carpet cleaning receipt also indicates that the carpeting was heavily soiled. I find it reasonable to attribute the stains to the tenants' failure to prevent staining from occurring and/or timely efforts to cleaning of the stains. Therefore, I find the tenants responsible for the landlord's loss with respect to the stained carpeting.

The landlord provided an estimate for carpet cleaning in the amount of \$250.00 to demonstrate her loss. While a second attempt at carpet cleaning has yet to be performed, I find that a second attempt with a different carpet cleaning company is a reasonable action to take in an effort to remove the stains. Alternatively, I find reasonable that \$250.00 reflects the diminished value of the carpeting. Therefore, I award the landlord \$250.00 for the stained carpeting as requested.

Grass cutting

I find the landlord did not provide sufficient evidence to satisfy me that the landlord suffered the loss claimed. The landlord did not provide photographs of the yard. Nor did the landlord provide a receipt for grass cutting. Perhaps most compelling was that the landlord could not recall who cut the grass for her, if anybody. Therefore, I dismiss this portion of the landlord's claim.

Painting

The landlord's claim is comprised of two components: supplies and labour. The landlord did not specify the supplies for which she is seeking compensation and did not provide a receipt. Accordingly, I find there is insufficient evidence to demonstrate that the tenants are obligated to compensate the landlord for supplies. Therefore, I find the landlord did not prove that she suffered a loss with respect to supplies and I dismiss this portion of her claim.

As provided under sections 32 and 37 of the Act, reasonable wear and tear does not constitute damage. Accordingly, a landlord is not entitled to seek compensation to remedy signs of wear and tear.

Residential Tenancy Policy Guideline 1 provides that landlords are expected to repaint rental units at reasonable intervals; and, that landlords should expect tenants to hang

pictures during their tenancy and a reasonable amount of holes would constitute wear and tear. Residential tenancy Policy Guideline 40 provides that interior paint has an average useful life of four years.

With respect to the alleged wall damage, the landlord's photographs show several drywall patches on the walls and this would appear consistent with the tenants' testimony that they prepared the walls for painting. I also noted that the move-in inspection report includes a notation that in the bedrooms was "couple nail holes and one punch?"

I also heard undisputed testimony from the tenants that the landlord supplied them with paint but that the paint was dried up and not usable.

Considering this tenancy was more than three years in duration and some nail holes are to be expected during a tenancy; there was pre-existing wall damage in the bedrooms; and, the tenants prepared the walls for painting but the paint supplied by the landlord was dried up; I find I am unpersuaded that the landlord is entitled to receive compensation for two hours of painting from the tenants. Therefore, I dismiss this portion of the landlord's claims against the tenants.

Blinds

It was undisputed that the tenants removed the old blinds from the front bedroom windows and installed inexpensive bamboo blinds. However, I find the weakness in the landlord's case rests with the value of her loss, if any. The landlord acknowledged that the blinds were vinyl and that some slats were previously broken. Broken slats were also noted on the move-in inspection report and the photographs of other blinds showed several broken slats. Furthermore, the landlord could not say how old the blinds were and the landlord did not provide a receipt or a quote to show the cost of new blinds. Accordingly, I find there is insufficient evidence for me to determine the value of the old, vinyl blinds, if any, and I dismiss this portion of the landlord's claim against the tenants.

Filing fee, security deposit and monetary order

Given the landlord's partial success in this application, I award the landlord recovery of one-half of the filing fee she paid for this application, or \$25.00.

I authorize the landlord to retain the security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

The landlord is provided a Monetary Order for the balance owing, calculated as follows:

Heating oil	\$474.13
Hydro	85.68
Water, sewer, garbage	114.33
Carpet staining	250.00
Filing fee, one-half	<u>25.00</u>
Sub-total	\$949.14
Less: security deposit	<u>(712.50)</u>
Monetary Order	\$236.64

Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$236.64 to serve and enforce upon the tenants.

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 19, 2016

Residential Tenancy Branch