



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNR, MNSD

Introduction

This hearing dealt with an application by the landlord for a monetary order, an order to retain the security deposit in partial satisfaction of the claim and the recovery of the filing fee for this application. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of evidence submitted by the landlord. The tenant did not submit any documentation for this hearing. Both parties gave affirmed testimony.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on January 1, 2015 and ended on October 31, 2015. The landlord stated that the agreement was to be for one year, but the tenant wished to "break the lease early", which she agreed to. The tenant was obligated to pay \$850.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$450.00 security deposit. The landlord stated that the tenant participated in the written move in condition inspection report but did not at move out.

The landlord stated that the tenant left the unit in a dirty state that was not suitable for re-rental with some minor damage. The landlord stated the kitchen was especially dirty that required 11 hours of cleaning with the help of her mother and daughter. The landlord stated that she charged an hourly amount of \$35.00 total for three people which she felt was very fair. The landlord stated that she had to replace three lightbulbs that the tenant neglected to change. The landlord stated that the suite was freshly painted prior to the tenant moving in. The landlord stated that the amount of damage to the walls and paint in the two bedrooms far exceeded wear and tear that required patching, filling, sanding and painting. The landlord stated that the amount of painting and repair was double the cost that she is seeking but was trying to be fair in seeking only 50%.

The landlord stated that the tenant also clogged the central vacuum system with dog hair and "I think some hairpins". The landlord stated that the tenant damaged the wall mount hanger where the vacuum hangs. The landlord stated that the tenant left a burn mark or chip on the acrylic tub. The landlord stated that the tenant plugged the dryer duct hose by never cleaning the dryer filter.

The landlord is applying for the following:

1.	Suite Cleaning & lightbulbs	\$396.20
2.	Painting\ repair vacuum wall mount and unclog central vac	\$315.00
3.	Bathtub repair - estimate	\$131.25
4.	Dryer Duct Cleaning - estimate	\$136.45
5.	Filing Fee	\$50.00
	Total	\$1028.90

The tenant gave the following testimony. The tenant stated that she acknowledges that the unit may have needed a little more cleaning but the landlord did not give her a chance to clean up. The tenant stated at the very most the landlord should only be entitled to is two hours of cleaning as she left the unit very clean at move out. The tenant stated that she concedes that two lightbulbs were burnt out but not three, as the oven fan light did not work at any time during the tenancy.

The tenant stated that she adamantly disputes that painting and patching costs. The tenant stated that the holes are very small and that the amount the landlord is asking for is excessive. The tenant stated that the damage can be attributed to normal wear and tear and she shouldn't have to pay for that. The tenant stated that the bathtub damage was there prior to move in and that she doesn't know how it got there. The tenant stated that she only used the dryer when she moved in but when it melted her clothes, so she stopped using it. The tenant stated that she made the landlord aware of this shortly after moving in and doesn't feel that she should have to maintain something that she never used.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced

here. The principal aspects of the landlord's claim and my findings around each are set out below.

The first issue that I must address was the tenants' position that she was never given an opportunity to minimize and rectify the cleaning or repairs. The tenant stated that she would have returned on November 1, 2015 to take care of all issues. I do not find the tenants position reasonable given the circumstances. The landlord provided the tenant with a detailed written checklist and instructions on October 2, 2015 about ending the tenancy and strongly encouraged the tenant to obtain assistance to meet their obligations or hire someone to help. In addition, the landlord scheduled the move out condition inspection with the tenant for 1:00 p.m. on October 31, 2015. The tenant did not advise the landlord if this wasn't acceptable.

The landlord arrived at the unit shortly after 1:00 p.m. but the tenant was at work. The tenant was unavailable to attend after she finished work as she had to take her daughter "trick or treating" as it was Halloween. When the landlord advised the tenant that they were already undertaking the cleaning and repairs as time was of the essence because the new tenants were going to move in; the tenant cut off communication at 5:48 p.m. on October 31, 2015 and did not contact the landlord again until 7:25 p.m. on November 1, 2015. The actions of the tenant do not equate to her testimony that she was eager to minimize and address the issues.

The landlord provided clear detailed notes and documentary evidence to support her position that the tenant was given every opportunity to participate in the move out condition inspection. The landlord stated that the tenant never gave an alternative time that she wished to do the inspection. The landlord stated that she and her husband were in the suite all night doing the cleaning and repairs to which the tenant was invited to attend at any time but chose not to. Based on all of the documentary evidence provided by the landlord, I am satisfied that the landlord met their obligation under Sections 23 and 35 of the Act.

I address the landlord claim and my findings as follows.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual

monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Suite Cleaning and light bulbs - \$396.20

The landlord provided photos, receipts, and the condition inspection report to support their claim. Although the tenant stated that the unit was left very clean, the landlords' documentation disputes that. The landlord has provided sufficient evidence to show that the unit required cleaning and the replacement of three lightbulbs. The landlord is entitled to \$396.20

Painting, unclog central vacuum and repair wall mount hanger for vacuum \$315.00.

The landlord provided photos, receipts, and the condition inspection report to support their claim. The landlord stated that the unit was freshly painted just prior to the subject tenant taking possession of the unit. Based on the documentation provided by the landlord, I find that the damage exceeds normal wear and tear and that the landlord has provided sufficient evidence that the tenant is responsible for the costs incurred in this claim. I find that the landlord is entitled to \$315.00.

Bathtub Repair - \$131.25

The landlord stated that the new tenants were not bothered by the burn mark in the tub and haven't asked for it to be repaired. In addition, the landlord stated that the cost submitted is an estimate. The landlord has not suffered any out of pocket loss in regards to the claim; either in lost rent or actual repairs costs. In addition, the landlord did not provided sufficient evidence to show that the tenant caused this damage. The landlord has not met the burden of an applicant as outlined in Section 67 of the Act and therefore has not been successful in this claim. I dismiss this portion of the landlords claim.

Dryer Duct Cleaning – 136.45

The landlord stated that the dryer is working and that they haven't actually had the dryer duct cleaned. The landlord stated that she supplied an estimate to have it cleaned. The landlord has not suffered any loss of use of this item. In addition, the landlord has not suffered any out of pocket loss in regards to the claim; either in loss of revenue or actual repairs costs. The landlord has not met the burden of an applicant as outlined in Section

67 of the Act and therefore has not been successful in this claim. I dismiss this portion of the landlords claim.

The landlord is entitled to the recovery of the \$50.00 filing fee for this application.

Conclusion

The landlord has established a claim for \$761.20. I order that the landlord retain the \$425.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$336.20. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: June 13, 2016

Residential Tenancy Branch