



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF, O; MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenants pursuant to section 72; and
- an "other" remedy.

This hearing also dealt with the tenants' application for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38 of the Act.

The landlord attended. The tenant HL attended with her agent. Those in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

No issues of service were raised by the parties.

The landlord did not set out any other remedies that she sought other than the monetary remedies enumerated.

The landlord claims for \$1,885.00:

Item	Amount
Light Switch	\$85.00
Carpet Cleaning	210.00
Cleaning	300.00
Rent Loss	171.00
Total Monetary Order Sought	\$766.00

The tenants claim for \$1,885.00:

Item	Amount
Return of Security Deposit	\$800.00
Subsection 38(6) Compensation	800.00
Less Switch Repair	-85.00
Total Monetary Order Sought	\$1,515.00

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Is the tenant entitled to a monetary award for the return of a portion of their security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenants' claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began 1 July 2014 and ended 31 January 2016. Monthly rent was \$1,600.00. The landlord collected a security deposit in the amount of \$800.00 on or about 5 June 2014.

On 31 January 2016, the tenants provided their forwarding address in writing.

Testimony of the Landlord

The landlord testified that the tenants' daughter assisted with translation at the condition move out inspection. The landlord testified that the inspection was a very long process and admits that maybe some of the inspection was forgotten.

The landlord testified that the dirt in the photograph shows the dirt in the carpet that was there after the tenants vacated. The landlord submits that the tenants did not vacuum

before cleaning the carpets and did not use the appropriate cleaning solution for the steam cleaner. The landlord testified that the high traffic areas of the carpet were very dirty. The landlord testified that the carpets had to be professionally cleaned.

The landlord testified that the rental unit was clean at the beginning of the tenancy. The landlord provided me with photographs taken 31 January 2016.

The landlord testified that she hired a cleaner who cleaned for twelve hours. The landlord testified that the cleaner attended to the balcony, windows... The landlord testified that she paid the cleaner \$300.00 in case.

The landlord testified that the tenants agreed to pay for repairing the light switch. The landlord testified that the light switch was cracked and required an electrician to replace it. The landlord testified that the switch was from 2009, but was not cracked at the beginning of the tenancy.

The landlord testified that because of the cleaning requirements the new tenancy was delayed. The landlord testified that the subsequent tenant deducted a per diem amount for the days that he was unable to occupy the rental unit.

The landlord testified that she met with the tenants on 13 February 2016 and prepared a note. The landlord testified that the tenants refused to countersign the note.

On cross examination, the landlord admitted that there were marks on the ceiling at the beginning of the tenancy and that this left a permanent smudge. The landlord agreed that this was not noted in the condition inspection report.

Testimony of the Agent

The agent testified that the tenants agreed to pay for the cost of the electrical cover. The agent testified that the tenants believed that the cover was cracked already, but agreed to the charge.

The agent testified that the tenants rented a steam cleaner and used a half bottle of remaining cleaner to clean the carpets.

The agent testified that on 31 January 2016 the landlord identified some areas that could have been cleaned better, but did not identify any claims at that time. The agent testified that the agreement was that there would be no other charges. The agent

testified that a week later this changed and the landlord provided a very different report of things that were dirty and said that the carpet was “filthy”.

On 13 February 2016, the landlord provided a cheque in the amount of \$205.00 to the tenants.

The agent testified that there were dark spots on the balcony when the tenancy began. The agent testified that the tenants swept the balcony when they left the rental unit, but were not able to use water because water running off the deck would violate the strata laws of the residential property.

The agent testified that the condition of the rental unit at the beginning of the tenancy was similar to the condition at the end. The agent testified that the windows were in better condition than at the beginning of the tenancy.

The agent notes that the deficits of which the landlord now complains are not noted in the condition inspection report. The agent submits that if the next tenant requires a condition that is much cleaner, then this is not the tenant's responsibility.

Documents

I was provided with a copy of the condition inspection report completed 1 July 2014 and 31 January 2016. The report is unremarkable. The report notes that the carpet is dirty and that the tenants had agreed to the switch repair.

The landlord provided photographs taken 31 January 2016:

- The landlord provided photographs of the balcony on move out. The balcony is darkened with dirt.
- The landlord provided photographs of the door tracks to the balcony. The tracks are dirty.
- The landlord provided photographs of the light fixture. The light fixture is dirty.
- The landlord provided photographs of the blinds in the rental unit. The blinds are dirty.
- The landlord provided photographs of the stove showing that the stove top is unclean.

The landlord provided photographs taken by the subsequent tenant showing a large quantity of dirt that was removed by vacuuming.

I was provided with a copy of the relevant strata bylaw:

Balcony cleaning must be done with a damp mop. Excessive use of water to clean the balconies will result in fines being assessed against the Strata Lot.

The landlord provided me with a receipt for \$85.00 for the parts and labour associated with replacing the electrical switch.

I was provided with a receipt for carpet cleaning dated 12 February 2016 in the amount of \$210.00.

I was provided with a receipt dated 2 February 2016 in the amount of \$300.00 for the cleaning services.

I was provided with a written statement from the subsequent tenant. The subsequent tenant notes that carpets were unclean at the beginning of his tenancy and that he could not begin occupying the rental unit until the carpets were cleaned.

Analysis

Tenants' Claim

The tenancy ended 31 January 2016. The tenants provided their forwarding address in writing on 31 January 2016. On 13 February 2016, the landlord returned a portion of the tenants' security deposit (\$205.00). The landlord filed her application 13 June 2016.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain the deposits within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing.

The tenancy ended 31 January 2016 and the tenants delivered their forwarding address in writing that day. In accordance with subsection 38(1) of the Act, the landlord had until 15 February 2016 to return the full amount of the security deposit to the tenants. The landlord did not return the full amount and only returned \$205.00. The tenants refused return of the partial amount and sought recovery of the full amount. The tenants and landlord agreed that the landlord could retain the amount of the switch repair (\$85.00) pursuant to subsection 38(4) of the Act. Accordingly, the tenants are entitled to return of the full of the security deposit less the authorized deduction in the amount of \$715.00 (\$800.00 - \$85.00).

As the landlord failed to comply with subsection 38(1) of the Act within the prescribed time, pursuant to subsection 38(6) of the Act, the landlord must pay the tenants double

the amount of the security deposit that should have been returned at the end of the tenancy. The tenants are not entitled to doubling on the deduction authorized pursuant to subsection 38(4) of the Act. The tenants are entitled to a further monetary amount of \$715.00.

As the tenants have been successful in this application, they are entitled to recover their filing fee in the amount of \$100.00.

Landlord's Claim

The landlord makes claims in relation to cleaning deficiencies, a broken switch, and a rental loss.

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ... The tenant is not responsible ... for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act*...

Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Section 21 of the *Residential Tenancy Regulation* (the Regulation) establishes that the condition inspection report is strong evidence to the state of the rental unit at the time of the report:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The condition inspection report does not note most of the deficiencies of which the landlord complains. In particular, the report does not note any of the general cleaning issues. The photographs provided by the landlord only show the condition at the end of the tenancy. No photographs were provided to substantiate the condition at the beginning of the tenancy. Without more evidence, the landlord has failed to provide a

preponderance of evidence to contradict the condition inspection report. For this reason, I find that the landlord is not entitled to recover the cost of general cleaning.

The tenants authorized the reduction for the electrical repair and that amount was taken into account in determining the tenants' claim as set out above.

The landlord claims for the cost of the carpet cleaning. The condition inspection report notes that the carpet was dirty. While the tenants may have used a steam cleaner on the carpet, I find on the basis of the available evidence, that the tenants did not clean the carpets to a standard that complied with subsection 37(2) of the Act and find that the tenants breach the Act.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The landlord has provided a receipt for the cost of the carpet cleaning in the amount of \$210.00. I find that the landlord has substantiated the loss and are entitled to claim the full amount of the cost of carpet cleaning.

The landlord claims that the subsequent tenant could not move in to the rental unit because of the carpet cleaning. The subsequent tenant provided a written statement to this effect. I find that by failing to clean the carpets in a condition that complied with subsection 37(2) of the Act, the tenants caused a delay in the commencement of the subsequent tenancy and compensation to be paid to that tenant. The landlord collected a reduced rent for the subsequent tenant allowing for reduction of \$171.00. I find that the landlord is entitled to the full amount of this loss.

As the landlord has been successful in her application, she is entitled to recover the filing fee paid from the tenants.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,049.00:

Item	Amount
Return of Security Deposit	\$715.00
Subsection 38(6) Compensation	715.00
Recover Filing Fee	100.00
Offset Landlord's Award	-481.00
Total Monetary Order	\$1,049.00

The tenants are provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: August 08, 2016

Residential Tenancy Branch