



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Estates Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation for loss – Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord's Witness gave evidence under oath. It is noted that although the application includes a claim for an order of possession, the details indicate that the claim was not relevant and the Landlord confirmed during the hearing that the tenancy ended before the application was made. I therefore consider the claim for an order of possession to have been made in error.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on November 30, 2014 and ended on March 31, 2016. Rent of \$1,305.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$652.50 as a security deposit. The Parties mutually conducted a move-in inspection and completed a report with a copy given to the Tenant.

The Witness states that the Witness performed the move-out inspection. The Witness states that the Tenant was present for the move out inspection, that the Tenants were invited to inspect each room and that the Tenants went with the Landlord to each room. The Landlord states that the Tenants were shown the condition report but did not come to the office to sign the report. The Landlord states that the Tenant was not offered the report to sign at the time of inspection as the Landlord was too busy taking photos and the Tenant was disruptive by disagreeing with the items being noted by the Landlord.

The Tenant states that the Landlord rushed off on the inspection by herself. The Tenant states that the Landlord did not invite the Tenants to conduct the inspection with the Landlord and that the Tenants were not given the opportunity to go room by room with the Landlord as the Landlord was rushing the Tenants out of the unit. The Tenant states that the report was never shown to the Tenant or offered to be shown to the Tenant.

The Landlord states that they had an order of possession for 1:00 p.m. on move-out day and that this was obtained based on a mutual agreement entered into at an RTB hearing. The Landlord states that they were simply enforcing their right to the unit on the date and time of the order of possession. The Landlord confirms that no tenant was scheduled to move into the unit that day or the next. The Landlord confirms that no tenant moved into that unit until August 2016.

The Landlord states that the Tenants left the cloth drapes in the bedroom and living room unclean. The Landlord states that they were sent out for cleaning and claim the cost of \$58.80. The receipt was provided. The Tenant does not dispute this claim.

The Landlord states that the Tenant failed to clean a stove top, stove hood and the fridge. The Landlord claims \$102.00 for these tasks. The Landlord's invoice does not set out calculations. The Landlord claims \$285.00 for cleaning the rest of the 700 square foot, 1 bedroom, 1 bath, unit in 10 hours. The Landlord states that their employees that are paid between \$12.50 and \$15.00 per hour completed the work. The Landlord claims the work done at \$28.50 per hour and state that the extra amount is to cover overhead and payroll costs.

The Tenant states that they left the unit clean. The Tenant states that the stove was very old, rusty and hard to clean and would not come clean. The Tenant states that the fridge was thoroughly cleaned. The Tenant states that they cleaned the bathroom thoroughly but did not clean inside the cabinets. The Tenant states that they did not clean the stove hood.

The Landlord states that the Tenant left a 5 year old cotton curtain shredded on the side where they are pulled together. The Landlord states that the curtains were sent for cleaning and came back shredded. The Landlord states that they had to replace one panel and claim a reduced amount of \$92.27 because of the age of the curtains. The Landlord states that the curtains are purchased in bulk. No evidence of the cost of the curtains for one unit was provided. The Tenant states that the curtain material was extremely thin and had a small tear at the top. The Tenant states that any damage is the result of reasonable wear and tear. The Tenant submits that the invoice provided by the Landlord for the cost to replace the curtains is based on a quote.

The Landlord states that the Tenant left the 540 square feet of carpet unclean and left with black stains. The Landlord states that the carpet is 8 years old and that the Landlord paid \$1,319.05 for the carpet. The Landlord states that the carpet could not be cleaned by professional company and that the Landlord did not try to clean the carpet. The Landlord claims \$346.55.

The Landlord did not provide an invoice for the cost of the replacement carpet. The Tenant states that this claim is outrageous and that the carpet had natural dark spot patterns that could appear to be stains. The Tenant states that they did not clean the carpet as they believed the Landlord would clean it for a reasonable cost. The Tenant states that the carpet was still in good condition. The Tenant states that the photos of the carpets were taken right after the move-out and were not vacuumed at the time.

The Landlord states that the Tenant left the bathroom linoleum with dark water stains that could not be removed and claims \$185.83 for its replacement. The Landlord states that the linoleum was new in 2014. The Landlord states that the linoleum was fit for its purpose but the stains reduced its esthetic value. The Tenant states the linoleum had a dark flowing pattern but that there were no stains. The Tenant states that the photos of the linoleum are not from the unit they rented.

Analysis

Section 35 of the Act provides that at move out the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit. In giving direct evidence about the conduct of the move-out inspection the Landlord's witness was evasive. I accept the Tenant's more persuasive evidence that the Landlord did rush the Tenants out of the unit without providing the Tenants full opportunity to inspect the unit with the Landlord or to note their disagreement in writing with the Landlord's report at the time of the inspection. I consider it likely that the inspection was rushed as were the Tenants due to the previous dispute with the Landlord. While I find this rushing behavior on the part of the Landlord to be highly questionable in the circumstances where no tenant was due to move into the unit, I accept that the Tenants were afforded sufficient opportunity to indicate their dispute of the Landlord's assessment of the unit at move-out. I do however caution the Landlord in going forward to enable the full participation of any tenant at an inspection and not to act in a way that impedes that right.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that the landlord must do whatever is reasonable to minimize the damage or loss being claimed.

As the Tenant did not dispute the claim for cleaning the drapes I find that the Landlord has substantiated its claim to **\$58.80**.

Given the Tenant's evidence that a small hole was present in the curtains at the end of the tenancy I find that the Landlord has substantiated that the Tenant left the curtains damaged. However the Landlord's evidence of the bulk purchase of the curtains does not support the value lost or costs incurred for replacement of curtains purchased individually. I find therefore

that the Landlord has only substantiated a nominal amount of **\$50.00** for the damage to the curtains.

Given the photos I accept that the carpets were left unclean with smudges and deeper soiling over a high traffic carpet area. However given the lack of evidence of carpet cleaning, I find that the Landlord has failed to provide evidence of reasonable attempts to mitigate the losses claimed. I dismiss the claim for the replacement of the carpets.

Given the photos of the linoleum and considering the Landlord's credible oral evidence of damage I find that the Landlord has substantiated on a balance of probabilities that the Tenants left the linoleum substantially discolored and damaged. Given the Landlord's evidence of the life expectancy of the linoleum and amortized claim I find that the Landlord is entitled to **\$185.23** for the replacement of the linoleum.

Given the Landlord's photos I find the Tenant's evidence of cleaning the unit to be credible. I also consider the Landlord's costs being claimed for cleaning to be inflated and in contradiction to the Landlord's requirement to mitigate costs. I therefore dismiss the claim for cleaning the unit and appliances.

As the Landlord's application has had limited success I find that the Landlord is only entitled to recovery of half the \$100.00 filing fee (**\$50.00**) for a total entitlement of **\$344.03**. Deducting this entitlement from the Tenant's security deposit plus zero interest of \$652.50, leaves **\$308.47** to be returned to the Tenant forthwith.

Conclusion

I Order the Landlord to retain **\$344.03** from the security deposit plus interest of \$652.50 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$308.47**. If necessary, 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: September 23, 2016

Residential Tenancy Branch