



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPN MNR MND MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for unpaid rent and for damage to the unit 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; and authorization to recover the filing fee for this application from the tenants pursuant to section 72. The landlord originally applied for an Order of Possession pursuant to section 55 however the parties agreed that the tenants vacated the rental unit prior to this hearing. Therefore, the landlord withdrew the application for an order of possession.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the unit? Is the landlord entitled to retain all or a portion of the tenants' security deposit?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on February 1, 2015 for a fixed term of six months with a rental amount of \$1200.00 payable on the first of each month. The tenants vacated the rental unit on February 1, 2016. The parties agreed that no move-in condition inspection report was completed. The landlord sought to recover costs for unpaid rent and costs related to the end of tenancy. The landlord sought a total monetary award of \$1263.00.

The landlord testified that the tenants did not pay the full rental amount for October or November 2015 leaving a total amount of rental arrears of \$240.00. The tenants argued that this was a rent reduction. The landlord confirmed that a rent reduction was given at the time but he has since decided it was not necessary to provide it to the tenants.

The landlord testified that, at the end of the tenancy, the unit required repair and cleaning (including carpets). The landlord submitted an invoice indicating a carpet cleaning cost of \$150.00. The landlord submitted an invoice indicating costs for cleaning the rental unit totalling \$200.00. The landlord submitted an invoice for the repair of holes in walls and the ceiling totalling \$200.00. The landlord submitted an invoice for repair of a window sill and closet door totalling \$400.00. The landlord also testified that the tenant left the unit with missing light bulbs (\$16.00) and failed to return one of the entry keys (\$7.00).

The tenants both testified that they disagreed with the condition of the rental unit as described on the report at the end of the tenancy. The tenants testified that they hired a cleaner but, before he had completed his work at the end of the tenancy, the landlord asked him to leave. They testified that he cleaned the bedroom and bathroom. The tenants noted that they refused to sign the condition inspection report. The tenants testified that the landlord yelled at them.

The tenants testified that they were told they could hang items on the walls and the ceiling and that the holes were minimal – normal wear and tear. The tenants acknowledged that they may have failed to change a light bulb before vacating. The tenants testified that, during the course of and at the end of the tenancy, there were contractors through the unit regularly with dirty shoes causing dirty floors. The tenants testified that, during the tenancy, there was a lack of hot water and other issues with the facilities. The landlord provided undisputed testimony that he provided a rent reduction over the course of the tenancy at the request of the tenants because of the heating/hot water issues.

The landlord testified that the rental unit, built in 1996 had been last painted in 2013 and that, in 2015 renovations had been done to the unit. The parties agreed that the landlord intended to renovate the residence further once the tenants moved out. The landlord provided photographic evidence that the stove was left uncleaned, the windowsills were dirty and there were approximately 20 holes in the walls. The photographs showed a stained carpet.

Analysis

In this case, the landlord did not complete and provide a move-in condition inspection report and it is therefore more difficult to consider the state of the unit at the start and end of tenancy. I rely on the candid testimony of both parties and both tenants to determine whether there are any changes or damage beyond regular wear and tear to this rental unit over the course of this tenancy.

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.

The landlord provided undisputed testimony that the tenants did not pay the full rental amount for October or November 2015 however the tenants provided a full acceptable explanation: the landlord had reduced their rent. I find that the landlord reached an agreement with the tenant regarding a rent reduction and it cannot be reconsidered at this later time when the tenants have acted on that agreement.

The tenants acknowledged their failure to return one of the entry keys. Therefore, the landlord is entitled to recover the \$7.00 spent to replace that key.

The landlord has provided evidence to support the claim that he was required to replace light bulbs. Light bulbs are the responsibility of the tenants over the course of the tenancy. The landlord testified to approximately 6 burnt out light bulbs and estimated a cost of \$16.00 (for a box of 60 light bulbs). I find that the landlord is entitled to recover \$2.00 towards the cost of replacement light bulbs.

The landlord provided photographic evidence to show that the tenant did not clean the kitchen including behind and inside the stove. Therefore, the landlord is entitled to recover the cost of cleaning the rental unit as claimed by the landlord in his application: \$200.00.

The landlord also provided photographic evidence to prove that the carpets required cleaning at the end of the tenancy however the tenancy agreement did not specify that the carpets required professional cleaning. Therefore, the landlord is entitled to a reasonable cost towards carpet cleaning: \$150.00.

The landlord provided some photographic evidence of a door with a large scratch. The invoice for repair to the closet door refers to the repair of scratches totaling \$250.00. I find that the landlord's evidence to support this cost for a door scratch is insufficient. His testimony did not assist in explaining this cost. Therefore, I find that the landlord is entitled to a reasonable cost towards the door scratch repair: \$75.00.

The landlord provided evidence that the window sills required repair. The photographs showed they were chipped and damaged as well as very dirty. I find that the landlord is entitled to the cost of repair of the window sills at \$150.00.

Residential Tenancy Policy Guideline No. 40 provides guidelines regarding the useful life of the elements of the residential premises. With respect to nail holes at the end of tenancy, the guideline states that they are not the responsibility of the tenant unless they are excessive in nature and beyond normal wear and tear. The photographs show a reasonable amount of small holes. Therefore, I find that the landlord is not entitled to recover the cost of repairing the nail holes and ceiling.

In accordance with section 72(2), I allow the landlord to retain the tenants' security deposit towards the monetary award outlined as follows,

Item	Amount
Window Sill Repair	\$150.00
Closet Door Repair	75.00
Carpet Cleaning	150.00
Cleaning	200.00
Replacement Key and Light Bulbs (\$7.00 + \$2.00)	9.00
Less Security Deposit	-600.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order to Landlord	\$34.00

As the landlord has been successful in the application, I find the landlord is entitled to recover the filing fee from the tenants.

Conclusion

I grant the landlord a monetary order in the amount of \$34.00.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 13, 2016

Residential Tenancy Branch