



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNSD, MNDC

Introduction

This hearing dealt with the landlords' application for a Monetary Order for compensation for damage to the rental unit and authorization to retain the tenant's 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.

During the hearing, the landlords waived entitlement to any compensation in excess of the amount of the security deposit. I have amended the application accordingly.

Although the landlords indicated the dispute code related to damage, their details of dispute clearly indicated that they were seeking recovery of other amounts. I amended the application accordingly.

The landlords had provided digital evidence for this proceeding. In submitting the Digital Evidence Details worksheet they indicated that they would confirm with the tenant before the hearing that she could see/hear the evidence. The landlords did not confirm this with the tenant. During the hearing, the tenant stated she did not try to access the content on the USB stick. Under the Rules of Procedure, where a party intends to rely upon digital evidence, the party submitting the digital evidence must confirm with the other party that they were able to see/hear the content. IN this case, confirmation was not received. The landlords confirmed that their digital evidence included the same photographs that were provided in paper format and that the USB stick also contained an audio/video recording during the move-out inspection. I informed the parties that I would refer the printed photographs in making my decision but I have not viewed the video.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation from the tenant for damage to the rental unit in an amount equal to or greater than the amount of the security deposit?
2. Disposition of the security deposit.

Background and Evidence

The tenant and the former landlord entered into a tenancy agreement that started on September 1, 2012. The tenant paid a security deposit of \$1,250.00 and was required to pay rent of \$2,500.00 on the first day of every month. The current landlords purchased the property in December 2015. The tenant gave notice to end tenancy shortly thereafter and the tenancy ended on February 29, 2016.

When the tenancy started the former landlord did not complete a move-in inspection report. After the current landlords purchased the property they inspected the property on December 12, 2015 while the unit was fully furnished with the tenant's possessions and the landlords prepared an inspection report, which the tenant signed.

When the tenancy ended the parties met at the rental unit for purposes of performing the move out inspection. The tenant refused to sign the move-out inspection report.

The landlords described the move-out inspection as being hostile and the tenant "storming off" after refusing to sign the move-out inspection report. The landlords also noted that the tenant brought friends and children with her. The tenant explained she did not have childcare and brought her children to the inspection, along with her boyfriend. The tenant acknowledged that she and her boyfriend were getting frustrated because the move-out inspection was taking hours and the landlords told her she would not be getting her security deposit back. The landlords submitted that they started taking a recording of the encounter after it became hostile.

On April 9, 2016 the landlords received the tenant's forwarding address and the landlords filed this application on April 22, 2016.

Below, I have summarized the landlords' claims against the tenant and the tenant's responses.

1. Carpet cleaning -- \$156.50

The landlords submitted that the carpeting in the basement and stairs was stained with food and because the tenant did not produce a receipt to show she had the carpets cleaned they had the carpets cleaned shortly after the tenancy ended.

The tenant submitted that she had cleaned the carpeting two days prior to the end of the tenancy by renting a carpet cleaning machine. The tenant was of the position that some stains were pre-existing at the start of the tenancy and that some stains were the result of wear and tear. However, the tenant also indicated that she was agreeable to paying for carpet cleaning if stains are not considered wear and tear.

2. Wall repairs and painting -- \$1,200.00

The landlords submitted that several walls had damage, including: holes, scuffs, dents and torn drywall paper. The landlords hired a company to patch the damaged sections and re-paint the damaged walls. The landlords acknowledged that they also had the unit re-painted entirely but they are not seeking compensation from the tenant for re-painting undamaged walls.

The tenant submitted that when she moved in there was existing damage to the walls and she hung artwork and shelving over areas that were already damaged. The tenant was of the position that the remainder of marks to the walls amounted to wear and tear. The tenant testified that the former landlord never repainted the walls during the tenancy but did install a TV mount for the tenant that the tenant took with her at the end of the tenancy.

Both parties pointed to the inspection report prepared in December 2015. The landlords had described the walls as being in good condition on the report and the tenant agreed to that assessment. The tenant explained that the inspection was very brief, taking only a few minutes, and done while her furniture and artwork was in place. The tenant submitted that the tenancy ended only three months later. The landlords submitted that the inspection done in December 2015 took longer than a few minutes.

3. Cleaning and cleaning supplies -- \$287.50 + \$311.59

The landlords submitted that additional cleaning was required in the rental unit to remove cobwebs and dust. The landlords provided a copy of the receipt for the cleaning supplies and a hand-written receipt signed by a woman who charged the landlord's for 11.5 hours of cleaning.

The tenant submitted that she and a cleaner thoroughly cleaned the rental unit and cannot understand what the landlord's cleaner did for 11.5 hours. The tenant pointed out that the landlord's cleaner did not provide a description of what she cleaned for that amount of time.

In response, the landlords acknowledged that the majority of the cleaner's time and cleaning supplies were purchased in an attempt to remove the scuffs and stains from the walls to avoid re-painting them.

4. Administration -- \$200.00

The landlords explained that this claim is for six hours of the landlords' time spent after the tenancy ended to find and co-ordinate the cleaner and painters at the property and provide access to the unit for these people. The landlords also stated that they did some work at the property themselves. I dismissed this claim summarily as the landlords did not provide a

breakdown of their time and I was of the view that the majority would be characterized as a cost of doing business as a landlord.

Analysis

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:

- a. That the other party violated the Act, regulations, or tenancy agreement;
- b. That the violation caused the party making the application to incur damages or loss as a result of the violation;
- c. The value of the loss; and,
- d. That the party making the application did whatever was reasonable to minimize the damage or loss.

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 37 of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of the tenancy; however, section 37 also provides that reasonable wear and tear is not damage. Accordingly, a landlord may not pursue a tenant for compensation to rectify reasonable wear and tear. Residential Tenancy Branch Policy Guideline 1 provides several policy statements with respect to a tenant's and a landlord's respective obligations with respect to cleaning and repairs.

Also of consideration is that awards for damages are intended to be restorative. Where an item has a limited useful life, it is often appropriate to reduce the replacement cost by the depreciation of the original item. 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*.

Upon consideration of everything before me, I provide the following findings and reasons with respect to each of the landlords' claims against the tenant.

1. Carpet cleaning

Policy Guideline 1 provides that tenants are usually held responsible to steam clean or shampoo carpeting if their tenancy was greater than one year in duration. This tenancy was greater than one year and I find the tenant was obligated to steam clean or shampoo the carpeting at the end of the tenancy so as to meet her obligation to leave the rental unit reasonably clean. The tenant testified that she had cleaned the carpets by way of a rented

carpet cleaner; however, the tenant did not produce a receipt to establish that. The landlords had the carpets cleaned shortly after the tenancy ended and produced a receipt to corroborate that. Therefore, I find the landlords provided better evidence as to whether the carpets required cleaning at the end of the tenancy and I am satisfied they are entitled to recover carpet cleaning costs from the tenant.

2. Wall repairs and painting

Section 23 of the Act requires that a landlord prepare a move-in inspection report at the start of the tenancy. Section 35 of the Act requires that a landlord prepare a move-out inspection at the end of the tenancy. Condition inspections are to be done in accordance with the Residential Tenancy Regulations. Section 14 of the Regulations provides:

14 The landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act *[condition inspections]* when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time

[Reproduced as written with my emphasis added]

The intention of performing a move-in and move-out inspection report is to compare the condition of the unit at the start of the tenancy and the end and to record any pre-existing damage. Obviously, it is easier to see the condition of all areas of the rental unit when it is empty of the tenant's possessions and I am of the view that the inspection is likely to be most accurate at that time.

The condition of the walls at the end of the tenancy was not in dispute and it was well documented by the landlord's with their photographs; however, the tenant raised issues with respect to the walls showing wear and tear at the end of the tenancy and having pre-existing damage at the start of the tenancy. Undeniably, the landlords were not present at the start of the tenancy and purchased a property from former landlord who did not prepare a move-in inspection report. As such, the landlords have largely relied upon their inspection report that they prepared in December 2015 in making their claims against the tenant. I proceed to consider the evidentiary weight that is appropriate to apply to the December 2015 inspection report.

In this case, the parties did an inspection report in December 2015 which is more than three years after the tenancy started, albeit with the agreement of the tenant, but while the unit was fully furnished, and including artwork on the walls. I did not hear evidence that when the December 2015 inspection was done the furniture wall pulled away from the walls or the tenant's artwork removed from the walls. However, when the move-out inspection was done the unit was vacant and devoid of furnishings and artwork. I find that it stands to reason that any deficiencies on the walls would be readily apparent during the move-out inspection but not so much during the December 2015 inspection. Therefore, I find the inspection reports are not

fairly comparable and I find it more appropriate to give little evidentiary weight to the December 2015 inspection report.

The tenant testified that there was pre-existing damage to the walls and I find the landlords have not provided sufficient evidence to contradict that except for the tenant's admissions that she removed a TV mount and shelving from the walls that were installed during her tenancy. Since the landlord's receipt includes repairs for all damage, some of which the tenant may not be responsible for, and some areas would appear to be wear and tear considering this tenancy was 3.5 years in duration, I find I am unable to apportion the repair cost with any accuracy using the receipt provided. Accordingly, in recognition that the tenant is responsible for some damage, including holes left by removing the TV mount and shelving, I find it appropriate to grant a nominal award to the landlords. Therefore, I grant the landlord's a nominal award in the amount of \$100.00.

3. Cleaning and cleaning supplies

Upon review of the printed photographs, I find the landlords' photographs do not depict a rental unit that was not left reasonably clean. Nor, did the landlords' cleaner provide a detailed account as to what she did for 11.5 hours. However, the landlords acknowledged that the majority of the cleaning was done in an attempt to clean the scuffs and marks from the walls to avoid painting.

Considering this tenancy was 3.5 years in duration, and it is unknown as to when the unit was last painted, and considering Policy Guideline 40 provides that interior paint has an average useful life of 4 years, I find it likely that this unit was due for re-painting. I find the landlords' attempt to clean away stains and scuffs is their decision that they made in an attempt to extend the life of the existing paint but for the reasons provided above, I find this unit was likely due for re-painting in any event due to age, deterioration, wear and tear which is the landlords' responsibility. Therefore, I dismiss the landlords' claim against the tenant for cleaning and cleaning supplies.

Security Deposit and Monetary Order

In light of all of the above, I have awarded the landlords compensation totalling \$256.50 and I authorize the landlords to deduct that sum from the tenant's security deposit. In keeping with Residential Tenancy Policy Guideline 17: *Security Deposit and Set-Off* I order the landlords to return the balance of the security deposit to the tenant in the amount of \$993.50 without further delay.

Conclusion

The landlords are awarded and authorized to deduct \$256.50 from the tenant's security deposit and the landlords are ordered to return the balance of the security deposit to the tenant in the amount of \$993.50 without further delay.

The tenant has been provided a Monetary Order in the sum \$993.50 to ensure payment is made.

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: October 28, 2016

Residential Tenancy Branch