



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This matter commenced on November 15, 2016 and due to insufficient time was adjourned. On November 24, 2016 an interim decision was made which should be read in conjunction with this decision.

The landlord and the tenants reconvened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For a monetary order for damage to the rental unit; and
2. For money owed or compensation for damage or loss under the Act.

The tenants' application is seeking orders as follows:

1. For return double the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to a monetary order for money owed or compensation under the Act?

Are the tenants entitled to return of double the security deposit?

Background and Evidence

The parties agreed that the tenancy began on May 1, 2014. Rent in the amount of \$4,700.00 was payable on the first of each month. The tenants paid a security deposit of \$2,350.00. The tenancy ended on April 30, 2016.

The landlord claims as follows:

a.	Pool maintenance	\$ 153.60
b.	Exterior tiled surfaces	\$ 1,702.74
c.	Professional window cleaning	\$ 300.00
d.	Carpet cleaning/repair	\$ 700.00
e.	Filing fee	\$ 100.00
	Total claimed	\$ 2,956.34

Landlord's application

Pool maintenance

The landlord testified that the tenants were required under the terms of their tenancy agreement to maintain the pool. The landlord stated that the tenants did the treatments through the tenancy except they cancel the service early and no pool treatments were completed during the last month of the tenancy. The landlord seeks to recover the cost of the pool maintenance in the amount of \$153.60. Filed in evidence is an invoice for pool maintenance.

The tenant acknowledged that they cancel the pool service prior to the tenancy ending.

Exterior tiled surfaces

The landlord testified that the tenants were in default of their tenancy agreement as they were required to have the exterior tiles professionally cleaned 90 to 60 days prior to the tenancy ending.

The landlord testified that the tenants did not have the tiles cleaned and they arranged to have them cleaned on March 21, 2016. The landlord stated that the tenant refused to allow the tile cleaner access. The landlord stated that they suffered a loss as they had

to pay the tile cleaner for attending the premises. The landlord seeks to recover the amount of \$200.00. Filed in evidence is a statement from the maintenance company.

The landlord testified that the tenants had their own tile cleaners attended in the afternoon of March 21, 2016. The landlord stated that the cleaners caused extensive damage to the tiles by using excessive water and pressure, dislocating a large amount of tiles. The landlord stated that the worker attempted to hide the damage by placing the tiles back in to their spot. The landlord seeks to recover the cost of the damage in the amount of \$1,302.74. Filed in evidence is an invoice for repairs. Filed in evidence are photographs.

Filed in evidence of the landlord is a letter from the tenants' tile cleaners, which reads in part.

"we were contacted by JK on March 21, 2016 and made an agreement with him for an immediate start on pressure washing the extensive tile areas.... We had agreed to a very low price for this work on his assurance we would have immediate additional and similar work at the premises he said he would be moving to..,

Our 2-man crew was not given any advisory or notice from ... that theses tiles on your property were susceptible to be dislodged by excess water pressure or by pressure applied other than from more-or-less directly above the tiled surfaces. We were sorry to learn from you that large numbers of tiles had been dislocated. One of the members of this crew has also acknowledge that the loosely place the intact tiles in their approximate original locations so to minimize the immediate visual impact."

[Reproduced as written.]

The landlord testified that they had to use tiles out of their reserve as they had matched the broken tiles. The landlord seeks to recover the amount of \$200.00.

The tenant testified that the landlord did not give them any advance notice that the exterior tile cleaners were coming and it was not a good time. The tenant stated that they arrangements for their own tile cleaner to attend.

The tenant testified that if the company they had hired to clean the tiles caused damage to the tiles it was from their own incompetence. The tenant stated that it was unreasonable for the landlord to notify them seven weeks later.

Professional window cleaning

The landlord testified that the tenants were required to hire professional window cleansers at the end of the tenancy. The landlord stated that the tenant hired a company which they wet mopped the windows; however the work was unsatisfactory. The landlord stated that they have not re-cleaned the windows; however they have exempted the new renters from having to clean them at the end of their tenancy. The landlord seeks to recover the amount of \$300.00.

The tenant testified that they had the windows cleaned. The tenant stated that there is no documentary evidence to prove otherwise. Filed in evidence are receipts for have the windows cleaned.

Carpet cleaning

The landlord testified that the tenants did not adequately clean the carpets at the end of the tenancy as the area cleaned was only approximately 30% of the carpeted area. The landlord stated that the tenant paid the amount of \$99.00 which was for three bedrooms and the hallway.

The landlord testified that they did not clean the other areas of carpet as the new tenant had moved into the rental unit. The landlord stated that as a result they will be responsible for cleaning the carpets when the new renter leaves. The landlord seeks to recover the amount of \$400.00.

The landlord testified that the carpets were left with three blue stains which are the size of a two dollar coin. The landlord stated they have not attempted to have the stains remove as they are underneath the new renter's furniture. The landlord stated that they are doubtful the stains will be removed when the carpets are cleaned in the spring of 2017, and seeks to recover the cost of the repair in the amount of \$300.00.

The tenant testified they were told by the landlord not to clean the carpets. The tenant stated that they still felt responsible and had the carpets cleaned on the last day of the tenancy. The tenant stated if that if the landlord informed earlier of the three stains they could have sent the carpet cleaners back to remove them for free.

The tenant's application

The tenant claims as follows:

a.	Return of double the security deposit (\$2,350.00 X 2 = \$4,700.00 less the amount paid of \$2,350)	\$2,350.00
b.	Filing fee	\$ 100.00
	Total claimed	\$2,450.00

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

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 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Section 38(1) of the Act states, within 15 days after the later of (a) the date the tenancy ends, and (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following: (c) repay, (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act states if a landlord does not comply with subsection (1), the landlord (a) may not make a claim against the security deposit or any pet damage deposit, and(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Landlord's application

Pool maintenance

In this case, the tenants cancelled the pool service for the last month of their tenancy; however, the tenants were responsible for the maintenance until the ended of their tenancy. I find the tenants breached the tenancy agreement and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the maintenance in the amount of **\$153.60**

Exterior tiled surfaces

The evidence supports the landlord did not give the tenants proper 24 hours' notice that the tile cleaner was coming. I find the tenants had the right to deny access due to insufficient notice. Therefore, I find any loss the landlord suffered was as a result of the landlord not complying with the Act. Therefore, I find the landlord is not entitled to compensation for having their tile cleaner turned away.

In this case, the tenants hired their own tile cleaner. The evidence supports the tile cleaners caused damage to the tiles which is supported by a letter from the company and photographs. I find the workers action of not notifying the tenants when the first tile was dislodge and continuing to pressure wash the tiles causing more damage neglectful. It also took anyway the opportunity for the tenants and the landlord to inspect the tiles to determine if the damage was caused by their neglect or due to the aging process. I find replacing the tiles without notifying the tenants deceitful; this leads me to believe the worker was careless.

However, having said the above, I find the tenants are responsible for the actions of all people they allow on the property this would include the worker they hired.

The tenants turned away the landlord's tile cleaner and they hired their own company to complete the work. The tenants were responsible to supervisor and to ensure the work

was completed property. I find the tenants breached the Act, when damage was caused to the tiles and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of the repair in the amount of **\$1,302.74**.

I further accept tiles were broken which had to be replaced. However, I am not satisfied on the amount claimed as the landlord provided no evidence on the exact number of tiles broken or the estimated value of a tile. Therefore, I find a nominal amount is appropriate in the amount of **\$50.00**.

Professional window cleaning

In this case the tenants had the windows cleaned; this is supported by the testimony of the parties and the receipts. I find the landlord has failed to prove that the work was unsatisfactory. The landlord provided no photographic evidence for me to review to determine if the windows were not left reasonable clean. I find the landlord has failed to prove a violation of the Act by the tenants. Therefore, I dismiss this portion of the landlord's claim.

Carpet cleaning/repair

In this case both parties have provided a different version of events. The evidence of the landlord was that the all carpets were not cleaned. The evidence of the tenant was that the carpets were cleaned. As the onus is on the landlord to prove their version, I find without further evidence such a photographs showing all of the carpets, that the landlord has failed to prove their version. Therefore, I dismiss this portion of the claim.

The landlord provided three photographs that show three small blue stains. The landlord has not attempted to remove the stains or have a qualified person attend to determine if the stains are removable. As a result I cannot determine if the landlord claim for carpet repair is justified. Therefore, I dismiss this portion of the claim.

I find that the landlord has established a total monetary claim of **\$1,606.34** comprised of the above described amounts and the \$100.00 fee paid for this application.

Tenant's application

In this case, both parties agreed that the landlord had the tenant's forwarding address at the end of the tenancy. The landlord had 15 days to either return the security deposit or make a claim against the deposit.

I find the landlord had until May 15 2016, to return of security deposit or make an application claiming against the deposit. The landlord returned the security deposit in July 2016, which is outside the statutory time limited set-out in the Act.

I find the landlord breached section 38 of the Act. Therefore, I find the landlord must pay the tenant double the security deposit pursuant to section 38(6) of the Act. The legislation does not provide any flexibility on this issue.

Therefore, I find the tenant is entitled to a monetary order for the return of double the security deposit and filing fee in the amount of \$4,800.00 less the amount already returned of \$2,350.00. I grant the tenants a monetary order for the balance due in the amount of **\$2,450.00.**

As both parties have been awarded a monetary award, I find it appropriate to offset the amounts. Since the tenants have been award the amount of \$2,450.00 and the landlord has been award the amount of \$1,606.34. I find it appropriate to make a formal order for the balance due to the tenants in the amount of **\$843.66.**

Conclusion

Both parties were granted a monetary order. Their respective claims were offset leaving a balance due to the tenants. The tenants were granted a formal order for the balance due.

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: January 19, 2017

Residential Tenancy Branch