



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNSD, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for the cost of cleaning, replacing appliances and flooring, repairs and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of the claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant acknowledged receipt of evidence submitted by the landlord. However, the landlord agreed that she did not provide the tenant with all of the documents that she had filed into evidence at the Residential Tenancy Branch Office. I explained to the landlord that documents before me that were not provided to the tenant would not be used in the making of this decision. Both parties gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for the cost of cleaning, replacing appliances and flooring, repairs and for the recovery of the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started in May 2011 for a fixed term of one year. At the end of the term the parties entered into a new tenancy agreement. This practice continued at the end of every subsequent term, until January 01, 2016 at which time the parties entered into a final tenancy agreement. The monthly rent at the end of the tenancy, was \$1,350.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$650.00.

The rental unit is a 900 square foot apartment located in a building complex. The building is nine years old and the landlord purchased the rental unit when it was brand new. The landlord agreed that she had not painted or carried out any repairs or renovations since she purchased the rental unit. The tenant stated that the landlord did not visit the unit other than on one occasion when she came by with her husband to repair the garburator. The landlord stated that she did not visit the unit to inspect or carry out repairs because she trusted the tenant.

During the hearing, the tenant stated that the landlord requested him to move out because her parents wished to move into the rental unit. On April 10, 2016, the parties entered into a mutual agreement to end tenancy effective July 16, 2016. The tenant stated that the landlord's parents did not move in and the rental unit was listed for sale. The landlord agreed that the unit sold in December 2016.

A move out inspection was conducted on July 16, 2016 and the tenant provided the landlord with a forwarding address on that same day. A copy of the move out inspection report was filed into evidence.

The tenant stated that it was difficult to find a place to rent and when he found one he moved out in a hurry and did not have enough time to clean the unit. At the move out inspection, the tenant agreed to allow the landlord to keep the deposit of \$650.00 towards the cost of cleaning.

On August 02, 2016, the landlord made this application for additional damages. The landlord stated that the carpet was extremely soiled and had to be replaced. The dishwasher was mouldy and the stove had not been cleaned. The landlord stated that she replaced both appliances even though they were in working order.

The landlord also described other damage to the unit. She stated that there was a hole in the bathroom door, a cabinet door was off its hinges, the closet sliding door was off the track and the unit had to be painted. The landlord is claiming for the cost of the above items.

The landlord filed digital evidence depicting the condition of the rental unit at the end of the tenancy. The evidence shows that the tenant did not clean the unit and left the floors and appliances in a dirty condition and also shows a cabinet door off its hinges.

The landlord filed an invoice for the cost incurred to clean the rental unit. However the landlord failed to serve the tenant with copies of the invoices or estimates she filed into evidence.

Even though the tenant did not receive a copy of the invoice and stated that he considered \$630.00 for cleaning a 900 square foot apartment exorbitant, the tenant agreed to cover the cost of cleaning.

The landlord is claiming the following:

1.	Cleaning	\$630.00
2.	Replace carpets	\$3,000.00
3.	Replace dishwasher	\$449.99
4.	Replace stove	\$599.99
5.	Repair bathroom door	\$100.00
6.	Repair cabinet door	\$150.00
7.	Repair door and ceiling of closet	\$100.00
8.	Paint	\$300.00
	Total	\$5,329.98

Analysis

1. Cleaning - \$630.00

The tenant agreed to cover the cost of cleaning and therefore I award the landlord her claim of \$630.00

2. Replace carpets - \$3,000.00

Section 40 of the *Residential Tenancy Policy Guideline* addresses the useful life of an item. I will use this guideline to assess the remainder of the useful life of the carpet. As per this policy the useful life of flooring is ten years. The landlord agreed that the carpet was 9 years old at the end of tenancy. The landlord filed an estimate of the cost to replace the carpet and did not file a receipt or proof of having incurred this cost. The landlord failed to provide a copy of the estimate to the tenant.

Even if the landlord had filed evidence to support her claim and provided a copy of her evidence to the tenant, she would have been entitled to a prorated amount because the carpet had lived out most of its useful life. The tenant moved out in July 2016 and the estimate that the landlord provided is undated. Based on the above I find that the landlord has not proven her claim and accordingly her claim for \$3,000.00 is dismissed.

3. Replace dishwasher - \$449.99
4. Replace stove - \$599.99

The landlord stated that the dishwasher was mouldy and the stove was not clean. The tenant agreed that he had not cleaned the appliances and therefore he agreed to cover the cost of cleaning. The landlord also agreed that both appliances were in working order. The landlord did not file any invoices to support her testimony that she replaced these appliances. Even if the landlord had filed invoices, I find that the landlord chose to replace appliances that were still operative and therefore must bear the cost of doing so.

5. Repair bathroom door - \$100.00
6. Repair cabinet door - \$150.00
7. Repair door and ceiling of closet - \$100.00

The tenant stated that the hole in the bathroom door was the size of a dime and was the result of the door making contact with the wall repeatedly when opening and closing the door, during the five years of tenancy. The tenant stated that the screw in the cabinet door fell off and since the cabinet was made of particle board the door came off the hinges. The tenant also stated that the folding closet door came off its tracks and sometimes would just fall off on its own, at night.

The landlord stated that the tenant did not report any of these problems during the tenancy. The tenant stated that except for one occasion, the landlord did not visit the unit and only met the tenants once a year to sign a tenancy agreement. The tenant maintained that the above resulted from wear and tear.

Residential Tenancy Policy Guideline #1 addresses **Landlord & Tenant – Responsibility for Residential Premises.**

In part, this guideline provides as follows:

The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or 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* (the Legislation).

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant

Based on the testimony of both parties and upon viewing the digital evidence, I accept the tenant's testimony that the damage to these items resulted from wear and tear and not from negligence on the part of the tenant. The landlord's claims for these items are dismissed.

8. Paint - \$300.00

As per this policy guideline #40 of the *Residential Tenancy Policy Guideline*, the useful life of interior painting is four years. The landlord agreed that she had not painted the unit during the five year tenancy and therefore the painting had outlived its useful life by the end of the tenancy. Accordingly, the landlord's claim for \$300.00 for painting is dismissed.

The landlord has also filed a claim for the recovery of the filing fee. Since the tenant had agreed to cover the cost of cleaning prior to the landlord's application and since the landlord has not proven the remainder of her claim, she must bear the cost of filing her own application.

Overall the landlord has established a claim for the cost of cleaning in the amount of \$630.00. The landlord has a security deposit of \$650.00 in her possession that the tenant allowed her to keep towards cleaning. Since the cost of cleaning was \$630.00, I order the landlord to return \$20.00 to the tenant.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of the monetary claim. Because the landlord has established a claim in the amount of less than the security deposit it is appropriate that I order the return of the balance of the security deposit to the tenant.

Accordingly, I so order and I grant the tenant a monetary order in the amount of \$20.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

I grant the tenant a monetary order in the amount of **\$20.00**.

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 27, 2017

Residential Tenancy Branch