



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the "Act"), for a monetary order for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on January 11th or 12th, 2015. Rent in the amount of \$1,650.00 was payable on the first of each month. The tenants paid a security deposit of \$825.00 and a pet damage deposit of \$825.00 (the "Deposits"). The tenancy ended on July 31, 2016. The parties after the hearing informed the Arbitrator that the Deposits of \$1,650.00 were returned to the tenants on August 14, 2016.

The parties agreed a move-in condition report was completed. A move-out condition inspection report was completed; however, the tenant did not agree that the landlord was applying the standard as the landlord's agent who conducted the move-in condition inspection. The tenant did not sign the report.

The landlords claim as follows:

a.	Cleaning	\$ 252.00
b.	Carpet replacement	\$1,350.00
c.	Replace 3 fobs	\$ 195.00
d.	Filing fee	\$ 100.00
	Total claimed	

Cleaning

The landlord testified that the tenant did not leave the rental unit clean at the end of the tenancy. The landlord stated that there were crumbs of food on the counter, the appliances were left dirty, and there was mould in the window tracks of the window and in some of the door frames. The landlord seeks to recover the cost of cleaning in the amount of \$252.00. Filed in evidence are photographs. Filed in evidence is a receipt for cleaning.

The landlord's witness testified that they were hired to clean the rental unit. The witness stated that nothing was cleaned. The witness stated that they cleaned the kitchen, the appliances, two bathrooms and all the window tracks. The witness stated that there was a lot of grease on the walls, and the fans were extremely dirty. The witness stated that it took them eight hours to clean and they charged the landlord the amount of \$30.00 per hour plus taxes.

The tenant testified that they personally cleaned the oven, with oven cleaner. The tenant stated that the rental unit was dusty from an earlier renovation of the bathroom. The tenant stated that there was mould in the window tracks when they moved in to the rental unit. The tenant stated that mould is a health issue and it is not their responsibility to clean.

Carpet replacement

The landlord testified that the carpets were stained with grease, dog urine, dog feces and smelled horrible. The landlord stated that they cleaned the carpets three different times; however, a lot of the stains were not removable. The landlord stated that the carpets were eight years old. The landlord seeks to recover the cost of carpet replacement in the amount of \$1,395.00. Filed in evidence are photographs and an estimate for carpet replacement.

The tenant testified that the carpets were dirty and stained at the start of the tenancy.

Replace 3 fobs

The landlord testified that the tenants were given three fobs at the start of the tenancy. The landlord stated that the fobs would not work consistently when tested on the garage doors. The landlord stated the tenant never informed them that there was a problem with the fobs. The landlord stated that the fobs were seven years old. The landlord seeks to recover the cost to replace the fobs in the amount of \$195.00.

The tenant testified that the fobs were working at the end of the tenancy. The tenant stated that they had no problems with the fobs; however, you had to be really close to the doors.

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, the landlords have the burden of proof to prove their claim.

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.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit 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.

Cleaning

In this case, the parties have a different version to the state of the cleanliness of the rental.

The evidence of the landlord's witness was everything required cleaning. This included cleaning the walls from grease and dirty. However, the move-in condition inspection shows the kitchen walls were greasy and the hallway walls dirty at the start of the tenancy. I find it would be unreasonable for the tenant to be responsible to cleaning the walls, when they were dirty at the start of the tenancy.

In this case, the landlord provided photographs of toilets. The photographs of the toilets show brown / blackish stains underneath the rim of the toilet at close range. I find it highly unlikely that this was inspected at the start of the tenancy to ensure there were no stains.

I am not satisfied based on the photographs that the tenant is responsible for the hours claimed for cleaning as the tenants are only required to leave the rental unit reasonable clean.

However, I am satisfied that the tenant failed to meet their responsibilities to clean the window, window tracks and ledges. The move-in condition does not show there was any mould in the windows.

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act. The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould.

I find the tenants breached the Act, when they failed to clean the windows. I find it reasonable to grant the landlord half the amount of the cleaning invoice in the amount of **\$126.00**.

Carpet replacement

The Residential Tenancy Policy Guideline 40 defines the useful life of building elements. If the tenants damaged an item, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement.

In this case the carpets were eight years old at the end of the tenancy. Under the policy guideline carpets have a useful lifespan of ten years. The move-in condition inspection report shows that the living room carpets were stained and there were spots on the bedroom carpet at the start of the tenancy.

While I accept the photographs show the carpet dirty; however, I am unable to determine if the tenants contributed to the stains, as the landlord did not provide photographs of the carpets at the start of the tenancy. Further, the carpets were eight years old and nearing their useful lifespan, I find it would be an unjust enrichment for the landlord to receive new carpets at the tenants' expense. I find the landlord has failed to prove the damage to the carpet was caused by the tenants. Therefore, I dismiss this portion of their claim

Replace 3 fobs

In this case, the fobs were seven years old. The evidence of the landlord was that the fobs were not working consistently. The evidence of the tenant was that they did not have any problems with the fobs.

Although the landlord may have had problems with the fobs not working consistently, I find the landlords have not provided any evidence that this was caused by neglect. Rather, I find it more likely than not, normal wear and tear under reasonable use and the aging process as the fobs were seven years old. I find the landlords have failed to prove a violation of the Act by the tenants. Therefore, I dismiss this portion of their claim.

I find that the landlords have established a total monetary claim of **\$226.00** comprised of the above described amount and the \$100.00 fee paid for this application. I grant the landlord a monetary order pursuant to section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The tenants are cautioned that costs of such enforcements are recoverable by the tenants.

~~I order that the landlords retain the amount of **\$226.00** from the tenants' Deposits (\$1,650.00) in full satisfaction of the claim. I grant the tenants a monetary order for the balance due of their Deposits in the amount of **\$1,424.00** pursuant to section 67 of the Act.~~

The monetary ordered granted to the tenants is cancelled and has no force or effect.

~~This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords.~~

Conclusion

~~The landlords are granted a monetary order and may keep a portion of the Deposits in full satisfaction of the claim. The tenants are granted a formal order for the balance due of their Deposits.~~

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: February 10, 2017

Residential Tenancy Branch

This decision was amended on February 20, 2017, which the wording that has been added has been underlined. Wording that I have removed has been ~~strikethrough~~