



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for a monetary order for damages to the unit and for money owed or loss and to recover the filing fee from the landlord.

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

Is the landlord entitled to monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on October 1, 2012. Rent in the amount of \$1,035.00 was payable on the first of each month. The tenants paid a security deposit of \$500.00, which was returned to the tenants. The tenancy ended on September 30, 2015.

A move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Damaged cupboards	\$1,205.12
b.	Painting	\$1,394.20
c.	Carpets	\$ 100.00
d.	Filing fee	\$ 100.00
	Total claimed	\$2,799.32

Damaged cupboards

The landlord's agent testified that the tenants caused damage to 17 cabinet doors as they were cracked and peeling. The agent stated that they sent in a claim for warranty; however, it was

denied as they said it was not a manufacture defect. The landlord seeks to recover the amount of \$1,205.12. Filed in evidence is a receipt and photographs.

The tenants testified they did not cause any damage to the doors as they were peeling from normal wear and tear. The tenants stated that the photographs do not support they caused damage to 17 cabinets as the photographs submitted as evidence are at different angle of the same two doors and a drawer.

Painting

The landlord's agent testified that there were a lot of bright spots of paint on the walls and the landlord required to repaint the rental unit. The agent stated it was last painted in 2012. The landlord seeks to recover the cost of repainting in the amount of \$1,394.20. File in evidence is a receipt.

The tenants testified that the landlord wanted them to fill all the holes they made from hanging pictures and to touchup the paint. The tenants stated the landlord gave them different paints and told them to figure it out. The tenant stated that they were not responsible to fill holes or touch up the paint as this was normal wear and tea.

Carpets

The landlord's agent testified that landlord was not satisfied that the carpets were properly cleaned. The agent stated that the receipt is dated September 29, 2016, and the landlord believes it is not possible to clean the carpets when the tenants still have furniture in the unit. The agent stated that the landlord was not satisfied that the carpets were properly cleaned and had the carpets cleaned again. The landlord seeks to recover the amount of \$100.00.

The tenants testified that they had all their furniture out by 9:00 pm on September 29, 2016, and that they have a friend that does carpet cleaning attended after the furniture was removed on the 29th. The tenant stated that they also have their own carpet cleaner and cleaned the carpets regularly throughout the tenancy.

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 landlord has the burden of proof to prove their 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.

Section 21 of the Act States a condition inspection report completed in accordance with this section is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

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.

Damaged cupboards

In the case the landlord is claiming damage to 17 cabinet doors; however, that is not supported by the documentary evidence. The photographs are of only two of the cabinet doors and a drawer.

Further, the move-out condition inspection report stated several cabinet doors in bedroom 3 were damaged from peeling. I find the landlord has failed to provide a preponderance of evidence as required by section 21 of the Act, that the tenant caused damage to 17 cabinet doors.

Even If I accept the tenant caused damage to several doors as shown in the photographs. I am unable to assess the value as no evidence was given for the cost of the items shown in the photographs. Therefore, I dismiss this portion of the landlord's claim.

Painting

I find the landlord has failed to prove the tenants caused any damage to the walls, such as photographs.

Further, it is not the tenants' responsibility to fill holes or touchup the paint. The landlord should expect that a tenant would hand picture on the walls during their tenancy, this is not considered damage; rather this is normal wear and tear under reasonable use.

Furthermore, the move-out inspection makes no comments that there was any damage to the walls. I find the landlord has failed to provide preponderance of evidence to the contrary as required by section 21 of the Act. Therefore, I dismiss this portion of the landlord's claim.

Carpets

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenants are generally expected to clean the carpets if vacating after a tenancy of one year.

In this case, the evidence of the tenants was that they cleaned the carpets. This is supported by a receipt. While the move-out inspection confirms the tenant were to provide a receipt for cleaning, a receipt was submitted by the tenants as request. The move-out condition inspection report does not make any indication that the carpets were left dirty by the tenants.

Further, I find the landlord claim that carpets cannot be cleaned as there was furniture in the premises is unreasonable. There is no reason why furniture cannot moved within the rental unit during the cleaning process.

Furthermore, the move-in condition inspection reports shows the carpets were stained in bedroom 2 and in the living room at the start of the tenancy.

I find the landlord has failed to prove the carpets were left dirty by the tenants at the end of the tenancy. The landlord did not provide a preponderance of evidence as required by section 21 of the Act.

Based on the above findings, I find the landlord's application must be dismissed. The landlord is not entitled to recover the filing fee from the tenants.

Conclusion

The landlord's application is dismissed.

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: March 17, 2017

Residential Tenancy Branch