



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNSD,

Introduction

This is an amended application brought by the Landlord requesting a monetary Order in the amount of \$6819.27, and requesting recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, digital evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties and the witnesses the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witnesses.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondents, and if so in what amount.

Background and Evidence

Parties agree that this tenancy began on July 1, 2015 and that the tenants vacated the rental unit on December 1, 2016.

The parties also agree that the tenants paid a security deposit of \$850.00 on June 30, 2015.

Venetian Blinds

Landlord testified that, at the end of the tenancy, she found that one of the Venetian blinds had a cracked slat that had been glued back together. She further stated that the blind could not be repaired and as a result had to be replaced.

The landlord further stated that she was unable to re-place just the one blind as it was the middle blind of a three blind set and the colors could no longer be matched.

The landlord further stated that the blinds were only three years old and therefore she is asking for the cost of replacing those blinds, less three years depreciation.

The tenants testified that one slat on one of the Venetian blinds did break during their tenancy when it was accidentally caught on the edge of the window when opening the window. The tenants further testified that there was no negligence on their part and they were using the window in a normal fashion and it simply caught the Venetian blind as it opened.

Carpet Cleaning

The landlord testified that the tenants did not clean the carpets when they vacated and left the carpets soiled and stained and as a result they had to be cleaned.

The landlord's witnesses also testified that the carpets in the rental unit were soiled and stained and needed to be cleaned.

The tenants testified that they did not clean the carpets when they moved out however the carpets had been cleaned once during the tenancy and were left in reasonable condition.

General Cleaning

The landlord testified that the tenants appeared to have done no cleaning prior to vacating, and, as a result, extensive cleaning was required, as can be seen from the photos she has supplied. She further estimates there was approximately 25 hours of cleaning done by her and her mother.

The landlords witness/mother testified that the only cleaning that had been done in the rental unit was the kitchen counter tops and the remainder of the rental unit required cleaning.

The tenants testified that they did clean the unit before they vacated and they believe they left the rental unit in a reasonable state of cleanliness. They further testified that the photo evidence provided by the landlord was not taken on the date of the moveout and they believe the landlords may have changed the condition of the rental unit before taking the photos.

Painting Ceilings

The landlord testified that, at the end of the tenancy, there were marks on both the master closet and the powder room ceilings, and, as a result, those ceilings had to be repainted. She further states that they were last painted in 2013.

The landlords witness/mother testified that there were some marks on the kitchen ceiling and on the bedroom closet at the end of the tenancy.

The tenants testified that they don't believe there was any damage to the ceilings beyond normal wear and tear, and in fact the damage now claimed by the landlords may have existed at the beginning of the tenancy as this was not a new unit when they moved in and there had been previous tenants in the rental unit. They further stated that they would not have noted any tiny marks on the ceiling on the move-in inspection report as they would not have considered them to be significant.

Washing Machine Rubber Gasket

The landlord testified that the rubber seal on the washing machine was black and appeared to have extensive mold, and they were unable to get the seal clean and therefore it had to be replaced.

The landlords witness/mother also testified that the washing machine seal appeared to be black with mold and would not come clean.

The landlord's other witness however testified, when questioned by the tenants about the seal, that the gasket had come clean and that he had been surprised that they were able to get it clean.

The tenants testified that the gasket on the washing machine was not inspected at the beginning of the tenancy; they were simply shown the washing machine with the door closed. They further testified that they used the washing machine in a normal manner and that they did nothing to cause any blackening or mold on the rubber seal.

Refrigerator Shelf

The landlord testified that the refrigerator shelf was not cracked at the beginning of the tenancy; however they found that it was cracked at the end of the tenancy and therefore it had to be replaced.

The tenants testified that the crack on the refrigerator shelf was very minor and they did not notice it during the move-in inspection, and therefore it would not be on a move-in inspection report, however they do not believe they caused the crack to the refrigerator shelf as they used the refrigerator in a normal manner, and the crack was likely normal wear and tear.

Unclogging Bathroom Sink

The landlord testified that the tenants had informed them that the bathroom sink was running slowly and, even though they had used Drano, it was still not draining properly, and therefore they went to inspect the sink and they found, at that time, that there was gravel from a fish tank in the drain that was causing the clog. And therefore they are charging the tenants for unclogging that drain.

The tenants testified that they did have a fish tank however they used the strainer when cleaning the tank, and therefore there could not have been very much gravel in the drain. They further testified that the landlords never told them they were going to be charged for unclogging the drain, and in fact they even gave the landlord's a bottle of wine as a thank you.

In response to the tenants testimony regarding the drain, the landlord stated that they had not originally planned to charge the tenants for unclogging the drain, however when they could not come to an agreement with the tenants over the cost of repairs needed at the end of the tenancy, she decided to go after everything she could get before the statute of limitations runs out.

Bathroom Cabinet

The landlord testified that, at the end of the tenancy, they found the upper spare bathroom cabinet had water damage on the inside and was starting to rot and as a result the cabinet will have to be replaced.

The tenants testified that they are not aware of any damage to the bathroom cabinet, nor did they ever see any water leaking inside the cabinet and therefore they have no idea how this alleged damage occurred.

Kitchen Cabinets

The landlord and her witness/mother testified that, at the end of the tenancy, she found that the finish on the kitchen cabinets had all been permanently stained, and the marks would not come off when they attempted to clean them, and as a result they will all have to be repaired/replaced.

The landlord's other witness testified that the kitchen cabinets were left chipped in places, and were not cleaned, stating they were in very rough shape.

The tenants testified that the evidence provided by the landlords shows a few food specks on the cabinets, however there is no proof that these are permanent stains, and in five previous visits the landlord made no mention of any problems with the kitchen cabinets, and they feel the landlord is simply inflating her claim to pay for renovations she wants to do to the rental unit since she is now moving back into the rental unit.

Late Rent Charge

The landlords testified that the tenants failed to pay the full rent on one occasion and the rent was one day late, and therefore, since the tenancy agreement requires the late payment fee of \$25.00 she is charging this fee.

The tenants testified that a portion of the rent was late on one occasion, but only by one day.

Inspection Reports

Move in Inspection Report

The tenants testified that they were never given a copy of the move-in inspection report at the beginning of the tenancy, and therefore, the landlord could have easily altered that report, as the first time they were given a copy of the report was with this application for dispute resolution.

The landlord had originally testified that her mother gave a copy of the move-in inspection report to the tenants at the beginning of the tenancy, however when she asked her mother if she had done a move-in inspection report and given a copy to the tenants, her mother replied yes they did do an inspection together and filled out the form, but she does not remember if she gave a copy to the tenants.

After her mother had stated that she did not remember if she gave a copy to the tenants, the landlord stated that, even if her mother did not give a copy to the tenants, she herself gave the tenants a copy later on.

In response to the landlord's testimony the tenants reiterated that they did not receive a copy from either the landlord's mother or the landlord.

Move out Inspection Report

With regards to the moveout inspection report the landlord testified that she had given the tenants two opportunities to do the inspection however the tenants did not accept either of the opportunities, and therefore the inspection was done without the tenants participation.

The landlord further testified, however, that she did not propose a second opportunity to the tenants by providing the tenant's with notice in the approved form, she simply sent them an e-mail.

The tenants testified that the landlord did not give them a reasonable second opportunity for the inspection, and they were unable to participate at the time proposed by the landlord.

Analysis

First of all, although the parties agree that a move in inspection of the rental unit was done, it is my finding that the landlord has not met the burden of proving that the tenants were given a copy of the move-in inspection report as required by the Residential Tenancy Act.

I find it very suspect that the landlord originally testified that her mother gave a copy of the move-in inspection report to the tenants, but when her mother stated she could not remember if she gave a copy to the tenants, the landlord added, she too, had given a copy to the tenants.

It is my finding therefore that I accept the tenants testimony that they never received a copy of the move-in inspection report at the beginning of the tenancy.

It is my decision therefore that I will not accept the validity of the move-in inspection report, as there is no way of knowing whether any changes were made to the report after the report was initially filled in.

Secondly, it is also my decision that the landlord failed to comply with the Residential Tenancy Act, and the Residential Tenancy Regulations, with regards to scheduling the moveout inspection report.

The Regulations state that the landlord must propose a second opportunity to conduct the inspection by providing notice to the tenants in the approved form, and as stated above, in this case, the landlord failed to do so.

It is my decision therefore that I will not accept the validity of the moveout inspection report as, the tenants were not given a reasonable opportunity participate in the inspection, and it was completed without the participation of the tenants.

My decision therefore in today's hearing will be based on the remaining evidence provided by the landlord and the tenants and the testimony of all parties who participated.

Venetian Blinds

It is my decision that I will allow a portion of the landlords claim for the damaged window blind.

The tenants claim that the window blind was damaged accidentally when opening a window; however it is the tenant's responsibility to ensure that caution is taken when opening and closing windows to ensure that they do not cause damage to any blinds that are on those windows.

The landlord is claiming \$902.10 to replace the Venetian blinds, however the invoice provided in the landlords evidence package totals \$646.12 for replacing the three blinds, and therefore allowing for three years depreciation at 10% per year I will allow a total of \$452.28.

Carpet Cleaning

I also accept the landlords claim that the carpets in the rental unit were left in need of cleaning and therefore I will allow the landlords claim for carpet cleaning, totaling \$199.50.

General Cleaning

It is my decision that I will not allow the landlords full claim for general cleaning.

Under the Residential Tenancy Act, a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have shown that the tenants failed to meet the "reasonable" standard of cleanliness required

In this case it is my decision that the landlords have shown, through their photo and video evidence, that some excess cleaning was required, however I am certainly not convinced that the landlords were required to do 25 hours of cleaning, and I believe this to be an exaggeration.

It is my decision therefore, that I will allow \$200.00 for general cleaning.

Painting Ceilings

I will not allow the landlords claim for painting the ceilings. I am not convinced that the slight damage to the ceilings did not exist at the beginning of the tenancy.

Further, I find the tenants explanation reasonable, that they would be unlikely to point out any minor flaws in the ceiling during the move-in inspection and therefore I find it unlikely that these minor flaws would have been noted on any move-in inspection report anyway.

Further, there was conflicting testimony between the applicant and her witness, as the applicant stated that the damage ceilings were in the master closet and powder room, however her witness/mother stated that the damage was in the closet and kitchen.

Washing Machine Rubber Gasket

I also deny the landlords claim for replacing the washing machine rubber Gasket because, first of all the landlord has provided no evidence to show that the rubber gasket was damaged as a result of any negligence on the part of the tenants, and secondly the landlords testimony conflicted with the testimony of one of her witnesses, who stated that the rubber Gasket had come clean.

Refrigerator Shelf

I also deny the landlords claim for replacing the refrigerator shelf because again it is my finding that the landlords have not met the burden of proving that this damage was caused by the tenants. The tenants testified that they used the refrigerator in a normal manner, and that the shelf was likely damaged before they moved into the rental unit.

Unclogging the Bathroom Sink

I also deny the landlords claim for unclogging the bathroom sink because, although the tenants state that they may have gotten some fish tank gravel in the sink, the landlords did not tell the tenants at the time they would be charged for unclogging the sink and, in fact, accepted a bottle of wine as a thanks.

The landlord even testified that, originally she had not planned to charge the tenants for unclogging the sink, however she has now decided to do so because the tenants would not agree to her other claims.

This appears to me like the landlord is simply padding her claim against the tenants because she's unhappy that the tenants did not accept the original amount she was claiming.

Bathroom Cabinet

I also deny the landlords claim for damage to a bathroom cabinet, as there is no evidence to show that this alleged damage was the result of any willful or negligent actions on the part of the tenants.

The landlord claims that there is water damage in the back of the cabinet however the tenants testified that they never saw any leaking inside the cabinet, nor did they ever see any standing water, and therefore I fail to see how they could have prevented this alleged damage.

Kitchen Cabinets

The landlord claims that the tenants caused permanent stains to the kitchen cabinets however again it is my finding that the landlord has not met the burden of proving that claim.

The photo evidence provided by the landlord does show some marks on the front of the cabinets however, although the landlord and her mother claim to have attempted to clean the cabinets, the landlord has provided no independent evidence, from a professional cleaning company, to show that these cabinets could not have been cleaned. Further, since I have not accepted the validity of the move-in inspection report, there is no credible evidence to show that some of the marks on the cabinets did not exist at the beginning of the tenancy.

Late Rent Fee

I will allow the landlords claim for the late rent fee, because the tenants admit to having paid a portion of the rent late, by one day, on one occasion, and since the tenancy agreement does require a \$25.00 fee, the tenants are bound by that agreement.

Therefore pursuant to section 62 of the Residential Tenancy Act the total amount of the landlord's claim that I have allowed is as follows:

Blind replacement	\$452.28.
Carpet cleaning	\$199.50.
General cleaning	\$200.00
Late rent fee	\$25.00
Total	\$876.78

I will not allow the landlords request for recovery of the \$100.00 filing fee because the total amount I have allowed is only slightly higher than the amount of security deposit that the tenants had already agreed to allow the landlord to keep.

Conclusion

I have allowed \$876.78 of the landlords claim, and I therefore order, pursuant to Section 38 of the Residential Tenancy Act, that the landlord may retain the full security deposit of \$850.00, and I have issued a monetary order, pursuant to Section 67 of the Residential Tenancy Act, for the respondents to pay \$26.78 to the landlord.

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: June 29, 2017

Residential Tenancy Branch