



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNSD OLC FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the Act"). The landlord applied for: a monetary order for damage to the rental unit pursuant to section 67; authorization to retain all of the tenants' security deposit pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for: authorization to obtain a return of their security deposit pursuant to section 38; an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and authorization to recover the filing fee pursuant to section 72 of the Act.

Both parties (the landlord and two tenants) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit or compensation for loss under the Act?

Is the landlord entitled to retain all or a portion of the tenants' security deposit?

Is the landlord entitled to recover the filing fee for this application from the tenants?

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

Are the tenants entitled to an order requiring the landlord to comply with the Act?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on December 8, 2016 as a month to month tenancy with a rental amount of \$1600.00 payable on the first of each month. The landlord testified that she continues to hold the tenants' \$800.00 security deposit paid at the outset of the tenancy. The tenant sought the return of their security deposit as well as any other amount they are entitled to because the landlord has yet to return their deposit. The tenants vacated the rental unit on February 28, 2017. Both tenants testified that they provided their forwarding address to the landlord on the same date (February 28, 2017: the day of the final condition

inspection). The tenants did not have a copy of the written notice provided to the landlord. The landlord denied receiving the forwarding address at that time.

The tenants testified that they vacated the rental unit after receiving a 2 Month Notice to End Tenancy for Landlord's Use issued by the landlord. They testified that, prior to vacating the rental unit the landlord provided them compensation in the form of one free months' rent (February 2017). The landlord testified that the tenants gave their forwarding address to her in writing on March 6, 2017. She provided a copy of the written notice providing their new address. The landlord stated, at this hearing that she knows the tenants say they gave her the address earlier but she could find no record of a new address provided by the tenants.

The landlord testified that the rental premises are approximately 25 years old or older. She testified that the tenants should compensate her for damage to the rental unit as the unit was in excellent condition prior to their stay in the rental unit. The landlord testified that the rental unit was painted three days prior to the tenants' move in to the rental unit. She testified that, at move-out, painting was required as a result of all of the damage and marks on the walls of the rental unit. The landlord submitted a receipt for painting to substantiate her claim.

The landlord testified that the carpet had been installed in the rental unit two weeks prior to the tenants' move in. She testified that, when they vacated the unit, there was blue and pink marks on the carpet. The landlord submitted a copy of an invoice for replacement carpet and labour to install the new carpet totalling \$678.73. The invoice notes that the company were unable to match the old carpet as the original carpet had been discontinued. The landlord argued that she believed that professional carpet cleaning at the end of a tenancy was the standards under the residential tenancy laws and therefore that the tenants were responsible to pay her \$82.95 invoice for the carpet cleaning, as well. She testified she cleaned in hopes she would not have to repair or replace the carpet.

The landlord testified that the tenants were asked to pay \$65.00 per month towards internet. The landlord sought the tenants' portion of the internet bill for the months of January 2017 and February 2017. She submitted copies of the internet bills for the months of January and February 2017 totalling an amount greater than \$130.00. At this hearing, both tenants agreed they were required to pay \$65.00 per month towards the cost of internet. They both testified that they told the landlord to reduce their security deposit by \$130.00 to pay the internet bill.

Tenant DM testified that they did extensive cleaning at move in and at move out. Tenant DM testified that the landlord was bullying her daughter at the move-out condition inspection and that the police were called. Tenant DM's daughter, Tenant JM testified that the unit was spotless when they vacated the premises. The landlord submitted that the whole rental unit needed to be cleaned after the end of the tenancy. She submitted an estimate from a cleaning company in the amount of \$147.00 for a move-out clean but no receipt for cleaning work done.

The landlord testified that, when the tenants moved out, one of her armchairs was ruined and needed to be replaced. She testified that the chair smells like cat urine or a baby's diaper. She testified that she purchased the chair three years ago from a furniture department store for approximately \$450.00. Both tenants disputed that there was any change from the chair's condition at move-in. Tenant DM testified that they had advised the landlord at move-in that the chair was not in good condition and smelled. They testified that they simply put the chair in a corner when the landlord took no steps to replace or dispose of the chair. The landlord sought \$125.00 to replace the chair with a similar second hand chair.

The landlord submitted a monetary worksheet with a breakdown of the amount she sought;

Item	Amount
<i>Estimate</i> for carpet replacement	\$678.73
<i>Estimate</i> for Cleaning service at end of tenancy	147.00
Carpet cleaning (for bedrooms)	82.95
<i>Estimated</i> value of chair	125.00
Internet utility bills (\$65.00 x 2 = \$130.00)	130.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Sought by Landlord	\$1263.68

The landlord also sought to retain the tenants' \$800.00 security deposit in addition to the monetary amount she sought from the tenants.

A copy of the condition inspection report was submitted as evidence for this hearing. At move-in, most items are checked as "good condition" or marked as "fair condition". Notations regarding the condition at move-in included; paint splatter on linoleum in front entranceway floor; a stopper missing from the kitchen sink; paint splatters on the living room carpet; screen missing in living room; paint splatter on floor in main bathroom; carpet newly installed in bedrooms; and screen missing on exterior deck; as well as a need to clean under refrigerator and stove. At move in, the tenants initialled the form to indicate that she agreed with the report as provided.

At move-out, the condition inspection report indicates; stickers/damage on front closet; stains on wall next to table; stickers and stains on fridge; wax melted on mantle; melted wax on window ledge in bathroom. The aforementioned items were marked by the tenants as the "agreed" condition at move-out. The tenants marked "do not agree" with respect to the landlord's notation of: dirty, unwashed walls; lights burnt out; dirty/smelly chair; stains on floor and carpet; washer and dryer not clean.

Photographs of the residence were submitted as evidence of the condition of the unit at the end of the tenancy. Generally, the photographs showed a well cleaned home however the photographs did illustrate; dryer sheets and socks under the washer/dryer; chips on the front of the stainless refrigerator; tears or missing patches on the carpet as well as pink and blue stains on the carpet. There are some kitchen chairs in the unit that appear to be very dirty however there is no evidence as to who the chairs belong to or what condition they were in at the outset of the tenancy. The chair referred to as dirty and smelly by the landlord is a large, brown, old recliner and any stains that she wishes to highlight are not evident in the photographs.

The tenants and landlord both testified that the tenants did not agree with the condition inspection at move out. Both tenants testified that when the landlord's boyfriend attended the move-out inspection, the situation became very awkward. Furthermore, the tenants provided undisputed testimony that they were not able to be present for the entirety of the inspection at move-out.

Analysis

The tenants applied for return of all or a portion of their security deposit pursuant to section 38 of the Act. Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenants' forwarding address in writing, to either return the security deposit in full

or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenants' security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*).

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. In this case, I find the landlord was informed of the forwarding address on March 6, 2017 (after the tenants vacated the rental unit). I was presented with no evidence to verify that the tenants provided a new address in writing on an earlier date. Therefore, I find the landlord had 15 days after March 6, 2017 to take one of the actions outlined above.

On March 18, 2017, the landlord filed an application to be compensated for damage to the rental unit and to retain all or a portion of the tenants' security deposit. I find that the landlord has made her application with respect to the tenants' security deposit in accordance with the *Act*. I note for the landlord's benefit, that it is incumbent upon the landlord to prove that the tenant caused damage to the unit and that the landlord has incurred monetary loss as a result of the actions of the tenant in order to justify retention of a tenant's security deposit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order payment. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. In this case, the landlord must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenants. Once that has been established, the landlord must also provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the evidence of the landlord that the residential premises that she rented to the tenants is approximately 25 years old. I accept her evidence that new carpet had been installed approximately two weeks prior to the tenants' move in to the unit because the condition inspection report documents the recent installation of carpets. The photographs of the rental unit at the end of the tenancy show blue and pink marks on the carpet. The landlord provided sworn testimony that these marks did not come off after she had the carpets cleaned for a total of \$82.95. The \$678.73 invoice for new carpeting indicated that the original carpet had been discontinued and therefore the entire carpet required replacement. I find that the tenants are not required to bear an additional cost because the carpet the landlord previously chose is discontinued. Therefore, I find that the landlord is entitled to a portion of her invoice for new carpeting in the amount of **\$339.00** (50%) for the replacement of carpets and an additional **\$82.95** for the carpet cleaning.

The tenants disputed that the rental unit was painted three days prior to the tenants' move in and also disputed that there was any substantial change to the walls at the end of the tenancy. Based on the photographic evidence submitted by the landlord, I find that any damage to the walls was within the realm of normal wear and tear over the course of the tenancy.

I accept the candid testimony of the tenants that they owe \$130.00 for 2 months of internet in accordance with their agreement with the landlord. Both tenants testified that agreed to the amount owed when it was raised by the landlord. The tenants indicated that they are agreeable to a reduction in their security deposit to cover the cost of the internet. Given this testimony, I find that the landlord is entitled to **\$130.00** in internet billing.

After a review of the photographs submitted by the landlord for this hearing, I accept the testimony of both tenants that they did an extensive cleaning at move out. The unit was not 'spotless' as described by Tenant JM but the items left unclean were mainly areas that might be missed in a rush. Given that the unit was neat and clean, in accordance with the requirements of the Act, I find that the landlord is not entitled to payment for a cleaning company in the amount of \$147.00 for a move-out clean. I also note that the landlord did not prove her expense for cleaning as she only supplied a *quote* for a move-out clean.

The landlord sought \$125.00 to replace one of her armchairs in the tenants' unit. I find that the landlord supplied insufficient evidence to show that the chair was ruined and needed to be replaced. The condition inspection report did not reference the chair at the outset of the tenancy and there is no photographic evidence to show the difference from move-in to move-out. Furthermore, I accept the testimony of the tenants, which was often very candid, that the chair was in the same condition when they moved in to the unit. Therefore, I find that the landlord is not entitled to \$125.00 for a new chair.

Section 72(2) of the Act reads as follows:

If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant...

I find that the landlord is entitled to retain a portion (\$551.95) of the tenants' security deposit to satisfy the amount owed for damage at the end of the tenancy. The tenants are entitled to a monetary award of \$248.05 - the remainder of their security deposit.

Item	Amount
Tenants' Security Deposit (<i>with no applicable interest</i>)	\$800.00
Landlord deduction: 50% of carpet replacement cost	-339.00
Landlord deduction: Carpet cleaners (for bedrooms)	-82.95
Landlord deduction: Internet utility bills January 2017 & February 2017 (\$65.00 x 2 = \$130.00)	-130.00
Monetary Order to the Tenants (Remainder of Security Deposit)	\$248.05

I find that both parties are responsible for the cost of their own filing fee for these applications as they have both been successful in part.

Conclusion

I grant a monetary order in favour of the tenants in the amount of \$248.05.

The tenant(s) are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 22, 2017

Residential Tenancy Branch