



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MND, MNDC, FF

Introduction

This hearing dealt with monetary cross applications. The landlord applied for monetary compensation for damage and cleaning costs, as amended; and, authorization to retain the tenant's security deposit. The tenants applied for return of the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage and cleaning costs as claimed?
2. Disposition of the security deposit.

Background and Evidence

The one year fixed term tenancy started on February 1, 2016 and was set to expire on January 31, 2017. The tenants paid a security deposit of \$500.00 and were required to pay rent of \$1,000.00 on the first day of every month. The tenants vacated the rental unit on January 30, 2017.

A move-in inspection was performed together and a move-in inspection report was prepared and signed.

A move-out inspection was done by the landlord, with her father present as a witness, without the tenants present. The parties were in dispute as to whether the landlord had given the tenants an opportunity to participate in a move-out inspection.

Both parties provided consistent testimony that the landlord had proposed to the tenants a move-out inspection for January 31, 2017 but that the time for the inspection was left pending. On January 30, 2017 the landlord sent a text message to the tenants asking to set a time for the move out inspection. The tenants responded on January 30, 2017 to advise the landlord they had already left town; that they took pictures of the rental unit and the keys for the rental unit had been slid under the landlord's door. The tenants did not indicate that they would be returning to town and the tenants acknowledged that they had no intention to come back to the rental unit. The tenants stated they were unaware they could appoint an agent to do the move-out inspection on their behalf.

The landlord proceeded to inspect the rental unit with her father and the inspection report was sent to the tenants.

The tenants provided their forwarding address to the landlord on February 7, 2017 via email. The tenants did not authorize the landlord to make any deductions from the security deposit in writing.

The tenants were of the position the landlord extinguished the right to make a claim against their security deposit because they were not given two opportunities to participate in a move-out inspection and the move-out inspection report was not provided to them until it came with the landlord's evidence package in April 2017. I noted that the tenants were not seeking doubling of the security deposit and I was satisfied that doubling of the deposit was not applicable in this case since the landlord had filed an Application for Dispute Resolution within 15 days of receiving the tenants' forwarding address. The landlord explained that she filed her Application as she understood the tenants did not agree with her proposal for compensation for carpet cleaning a the broken light fixture and she wanted a decision of an Arbitrator as that would be fair to both parties. Both parties were agreeable that the disposition of the security deposit will depend on the award to the landlord with respect to her claims against the tenants for cleaning and damage.

Below, I have summarized the landlord's claims against the tenants followed by the tenant's responses.

Landlord's claims

1. Carpet cleaning --\$136.50

The landlord submitted that the tenants did not have the carpets cleaned and there were stains on the carpeting. The Addendum to the tenancy agreement requires the tenants to have the carpets professionally cleaned and the tenancy was one year in duration.

The landlord acknowledged that it is hard to see the staining in the carpeting and attributed this to the poor light in the rental unit but the landlord pointed to the carpet cleaning invoice which speaks to staining. The landlord also submitted a carpet cleaning invoice to show the carpets were cleaned before the tenancy started.

2. Broken light fixture -- \$275.52

It was undisputed that the tenant broke the kitchen light fixture during the tenancy. The dispute surrounded the value of the landlord's loss.

The landlord submitted that she purchased a light fixture similar in appearance to the broken fixture at a cost of \$181.44 and paid \$94.08 to have it installed. The landlord seeks to recover these costs from the tenants. The landlord stated the broken light fixture was approximately 10 years old and could not be repaired.

The landlord submitted that she had originally proposed a settlement to the tenants for this item in the amount of \$150.00 but the tenants' did not appear to be agreeable to that so she went ahead and purchased a new light fixture. The landlord explained that installation took place a few months after the tenancy ended because the landlord had been out of town in March and April 2017.

3. Dispute Resolution costs

The landlord requested recovery of the costs for making claim, including mailing costs and photograph development.

The Act provides that a party may recover the filing fee from the other party but other costs incurred to participate and prepare for a dispute resolution proceeding are not recoverable. Therefore, I dismissed the landlord's request to recover mailing and photograph development costs summarily.

Tenants' responses

1. Carpet cleaning

The tenants were of the position that the carpets were not as dirty as the landlord indicates on the move-out inspection report. The tenants state that they did not see any stains in the photographs the landlord sent to them. The tenants returned the rental unit in the same condition in which it was given, as stipulated in the Addendum.

2. Broken light fixture

The tenants are agreeable to compensating the landlord for a broken light fixture but are of the view that the amount claimed by the landlord is too high. The tenants submit that the landlord had proposed \$150.00 to them and they are of the view that \$100.00 to \$150.00 is more reasonable. The tenants stated that they found light fixtures that look similar to the broken light fixture that cost \$100.00.

The tenants questioned whether the landlord incurred a cost to install the new light fixture since she only provided an estimate dated April 3, 2017.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The Inadlrod has the burden to establish an entitlement to recover carpet cleaning and damages from the tenants. As explained previously, the disposition of the security deposit will depend upon the amounts awarded to the landlord with this decision.

1. Carpet cleaning

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean at the end of the tenancy. Term 17 of the Addendum provides that “When tenancy ends, carpets must be professionally cleaned. Unit must be put in the same clean condition as when tenancy started”. I find that Term 17 is inconsistent and may exceed the cleaning requirement imposed upon tenants by the Act. Where a term in a tenancy agreement is inconsistent or violates the Act it will not be enforced. Accordingly, I do not rely upon Term 17 of the Addendum to determine whether the tenants should have had the carpets steam cleaned or shampooed. Rather, I turn to Residential Tenancy Policy Guideline 1 which provides information and policy statements with respect to various cleaning and repair obligations of both landlords and tenants.

As provided in policy guideline 1, tenants are generally held responsible to steam clean or shampoo carpeting after a tenancy of one year, or if the tenant deliberately or carelessly stained the carpeting regardless of the length of the tenancy. The tenancy in this case did not exceed one year. Upon review of the landlord’s photographs, I note that I see a few very faint stains. The landlord acknowledged the photographs do not show the stains very well given the lighting in the unit and pointed me to the carpet cleaning invoice. The carpet cleaning invoice describes “obvious soiling”; “extra soiling in traffic lanes” and the need for spot treatment.

Based on the carpet cleaning invoice, I find I am satisfied that the carpets were soiled and stained at the end of the tenancy and I grant the landlord’s request to recover carpet cleaning costs from the tenants in the amount claimed.

2. Broken light fixture

Sections 32 and 37 of the Act require a tenant to repair damage they cause by way of their actions or neglect. If a tenant causes damage and does not repair the damage the landlord may seek compensation from the tenant. This issue in this case is the value of the landlord’s loss.

Awards for damages are intended to be restorative and where a building element requires replacement due to damage it is often appropriate to reduce the replacement

cost by the depreciation of the original item. In order to estimate depreciation I have referred to normal useful life of light fixtures as provided in Residential Tenancy Policy Guideline 40: *Useful life of building elements*.

Policy Guideline 40 provides that light fixtures have an average useful life of 15 years. The light fixture that was broken by the tenant was approximately 10 years old meaning the tenants are responsible for the premature demise of the exiting light fixture and I find it appropriate to hold the tenants responsible to compensate the landlord 1/3 of the cost to purchase a replacement light fixture and have it installed.

Further, the landlord provided a photograph of the damaged light fixture and a print-out showing an image of the light fixture she purchased in February 2017. I find the replacement light fixture is similar to that of the broken fixture as the landlord contended. Accordingly, I find the purchase price of \$181.44 for a hanging light fixture is not unreasonable. I also find it reasonable to expect that the landlord would incur a cost to have the fixture installed and I am satisfied that the amount claimed for installation is not unreasonable. Therefore, in determining the tenants' liability I have used the amounts provided by the landlord for purchase and installation of the new light fixture.

In light of the above, I calculate the tenant's liability is approximately \$91.84 ($\$275.52 \times 1/3$). The tenants were of the view that compensation of \$100.00 to \$150.00 would be reasonable. Therefore, I round up my calculation and award the landlord \$100.00 for the broken light fixture.

3. Filing fees

The landlord demonstrated an entitlement to recover carpet cleaning costs but I am of the view the tenant's would have been agreeable to a deduction of \$100.00 for the light fixture had the landlord been more reasonable in her request. Therefore, I award the landlord recovery of one-half of the filing fee she paid for her Application, or \$50.00.

I make no award to the tenants for the filing fee they paid as I find their Application was largely unnecessary since the landlord had already made an Application for Dispute Resolution seeking authorization to make deductions or retain the security deposit and disposition of the security deposit would have been and was dealt with under the landlord's application.

Security Deposit and Monetary Order

As provided in this decision, I have awarded the landlord compensation totalling \$286.50. The landlord is authorized to deduct this amount from the security deposit and the landlord is ordered to return the balance of the security deposit in the amount of \$213.50 to the tenants' without delay. The tenants are provided a Monetary Order in the amount of \$213.50 to serve and enforce if necessary.

Conclusion

The landlord is authorized to deduct \$286.50 from the tenants' security deposit. The landlord is ordered to return the balance of the security deposit in the amount of \$213.50 to the tenants without delay. The tenants are provided a Monetary Order in the amount of \$213.50 to serve and enforce upon the landlord if necessary.

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: August 18, 2017

Residential Tenancy Branch