



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlords filed their Application requesting a monetary order for loss of rent, for money owed or compensation under the Act or tenancy agreement, for damages to the rental unit, for an order to keep the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

The Tenants filed for a monetary order for return of double the security deposit under section 38 of the Act, for an order for the Landlords to comply with the Act or tenancy agreement and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

At the outset of the hearing the Tenants explained they did not send their evidence to the branch and they requested an adjournment to do so. The Tenants filed their application in March of 2017 and did not submit evidence for the hearing that was scheduled for August 22, 2017. The Notice of Hearing explains to both parties the importance of submitting evidence in accordance with the rules of procedure. The Tenants did not provide a reason they did not submit the evidence that would justify an adjournment. Therefore, I declined the request for an adjournment. Nevertheless, the Tenants were allowed to testify as to their evidence.

I also note that the Tenants have vacated the rental unit and therefore, the request for an order for the Landlords to comply with the Act and tenancy agreement is dismissed without leave to reapply.

Issue(s) to be Decided

Are the Landlords entitled to the relief sought?

Are the Tenants entitled to return of double the security deposit?

Background and Evidence

This tenancy initially began in 2013, with the same Tenants in the same rental unit but with a different owner/landlord. The evidence indicates that the rental unit was new when the Tenants moved in sometime in 2013. In June of 2015 a home inspector was hired by the current owner/Landlords to inspect the rental unit and home. The current owners/Landlords purchased the property and on September 1, 2015, the Landlords and the Tenants entered into a written, fixed term tenancy agreement which expired May 31, 2016. The tenancy continued on a month to month basis until February 28 of 2017. The Tenants paid a security deposit of \$500.00 on August 28, 2015, and the monthly rent was \$1,000.00, payable on the first day of each month. The Tenants were required to pay a share of the hydro and gas bills under the tenancy agreement.

Tenants' Claim

The Tenants claimed for the return of double the security deposit. They testified that the Landlords did not do an incoming or outgoing condition inspection report. The Tenants testified that they moved out of the rental unit on February 28, 2017, and provided the forwarding address to return the security deposit to on March 13, 2017, in a Word document given to the Landlords personally.

The Landlords testified that the Tenants left behind items in the rental unit and did not move these items out until March 1 and 2, 2017.

The Landlords testified that they were informed that the Tenants were the first occupants of the rental unit in 2013. The Tenants agreed with this.

Landlords' Claims

The Landlords claim for the following items:

Repairs to damaged walls, baseboards and trim

The Landlords testified that they were informed by the original owners of the property that the Tenants were the first renters to occupy the rental unit, which was the basement unit in a brand new home.

The Landlords testified that when they received the rental unit back from the Tenants they found several areas of the walls had been damaged and not repaired by the Tenants. The Landlords testified they had their handyman meet with one of the Tenants ("E.A.") to go through the damaged portions of the rental unit and inspect the repairs required.

The Landlords testified they were informed by their handyman that the Tenant E.A. went through the repairs to the walls required, and the Tenant E.A. agreed to pay for these repairs. The Landlords testified that their handyman charged them \$1,200.00 for repairs to dents, holes, scratches, marks on walls and on trim. This included priming and repainting all damaged areas.

In evidence the Landlord has submitted a copy of the Invoice from the handyman and photographs of the rental unit walls, baseboard and other trim. These indicate a few holes, marks and scrapes on the walls. There is one area where the drywall paper has been damaged in four spots and has peeled away from the walls. There is another area with gouges along the wall.

The Landlords testified that the Tenants tried to repair the walls in a few areas such as a bit of patching around a light switch plate.

The Agent for the Landlords testified that when he was looking at the rental unit with her and the handyman, the Tenant E.A. agreed to the damages and said he did not have time to make these repairs himself.

In reply, the Tenant E.A. testified he met with the female Landlord and her daughter, the Agent who appeared at the hearing, and the repairperson to walk through the rental unit at the end of the tenancy. The Tenant testified he never admitted to any damages, he was just walking through the rental unit as a formality. He testified that he was not informed the gentleman was a handyman. The Tenant E.A. testified he never admitted to something he did not do, and did not agree about the repairs. He felt the Landlords are trying to charge too much for the repairs. He testified he did not sign any kind of a special report with the Landlords.

Damaged bedroom door

In evidence the Landlord provided a photograph of the bedroom door. There is a damaged portion of a panel in the lower right hand side of the door. The Landlords claim \$350.00 to remove and dispose of the old door, and to acquire, install and paint a new door. The Landlords testified that it was a hollow door and there was no way to repair it. They testified the door was not damaged at the time of the home inspection, prior to purchasing the property.

In reply, the Tenants testified they don't deny they damaged the door. They tried to allege that the damage occurred to the door before these Landlords purchased the property. Tenant E.A. testified that the Landlords were going to give him a copy of the receipt for the repairs of the door, but did not do so. The Tenants estimated that it would only cost \$100.00 to repair the door. They testified they were looking at Internet ads during the hearing for this information.

Damaged bedroom closet door

The Landlords claim \$330.00 to remove and dispose of a damaged bedroom closet door, and to supply, install and paint a new door. In evidence the Landlords' submitted a photograph of the door and it appears to have had a hole punched into it by a door hinge stopper unit.

In reply, the Tenants testified it was a small hole and this was reasonable wear and tear.

Damaged kitchen corner cabinet door

The Landlords claim \$350.00 to supply and install a new hinge for a damaged corner kitchen cabinet door. They testified that it took quite a while for the handyman to find the correct hinges to reinstall the

kitchen cabinet door. They testified they did not see the broken hinges before the Tenants removed them.

The Tenant E.A. testified he had attempted to repair this door; however, he was unable to purchase the correct hinges to fit the corner door. He testified he gave the Landlords an estimate for the cost of the hinges, although he was unable to find the correct hinges to install. He further testified that the screws came out of the hinges and that the hinges were rusty and broke into pieces.

Carpet cleaning

The Landlords rented a carpet cleaning machine and cleaned the carpets after the Tenants moved out. The Landlords claim \$150.00 for carpet cleaning and materials. The Landlord testified they had to vacuum the carpet thoroughly and then use the carpet cleaner to clean the carpets.

The Tenants claimed they vacuumed the carpet and cleaned it using a carpet cleaner they got from an employer of one of the Tenants.

The pictures in evidence show the carpets had a few stains on them prior to being cleaned.

General cleaning

The Landlords claim \$45.00 for general cleaning. In evidence they submitted pictures of several areas of the rental unit, including the backs of doors, a water-valve-shut off door, and baseboards. These areas all had dust, dirt or scuff marks that had not been removed. The Landlords claimed these pictures were taken on March 1, 2017, after the Tenants had moved out.

The Tenants testified they spent time to clean the unit and alleged the pictures were taken on February 1, 2017, right after the Tenants gave the Landlords a Notice to End Tenancy.

Unpaid utility bills

During the course of the hearing, the Landlords explained they were seeking \$117.60 in compensation for the unpaid portion of the utility bill the Tenants owed. After the Landlords explained their calculations the Tenants agreed to pay **\$117.60** for this bill.

Loss of rent for one month

The Landlords claim for one month of lost rent due to the condition the Tenants left the rental unit in when the vacated.

The Landlords testified and submitted evidence in the form of the invoice from their handyman that the work was not completed until April 10, 2017. They testified that the handyman did not come every day to work on the unit, he came when he had the right parts for repairs.

The Landlords testified they did not re-rent the unit until June of 2017.

The Tenants replied that this did not seem like a reasonable amount of time to make the few small repairs to the rental unit. They testified they gave the Landlords notice they were leaving at the end of February 2017, and they could have had their handyman repair the unit much faster.

Analysis

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 sections 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.

In this instance, the burden of proof is on both the Landlords and the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement by the other party. Once that has been established, the Applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Applicants did everything possible to minimize the damage or losses that were incurred.

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.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Tenant's Claims

While the Landlords were not the owners of the rental unit at the outset of the tenancy and could not have performed an incoming condition inspection report, they were still required to perform an outgoing condition inspection report under the *Act*. The evidence shows they did not do this.

By failing to perform the outgoing condition inspection report in accordance with the *Act*, the Landlords extinguished the right to claim against the security deposit for damages, pursuant to sections 36(2) of the *Act*. Under section 38 of the *Act* they should have returned the security deposit to the Tenants as they could not have made a claim against the deposits due to this extinguishment.

Therefore, I find the Landlords have breached section 38 of the *Act*.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlords pay the Tenants the sum of **\$1,100.00**, comprised of double the security deposit (2 x \$500.00) plus the \$100.00 fee for filing this Application, ***subject to any set off below in the Landlords' claims.***

Landlord's Claims

Under section 32 of the Act, the Tenants were required to repair damage to the rental unit that was caused by their actions or neglect, but are not required to make repairs for reasonable wear and tear.

In this matter, I find the Tenants failed to make many repairs they should have made, and failed to clean the carpets and the rental unit as they should have, prior to the end of the tenancy, and therefore, the Tenants have breached section 32 of the Act. Under section 7 of the Act, the Tenants must compensate the Landlords for losses they incurred due to the Tenants breaches of the Act.

The Landlords' claims and awards are as follows.

Repairs to damaged walls, baseboards and trim

I find that the Landlords have established that the Tenants have damaged the walls and baseboard trim in the rental unit in some of the areas claimed. However, I do not find that the Landlords are entitled to the entire amount claimed. I find that some of the items claimed for would be reasonable wear and tear, such as a few nail holes for hanging pictures and hats, as shown in the photographs.

I do find the Tenants are responsible for damages caused by a mirror propped up against a wall, the drywall paper being torn from the drywall, and other deep gouges to the walls that damaged them beyond reasonable wear and tear. From the photographs it appears there were many such deep gouges and scrapes to the walls.

I note that under Policy Guideline 40, the useful life expectancy for interior paint is four years, and the Tenants were in the rental unit from 2013 to 2017. Therefore, I do not allow the Landlord the cost of repainting the entire unit, just an amount for re-painting the damaged areas.

Taking into account the repairs required which I find were caused due to the Tenants, I allow the Landlords the global sum of **\$500.00** for this portion of the claim, which includes labour and materials for patching, repairing and re-painting the damaged portions of the walls.

Damaged bedroom door

I find the Tenants admitted to damaging the bedroom door. I do not find this was reasonable wear and tear; rather I find it looked like some object was banged into the door and created a dented and damaged portion of the door. I find the Tenants are responsible for the cost of replacing the door. I find the Tenants had insufficient evidence the door could be replaced and repainted for the \$100.00 they estimated.

I find that the amount claimed by the Landlords for this of \$350.00 is reasonable; however, I must apply the depreciated value for the door and I note that under Policy Guideline 40, the useful life expectancy for a door is 20 years. I find the door was four years old based on the evidence before me. Therefore, I reduce the amount claimed by \$70.00, equal to one fifth of the useful life expectancy and I award the Landlords **\$280.00**, to replace the door.

Damaged bedroom closet door

I find that the Tenants admitted damaging the bedroom closet door and this was not reasonable wear and tear. It appears the door was forced open and the force caused the door hinge stopper to punch a hole through the door.

I note that under Policy Guideline 40, the useful life expectancy for a door is 20 years. I find the door was four years old based on the evidence before me. Therefore, I reduce the amount claimed by \$66.00, equal to one fifth of the useful life expectancy and I award the Landlords **\$264.00**, to replace the bedroom closet door.

Damaged kitchen cabinet corner door

While I find the Tenants damaged the corner door in the kitchen cabinets, based on their own testimony, I do not find the Landlords have proven it would cost \$350.00 to replace the hinges. I found this to be quite a high amount for new hinges, even if it took some time to locate these. Therefore, I allow the Landlords **\$50.00** as a global sum for the cost of locating and repairing the hinges in the kitchen cabinet door.

Carpet cleaning

Under Policy Guideline 1 renters are generally expected to have the carpets steam cleaned after occupying the rental unit for more than one year. Here I find the Tenants had insufficient evidence they steam cleaned the carpets prior to the end of the tenancy. I find that the Landlords have asked for a reasonable sum to clean the carpets in the rental unit, in the amount of **\$150.00** and I award this this amount.

General cleaning

I accept the testimony of the Landlords and find that there were several areas of the rental unit which were not cleaned by the Tenants. I allow the Landlords **\$45.00** for general cleaning of the rental unit.

Unpaid utility bills

During the course of the hearing, the Landlords explained they were seeking \$117.60 in compensation for the unpaid portion of the utility bill the Tenants owed. After the Landlords explained their calculations the Tenants agreed to pay **\$117.60** for this, and I award the Landlords that sum.

Loss of rent for one month

I find that the Tenants left the rental unit in a condition that did not allow the Landlords to re-rent the unit immediately. However, I also find the Landlords had insufficient evidence they were trying to rent the unit for the month after the Tenants left.

The Landlords did not re-rent the unit until June of 2017, which leads me to find the Landlords had insufficient evidence that they mitigated their losses and they advertised the rental unit quickly after the Tenants gave notice. I find the Landlords failed to mitigate this loss.

Therefore, I find the Landlords have been adequately compensated for their losses in cleaning and repairing the rental unit in the above awards.

This leads me to find the Landlords are entitled to recover the above amounts totalling **\$1,506.60** comprised of \$1,406.60 for repairs and cleaning, and the \$100.00 for their filing fee, from the Tenants, ***subject to any set off below.***

Set off of Amounts Awarded

I have awarded the Tenants \$1,100.00 for recovery of double the security deposit, plus their filing fee, and I have awarded the Landlords \$1,506.60 for repairs and cleaning, plus their filing fee. I offset the awards and find the Landlords are owed a balance of **\$406.60** by the Tenants, and I grant and issue a monetary award in that amount.

The Tenants must be served with a copy of the order and it may be enforced in the Provincial Court (Small Claims Division).

Conclusion

The Tenants are entitled to the return of double the security deposit as the Landlords extinguished their right to claim against the deposit when they failed to perform an outgoing condition inspection report.

The Landlords are entitled to recover their losses for some of the repairs and cleaning not performed by the Tenants before the vacated the rental unit.

After offsetting the award granted to each party, I find the Tenants must pay the Landlords the sum of **\$406.60**. The Landlords are granted a monetary order in this amount, which must be served on the Tenants and may be enforced in the Provincial Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: September 06, 2017

Residential Tenancy Branch