



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD RR FF MNDC

Introduction

Both parties and witnesses for the landlord attended the hearing and gave sworn testimony. Each confirmed receipt of their Applications for Dispute Resolution; the tenant's was dated as filed on January 1, 2018 and the landlord's on January 23, 2018. The tenant provided evidence that he vacated on November 30, 2017 and provided his forwarding address in writing on October 22, 2017 by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7 and 67 for damages;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies for orders as follows:

- d) To recover twice the security deposit pursuant to section 38;
- e) For a refund of an amount he paid to clean a carpet; and
- f) To recover the filing fee pursuant to section 72.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant damaged the unit, that it is beyond reasonable wear and tear and the cost to repair? Are they entitled to recover the filing fee for this application?

Has the tenant proved on a balance of probabilities that they are entitled to a refund of twice the security deposit and to a refund of a carpet cleaning fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced August 1, 2016, that

rent was \$2300 a month and a security deposit of \$1175 was paid. The tenancy ended on November 30, 2017 pursuant to a legal one month notice by the tenant and the tenant provided his forwarding address in writing by registered mail to the landlord in October 2017. The tenant resided in the unit a total of 16 months. It is undisputed that the landlord has not refunded any of the security deposit and the tenant gave her no permission to retain any of it.

The landlord alleges the tenant did significant damage to the unit. She completed a Condition Inspection Report showing move-in and move-out condition but it was unsigned and she just noted it was a "verbal promise" on the signature line. She said the tenant had told her he was a religious man and she trusted him to maintain the unit but he did not. The landlord claims as follows:

1. \$2320 estimate to repaint the unit. The paint was 4 years old + 4 months at the end of the tenancy. The current tenant says the landlord will compensate him for painting depending on the outcome of this hearing.
2. \$800 to clean the unit. This was paid to the current tenant. The landlord and tenant said the unit was thick with grease, on walls, floors and appliances. The current tenant said he has had to use 3 different products to try to clean it including paint thinner and it has taken many weeks. The landlord provided a phone estimate from a maid service but said they refused to do it when they saw the amount of grease on everything.
3. \$1774.19 (invoice provided) for a new stove. The stove was 4 years and 4 months old at the end of the tenancy. The current tenant testified that it had been ruined by using something sharp on it and also it was thick with grease.
4. \$532 (invoice provided) for a new carpet for one room. The landlord said, and the current tenant confirmed, that the child of the former tenant had used markers and paint on it so it could not be cleaned. They said the same markers were used on several doors and walls in the home and they don't come out.
5. \$397.96 for blinds that were about 9 years and 4 months old at the end of this tenancy.

Although no signed condition inspection reports were done at move-in and move-out, the landlord provided a number of photographs showing the unit at the beginning and end of the tenancy. The tenant queried the dates of the photographs. The landlord said they were taken just before he moved in and after he moved out. The landlord's brother testified that their mother had lived in the unit and did some renovations. He said she is a very fussy housekeeper and the unit was in 'pristine condition' and had been empty for a few months after the renovation and before this tenant moved in. He said the photographs showed the true state of the unit when the former tenant moved in and moved out. The current tenant testified that the unit was in very bad condition at the end of the tenancy and the landlord's photographs showing holes in walls roughly filled in, marker on the carpet and grease on everything were accurate.

The tenant denied that there was a lot of grease in the unit. He said he and his wife cleaned it at move-in and move-out and he followed all the instructions on the Residential Tenancy website to leave the unit in a good condition. He claims a refund of the cost of cleaning the

carpet (\$93.50) on the basis that there was no move-in or move-out inspection done so it was not his responsibility.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Regarding the tenant's claim for a refund of double the security deposit, I find section 38 of the Act states:

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find the weight of the evidence is that the tenant vacated on November 30, 2017 and provided his forwarding address in writing before that date. I find the landlord did not refund the tenant's security deposit or make an application to claim against it within 15 days of November 30, 2017. The landlord's application was made on January 23, 2018. Therefore I find the tenant entitled to a refund of double their security deposit. In respect to the claim of the tenant for a refund of the carpet cleaning fee he paid, I find pursuant to section 37 of the Act, Residential Policy Guideline 1 and his lease, clause 12, he is responsible to leave the home in a clean condition and is generally expected to clean the carpet after a tenancy of one year. I find he is not entitled to a refund of the amount it cost to clean the carpet as it was his obligation.

In respect to the landlord's claim for compensation, I find criteria for awards for compensation are provided under sections 7 and 67 of the Act which provide 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 onus is on the landlord to prove on a balance of probabilities that this tenant damaged the property that it was beyond reasonable wear and tear and the cost to repair. I find the landlord's evidence credible that the tenant violated the Act and their tenancy agreement by damaging the property. I find the landlord's credibility is well supported by before and after photographs and her witnesses' testimony. As discussed with the parties in the hearing, Residential Policy Guideline 40 assigns a useful life for elements in rental property which is designed to account for reasonable wear and tear. It will be applied to the costs claimed.

I find in the Guideline paint is assigned a useful life of 4 years in rented property and this paint was 4 years and 4 months old at the end of the tenancy. As it was beyond the end of its useful life, I find the landlord not entitled to recover any cost towards the \$2320 estimate to repaint.

I find the landlord entitled to recover the \$800 paid to the current tenant to clean the unit as I find the evidence of the landlord and witnesses more credible than the tenant's evidence. I find the unit was thick with grease, on walls, floors and appliances to the point where maid service refused to take the job.

I find the landlord chose to buy a new stove for \$1774.19 (invoice provided) to replace one that was 4 years and 4 months old because it was so badly damaged. A stove is assigned a useful life of 15 years in the Guideline and I find the weight of the evidence is the tenant ruined the stove by using something sharp on it and leaving it thick with grease. I find the landlord entitled to recover 71% of the cost of the replacement stove for the years of useful life remaining in the old stove or \$1,259.67. Calculation as follows: 180 total assigned months of life less 52 months old = 128 months of useful life remaining. $128/180 = 71\%$ of useful life remaining.

I find the weight of the evidence is that one carpet was ruined by marker and paint from the tenant's occupancy. I find the Guideline assigns a useful life for carpets of 10 years (120 months). Since this carpet was 52 months old at the end of the tenancy, I find the landlord entitled to recover 56% of replacement cost or \$301.46 for the 68 months of useful life remaining in it.

Regarding the blinds, I find the weight of the evidence is the tenant damaged the venetian blinds. I find the photographs and witness testimony support the landlord's credibility. The Guideline assigns a useful life of 10 years (120 months) to blinds and these blinds were 112 months old according to the evidence. I find the landlord entitled to recover 6% of the cost of \$397.96 for replacement blinds for the 8 months of remaining life or \$26.50.

Conclusion:

I find the parties entitled to compensation as calculated below and to recover their filing fees for their applications. I find the balance is in favour of the landlord so the landlord will retain the doubled deposit and receive a monetary order for \$37.63 for the balance.

Landlord: Cleaning cost	800.00
Stove replacement allowance	1259.67
Carpet replacement allowance	301.46
Blind allowance	26.50
Filing fee	100.00
Total for Landlord	2487.63

Tenant: Original security deposit	1175.00
Double security deposit	1175.00
Filing fee	100.00
Total for tenant	2450.00

Balance: \$2487.63- \$2450 = \$37.63 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: March 07, 2018

Residential Tenancy Branch