



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on May 2, 2018. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

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.

Issues to be Decided

- Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested?

Background and Evidence

During the hearing, both parties agreed on the following:

The tenancy ended on August 29, 2017, the day which the Tenants moved the last of their belongings out of the rental unit. The move-out inspection was done on August 30,

2017. However, the Tenants did not sign the inspection report because there was some disagreement about some of the items. The Tenants sent their forwarding address in writing, and by mail, on September 19, 2017. The Landlord filed this application on September 28, 2017, seeking to claim against the deposits she held for damage and loss.

The Landlord testified the following:

She currently holds the Tenant's security/pet deposit totalling \$1,700.00. The Landlord submitted a monetary order worksheet to summarize what she is seeking. However, these were based on initial estimates, and more specific amounts are detailed below.

Item #1 - drywall repair

The Landlord pointed to the inspection report to show that the walls and trim were in "poor condition" at the end of the tenancy in several locations, and yet they were in good condition at the start of the tenancy. The Landlord submitted multiple photos showing a variety of drywall damage. This included hooks the Tenants had installed, corner beads that had been chipped or smashed in, drywall screws in a variety of locations, many holes from hanging pictures, and adhesive/tape damage. The Landlord stated that none of these items were repaired sufficiently before the Tenants left, and so she had to hire a drywall repair company. She stated this cost \$336.00, as per the invoice she submitted. The Landlord stated that she counted well over 100 holes in the walls and they could not simply be repainted; they needed repair first because in many cases the Tenants used drywall anchors which leave substantial holes. The Landlord also noted that some of the drywall repair items were more significant, like the broken/smashed corners, which take time to repair.

The Tenants stated that they were under the impression that they were allowed to hang pictures because the Landlord had told them at the start of the tenancy that they could make themselves at home. The Tenants stated that the Landlord specifically told them they could hang photos on the wall. The Tenants provided a copy of a letter they wrote which states that nowhere in their lease did it say they had to patch the walls before they left, nor did the lease prohibit them from hanging things on the walls. The Tenants stated that had they known this would have been an issue, they would have repaired the holes and damage. The Tenants feel they were blindsided by the need to fix these issues because they were under the impression that most of the items were normal wear and tear, which would be taken care of by the Landlord. The Tenants

acknowledged that some of the damage to the corners may have been caused by their children.

The Tenants stated they had a conversation with the Landlord's agent about the walls and they were told not to worry about it, as it was normal wear and tear. The Landlord denies that this conversation happened, and said the holes and damage was not "normal" or acceptable.

Item #2 – painting

The Landlord stated that the rental unit was last repainted in 2006 but it was still in good condition. The Landlord stated that because of all the holes and damage, the whole rental unit needed repainting, so she hired her brother for \$1,500.00. The Landlord stated that she does not have a receipt for this expense.

The Tenants stated that they should not be liable for repainting because the Landlord is responsible for keeping the unit painted.

Item #3 - cleaning

The Landlord stated that the rental unit was generally dirty when the Tenants left, so she had to spend lots of time cleaning the unit to make it re-rentable. The Landlord stated that she submitted a copy of the receipt from 2016 when she had the unit professionally cleaned to show what it normally costs to clean a unit of this size. The Landlord stated that she did not hire anyone this time around but rather did the work herself and is looking to be compensated the same amount she paid to have it cleaned in the past, which was \$294.00.

The Landlord stated that there were dead bugs everywhere (inside light fixtures, window ledges). The Landlord also stated that there was cat urine stains, as well as cat footprints on the cabinets. The Landlord also stated that the oven was black and needed scrubbing. The Landlord said it took her "all day" to clean the unit after the Tenants moved out.

The Landlord provided some photos of different areas in the rental unit where there was some mess; dead bugs near the windows and in the light fixtures, carpet stains, dried spills, debris beside washer, grease on cupboards, dirty oven, hair in drawers).

The Tenants also provided some photos of the unit after they cleaned up which provide different and more zoomed out angles on the rental unit. The Tenants provided photos to show that the general state of cleanliness was quite good. The Tenants also provided a couple of photos of the carpet stains and some of the holes and damage that was left behind.

The Tenants stated that they left the unit in the same condition that it was at the start of the tenancy. They Tenants deny that there was cat urine, and stated that the carpets were old and cats had lived in the unit before them, so they are unfairly being blamed for the carpet condition. The Tenants stated that they had the carpets professionally cleaned as they were required to do. The Tenants acknowledged that there were some bugs but stated that this was only a recent thing that they had limited control over.

Analysis

In this case, the Landlord bears the burden of proof to show that she is entitled to retain the Tenants' security deposit to offset damage caused by the Tenants.

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows:

Drywall Repair

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.

Further, Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises also states:

Nail Holes

[...]

The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

In this case, I note that the Landlord informed the Tenants that it was okay to hang pictures on the wall when they started the Tenancy. However, there appears to be an excessive amount of holes, beyond just small nail holes, some of which were larger and were caused by screws, adhesives and drywall anchors. I find this goes beyond what would normally be expected and would have required some time and effort to remedy. I also note that there was damage to the corners of the drywall in several places, and this also would have required some time to fix. It is unclear what discussions took place between the Landlord's agent and the Tenants regarding what they were responsible for fixing.

The condition inspection report, photos, and testimony all indicate that there would have been some drywall repairs required after the Tenants moved out and due to some damage they caused while they lived there. One of the Tenants also suggested in the hearing that although he did not recall damaging the corners (drywall), it could have been the result of children that were present. Ultimately, I find the Landlord is entitled to compensation to repair the walls, as I find much of it goes beyond normal wear and tear. I award the Landlord the costs she incurred to have the repairs made in the amount of \$336.00.

Painting

With respect to the painting of the rental unit, I note that the Landlord spent \$1,500.00 on painting. However, I also note that it has been over a decade since the rental unit has been repainted. I turn to Residential Tenancy Policy Guideline #40, which states that the useful life expectancy for interior painted walls is only 4 years. As such, I find the paint on the interior walls was well past the useful life expectancy, and I do not find the Tenants are responsible for any of this amount. I dismiss this portion of the Landlord's claim.

Cleaning

The Landlord stated that she spent “all day cleaning” the rental unit because of the mess the Tenants left. However, I note that she was not specific about how much time it actually took her to complete the cleaning. I have looked at the photos provided by both parties and I note that there was some amount of dirt, hair, bugs, and stains left behind. Policy Guideline #1 highlights that what each party is responsible for in terms of cleaning and repair.

For example, the following applies to major appliances “at the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.” Also, the following applies to windows (where the bugs had recently accumulated) “the tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould.

I note that the Landlord did not hire out cleaning services but instead cleaned the unit herself. The Landlord is looking to be compensated the same amount she paid a couple of years ago to have it professionally cleaned. However, I also note that the Landlord was not specific about how much time it actually took, which makes it difficult to ascertain any amount she may be entitled to.

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

In this case, I find the Landlord has failed to sufficiently establish the value of her loss on this point because she did not pay for any cleaner to come in and did not provide clear evidence regarding how long it took to clean. However, despite all of this, I find there were some items (oven, bugs collecting on windows and lights, hair in drawers, and dried spills) that would have required cleaning by the Landlord (as per the photos), which should have been done by the Tenants prior to leaving. In this case, I find the Landlord is entitled to a nominal amount of \$150.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with her application, which cost her \$100.00 to file, I order the Tenants to repay half of the fee that the Landlord paid to make application for dispute resolution.

In summary, the Landlord is entitled to \$336.00 for drywall repairs, \$150.00 in compensation for cleaning, plus \$50.00 for half the cost of this application, which totals \$536.00. Since the Landlord holds \$1,700.00 in security and pet deposit from the Tenants, I order the Landlord to return the balance of \$1,164.00 to the Tenants. I will also issue the Tenants a Monetary Order for this amount, in case the Landlord fails to return the remainder of the deposits held.

Conclusion

The Tenants are granted a monetary order in the amount of **\$1,164.00**, as specified above. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order 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: May 4, 2018

Residential Tenancy Branch