



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND MNDC MNSD FF

Introduction:

Both parties and witnesses attended the hearing and gave sworn testimony. . The landlord testified that they served the Application for Dispute Resolution dated March 14, 2018 on the tenant by registered mail and the tenant confirmed receipt of it and the evidence. I find the documents were legally served pursuant to sections 88 and 89 of the Act. 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) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord proved on a balance of probabilities that the tenant damaged the property and that it was beyond reasonable wear and tear? What is the cost of the losses incurred by the landlord? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties and witnesses attended and were given opportunity to be heard, to present evidence and to make submissions. The landlord had provided an amendment to correct the tenants' names and it was granted after verifying the correct names with the tenants. It is undisputed the tenancy commenced March 1, 2017 on a fixed term to March 1, 2018 and the tenants vacated on March 1, 2018. Monthly rent was \$2600 and a security deposit of \$1300 was paid. The landlord confirmed the home was built about 1987 and most of the items were original. They provided a detailed condition inspection report done at move-in and move-out by their property agent.

The tenants said the condition inspection report provided by the landlord is false and they pointed out many discrepancies such as the agent's signature. They provided their copy of the condition inspection report which is very different from that provided by the landlord. The agent attended and verified that the copy the tenant provided was the correct one and reflected the true condition of the home at move-in and move-out. The tenant said the copious notes and damage noted on the landlord's copy were all added and are false. On the tenant's copy, it was noted on move-in that most items were "Fair" condition, there were patched and stained ceilings, the basement had a wire sticking out of the wall and stains and screws in the ceiling. On move-out, it was noted that the carpets were stained, the garbage cans were left full, the

shed key was missing, a door knob had a problem and the shower tiles in the basement had problems. The agent noted the tenant told her that particle board was behind the tile and it should be fibre glass. She noted the tiles had bubbled and expanded.

The agent also noted one of the bedrooms had water damage to the carpet from the outside tap which was leaking into the basement. The agent had a plumber come to fix this. He verified to her that he went into every room in the house and there was no sign of tampering for hydroponic equipment. He said he knows what this looks like for he has had experience with it. She noted she noted no dog feces or cigarette butts outside as the yard was covered in snow; there was one burnt shrub by the garage but everything else looked fine. She asserts her observations are unbiased and she has no relationship or loyalty to the tenants. She had inspected the home four times during the year. The landlord accused the agent of being part of organized crime and of making a fraudulent condition inspection report. The agent denies these allegations.

The landlord claims as follows:

1. \$525 for Building inspection and consultation
2. \$370.17 electrical costs re. tampering
3. \$1050 for plumbing system alterations and leaks
4. \$42,400 to \$51,303 for renovator's costs to fix damages
5. \$761.25 or \$680.00 for carpet cleaning upstairs
6. \$4982.51 for damage to vertical blinds and cords from possibly pets
7. \$11,974.965 or \$10,432.72 or \$9,296.99 or 9,084.72 for replacing damaged carpets
8. \$153.92 + \$17.79 for damaged kitchen and bedroom lights
9. \$185.11 for some of plumbing and leaking tap damage
10. \$22.53 + 190.05 for mailing and related costs
11. 11.81 +13.41 + 147.25 for a mask, furnace filter and broken door locks
12. 380.10 for travelling costs to fix the house
13. 15,000 Loss of rental income while vacant; it is not re-rented for landlords cannot afford costs of repair.

The landlord said there was a bad smell throughout like burned plastic which is consistent with a grow-op or meth lab. The agent said she has a sensitive nose but smelled nothing. The landlord provided many photographs, a building inspector's report and an electrician's report. They also provided many receipts, many of the quotes from various companies for the same job.

The tenant said they would like twice their security deposit back but they have not filed an Application.

Although I have considered all the evidence, I will note only that evidence that is most relevant to my decision. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the *Act* does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the *Act*, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence is that the home and carpets date from 1987. The Residential Policy Guideline assigns a useful life for elements in rented premises which is designed to account for reasonable wear and tear. Carpets are assigned a useful life of 10 years. I find these carpets were about 30 years old at move-out so beyond their useful life. I find the landlord not entitled to compensation for carpet replacement.

I rely more on the condition inspection report provided by the tenant as the landlord's submitted copy had additions and alterations not approved by the tenant or the agent. I find the landlord hired a property agent who inspected the property four times a year and found no evidence of illegal activity such as a grow-op or meth lab. She testified that she had checked on the tenants before renting and they had no criminal record and their background was inconsistent with the charges levelled by the landlord. She had a plumber inspect all the rooms and he found no sign of illegal activity either. I find they hired a property inspector and his report notes the client indicates the building may have been used as a 'grow op'. They said they found electrical alterations, venting holes and holes in the ceiling for hooks and although they cannot verify when these came into existence, they have 'been known to be associated with marijuana grow operations'. I find this is insufficient evidence that the tenants were engaged in such activity. I find the landlord suggested this to the inspector and he noted items that may indicate it. I find the tenant noted on the move-in report that there was an unidentified wire sticking out of the basement wall and stains and screws in the ceiling and the ceiling were patched. In other words, I find the items noted on the house inspector's report may have been pre-existing the

tenancy. I find the tenant not responsible to pay for this house inspection as they fulfilled their duty and did the house inspection with the landlord's agent on move-out. Likewise, I find insufficient evidence that the tenants interfered with the wiring in the house so I find them not responsible for the electrical costs.

In respect to the charge for plumbing system alterations, I find insufficient evidence that the tenant altered plumbing. I find the evidence of the property manager persuasive; she had a plumber inspect every room when he was doing some repairs and he found no evidence of illegal activity or tampering. I find the tenants not responsible for costs for plumbing alterations. I also find insufficient evidence to support the landlord's claim for renovations. I find they have not proved on a balance of probabilities that the tenants damaged their home so it required over \$40,000 in renovations.

I find the weight of the evidence is that the tenants did not have the carpets professionally cleaned. Policy Guideline 1 of the Residential Policy Guidelines states this is a tenant responsibility and it is also part of the lease agreement. I find the landlord entitled to recover costs of carpet cleaning for the lower of the two quotes or \$680.00. I find insufficient evidence that the tenants damaged the kitchen or bedroom lights so I dismiss this portion of the claim. Policy Guideline 1 also provides it is the landlord's responsibility to take care of the furnace so I find the tenant not responsible for the cost of replacing the furnace filter.

I find insufficient evidence to support the majority of the landlord's claim for damages, there is insufficient evidence that the landlord's repairs which they undertook themselves were necessitated by damage done by the tenants. Therefore, I find them not entitled to their travelling costs or costs of a mask to do repairs; they had a carpet cleaning company to do the carpet cleaning which is the only item that I find sufficient evidence was a responsibility of the tenant. Although not listed in the landlord's itemized claim, the tenant did agree they lost the key to the shed; I award the landlord the nominal sum of \$25 to replace the shed key. I also award the landlord the nominal sum of \$100 for removal of garbage.

I find the landlords have undertaken a renovation of the home and they have not re-rented it. Since I find insufficient evidence to support their claim that this renovation was a result of damages caused by the tenants, I dismiss their claim for loss of rental income. I find the move-out report listed did not indicate major repairs that would make the unit un-rentable.

The tenant noted she expected twice her security deposit refunded. I find they vacated on March 1, 2018 and the landlord filed their application on March 14, 2018 which is within the 15 days allowed by section 38 of the Act to claim against the deposit. Therefore the deposit would not be doubled. However, if any of the deposit remains after deducting the allowance for damages, I find the tenant is entitled to its return.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application. A monetary order is in favour of the tenant after the deductions.

Calculation of Monetary Award:

Carpet cleaning upstairs	680.00
Lost shed key allowance	25.00
Garbage removal allowance	100.00
Filing fee	100.00
Less security deposit of tenant	-1300.00
Total Monetary Order in favour of tenant	-395.00

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: October 09, 2018

Residential Tenancy Branch