



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: MNSD
 Landlord: MNDC MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on October 9, 2018.

The Landlord and the Tenant both attended the hearing. Both parties confirmed receipt of each other's documentary evidence and Notice of Hearing packages.

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

Issue(s) to be Decided

Landlord

- Is the Landlord entitled to compensation for damage to the rental unit?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Tenant

- Is the Tenant entitled to the return of the security deposit held by the Landlord?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that:

- The tenancy began in October of 2015, and that it ended on February 28, 2018, the day the move-out inspection was completed.
- The Landlord still holds \$1,500.00 as a security and pet deposit
- The Tenant provided, and the Landlord received, the forwarding address in writing on February 28, 2018.
- The Landlord did not perform a move-in inspection, nor did he document the condition of the rental unit, prior to the start of the tenancy.
- A move-out inspection report was completed but the Tenant did not agree with what the Landlord stated, and did not agree as to the alleged damages.

The Landlord provided a monetary order worksheet where he is seeking \$2,649.47 in compensation for 4 items. However, in the hearing, he withdrew his claim for the 4th item (cleaning). As such, only the first 3 items on the monetary order worksheet will be addressed in this hearing. The 3 items are as follows:

1. \$1,051.47 – Carpet material cost
2. \$650.00 - Labour for carpet replacement

Items #1 and #2 were described by the Landlord as expenses related to the replacement of the carpets in the two bedrooms of the rental unit. The Landlord stated that the Tenant damaged the carpets, and his cats peed on and stained the carpets in many spots. The Landlord provided invoices for the two above items. The Landlord also provided some photos taken at the time the Tenant moved out of the rental unit. The Landlord stated that the carpets were last replaced in 2008. The Landlord feels the damage to the carpets goes well beyond reasonable wear and tear.

The Tenant took some photos at the start of the tenancy and provided them into evidence. The Tenant stated that some of the photos clearly show that the carpet was not installed properly, and was snagging, and ripping. The Tenant also stated that there were stains already present on the carpets when he moved in. The Tenant stated that these were issues he talked to the Landlord about at the start of the tenancy and the Tenant noted that since no move-in inspection was done, there is no evidence to show the damage was caused by him. The Tenant stated that all of the issues with the carpet were from normal wear and tear, and from improper installation, as shown in the photos.

3. \$700.00 – repair of drywall and paint

The Landlord stated that the Tenant left all sorts of holes and marks on the walls, and he had to hire someone to fill and patch the holes, and then paint the walls. The Landlord provided photos of some of the marks and the scuffs at the end of the tenancy but was unable to show any evidence as to what they looked like at the start of the tenancy. The Landlord stated that he does not know when the walls were last painted, but feels the Tenant did an unreasonable amount of damage to the walls.

The Tenant stated that since no move-in inspection was completed, there is no evidence from the Landlord to show that he caused this damage. The Tenant denied causing the alleged damage to the walls, and stated that this damage was already present when he moved in. The Tenant stated and provided some photos to show that the walls were poorly painted at the start of the tenancy. The Tenant stated he left the rental unit in the same condition he found it.

TOTAL CLAIMED: \$2,401.47

The Tenant stated that he was initially willing to allow the Landlord to retain \$500.00 from his deposits, but he does not agree with this anymore. The Landlord stated that he and the Tenant initially agreed, at the start of the tenancy, that he could keep a portion of the \$500.00 pet deposit in order to help offset damage or dirt caused by the Tenants cat. The Landlord provided a copy of this email agreement where the Tenant stated the Landlord could use “part” of the deposit to clean the carpets because the Tenant was being allowed to have a cat.

Analysis

With respect to the Landlord's application to recover money for damages, 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 Tenant. 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.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I first turn to the Landlord's claim for compensation in the amount of \$2,401.47. I note there is no move-in inspection report. I find the Landlord failed to document the condition at the start of the tenancy and the parties appear to disagree on the condition at the start of the tenancy. I note the Landlord has provided an email whereby the Tenant agreed to him retaining "part" of the deposit to help with carpet cleaning (because of the cat). However, I note this agreement did not mention anything about damage or replacement of the carpets, which is ultimately what the Landlord did. There is no evidence that the carpets were ever cleaned, and since the agreement made between the Landlord and the Tenant only speaks to use of the money for cleaning, I find it is not applicable or enforceable with respect to the issues in this hearing (replacement cost).

I now turn to the Landlords claim for the individual items, listed above (item 1-3).

1. \$1,051.47 – Carpet cost
2. \$650.00 - Labour for carpet replacement

I note items #1 and #2 were described by the Landlord as expenses related to the replacement of the carpets in the two bedrooms of the rental unit. However, I find it important to note that the burden of proof rests with the Landlord to establish his claim, and prove that the Tenant caused, and is responsible for the damage. The Landlord has provided zero documentary evidence to show what the condition of the carpet was at the start of the tenancy. Although the Tenant provided some photos from the start of the tenancy, I do not find they support the Landlords allegations, which he says required their replacement. I note the photos from the Tenant show poor installation, and some ripping and tearing

already present at the beginning of the tenancy, which could have easily spread with normal wear and tear. Ultimately, without further proof from the Landlord, I find he has not met the burden placed on him to show that it was the Tenant who is responsible for the damage and that it wasn't a result of normal wear and tear.

3. \$700.00 – repair of drywall and paint

The Landlord stated that the Tenant left all sorts of holes and marks on the walls, and he had to hire someone to fill and patch the holes, which cost him \$700.00. However, for similar reasons above, I find the Landlord has failed to provide sufficient evidence to show what the condition of the walls were at the start of the tenancy. The Tenant provided a few photos to show that the paint was not in great shape when he moved in, and he also stated that there were holes and marks, which he should not be held responsible for. Although the Landlord disagrees that the walls were damaged prior to the Tenant moving in, he was unable to produce any documentary evidence to show otherwise. The Landlord largely relied on oral testimony to prove the condition of the rental unit at the start of the tenancy. Having reviewed the evidence on this point, I find that without further proof from the Landlord, I find he has not met the burden placed on him to show that it was the Tenant who is responsible for the wall damage and that it wasn't a result of normal wear and tear.

On all of the Landlords claimed items, there is a problematic lack of evidence showing the condition of the rental unit at the start of the tenancy. I find the Landlord has not sufficiently proven his claim, and I order him to return the entire security and pet deposit to the Tenant, totaling \$1,500.00. The Tenant has applied to have his security and pet deposit returned to him. Since I have already made an order for the Landlord to return this, I will not address this issue any further.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was largely successful in this hearing, I award them the \$100.00 he paid to file this application and I decline to award the Landlord with the amount he paid.

In summary, the Landlord is ordered to return the security deposit of \$1,000.00 and the pet deposit of \$500.00. Also, the Landlord is ordered to pay the Tenant for the cost of his filing fee. I issue the monetary order against the Landlord for \$1,600.00.

Conclusion

The Tenants are granted a monetary order pursuant to Section 38 and 67 in the amount of **\$1,600.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant 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: October 10, 2018

Residential Tenancy Branch