



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KILLAM INTERNATIONAL LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD

Introduction

On May 11, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for damage; money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; to keep the security deposit and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties confirmed that they had exchanged the documentary evidence before 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.

Issues to be Decided

- Is the Landlord entitled to compensation for damage to the unit?
- Is the Landlord entitled to compensation for money owed or damage or loss?
- Is the Landlord entitled to keep the security deposit?

Background and Evidence

The parties testified that the tenancy began in February 2012, and ended on April 28, 2018. The Tenants were to pay the Landlord monthly rent in the amount of \$2,059.00 by the first day of each month. The Tenants paid the Landlord a security deposit of \$922.50. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that when the Tenants moved out of the rental unit there was damage to the unit and cleaning required.

The Landlord is requesting compensation for the following items:

Deck Power wash	\$125.00	Receipt provided
Living room Drapes	\$86.25	Receipt provided
Livingroom drapes	\$77.45	Receipt provided
Bedroom drapes	\$68.36	Receipt provided
Carpet Replacement (stairs bedrooms)	\$2,914.81	Receipt provided
Toilet seat	\$29.11	Receipt provided
Bathroom fixture	\$89.75	Receipt provided
Fan filter	\$17.73	Receipt provided
Drywall	\$13.98	Receipt provided
Fridge parts	\$181.70	Receipt provided
Dishwasher	\$673.22	Receipt provided
Stove	\$716.79	Receipt provided
Lightbulbs	\$22.90 + \$4.70	Receipts provided
Cleaning	\$750.00	No receipt
Washing Machine	\$360.00	Receipt provided
Tip	\$200.00	

Deck Power Wash

The Landlord testified that the Landlord asked the Tenants to power wash the private deck prior to moving out; however, the Tenants did not. The Landlord had the deck power washed at a cost of \$125.00. The Landlord provided a receipt for \$125.00.

In reply, the Tenants agreed to pay the amount of \$125.00.

Living Room Drapes and Bedroom Drapes

The Landlord testified that the Tenants did not have the drapes cleaned at the end of the tenancy. The Landlord testified that one drape was ripped at the seams and they smelled. The Landlord testified that she had the drapes professionally cleaned. The Landlord provided a receipt for the cleaning costs. The Landlord is seeking the amount of \$163.70.

The addendum to the tenancy agreement provides that the Tenants will have the curtains cleaned at the end of the lease period. The condition inspection report provided by the Landlord indicates the drapes were satisfactory at the start of the tenancy.

In reply, the Tenants testified that they did not notice the drapes were ripped and that they had them professionally dry-cleaned. They submitted that the drapes were not new at the start of the tenancy. The Tenants provided a receipt in the amount of \$110.25 for the cleaning of the drapes.

Carpet Replacement (stairs bedrooms)

The Landlord testified that the carpet was badly stained and ripped and needed to be replaced. The Landlord submitted that the carpet was old when the Tenants moved out. The Landlord is seeking \$2,773.06 for the replacement cost of the carpet. The Landlord testified that she repeatedly asked the Tenants to clean the carpet.

In reply, the Tenants testified that the carpet was in bad shape. The Tenants testified that the Landlord said the carpet needed to be replaced so the Tenants did not have it cleaned.

Toilet Seat

The Landlord testified that the toilet seat was left in a disgusting condition and needed to be replaced. She testified that it could not be cleaned. The Landlord provided a receipt for the replacement cost.

In reply, the Tenants agreed to pay the amount of \$29.11.

Bathroom Fixture

The Landlord testified that the Tenants are responsible for the replacement cost of a fixture in the bathroom. The Landlord is seeking \$89.75.

In reply, the Tenants agreed to pay the amount of \$89.75.

Fan Filter

The Landlord testified that the Tenants are responsible for the cost to replace a filter above the stove. The Landlord is seeking \$17.73.

In reply, the Tenants agreed to pay the amount of \$17.73.

Drywall

The Landlord testified that The Tenants left some holes in the walls. The Landlord testified that she purchased drywall and patched the hole. The Landlord is seeking the amount of \$13.98 for the cost of the drywall.

In reply, the Tenants submitted there was only one hole because there was no door stopper. The Tenants agreed to pay the amount of \$13.98.

Fridge Parts

The Landlord testified that the top shelf of the fridge was cracked and it could not hold the shelf in place. The Landlord testified that the shelf could not be repaired. The Landlord replaced the side panels and top that holds the glass. The Landlord testified that the fridge was purchased new three years prior. The Landlord provided photographs of the fridge. The Landlord is seeking \$181.70.

In reply, the Tenants acknowledged that there was a crack in the shelf; however, they submitted that it could hold weight and was functional. The Tenants testified that they do not know how the crack occurred and they submitted that they were not negligent in their use of the fridge.

Dishwasher

The Landlord testified that the dishwasher was found to be dirty, moldy, and smelly. The Landlord testified that her handyman suggested they get rid of it. He Landlord testified that the dishwasher was 9 years old.

In reply, the Tenants testified that the dishwasher was old. They testified that they tried to use it but noticed it did not work, so they washed dishes by hand.

Stove

The Landlord testified that the stove was left dirty and looked like it had never been cleaned. The Landlord testified that "it" was baked on. The Landlord testified that the stove was 12 years old. The Landlord testified that she did not try to try to clean the stove. The Landlord replaced the stove and is seeking \$716.79 for the replacement cost.

In reply, the Tenants testified that the Landlord told them that the oven was being replaced and told them not to clean it. The Tenants referred to an email they received from the Landlord telling them not to clean the oven.

The Landlord acknowledged that she sent the email to the Tenants telling them not to clean the oven.

Lightbulbs

The Landlord is seeking to recover the cost of purchasing lightbulbs. The Landlord is claiming \$27.60.

In reply, the Tenants agreed to pay the cost of the lightbulbs.

Cleaning

The Landlord testified that at the end of the tenancy the Tenants only performed a surface clean in the rental unit. The Landlord testified that the Tenants refused to participate in a move out inspection. The Landlord did not provide a receipt for any cleaning costs. The Landlord provided 63 color photographs taken of the rental unit at the end of the tenancy.

In reply, the Tenants testified that the unit was left clean because they paid for professional cleaners who cleaned the rental unit. The Tenants submitted that the cleaners reported that the Landlord was happy with their work and approached them about working for her on other projects. The Tenants provided a copy of a letter dated October 5, 2018 from the cleaning service that indicates that three cleaners spent 8.75 hours cleaning the unit on April 29, 2018. The Tenants provided a receipt in the amount of \$855.75 that they paid the cleaners. The Tenants provided photographs of the rental unit.

The Tenants provide a letter from Mr. J.W. that indicates he met with the Landlord for an inspection and had spent a great deal on cleaners. Mr. J.W. agreed to sign over the security deposit because things were not perfect.

Washing Machine

The Landlord testified that the washing machine was left dirty. The Landlord testified that there was black gunk in the tub. The Landlord testified that she cleaned the washer using bleach. She testified that the washer could not be cleaned so she replaced the machine. The Landlord testified that the washer was 10 -15 years old. The Landlord is seeking to recover the purchase cost of \$360.00. The Landlord provided a photograph of black dirt/ gunk removed from inside the washer.

In reply, the Tenants testified that the washer was working fine. The Tenant submitted that he did not know that it was possible for a washer to get dirty because it washes. The Tenants submitted that the receipt indicates that the Landlord purchased the washer four months after they moved out.

The Landlord replied that she waited until July to rent the unit out.

Tip for Painter

The Landlord testified that she tipped the painter an extra \$200.00. The Landlord is seeking to recover the cost.

Loss of Rent for May 2018

The Landlord testified that the rental unit was not in a condition to be rented at the end of the tenancy. The Landlord testified that prospective Tenants would walk in and leave saying the unit is filthy. The Landlord testified that she rented it out for July 15, 2018. The Landlord testified that she advertised the unit on local websites at the middle of May 2018. She testified that the rental unit was not in rentable condition for the month of May 2018. The Landlord provided photographs of the rental unit taken at the end of the tenancy. The Landlord is seeking \$2,059.00 for loss of rent.

In reply, the Tenants testified that the unit was left clean because they paid for professional cleaners who cleaned the rental unit. The Tenants submitted that the Landlord did not advertise the unit until the middle of May.

Security Deposit

The Landlord applied to keep the security deposit in partial satisfaction of the claims.

The Tenants testified that at the end of the tenancy they agreed that the Landlord could keep the security deposit towards damage and cleaning costs.

Analysis

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

Section 21 of the Residential Tenancy Regulation states:

in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the

rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

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.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

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.

The Residential Tenancy Policy Guideline # Useful Life of Building Elements provides that If the arbitrator finds that a Landlord makes repairs to a rental unit due to damage caused by the Tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the Tenant’s responsibility for the cost or replacement.

The Guideline provides the useful life of the following elements:

- Carpet 10 years
- Washer 15 years
- Refrigerator 15 years
- Stove 15 years
- Drapes 10 years
- Dishwasher 10 years

Landlords Claims

Deck Power Wash

I award the Landlord \$125.00 for the cost of power washing the deck.

Living Room and Bedroom Drapes

I find that the drapes were not new at the start of the tenancy. I accept the Tenants evidence that they paid to have the drapes cleaned. I find that there is insufficient evidence that the drapes were damaged by intentional neglect by the Tenants. The tenancy lasted for approximately six years and it is more likely than not that the drapes were nearing their useful life.

The Landlords claim for the repair and re-cleaning of the drapes is dismissed.

Carpet Replacement (stairs bedrooms)

I find that the carpets were old and in bad shape. I accept the Landlord's evidence that the carpets in the rental unit were dirty at the end of the tenancy. However, I find that the Landlord told the Tenants to not have the carpets cleaned because they were being replaced. I find that the Tenants did not have an opportunity to clean the carpets.

I find that it is more likely than not that the carpets were nearing their useful life and because the Landlord decided to purchase new carpets rather than evaluating any damage after the carpets had been cleaned, I find that the Tenants are not responsible for the replacement cost.

The Landlord's claim for the cost of carpet replacement is dismissed.

Toilet Seat

I award the Landlord \$29.11 for the cost of a new toilet seat.

Bathroom Fixture

I award the Landlord \$89.75 for the cost of a light fixture.

Fan Filter

I award the Landlord \$17.73 for the cost of power washing the deck.

Drywall

I award the Landlord \$13.98 for the cost of drywall.

Fridge Parts

I find that the Tenants are responsible for the damage to the refrigerator. I find that the refrigerator was relatively new and the damage is more than normal wear and tear. I award the Landlord the amount of \$181.70.

Dishwasher

I find that the dishwasher was nine years old. The Tenants testified that it did not work. I acknowledge the Landlord's photograph that shows a dirty dishwasher; however, the Landlord purchased a new dishwasher rather than attempt to clean the existing one. The Landlord is not seeking cleaning costs. I find that there is insufficient evidence from the Landlord that the Tenants are responsible for the replacement cost of the dishwasher due to deliberate actions or neglect. The Landlord's claim for \$673.22 is dismissed.

Stove

I find that the stove was 12 years old and nearing the end of its useful life. I acknowledge the Landlord's photograph shows a filthy oven; however, the Landlord told the Tenants to not bother cleaning it. The Landlord is not seeking a cost for cleaning. The Tenants testified that the stove was working. I find that there is insufficient evidence from the Landlord that the Tenants are responsible for the replacement cost of the oven due to deliberate actions or neglect. The Landlord's claim for \$716.79 is dismissed.

Lightbulbs

I award the Landlord \$27.60 for the cost of lightbulbs.

Cleaning

Based on a preponderance of photographic evidence from the Landlord, I find that the Tenants left the rental unit in an unclean state that is beyond normal wear and tear. This is supported by the Tenants agent, Mr. J.W. who agreed to sign over the security deposit, after the unit was cleaned, because things were not perfect. The Landlord is seeking compensation of \$750.00 but did not provide a receipt to prove the amount of her loss. I find that it is reasonable to award the Landlord some compensation due to what I find is the Tenants breach of section 32 of the Act.

Based on the evidence of the condition of the unit I find that it is reasonable to award the Landlord the amount of \$400.00 for the cost of cleaning the rental unit.

Washing Machine

I find that the washing machine was old and it still worked at the end of the tenancy. I find that there is insufficient evidence from the Landlord that the Tenants are responsible for the replacement cost of the washing machine due to deliberate actions or neglect. The Landlord did not claim for cleaning costs. The Landlord's claim for \$716.79 is dismissed.

Painters Tip

The Landlord's claim to recover a tip given to the painter is dismissed. The Landlord's decision to tip the painter \$200.00 is not recoverable from the Tenants.

Loss of Rent \$2,059.00

The Residential Tenancy Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the Tenant, the Landlord is entitled to claim damages for loss of rent. The Landlord is required to mitigate the loss by completing the repairs in a timely manner.

I find that the Tenants left the rental unit in an unclean state; however, many of the repairs performed by the Landlord were for elements that were at or near their useful life expectancy. I find that the Tenants were not responsible for any delays to replace the carpets or appliances. Also, Landlords are responsible to periodically paint the interior of a rental unit and interior paint has a useful life of 4 years. The Tenants moved out on April 28, 2018, and the Landlord did have some time to have the additional cleaning that I find the Tenants were responsible for.

The Landlord's claim for \$2,059.00 is dismissed.

Security Deposit

The Landlord is holding a security deposit of \$922.50.

Filing Fee

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, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a monetary claim in the amount of \$984.87. After setting off the security deposit of \$922.50 towards the award of \$984.87, I grant the Landlord a monetary order for the balance of \$62.37. The monetary order must be served on the Tenants and may be enforced in the Provincial Court.

Conclusion

I find that the Tenants are responsible for cleaning costs and repair costs to the rental unit.

The Landlord has established a monetary claim in the amount of \$984.87. After setting off the security deposit of \$922.50 towards the award of \$984.87, I grant the Landlord a

monetary order for the balance of \$62.37. The monetary order must be served on the Tenants and may be enforced in the Provincial 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: November 28, 2018

Residential Tenancy Branch