



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-L, FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord appeared with her agent GF ("the landlord"). The tenants attended. Both parties were given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The tenants acknowledged service of the Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find the landlord served the tenants with the Notice of Hearing and Application for Dispute Resolution under section 89.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;

- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agreed they entered into a residential tenancy agreement 22 years ago, in 1996. The tenants submitted a copy of the agreement. Rent at the time the tenants vacated was \$1,215.00. At the beginning of the tenancy, the tenants provided a security deposit in the amount of \$629.00. When the tenants vacated on September 30, 2018, the landlord returned the security deposit after checking the condition of the unit. The parties did not conduct a formal condition inspection report on moving in or moving out.

The tenants testified the house was built in 1944 and was over 50 years old when the tenancy began. The unit had many issues, such as the condition of the walls, wall paper, paint, cabinets, lighting, and so on, all of which showed increasing signs of age as the years of the tenancy passed.

The landlord and the tenants had a cordial relationship throughout the tenancy. The tenants testified that they treated the house and property as though it were their own.

The landlord gave notice to the tenants after the landlord's house burned down that the tenants had to vacate.

The tenants testified that when they were preparing to move out, the landlord told them on numerous occasions not to worry about cleaning, the condition of the carpet, or the state of the unit. The landlord told the tenants she was planning on changes including replacing the carpet which had been in the unit at the time the tenants moved in and which the tenants estimated was 30 years old. The landlord acknowledged this was true. Despite this, the tenants cleaned the carpets before they left.

The landlord stated that after the tenants left, the landlord incurred expenses in renovating, cleaning and repairing, for which she seeks reimbursement. The landlord said she did not expect it would cost what it did to repair and renovate. The landlord claimed reimbursement for the following:

ITEM	AMOUNT
Carpet cleaning	\$199.00
Painting and renovation	\$315.00

Miscellaneous repairs	\$250.00
Painting and wall paper	\$1,200.00
Pictures (for hearing)	8.23
Reimbursement filing fee	\$100.00
Total	\$2,072.23

The landlord said that after the tenants left, she discovered a stain in the carpet. As a result, she hired a professional carpet cleaner and incurred an expense of \$199.00. The tenants stated they did their best to clean the carpet before they left; however, it was about 30 years old and they could not restore it to its original condition.

The landlord claimed that there were holes in the walls where the tenants had removed pictures and shelves. The landlord claimed that the unit required repainting in areas and that the wall paper was damaged. The tenants stated the only holes in the walls related to hanging pictures and normal wear and tear. They deny they are responsible to pay for the landlord's costs of updating and modernizing the unit. They state that all claims by the landlord relate to building elements 22 – 30 years old, except for the painting which occurred 18 years ago.

The landlord stated she incurred costs of painting and repairs. She claimed miscellaneous repairs to replace light fixtures, bulbs, batteries for detectors, a hinge and cover plates. The tenants deny these items needed to be replaced or that it was their obligation to do so.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. In this case, the onus is on the landlords to prove they are entitled a claim for a monetary award.

The tenants had an obligation to leave the unit “reasonably clean”. There was no evidence presented by the landlord, such as a condition inspection report, to establish that the premises were not left “reasonably clean” by the tenant. The landlord acknowledged returning the security deposit to the tenants when they vacated after a “walk through”. This leads me to believe that the landlord was satisfied with the condition of the unit.

With respect to the carpet, *Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises* provides further explanation regarding the responsibility of the tenant at the end of a tenancy. The sections relevant to this matter have been noted below, in part:

CARPETS

...

3. *The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.*

After listening to the testimony of the parties and viewing the evidence, I accept the tenants' evidence the tenants cleaned the carpets before they left and that the carpets were reasonably clean given that they were 20+ years old.

Therefore, on a balance of the probabilities and based on the evidence before me, I decline to award the landlord any compensation for the carpet cleaning.

In determining damages related to repair and replacement costs for building elements, my assessments are determined in accordance with *Residential Tenancy Policy Guideline 40. Useful Life of Building Elements*. This Guideline notes:

Useful life is the expected lifetime, or acceptable period of use, of an item under normal circumstances...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.

Based on the Policy Guideline the useful life of the items for which the landlord seeks compensation is as follows:

Painting (interior) – 4 years

Kitchen counters – 25 years

Fire alarms, smoke detectors – 15 years

Wallpaper (based on useful life of panelling) – 20 years

The tenants testified the unit was unchanged in the 22 years they lived there. That is, no walls were painted, repairs carried out, or renovations conducted. Based upon the testimony of the parties and the evidence submitted, I find that all the remaining claims for compensation of the landlord relate to items which were past their useful life. As such, the tenants are not responsible for the costs associated with the repair and replacement of any of the items claimed by the landlord.

I therefore find the landlords have not met the burden of proof with respect to any of their claims. Accordingly, I dismiss all the landlord's claims without leave to reapply.

Conclusion

I dismiss all the landlord's claims without leave to reapply.

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, 2019

Residential Tenancy Branch