



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNDS, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for damage caused by the tenant, their pets or guests to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on February 23, 2019 and successfully delivered on February 26, 2019. A Canada post tracking number and history were provided as evidence of service. I find that the tenant has been duly served in accordance with the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on February 1, 2017. Current rent in the amount of \$832.00 was payable on the first of each month. The tenant paid a security deposit of \$400.00 and a pet damage deposit of \$400.00. The tenancy ended on January 31, 2019.

A move-in and move-out condition inspection report was completed. The tenant signed the move-in inspection; however, failed to attend the move-out inspection, even after served with a Final Notice of Inspection.

The landlord claims as follows:

a.	Cleaning the rental unit	\$ 315.00
b.	Damaged living room carpet	\$1,062.60
c.	Damaged heater	\$ 109.99
d.	Damaged television	\$ 300.00
e.	Paint	\$ 150.00
f.	Taken items: couch, 2 chairs, area rug, vacuum	\$2,508.60
g.	Filing fee	\$ 100.00
	Total claimed	\$4,545.20

Cleaning the rental unit

The landlord testified that the tenant did not leave the rental unit reasonable clean at the end of the tenancy. The landlord stated that the kitchen cupboards were left dirty, all the appliances were not cleaned, and the floors were not washed. The landlord stated that the bathroom was dirty. The landlord stated that the entire rental unit required cleaning. The landlord seeks to recover cleaning cost in the amount of \$315.00. Filed in evidence is a video of the rental unit and an estimate for cleaning.

Damaged living room carpet

The landlord testified that the carpet was in fair condition when the tenancy started. The landlord stated at the end of the tenancy there were two large holes in the carpet. The landlord stated that the carpet was approximately ten years old at the end of the tenancy. The landlord seeks to recover the estimate cost to replace the carpets in the amount of \$1,062.60. Filed in evidence are photographs of the damaged carpet and an estimate for repair.

Damaged heater

The landlord testified that the provided the tenant with a space heater for the unit. The landlord stated that the cord on the space heater was damaged, most likely by the tenant's dog chew on it. The landlord stated that the tenant attempted to fix the cord by wrapping it in tape; however, that is a safety issue.

The landlord testified the space heater was two years old as it was purchased at the start of the tenancy. The landlord seeks to recover the cost of the heater in the amount of \$109.99. Filed in evidence is a photograph of the heater cord showing damage. Filed in evidence is an estimate for a new heater.

Damaged television

The landlord testified that they purchased a new television for themselves and placed the old television in the rental unit. The landlord stated that the television was in good working order at the start of the tenancy; however, at the end of the tenancy it was not working. The landlord stated there was no physical damage to the television; however, the tenant did not notify them that there were any problems with the television. The landlord seeks to recover the estimate value of a used television in the amount of \$300.00.

Paint

The landlord testified that the tenant caused damage to the walls, as there were lots of scraps on the drywall. The landlord stated that they have to repair the walls and repaint. The landlord stated the unit was painted just prior to the tenancy commencing. The landlord seeks to recover the cost of the paint in the amount of \$150.00. Filed in evidence are photographs of the walls.

Taken items: couch, 2 chairs, area rug, vacuum

The landlord testified that the rental unit was partial furnished. The landlord stated that at the end of the tenancy the tenant took the couch, two chairs that belonged to the dining room table, an area rug and the vacuum. The landlord stated that the couch was approximately ten years old, but in good condition at the start of the tenancy; the area rug was new at the start of the tenancy; and the vacuum was about ten years old.

The landlord testified that they could see most of these items in the tenant's truck. The landlord stated that the couch was damaged by the tenant's dog chewing the arm.

The landlord testified that they took a video showing the tenant taking these items and the conversation. The landlord seeks to recover the estimate cost to replace the items in the amount of \$2,508.60.

Filed in evidence is a video recording which shows the tenant had taken the items. The tenant indicated in the video that the landlord gave them permission to take them to the dump. However, the landlord in the video is clearly stating they do not have permission and the tenant should have removed the items from their truck. They did not and left the property.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Cleaning the rental unit

I accept the undisputed testimony of the landlord that the tenant did not leave the rental unit clean as required by the Act. The video shows the appliances were left dirty, the bathroom was not clean and the kitchen cupboards and floors were not washed. I find the tenant breached section 37 of the Act. Therefore, I find the landlord is entitled to cleaning costs in the amount of **\$315.00**.

Damaged living room carpet

I accept the undisputed testimony of the landlord that the tenant caused damage to the carpet. This is supported by the photographs filed in evidence.

The Residential Tenancy Policy Guideline 40 defines the useful life of building elements. If the tenant damaged an item, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement.

I have determined based on the guideline that the carpet had a useful life span of ten years. The carpet was ten years old at the time of replacement. I find the useful

lifespan of the carpet had expired. Therefore, I find the landlord is not entitled to compensation.

Damaged heater

I accept the undisputed testimony of the landlord that the tenant caused damage to the heater, as it appears the cord was chewed by the tenant's dog. This is supported by the photograph.

I have determined based on the guideline that the electric heater (heating system) had a useful life span of 15 years. The heater was two years old at the time of replacement. I find the landlord is entitled to recover the depreciated value of **\$95.32**.

Damaged television

I accept the undisputed testimony of the landlord that the television was not working at the end of the tenancy. However, I am not satisfied it was not working by the neglect of the tenant, as there was no evidence of damage. I find it more likely than not the television was simply broken due to normal use and the aging process. Therefore, I dismiss this portion of the landlord's claim.

Paint

I accept the undisputed testimony of the landlord that the tenant caused damage to the walls as the photographs show scraping. The move-in inspection shows the paint on the walls were in good condition at the start of the tenancy. I find the landlord is entitled to recover the cost to repair the walls in the amount of **\$150.00**.

Taken items: couch, 2 chairs, area rug, vacuum

I accept the undisputed testimony of the landlord that the tenant took the couch, two chairs, area rug and vacuum. These items appeared to have been damaged by the tenant's dog. This is supported by the video recording.

Although the useful lifespan of the furniture items may have been past their useful lifespan of ten (10) years, I find the tenant should have left those items when asked by the landlord as shown in the video. I find the tenant had no right to take the landlords property at that point. Therefore, I find it not appropriate to apply Policy Guideline 40, as this could be determined as theft and it took away the landlord right to have the items repaired, if possible. However, I find due to the age of the items, it would be an unjust enrichment to the landlord to receive the full value claimed. Therefore, I grant the landlord half of the claimed value in the total amount of **\$1,254.30**.

I find that the landlord has established a total monetary claim of **\$1,914.62** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the Deposits of **\$800.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,114.62**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: June 05, 2019

Residential Tenancy Branch