



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

AMENDED DECISION

Code MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

This hearing commenced on June 13, 2019 and was adjourned due to insufficient time. The interim decision should be read in conjunction with this decision.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on February 1, 2018 and was to expire on January 31, 2019. Rent in the amount of \$2,000.00 was payable on the first of each month. The tenants paid a security deposit of \$1,000.00 and a pet damage deposit of \$500.00. The tenancy ended on January 31, 2019.

The parties agreed that the rental unit was rented furnished. No inventory list was provided or signed by the parties. The parties agreed a move-in and move-out condition inspection report was not completed.

The landlords claim as follows:

a.	Carpet cleaning	\$ 252.00
b.	Desk damage	\$ 204.95
c.	Fireplace screen damage	\$ 86.22
d.	Candles missing	\$ 47.04
e.	Repair bench	\$ 100.00
f.	Vinyl floor damage	\$ 925.57
g.	Kitchen drawer damage	\$ 38.70
h.	Missing items <ul style="list-style-type: none"> • Tupperware, bowls, towels set, pillow protectors, double comforter, garbage can 	\$ 427.39
i.	Inside drawer damage	\$ 10.03
j.	White fur stool damage	\$ 67.19
k.	King Comforter damage	\$ 204.95
l.	Art frame damage	\$ 13.46
m.	Tile damage	\$ 1,529.52
n.	Shower curtain	\$ 33.59
o.	Toilet seat damage	\$ 24.62
p.	Bed post damage	\$ 43.65
q.	Painting and mask damaged	\$ 1,286.88
r.	Window cleaning	\$ 71.15
s.	Filing fee	\$ 100.00
	Total claimed	\$5,822.61

Carpet cleaning

The landlords testified that the tenant did not clean the area rug at the end of the tenancy and it was left dirty. The landlords stated they had to pay to have it cleaned. The landlords seek to recover the cost of cleaning in the amount of \$252.00. Filed in evidence are photographs.

The tenants testified that when they moved into the premises the rug was dirty from pet fur and they removed the rug and placed in storage. The tenants stated that it was in the same conditions it was when the tenancy commenced.

The landlords confirmed they did find the area rug in storage when they moved back into the home.

Desk damage

The landlords testified that the desk had no damage before the tenants moved into the rental unit and it was less than one year old. The landlords testified that the tenants caused unreasonable damage to the desk. The landlords stated they seek to recover the comparable estimate for the desk in the amount of \$204.95. Filed in evidence are photographs.

The tenants testified that the desk was clearly used when they moved into the premises. The tenants stated that the desk did have some additional wear and tear at the end of the tenancy.

Fireplace screen damage

The landlords testified that the tenants caused damage to the screen of the fireplace as there was white substance imbedded in the screen. The landlords stated that they do not know what it was, or what happened to it. The landlords stated that they covered it with a free-standing guard. The landlords seek to recover the cost of \$86.22. Filed in evidence are photographs.

The tenants testified that it could be wax from a melted candle and could easily be removed if the wax was heated.

Candles missing

The landlords testified that the tenants were provided wax candles, which they were told not to use and that they were simply to make it look nice. The landlords stated the candles were missing at the end of the tenancy. The landlords seek to recover the estimated cost of the candles in the amount of \$47.04.

The tenants acknowledged that there were candles at the start of the tenancy. The tenants stated that they were told by the landlords that they could use them. The tenants stated the candles had been used prior to their tenancy commencing.

Repair bench

The landlords testified that the tenants caused damage to the wood bench as it looks like the finish was scrapped off. The landlords stated that they have to have the bench sanded and varnished and seek to recover the cost in the amount of \$100.00. Filed in evidence are photographs.

The tenants testified that the bench was in the exact same condition as when the tenancy started. The tenants stated that they had the bench covered with a fur covering and it was rarely used.

Vinyl floor damage

The landlords testified that the tenants caused damage to the vinyl floors, which had recently been replaced before the tenancy commenced. The landlords stated that there were large scratches in the flooring. The landlords stated that they received a quote for repairing the floor in the amount of \$925.87. Filed in evidence are photographs.

The tenants testified that the floors were showing signs of traffic when they moved in to the premise. The tenants stated that it is tough to make out any damage in the photographs.

Kitchen drawer damage

The landlords testified that the kitchen drawer was damaged by the tenants as the front of the drawer was detached and it cannot be fixed. The landlords stated it was cheaper

to install a new drawer and seek to recover the cost of \$38.70. Filed in evidence are photographs.

The tenants testified that the front of the kitchen drawer fell off shortly after the tenancy started under normal use. The tenants stated it was not a new product and it is not uncommon for a drawer front to fall off under normal use.

Missing items

The landlords testified that the tenants were provided, tupperware, bowls, towels set, pillow protectors, double comforter, and a garbage can at the start of the tenancy and these items were missing at the end of the tenancy. The landlords seek to recover the cost of \$427.39.

The tenants testified that there was no inventory list completed. The tenants stated that the tupperware does not look familiar. There were no matching bowl sets and they did not use any of the landlords' linens and they had purchased their own garbage can. The tenants deny they kept any of these items.

Inside drawer damage

The landlords testified that the tenants caused damage to the inside of a drawer as it was stained with something pink. The landlords stated that they are not replacing the drawer; however, seek to recover the cost of a drawer liner in the amount of \$10.03. Filed in evidence are photographs.

The tenants deny they caused any damage to the inside of the drawer and it was returned to the landlords in the same condition it was received.

White fur stool damage

The landlords testified that the tenants caused damage to the white fur stool as there was some pink staining on the fur. The landlords stated they were not sure what the staining was from. The landlords stated that the replacement cost of the stool is the amount of \$67.19. Filed in evidence are photographs.

The tenants testified that the stool is in the same condition it was received. The tenants deny causing any damage to the stool.

King Comforter damage

The landlords testified that the tenants caused damage to the comforter as they notified us that they put it in the dryer too long and burnt it. The landlords stated that the tenants said they would replace it. The landlords seek to recover the cost of a new comforter in the amount of \$204.95.

The tenants testified that they did not use the landlords' linens during the tenancy. The tenants stated that they unpacked the comforter and they placed the comforter in the dryer to freshen it up for the landlords' return.

The tenants testified that at first, they took responsibility; however, they are now questioning whether the marks were on the comforter at the start of the tenancy as it was not inspected, and they did not inspect the comforter when they put it in the dryer.

Art frame damage

The landlords testified that the bracket that holds the wood together on the art frame was broken. The landlords stated that they are doing their best to fix things and they fix the frame by replacing the bracket. The landlords seek to recover the cost of \$13.46.

The tenants deny causing any damage to the picture frame and believe it was pre-existing.

Tile damage

The landlords testified that the tenants caused damage to the tiles on the kitchen counter. The landlords stated three tiles were on the front edge and one was beside the faucet. The landlords testified that both bathroom marble countertops were stained with green and pink. The landlords stated that the stains cannot come out of the marble. The landlords seek the replacement cost for new countertops and tiles in the amount of \$1,529.52.

The tenants testified that the tiles on the front of the counter fell off due to poor installation and not neglect.

The tenants testified that the bathrooms were not pristine when they moved in. The tenants stated that it was a well-used family home. The tenants deny they caused damage to the countertops.

Shower curtain

The landlords testified that the shower curtain was stained at the end of the tenancy. The landlords stated they do not know how it was stained; however, it could be from purple shampoo or other children products. The landlords stated that they seek to recover the cost of the shower curtain in the amount of \$33.59.

The tenants deny they caused damage to the shower curtain.

Toilet seat damage

The landlords testified that the tenants caused damage to the toilet seat as there were marks and grooves. The landlords seek to recover the replacement cost of a new toilet seat in the amount of \$24.62.

The tenants testified that there is no way they caused any damage to the toilet seat.

Bedpost damage

The landlords testified that the tenants caused damage to the bedpost. The landlords stated that they were able to cover the damage with paint. The landlords seek to recover the estimate cost of the paint in the amount of \$43.65.

The tenants testified that they deny they caused damage to the bedpost. The tenants stated there was no move-in condition inspection report. The tenants stated when they walked through the premise it was upside down as the landlord were packing.

Painting and mask damaged

The landlords testified that the tenants caused damage to the painting as it appears there is something on the painting like glitter glue in two places. The landlords state that the picture is large, which is approximately two feet from the floor and is six feet in length. The landlords stated they cannot go back to the original artist, so they gave an estimate of a similar painting in the amount of \$670.88.

The landlords testified that the tenants caused damage to a mask that was on the wall. The landlords stated there was damage to both sides of its nose. The landlords stated that they believe the mask may have fallen on the ground. The landlords seek to recover the comparable cost of \$616.00.

The tenants deny they caused any damage to the painting. The tenants stated that they had no contact with the mask causing any damage. The tenants stated that they treated everything in the home with care.

Window cleaning

The landlords testified that there was a lot of mould in the window sills. The landlords stated that it was the tenants' responsibility to clean the mould from the windows at the end of the tenancy. The landlords seek to recover the cost of cleaning in the amount of \$71.15.

The tenants testified that when they move in to the premises there was lots of mould in the windows which they had to clean.

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 landlords have the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

Carpet cleaning

I am not satisfied that the tenants left the carpet unreasonably clean. The photographs filed in evidence show small fibrous items on the carpet on an extremely enlarged photograph. This is unreasonable as this simply can be fibers from the carpet or fibers that could not be removed.

Further, the tenants' evidence was they did not use the area rug during their tenancy and it was placed in storage. This is supported by the landlords' evidence that they found the carpet stored. Therefore, I dismiss this portion of the landlords' claim.

Desk damage

I am satisfied that the damage to the desk was beyond normal wear and tear. While I accept the tenants' evidence that the desk was not new and may have had some signs of wear as there is no move-in condition inspection report.

However, the photographs support this damage was caused by neglect as they are large areas that were clearly damaged. The tenants had an obligation to protect the desk, such as using a placemat.

However, I am not satisfied the landlords are entitled to the full cost of replacing the desk. Therefore, I find a reasonable amount for compensation is half the amount claimed in the amount **\$102.47**.

Fireplace screen damage

The evidence of the landlords was the fireplace screen was damaged as there is a white substance on the bottom piece. The landlords submitted that they don't know what it was, or what happened to the screen. The evidence of the tenants was that it could be wax from a melted candle and could be easily removed.

I accept there is a white substance on the fireplace screen; however, I am not satisfied that it cannot be removed from the screen. There was no evidence for a qualified person indicating the substance could not be removed from a proper cleaning. Therefore, I dismiss this portion of the landlords' claim.

Candles missing

Both parties have provided a different version of events. The landlords' version was the wax candles were missing and the tenants were instructed not to use them. The tenants' version was that they were told they could use the candles.

As both versions are probable and the onus is on the landlords to prove their version, I find without further evidence from the landlords, such as written signed instruction that the candles were not to be used, they have not met the burden of proof. Therefore, I dismiss this portion of the landlords' claim.

Repair bench

I am not satisfied that the wood bench was damaged by the tenants. While the before picture and after picture are significantly different as the colors appear to be different. It appears the entire finish on the bench is equally stress. This leaves me to believe that there are other factors causing the finish to deteriorate. There was no evidence, such as dent, scratched that would leads me to believe the wood bench was damaged by neglect. Therefore, I dismiss this portion of the landlords' claim.

Vinyl floor damage

I am not satisfied that the tenants caused any damage to the vinyl floor. The photographs the landlords have provided of after photographs do not support the floors were damaged by neglect or that there is any significant damage that the floors would be required to be replaced. While there may be very minor scratching, even that is

difficult to see. I find this is simply wear and tear under reasonable use. Therefore, I dismiss this portion of the landlords' claim.

Kitchen drawer damage

I accept the evidence of the tenants that the drawer front fell off during the tenancy from normal use. This is not damage from neglect, rather wear and tear. Therefore, I dismiss this portion of the landlords' claim.

Missing items

In this case, both parties provided a different version of items that the landlords provided to the tenants for their use during the tenancy. However, the landlords did not have an inventory list that was signed by the tenants. Therefore, I am unable to determine what items the tenants actually received. Therefore, I dismiss this portion of the landlords' claim.

Inside drawer damage

I am not satisfied that the tenants caused damage to the inside of the drawer. There was no move-in condition inspection report to prove the drawer was inspected at the start of the tenancy. The before photograph does not show the inside of the drawer.

Further, a stain in a drawer is not unreasonable. Therefore, I dismiss this portion of the claim.

White fur stool damage

I am not satisfied that the tenants caused damage to the stool. There was no move-in conditional inspection report to prove the stool was inspected at the start of the tenancy. Further, the staining on the white fur is minimal and simply can be from normal wear and tear under reasonable use. Providing white furnishing and expecting them not be shows staining is unreasonable. Therefore, I dismiss this portion of the claim.

King Comforter damage

I am not satisfied that the tenants caused damage to the comforter. While I accept there was discoloring found at the end of the tenancy. There was no move-in condition inspection report to prove the comforter was inspected at the start of the tenancy.

Further, the before photographs shows the cover for the comforter and the bed nicely made, it does not show the comforter that is in the cover, which is the subject of this matter. Therefore, I dismiss this portion of the claim.

Art frame damage

I am not satisfied that the tenants caused damage to frame. There was no move-in condition inspection report to prove the frame was inspected at the start of the tenancy. While there is a before picture taken, it was not on the day the tenancy commenced. Therefore, I dismiss this portion of the claim.

Tile damage

I am not satisfied that the tenants caused damage to the kitchen tiles that was caused by neglect. The evidence of the tenants was that three of the front counter tiles fell off under normal use and they attempted to put them back on. The evidence of the tenants was that they were not properly installed. I find the landlords have failed to prove the tiles fell off by the neglect of the tenants. Therefore, I dismiss this portion of the landlords' claim.

I am not satisfied that the tenants caused damage to the marble countertops in the bathroom that was above normal wear and tear under reasonable use. The photographs provided by the landlords show some minor staining, which can be from reasonable use. Further, if the marble countertops required special instructions, it was the landlords' responsibility to provide those instructions to the tenants. Although the landlords provided before photographs they were not taken on the day the tenancy commenced. Therefore, I dismiss this portion of the landlords claim.

Shower curtain

I am not satisfied that the tenants cause damage to the shower curtain that was above normal wear and tear. The shower curtain was stained which simply can be from a product being used. This is normal wear and tear. Therefore, I dismiss this portion of the landlords' claim.

Toilet seat damage

I am not satisfied that the tenants caused damage to the toilet seat that required it to be replaced. Therefore, I dismiss this portion of the landlords' claim.

Bedpost damage

I am not satisfied that the tenants caused damage to the bedpost. There was no move-in condition inspection report to prove the bed post was inspected at the start of the tenancy. Further, this simply can be wear and tear as the damage is on the post of a leg. Therefore, I dismiss this portion of the claim.

Painting and mask damaged

I am not satisfied that the tenants caused damage to the painting that is above normal wear and tear. The photographs provided show very minor spots at very close range. I find it unreasonable that the landlords would seek the cost of replacement. Further, there was no move-in condition inspection report to prove the picture was inspected at the start of the tenancy.

I am not satisfied that the tenants cause damage to the mask. The photographs provided by the landlord does not show any visible damage. Furthermore, even if there was minor damage that does not justify the cost of replacement. Therefore, I dismiss this portion of the landlords' claim.

Window cleaning

I accept the landlords photograph shows one window sill that does not look well cleaned; however, the tenants are only required to leave the rental unit reasonably clean. I find based on the evidence that this does not support the unit was left unreasonable clean. Therefore, I dismiss this portion of the landlords' claim.

I find that the landlords have established a total monetary claim of **\$102.47** comprised of the above described amount.

As the landlords were largely unsuccessful with their application, I decline to award the landlords the cost of the filing fee.

I order that the landlords retain the amount of **\$102.47** from the security deposit in full satisfaction of their claim. I find the tenants are granted a formal order for the balance of their deposits in the amount of **\$1,397.52**. This order may be filed in the Provincial

Court (Small Claims) and enforced as an order of that Court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords.

Conclusion

The landlords are granted a monetary order and may keep a portion of the security deposit in partial satisfaction of the claim and the tenants are 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: October 15, 2019

Residential Tenancy Branch