



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to applications by the tenant and the landlords.

The tenant's application is seeking orders as follows:

1. Return of double security deposit; and
2. To recover the cost of filing the application.

The landlords' application is seeking orders as follows:

1. For a monetary order for damages to the rental unit;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

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

Is the tenant entitled to the return of double the security deposit?
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 the tenancy began on February 26, 2016. Rent in the amount of \$2,240.00 was payable on the first of each month. The tenant paid a security deposit of \$1,000.00. The tenancy ended on April 3, 2020.

The parties agreed a move-in and move-out condition inspection report was completed.

Tenant's application

The tenant submits in their application they gave the landlord their forwarding address in an email on April 2, 2020.

The landlords submit they made their application within the statutory time limits as the tenancy did not end until April 3, 2020.

Landlords' application

At the outset of the hearing the landlords withdrew item 4, which is for the removal of dead trees/shrubs/vines/flowerbeds.

The landlords' claim as follows:

a.	Drywall repair bathroom	\$ 162.60
b.	Fence panel replacements	\$ 418.81
c.	Vinyl plank repair	\$ 228.37
d.	Carpet replacement	\$1,040.09
e.	Filing fee	\$ 100.00
	Total claimed	\$1,949.87

Drywall repair bathroom

At the outset of the hearing the tenant agreed that they are responsible for the drywall repair and are not disputing this portion of the landlords' claim.

Fence panel replacements

The landlords testified that at the end of the tenancy there were two fence panels missing in the backyard and there was a piece of plywood leaning up against the fence. The landlord stated they were told the fence panels were removed to allow the children to go between yards. The landlord stated that the fences was about 10 years old at the end of the tenancy. The landlords seek to recover the cost of replacing the panels in the amount of \$418.81.

The tenant testified that the fence was not inspected or discussed at the move-in condition inspection. The tenant stated that the fence appeared to be old and rickety . The tenant stated they did not remove any fence panels during their tenancy and there was a piece of plywood on the neighbor's property blocking the hole. The tenant stated they do know anything out the 2 fence panels.

Vinyl plank repair

The landlords testified that the plank floor was just replaced by the insurance company and it was damaged at the end of the tenancy. The landlord seeks to recover the cost of \$228.37.

The tenant testified that there was a flood in the rental unit and the landlord's insurance replaced the flooring. The tenant stated that they had tenant insurance and their insurance company moved them out of the rental unit and back into the rental after the repairs were made. The tenant stated it was their movers that caused the damage to the flooring. The tenant confirmed they did not contact their insurance company regarding the damaged caused by their movers.

Carpet replacement

The landlords testified that the carpet in the bedroom had to be replaced because a rat chewing a hole in the carpet. The landlords stated that the tenant reported the rodent and the pest control found that the bedroom was in such poor shape and that there was stuff all over the floor and the mattress was soaked with urine. The landlord stated that due to the lack of cleaning this was a perfect environment for the rat to live. The landlord stated that due to the neglect of the tenant they had to replace the carpet. The landlord stated that the carpet was at least 10 years old at the time. The landlords seek to recover the cost to replace the carpet in the amount of \$1,040.09.

The tenant testified that they take care of challenging adults who have incredible hygiene issues. The tenant stated that they had a cleaner come every second week to clean their bedroom. The tenant stated that they had vacated the premise while the repairs were being made and they believe a rat must have gotten in to the premise by the restoration company. The tenant stated they are not responsible for the damage.

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, both parties have the burden of proof to prove their respective 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.

Tenant's application

In this case, the tenancy ended on April 3, 2020. The landlords had 15 days from when the tenancy ended to either return the security deposit or make a claim against the deposit. I find the last day the landlords had to file their application claiming against the deposit was April 18, 2020; however, as that was a date the Residential Tenancy Branch was not opened that day automatically was extended to April 20, 2020.

The landlords' application was filed on April 20, 2020, claiming against the security deposit. I find the doubling of the security deposit does not apply in this matter. Therefore, I dismiss the tenant's application for the return of double. As the tenant was not successful with their application and there was no need for the tenant to make this application as the landlords had already made a claim against their security deposit, I decline to award the cost of the filing fee.

Landlords' application

Drywall repair bathroom

The tenant agreed that they are responsible for the drywall repair. Therefore, I find the landlords are entitled to recover the cost of the repair in the amount of **\$162.60**.

Fence panel replacements

I am not satisfied that the tenant is responsible for the missing fence panels. The tenant denied they took or removed the fence panels and stated what was there at the start of the tenancy was old and rickety.

In this case, the fence was not inspected at the start of the tenancy, nor have the landlords provided any supporting evidence of the condition of the fence at the start of the tenancy, such as a photograph. I find the landlords have failed to establish that the tenant caused damage to the fence due to insufficient evidence. Therefore, I dismiss this portion of the landlords' claim.

Vinyl plank repair

In this case, the rental unit had flooded, and the tenant's insurance company paid to move the tenant's belongings from the rental unit while the repairs were being made by the landlord, which included installing a new vinyl plank floor. The evidence of the tenant was that the floor was likely damaged when their furniture was moved back into the rental unit. I find it was the tenant's responsibly to notify their insurer that the moving company caused damage to the property and have them make the repair. I find the tenant is responsible for the damage that was caused by their furniture movers. Therefore, I find the landlords are entitled to recover the cost of the replacement planking in the amount of **\$228.37**.

Carpet replacement

The Residential Tenancy Policy Guideline #40 - Useful Life of Building Elements, sets out the expected life of a building element. Carpet has a useful life span of 10 years. Even If I find the tenant was responsible for the damage, I find the carpet was past their useful lifespan and had fully depreciated. Therefore, I dismiss this portion of the landlords claim.

I find that the landlords have established a total monetary claim of **\$490.97** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the above amount of \$490.97 from the tenant's security deposit of **\$1,000.00** in full satisfaction of the claim and I grant the tenant the balance due of their security deposit in the amount of **\$509.03**, pursuant to section 67 of the Act.

Should the landlords fail to return the balance of the security deposit. 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 tenant's application for double the security deposit is dismissed. The landlords are granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim and the tenant is granted a formal order for the balance due of their security deposit.

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: September 2, 2020

Residential Tenancy Branch