



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gardenia Homes (Partington)
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for damages to the unit - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord is represented by an Agent (the “Landlord”) who states that there was no intention to name the Agent as a Party to the proceedings in the application. The Tenant confirms the its email address as set out in the Landlord’s application is correct.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started February 22, 2018 and ended November 30, 2019. Rent of \$2,200.00 was payable on the first day of each month. The security deposit has been dealt with in a previous decision. The Parties mutually conducted both a move-in and move-out inspection with completed reports copied to the Tenant. The move-out inspection was completed on December 1, 2019.

The Landlord states that the Tenant left scratches on the master bedroom door and damaged a closet door. The Landlord states that the doors and tracks were repaired and claims \$435.75 as the costs. The Landlord provides an invoice and a photo of the bedroom door. The Landlord states that the doors were original to the unit and are 12 years old as of this date. The Tenant states that it did not leave these doors damaged. The Tenant states that the Landlord's door photo is the utility door, noted in the move-in report as damaged with scratches.

The Landlord states that the Tenant left the walls very dirty and with scratches well above wear and tear. The Landlord claims \$3,885.00 as the costs to paint the walls. The Landlord states that the walls were last painted just before the start of the tenancy in February 2018. The Landlord states that the move-in report notes new paint. The Tenant states that it did not leave the walls damaged and that the unit was not painted at move-in. The Tenant states that the move-in report notes that bedroom wall was damaged with patches and dirt.

The Landlord states that the Tenant left the carpets in two bedrooms stained. The Landlord states that the carpets were 4 years old at the start of the tenancy. The Landlord confirms no supporting evidence of the age of the carpets. The Landlord states that the move-in notes the carpets as in good condition and the move-out as in poor condition. The Landlord states that they did send a cleaner, but the stains would not come off. The Landlord claims \$1,926.81 as costs to remove the old carpet and lay the new carpet. The Landlord provides an invoice and photos. The Tenant states that the carpets were left cleaned at the end of the tenancy and that they were more than 10 years old. The Tenant provides a receipt for the carpet cleaning.

The Landlord states that the Tenant left the stove with the burners not working. The Landlord claims \$938.00 as the costs to replace the stove. The Landlord confirms that its claim was based on an estimate but that the costs were since incurred in January 2020. The Landlord does not have an invoice for the payment. The Landlord states

that the stove was inspected and would have cost \$600.00 for the repairs without a warranty. The Landlord confirms that it did not provide any report from the inspection of the stove. The Landlord provides the estimate and photos of the interior of the oven. The Tenant states that the burners were working at move-out.

The Landlord states that the Tenant left the vertical drapes dirty with some broken. The Landlord states that instead of replacing them for the estimated cost of \$1,572.00, the drapes were washed by their contractors. The Landlord states that the drapes were original to the building that was 12 years old at the start of the tenancy. The Landlord claims the cleaning costs of \$435.00. The Landlord confirms no invoice has been provided for these costs. The Landlord provides the estimate and photos. The Tenant states that the drapes are noted in the move-in report to be damaged and dirty.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. I note that the Landlord did not provide a copy of the condition reports and did not dispute the Tenant's evidence of the contents of the reports, copies of which were provided by the Tenant.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

The move out report does not note damage to the closet and bedroom doors and the Landlord has not provided any supporting evidence of damage other than a photo of a

door. This photo appears to match the Tenant's evidence of the door being a utility door that had pre-existing damage as noted in the move-in report. For these reasons and given the Tenant's evidence of not having damaged the doors, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the damage claimed and I dismiss the claim for repair of the doors.

No notation of new paint could be seen on the move-in report. The Landlord does provide a photo that shows a small area of wall that has what appears to be mold. There are no other photos of any other walls being damaged. Given the move-in report note of pre-existing damage to the bedroom wall and the Tenant's evidence of not having new paint I consider that the Landlord's evidence of the damage to the walls at move-out is not reliable or is exaggerated. As a result, I find on a balance of probabilities that the Landlord has not substantiated that the walls beyond the mold on one corner was left damaged. As there is no evidence that this area of the wall could not be washed to return it to a reasonable state, I find that the Landlord has not substantiated that it took reasonable steps to mitigate its loss for this area. For these reasons I dismiss the Landlord's claim for painting the unit.

Residential Tenancy Branch (the "RTB") Policy guideline #40 provides that the useful life of carpet is 10 years. The Landlord's evidence of the age of the carpet is not supported and I consider the Landlord's oral evidence overall to be unreliable. I therefore prefer the Tenant's evidence that the carpet was older than 10 years. I also accept the Tenant's supported evidence of having cleaned the carpets at move-out. The move-out report does not note any damage to the bedroom carpets. While the Landlord's photos show stains on the carpets, the Landlord did not provide any evidence of its own cleaner to substantiate that the stains could not be removed. Nonetheless, given the age of the carpet at move-out, I find that any damage remaining after the Tenant's cleaning remains the responsibility of the Landlord. I dismiss the claim for the replacement of the carpets.

There is nothing in the move-out report that indicates damage to the burners. The Landlord has not provided a copy of the repair inspection of the damaged burners. The Landlord provided no supporting evidence that it incurred replacement costs. For these reasons and given the Tenant's evidence of the burners working at move-out I find on a balance of probabilities that the Landlord has not substantiated its claim for costs to replace the stove.

The move-in report notes the drapes to be dirty and damaged and the move-out report does not note any damage. Further the Landlord's provided no supporting evidence that it incurred cleaning costs. For these reasons I find on a balance of probabilities that the Landlord has not substantiated its claim for costs to replace or clean the drapes and I dismiss that claim.

As none of the Landlord's claims have been successful, I find that the Landlord is not entitled to recovery of the filing fee and I dismiss this claim. In effect the application is dismissed in its entirety.

Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: October 22, 2020

Residential Tenancy Branch