



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, 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, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

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

The Residential Tenancy Branch Rules of Procedure 6.11. prohibits the recording of the dispute resolution hearing. If any recording is made and used for any purpose the party who made the recording will be referred to the Residential Tenancy Branch Compliance Enforcement Unit and may be subject to an administrative penalty of up to \$5,000.00 for each day the contravention or failure continues.

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 the applicants' purchased the property from the respondents' who had owned the home for approximately 35 years. The property transfer took place on November 29, 2018. The parties agreed that the respondents remained on the property under a tenancy agreement as tenants.

Rent in the amount of \$2,800.00 was payable on the first of each month. The tenants paid a security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00. The tenancy ended on November 14, 2020.

A move-in condition inspection was not done because the seller who became the tenants had not vacated the property. The landlords are using their home inspection report that was completed for the purchase of the property, as evidence of the condition of the rental unit at the start of the tenancy. Filed in evidence is a copy of this report.

The landlords claim as follows:

a.	Painting	\$ 2,520.00
b.	Junk removal	\$ 495.02
c.	Fix concrete wall	\$ 316.16
d.	Cleaning	\$ 347.13
e.	Filing fee and Canada post fees	\$ 134.10
	Total claimed	\$3,712.41

Painting

The landlords testified that at the end of the tenancy the tenants filled all the holes in the wall; however, they were unable to colour match the paint. The landlords stated as a result they had to have the walls repainted. The landlords confirmed they did not paint the rental unit during the tenancy, which lasted two years and have no idea when the premises was last painted. However, they property inspection report showed that the paint was in good condition when purchased the property.

The tenants testified that they are not responsible for painting. The tenants stated that they had lived in the home prior to the tenancy commencing as the owners, and the holes were in the walls when the tenancy commenced. The tenants stated that they filled the holes in the walls as they had family pictures and artwork as a courteous to

the landlord. The tenants stated that the landlord fully renovated the premise after they vacated and simply want them to pay to have the premises repainted.

Junk removal

The landlords testified that the tenants left behind scrap wood, metal and patio furniture. The landlord stated that they had to pay to have the junk removed. The landlord stated that that the amount they paid was a fixed rate for half a load of garbage. Filed in evidence is a receipt and photographs.

The tenants testified that they left the wood behind because it was for the exterior of the home which they felt they were obligated to do so, under the contract to purchase. The tenants stated that they felt the lattice was also part of the home. The tenants stated that the patio furniture was given to another renter in the basement and was no longer their responsibility.

The tenants testified that the photographs the landlords have provided are misleading the just show the truck full of items, not what is actually in the truck. The tenants stated someone they knew drove by and by chance took a picture, which show the landlords were disposing items for their renovation, such as the hood fan. The tenants stated they are not responsible for the cost of disposing the landlords' property, and any issue of items relating to the sale of the property, such as the wood for the siding and lattice should have been discussed at that time.

Fix concrete wall

The landlords testified that the corner of the exterior concrete rock wall was cracked, and they had to buy supplies to make the repair. The landlord stated that they bought the material at the local hardware store. Filed in evidence is a receipt.

The tenants testified that they are not responsible for the repair. The tenants stated that when the property was purchased by the landlords there were lots of issue with the concrete walkway as it was cracking. The tenants stated that they have no control on the deterioration of the concrete wall, as it is exposed to rain, snow, freezing, and normal weather elements. The tenants stated that the walkway area was also not for their exclusive possession as this area is accessed by other renters. The tenants deny they caused any damage to the wall.

The landlords confirm that they have no evidence that the damage was caused by the tenants; however, believe it could have been damage as the tenant has large equipment on the property.

Cleaning

The landlords testified that tenants did not properly clean the refrigerator and they found a small pea in the dishwasher. The landlords stated that the cupboards were also stained and sticky. The landlords stated that the tenants did not clean the airducts and they were extremely dirty. The landlords stated that they have filed an estimate for cleaning; however, they never did hire anyone. Filed in evidence are photographs.

The tenants testified that the landlord is being unreasonable. The tenants stated that the entire premise was cleaned. The tenants stated that the cupboards were stained, which is expected as the kitchen cabinets were old, and they were that way when the landlords purchased the property. The tenants stated that the landlord has also removed the kitchen. The tenants stated they are not responsible for cleaning the airducts. Filed in evidence are photographs.

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.

Painting

In this matter I am not satisfied that the tenants are responsible for the cost of painting of the rental unit. In this case, the tenants were the original owners of the property for 35 years, and had photographs and artwork on the walls, when the property was sold.

Simply because the tenants filled holes at the end of the tenancy, does not support that the walls were damaged by their actions or neglect. I find this was not unreasonable for the tenants to fill the holes and this for the sole benefit of the landlord. Further, I find it would be reasonable to conclude that the landlords would have had the holes filled in any event.

While I accept the landlords could not colour match the paint; however, that was likely due to the age of the paint. The landlords had not painted the rental unit during this tenancy of 2 years and were unable to provide any information on when the rental unit was last painted.

Further, even if I accept the wall was damaged by filling the holes, which I do not, the Residential Tenancy Policy Guideline 40 defines the useful life of building elements. If the tenants' damaged an item, the age of the item may be considered when calculating the tenants' responsibility for the cost of replacement.

I have determined based on the guideline that the paint had a useful life span of four years. As there is no evidence of when the rental unit was painted, and the paint was

not able to be colour matched. I find it more likely than not that the useful lifespan had exceeded. Therefore, I dismiss the landlords' claim for painting.

Junk removal

I am not satisfied that the junk removal was all related to the tenancy. The wood siding and lattice were left behind on the property, as the tenants thought it was part of the premise to which the landlords purchased. I find that is reasonable and if this was an issue when the landlords purchased the property that should have been discussed when the property transferred and had it removed at that time.

Further, I am not satisfied that the landlord suffered a loss. As the landlords stated that the garbage removal was a fixed cost rate and you can see in the photograph that the landlords were also disposing other items, such as a hoof fan which is not the responsibility of the tenants. Even, if I had found the tenants left some items behind, I find the landlords would have still paid the same amount as this was a fixed rate. Therefore, I dismiss this portion of the landlords' claim.

Fix concrete wall

I find the landlords have failed to provide any evidence that the rock wall was damaged due to the actions or the neglect of the tenants. I find the rock wall was likely deteriorated due to the age and the nature of the product. Therefore, I dismiss the landlords' claim for the repair of the rock wall..

Cleaning

I am not satisfied that the tenant's left the rental premise unreasonably clean. While I accept there may have been very minor items missed, such as small particles of food in the dishwasher that does not mean that the rental unit was left dirty. The tenants' photographs show the rental unit was left reasonably clean. It is not uncommon for landlords to want to bring the rental unit to a higher standard than required by the Act.

Further, I find it unreasonable for the landlords to be claiming cleaning of the force airducts. That is their responsibility under the Act.

I also find it unreasonable for the landlords to be claiming for carpet cleaning when they did not clean the carpets, the landlord replaced the carpet for their own benefit. I find the

landlords have failed to prove that the tenants violated the Act. Therefore, I dismiss the landlords' claim for cleaning.

Based on the above, I find I must dismiss the landlords' application. As the landlords were not successful with their application, I find the landlords are not entitled to recover the cost of the filling fee.

As the landlords' have no further legal rights to retain the security deposit of \$1,400.00 or pet damage deposit of \$1,400.00. I order that the landlords to return the deposits forthwith to the tenants.

I grant the tenants a formal order in the total amount of **\$2,800.00**, pursuant to section 67 of the Act, should the landlords fail to comply with my order. 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' application is dismissed without leave to reapply. The tenants are granted a formal order for the return of their security deposit and pet damage 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: March 24, 2021

Residential Tenancy Branch