



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, 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 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

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 parties agreed that the tenancy began on August 20, 2018. Current rent in the amount of \$1,949.40 was payable on the first of each month. The tenants paid a security deposit of \$950.00. The tenancy ended on December 31, 2021. The landlord has returned a portion of the security deposit to the tenants in the amount of \$547.00. The tenants have already received a monetary order against the landlord’s failure to

return the security deposit. Therefore, I will not consider the landlord's request to retain any amount from the security deposit as a decision on that issue had been made.

The parties agreed a move-in and move-out condition inspection report was completed. The tenants testified that the move-out inspection was not done in the same manner as the move-out inspection. The landlord confirmed that they did not participate in the move-in inspection that they gave the form to the tenants to complete on their own.

The landlord claims as follows:

a.	Removal of pea gravel	\$ 250.00
b.	Deep toilet clean	\$ 90.00
c.	Cleaning	\$ 105.00
d.	Damages to walls	\$ 440.00
e.	Administration fees for dispute	\$ 400.00
f.	Filing fee	\$ 100.00
	Total claimed	\$1,385.00

Removal of pea gravel

The landlord testified that they gave the tenants permission to put pea gravel under their child's play equipment; however, the tenants were required to remove the pea gravel at the end of the tenancy. The landlord stated that the tenants did remove some of the pea gravel; however, that was subjective as they had put soil on top. The landlord stated that their husband did two hours of work which they did not bill for; however, they paid \$250.00 to a contractor to remove the pea gravel and make the necessary repair. The landlord stated they were originally only going to charge the tenants half the amount; however, since the tenants went to Arbitration and receive a monetary claim for double the security deposit, they are seeking the full amount.

The tenants testified that they had permission to install the pea gravel and the landlord did not say that it had to be removed when they vacated. However, they did so as a even though it was -14 degrees Celsius and there was snow on the ground. The tenant stated they removed 3 inches of the pea gravel, a little remained because it was frozen to the ground and then they filled the hole with 3 to 4 inches of soil and left additional soil for when the hole settles and left grass seed for the landlord to plant in the spring. The tenant stated they are a landscaper, and the work was done properly.

The tenants question the invoice of the landlord and believe it was falsely created by a family member, as it say the contractor is to pay the money to the landlord. The tenant stated that all the invoices were created after they received their monetary award.

The landlord confirmed that was an error by the contractor. The landlord confirmed they requested the tenant to leave grass seed.

Deep toilet clean

The landlord testified that the toilet in the half bath upstairs was stained from the general lack of cleaning. The landlord stated that they had to drain the water and soak the toilet bowl with chemicals for eight to ten hours and then scrub and then repeat the process to get the toilet cleaned. The landlord stated that it took them actually five hours to clean; however, they are seeking to recover three hours at the rate of \$30.00 per hour. The landlord seeks to recover the cost of \$90.00. Filed in evidence is an invoice and photographs of the toilet.

The tenants testified that there were water stains in the toilet when they moved into the rental unit. The tenants testified that the water is hard as it comes from a well and it is not uncommon when water sits it will be stained.

The tenants question the invoices provided by the landlord as they believe the landlord is just making up invoices as the first one created has a different name on it and then the landlord corrected the invoice with their own name. The tenants stated that the hourly rate the landlord is claiming is that of a professional cleaner. The tenants stated that is unreasonable that the landlord would be putting their camera in the toilet bowl to take pictures under the rim as this is not what is expected. The tenant stated when they completed the move-in inspection on their own they were never informed that they should be looking at these things.

The landlord argued that the tenant's did not mark the staining on the move-in condition inspection and that they have ten toilets without such an issue.

The tenants argued that they have been in the landlord home and their toilets were also stained.

Cleaning

The landlord testified that the tenants did do a pretty good job cleaning. However, they were some issues found when they conducted the move-in inspection with the incoming tenant. Which they had to hire a cleaner to clean the stove, washer, and sink.

The landlord stated that the stove, and oven were clean; however, there was a couple of spots on the front of the appliance that were not clean, and this was significant enough that the incoming tenant wanted it to be cleaned.

The landlord testified that there was mould underneath the tank of the toilet on the main floor and there was significant dirt on a windowsill that needed to be wiped and the kitchen sink was stained and there was some hair in it. The landlord seeks to recover the cost of \$105.00. Filed in evidence are photographs and a receipt.

The tenants testified that they left the rental unit clean. The tenant stated that the toilet bowl was cleaned, and they did not look underneath the tank as this was not done when they move into the rental unit. The tenant stated that the landlord informed them at the move-out inspection that the washing machine needed additional cleaning, which they did and sent photographs to the landlord, showing it was cleaned by text message on December 31, 2021.

The landlord argued that their photograph does not show the dirt on the backside of the crack to the soap dispenser

Damages to walls

The landlord testified that the tenants left more than a reasonable number of holes in the walls. The landlord stated that the tenants hung a dart board on the wall, and they were informed they would have to fix the wall when they leave. The landlord stated that they tenants asked permission to remove an accordion door which they agreed; however, they wanted them to fill the holes.

The landlord testified that the tenant, her son, was given a discount of \$500.00 at the beginning of the tenancy to make minor repairs. The landlord stated that there were hole upstairs in a bedroom and a couple of holes in the doors. The landlord testified that they paid the amount in the quote. The landlord stated they did not get an updated invoice. The landlord seeks to recover half the quote in the amount of \$400.00.

The tenant testified that the landlord always knew it was an indoor dart board and the holes in the wall were from hanging it on the wall, not from darts and they did fill those

holes. The tenant stated the holes in the door were from were two little, tiny thumb tack to hole their child's name plate and the holes in the bathroom were from the landlord's own shelf.

The tenants testified that they never agreed to fill the accordion door holes and the door was given back to the landlord at their request. The tenants stated that the landlord could have given them back the door to rehang or the landlord could have reinstalled the door.

The tenants also question the quote as the landlord photographs show the work was being done before the quote was issued.

The landlord responded that they did start the work before the quote; however, realized they could not do the work on their own.

Administration fees for dispute

The landlord submits they should be entitled to administrative cost for photographs, filing and organization of their claim that they paid to their staff. The landlord seeks \$400.00.

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.

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.

In this case the addendum to the tenancy agreement clause 1, requires the rental unit must be left in the same condition or better condition as the beginning of the tenancy. I find the landlord is attempting to contract outside of the Act, Section 37 of the Act only requires the tenant to leave the rental reasonably clean and undamaged except for reasonable wear and tear. Therefore, I find clause 1 is unenforceable.

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.

Removal of pea gravel

In this case, the tenants had permission of the landlord to install pea gravel in a small area of the backyard. Although it was late December and the ground was covered in snow the tenants removed most of the pea gravel, filled the hole with soil and left additional soil and grass seed for the landlord.

I find the landlords position is unreasonable as it would be impossible for the tenants to remove every piece of gravel, especially during this time of year.

Furthermore, I am not satisfied with the landlord's invoice as it says the contractor is to pay the landlord, which I note this was created by a family member. This would not be what to expect if a genuine invoice. Further, the invoice is claiming grass seed and soil, which clearly these were left behind by the tenants. The landlord provided no proof of payment such as a cancelled cheque. Therefore, I dismiss the landlord's claim.

Deep toilet clean

While I accept the toilet does appear to be dirty; however, I am not satisfied this was due to the actions or neglect of the tenants. The landlord is taking pictures underneath the toilet tank, and under the rim of the toilet, which was not done when the tenant's moved into the premise and the tenants did not inspect these areas when completing the move-in inspection report on their own.

Further, I find if it was simply from not being regularly cleaned it would not take three hours to clean based on the photographs, nor would the toilet have to be drained and special chemical used to soak the toilet. I find it more likely than not that this was a build up overtime of minerals from the well water.

I also question the credibility of the landlord as they have filed two invoices, the second invoice corrects the name on the first invoice, which was a same family member, who also created the pea gravel invoice which is also wrong. Further, I do not understand the reasoning that the landlord would be issuing an invoice to themselves. Therefore, I dismiss this portion of the landlord's claim.

Cleaning

In this case, I am not satisfied that the tenants left the rental unit unreasonably clean as defined in the Act. The evidence of the landlord was that the tenant's did do a pretty good job of cleaning and it was the incoming tenant that requested additional cleaning.

Both parties have provided photographs for my review and consideration. I find based on the photographs the tenants did leave the rental unit reasonably clean as required by the Act. The Act does not require the tenant to leave it perfectly clean. It is not uncommon that the landlord may do additional cleaning to bring the rental unit to a higher standard, which is reasonable; however, not at the cost of the outgoing tenants. Therefore, I dismiss this portion of the landlord's claim.

Damages to walls

I am not satisfied that the tenants caused any damage to the walls that was above reasonable wear and tear. The photographs provided by the landlord do not support this and it appears the holes made by the tenants were filled.

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, it is expected that most tenants will put up pictures, or other reasonable fixtures. The landlord may set rules as to how pictures or fixtures are attached to the walls. This is not considered damage nor are the tenant's responsible to fill the holes. Nor would it be considered damage if an accordion door was removed during the tenancy and could have been reinstalled by the landlord.

In this case, the landlord is claiming \$440.00 for half the quote provided in evidence in the amount of \$887.25., which the landlord confirmed under affirmation that they paid. I question the landlord credibility regarding payment of the quote, because written on the quote the landlord indicates they will hire cheaper labour and do some of the work themselves; however, at the hearing the landlord testified that they obtained the quote because they could not do the work. The landlord provided no proof of payment, such as cancelled cheque to the contractor. Therefore, I dismiss this portion of the landlord's claim.

Administration fees for dispute

In this case the landlord is claiming \$400.00 for time their staff spent on preparing for the hearing, I find the landlord is not entitled to claim this cost. The only cost the landlord is entitled to claim is the cost of the filing fee. And as I have found the landlord has not proven their claim. I dismiss this portion of the landlord's claim.

Conclusion

The landlord's application is dismissed without leave to reapply.

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 18, 2022

Residential Tenancy Branch