



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlord: MND MNSD FF
Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on February 27, 2023. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlords and the Tenant were all at the hearing and provided affirmed testimony. Both parties acknowledged receipt of each other’s application packages, and evidence. Neither party took issue with the service of the documents. I find both parties sufficiently served each other with their application, Notice of Hearing and evidence.

All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

On the Landlord’s application, they listed that they are seeking compensation for 2 items, totalling \$985.00. The Landlords also uploaded a monetary worksheet showing the amount of loss was actually more than this, totalling \$2,622.19. However, since they did not file an amendment to increase the monetary amount sought, I find they are limited to the amount noted on their application, \$985.00.

Issue(s) to be Decided

Tenant

- Is the Tenant entitled to the return of the security deposit held by the Landlord?

Landlord

- Is the Landlord entitled to compensation for damage to the rental unit?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that the tenancy started on November 1, 2017, and ended on May 31, 2022. Both parties also agree that a move-in inspection was completed on or around October 23, 2017, and a move-out inspection was conducted on May 30, 2022. A copy of the Condition Inspection Report (CIR) was provided into evidence. The move-out portion of the CIR was not signed by the Tenant when the move-out inspection was completed on May 30, 2022, since the Tenant was going to come back the following day to clean the carpets. On May 31, 2022, the Tenant came back to clean the carpets, and left the keys behind on that day. The Landlords stated that they finished completing the CIR on May 31, 2022, in the absence of the Tenant, and filled in the remainder of the CIR at that time. They sent him a copy of the report afterwards, which the Tenant acknowledges receiving. The Tenant provided his forwarding address at the bottom of the CIR on May 30, 2022.

Both parties also agree that monthly rent was set at \$2,030.00 and that the Landlord still holds a security deposit in the amount of \$985.00.

Landlord's Application

The Landlord noted the following items on their worksheet:

1) \$1,476.99 – New Stove

The Landlords stated that the Tenant cracked the glass top on the stove in the rental unit. The Landlords provided a couple of photos taken at the end of the tenancy to show the nature and extent of the damage, and they believe that something fell on the stove and broke it. The Landlords stated that they tried to replace the cooktop only, but the parts were unavailable, and so they had to replace the entire stove prior to the next tenancy. The Landlords stated that they did not notice the broken cooktop until May 31, 2022, after the parties had already met to do the move-out inspection. The Landlords acknowledged adding the item to the CIR after the walk-through was completed.

The Tenant stated that the stove top cracked at some point during their tenancy, but they did not notice it was broken until about 1 month before they moved out. The Tenant stated, and provided copies of text messages, to show that they reached out to the Landlord about a year before the end of the tenancy, to say that the stove was having electrical issues, and the broiler element would not turn off. The Tenant stated that the only way to turn the stove off was to unplug it. The Tenant also stated that the Landlord said he would have an electrician look at the stove. However, he never followed up. The Tenant believes that the overheating element was likely the cause of the broken glass top, but they don't know for sure.

2) \$1,145.21 – Bedroom #2 carpet replacement

The Landlords stated that they have not yet replaced the carpets, but are planning on it. They stated that the carpets in the second bedroom were heavily stained with crayon or paint and even after the Tenant cleaned the carpets on May 31, 2022, the stains were still present. The Landlords provided a quote for the replacement of the carpet in this one bedroom, where the stains were. The Landlord provided a copy of a photo showing the stains after the Tenant moved out. However, there are no carpet cleaning lines in the photo, which indicates it was taken prior to the cleaning of the carpets. The Landlords did not provide any photos taken after the carpets were cleaned by the Tenants.

The Tenant acknowledged that his daughter may have dropped something on the carpet, but doesn't know for sure what caused the stains. The Tenant stated that he had a carpets cleaned following the first part of the move-out inspection, and he asserts that most of the stains came out. The Tenant does not feel he should have to pay for the replacement of the carpets, since they were clean when he left.

Tenant's Application

The Tenant is seeking the following item:

- 1) \$985.00 – return of their security deposit

The Tenant stated that they are seeking the return of their deposit because they feel they cleaned the carpets sufficiently, and any damage was reasonable wear and tear.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Each application will be addressed separately. For each application, the burden of proof is on the person who made that application to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. The Applicant must also provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

Extinguishment and the Security Deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Sections 23 and 35 of the *Act* states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the

rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. The Landlord must give the Tenant a copy of that report in accordance with the regulations.

In this case, it appears both parties participated in the move-in inspection. It also appears as though both parties attended the unit to do the move-out inspection on May 30, 2022. I note the Landlords provided the Tenant with a copy of the CIR following that inspection. The Landlords received the Tenant's forwarding address in writing on May 30, 2022, as per the bottom of the CIR document. Overall, I find there is no evidence that the Landlords extinguished their right to claim against the deposit by not complying with the Act or the Regulations. Further, it does not appear the Tenant extinguished his right to the return of the deposit.

I accept that the Tenant provided his forwarding address to the Landlord on May 30, 2022, as this is when the Landlord acknowledged receiving it at the bottom of the CIR. I note the Landlord filed this application on June 10, 2022. I find the tenancy ended on May 31, 2022, which is the day the Tenant returned the keys and finished cleaning the carpets.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing to repay the security deposit or file a claim against it. In this case, the Landlords had 15 days from May 31, 2022, to repay the security deposit or file a claim against it. The Application was filed June 10, 2022, within time. I find the Landlords complied with section 38(1) of the *Act*. I do not find the Tenant is entitled to double the security deposit. However, the return of the initial deposit will be addressed further below.

With respect to the CIR document, I note the parties met and agreed to the condition of the rental unit at the start of the tenancy. This was signed by both parties. I find the move-in portion of the CIR is reliable with respect to the condition of the rental unit at the start of the tenancy. However, I do not find the move-out portion of the CIR is reliable. Although the parties met and conducted the move-out inspection, and the Landlord gave the Tenant a copy of the CIR afterwards, I find the way the Landlord completed the CIR to be problematic for its reliability.

I note the Landlords chose to conduct the walk-through with the Tenant on May 30, 2022. However, by their own admission, they did not finish completing the CIR until after May 31, 2022, once they had a chance to re-inspect the unit more closely in the absence of the Tenant. I find that by failing to fully complete and have both parties sign the CIR when the parties met to do the walk-through move-out inspection on May 30,

2022, it degrades the reliability of this document, as part of it was completed in the absence of the Tenant. The Tenant does not feel the Landlords' additions to the CIR are fair and accurate. Ultimately, I find the move-out portion of the CIR is not reliable and I assign it no weight.

Next, I turn to the following items on the Landlords' application:

1) \$1,476.99 – New Stove

I have reviewed the testimony and evidence on this matter. I note the Tenants do not dispute that that stovetop cracked while during their tenancy, although they are not sure how it occurred. I acknowledge that the Tenants pointed out that there was an electrical issue with the stove approximately a year before the tenancy ended, where the broil element would not turn off. The Tenants suggested that this may have caused the glass stovetop to crack. However, after reviewing the photos showing the damage, I am not satisfied this damage is consistent with potential heat damage from the use of the oven. I note there is fractured and missing glass, and I find the damage on the stovetop is likely more consistent with something being dropped on the stovetop, rather than purely from heat from the malfunctioning broiler. I find it more likely than not that the Tenant caused the damage to the stovetop. I find this is beyond reasonable wear and tear and I find the Tenant ought to be liable for some of the damage.

However, I note the Landlords were not sure how old the stove was, and stated they bought the rental unit over 10 years ago, and the stove was in there at the time, meaning the stove is at least 10 years old. I note that policy guideline #40 specifies that the useful life expectancy of stoves is around 15 years. It appears this stove was likely close to the end of its useful life expectancy.

An arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I award a nominal award of \$200.00 given the damage, and considering the limited useful life expectancy left in the stove itself.

2) \$1,145.21 – Bedroom #2 carpet replacement

I have reviewed the testimony and evidence on this matter. I note the carpets were in good condition at the start of the tenancy, as per the CIR. As noted above, I do not find the move-out portion of the CIR is reliable. The Landlords also provided some photos of the stains taken at the end of the tenancy. However, I note these appear to be photos taken before the carpets were cleaned by the Tenants. Ultimately, it is not sufficiently clear that these photos were taken after they had been cleaned, and it is unclear how prevalent the stains were after cleaning. The Tenants provided photos that show reasonably clean carpets. However, it is not clear which room this is from. In any event, without further reliable evidence from the Landlords, I am not satisfied that they have met the burden on them to show that the stains were such that the carpets needed replacement. I dismiss this item, in full.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were partially successful in this hearing, I award the recovery of the filing fee.

In total I award \$300.00 to the Landlords. I authorize them to retain this amount from the deposit and return the balance. I issue a monetary order to the Tenants for the return of the remaining deposit.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of \$685.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: February 28, 2023

Residential Tenancy Branch