



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit, damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard.

Issue(s) to be Decided

1. Whether the tenants damaged the rental unit.
2. Whether the landlord incurred damages or loss as a result of damage.
3. Whether the landlord has substantiated the quantum of the damages or loss incurred by the landlord.
4. Whether the landlord mitigated damages or loss.
5. Landlords' entitlement to retain all or part of the security deposit.
6. Award of the filing fee.

Background and Evidence

From the undisputed evidence before me, I find that tenancy began in August 2004 and ended on July 11, 2008. The tenants had paid a \$650.00 security deposit at the commencement of the tenancy. The tenant inspected and prepared the move-in inspection report and provided a copy of the report to the landlord. The landlord and tenant conducted an inspection at the end of the tenancy and the tenant signed that the report fairly represented the condition of the rental unit; however, the tenant did not authorize any deductions from the security deposit. The landlord made an application to retain the security deposit within 15 days of the tenancy ending.

Upon enquiry, I determined the house is approximately 11 years old and most of the flooring and fixtures that are the subject of this dispute were installed when the house was constructed. The landlords began residing in the rental unit after the tenancy ended.

The landlord was seeking to recover damages of \$2,437.00 from the tenants. The amount is comprised of:

Carpet replacement (downstairs only)	\$1,126.00
Window screen repair and replacement	71.00
Carpet cleaning (upstairs)	210.00
Plumbing removal and wall repair from bar sink	200.00
Fence post removal	150.00
Electrical inspection and siding repair re: hot tub installation	200.00
Hardwood floor replacement in kitchen	480.00
Exterior siding repair	<u>400.00</u>
Total damages claimed	<u>\$2,437.00</u>

During the hearing, I heard considerable testimony concerning damages which I summarize as follows.

Carpet replacement: The landlord claims the downstairs carpet needed to be replaced due to a very strong pet urine odor. The landlord provided photographs of the carpet, including the backside which showed a significant number of stains. The landlord did not attempt to clean the carpet and replaced it with superior cork flooring; however, the landlord was only seeking compensation equivalent to \$6.00 per square foot less depreciation of 2/3. The tenants claimed that they had the carpet cleaned at the end of the tenancy and point to a large stain on the downstairs carpet that was noted on the

move-in inspection report. The tenants did not provide a copy of a carpet cleaning receipt although they claim they were professionally cleaned. The move-out inspection report identifies pet urine stains on the downstairs carpet.

Window screens: The landlord provided receipts showing the cost of repairing and replacing 5 window screens. The tenants claim that the window screens were damaged because they fell out of the 2nd storey windows due to broken clips. The tenants also claim that the house was broken in to and one of the screens was damaged during the break in. The tenant explained that she noticed the broken window clips after she had completed the move-in inspection report.

Upstairs carpet cleaning: The landlord testified that the upstairs carpets smelled of pet urine and they had the carpets cleaned to salvage them. The landlord provided a copy of the carpet cleaning invoice. The tenants claimed that they had the carpets cleaned prior to ending the tenancy.

Removal of downstairs plumbing: The parties were in agreement that the tenants had installed a sink downstairs and that after the sink was disconnected and removed the plumbing was left exposed. The landlord estimated the cost associated to removing the plumbing and repairing the wall.

Removal of dog fencing: The parties were in agreement that the tenants had installed chain link fencing to contain their dogs and the landlord did not wish to retain the fencing. The tenants removed the fencing and the poles but seven holes filled with concrete remained. The landlord was willing to withdraw this claim in recognition of the work performed by the tenants to remove other debris from the property.

Electrical inspection and siding repair: The parties were in agreement that the tenants had installed a hot tub in 2005. The hot tub was connected to the rental unit's electrical

supply and the connection left a hole in the vinyl siding. The tenants patched the hole with putty. The landlord estimated the cost associated with replacing the vinyl siding and having an inspection of the electrical system. The landlord has acknowledged living in the rental unit since the tenancy ended and no electrical problems have been noticed.

Kitchen flooring: The landlord provided photographs of damaged hardwood flooring in front of the two entrances. The tenants testified that they frequently used the kitchen doors to access the outside and that it is wear and tear from walking on the floors. The landlord estimated the cost to replace the flooring was \$10.00 per square foot for 48 square feet.

Exterior siding repair: The landlord testified that the damage to the exterior siding relates to scratches from the tenants' dog and the tenants installing hanging baskets on four corner pillars. The landlord estimated 80 ft. needed replacing at a cost of \$5.00 per foot. The tenants did not dispute the damage but were of the opinion the landlord's estimate for costs was excessive.

In addition to the above, there was some discussion concerning the tenants' security deposit. The parties had been party to a previous dispute resolution proceeding where the landlord was awarded \$1,400.00. I heard testimony that the tenants have made partial payments towards that Order, not including the security deposit.

Analysis

I find that the landlord complied with the requirement to make an application for dispute resolution within the 15 day time limit imposed by section 38 of the Act.

With respect to claims for damages or loss under the Act, section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy

agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party violated the Act and that this violation resulted in costs or losses to the Applicant. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act by the tenants. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Based on the testimony of the parties and the evidence provided to me, I find that the landlord has proven that there was damage caused by the tenants with respect to the pet stained carpeting, walls and plumbing from the installation of a bar sink, and the exterior siding from the hot tub, pet scratches and hanging baskets. However, I do not find that the landlord has proven that the damage to the hardwood floors is a result of the damage caused by the tenants as opposed to wear and tear. Flooring is meant to be walked on and if the material used for the flooring does not stand up to high traffic areas then that is not a burden of the tenant. I also refer to the move-in inspection which noted deep gouges in the kitchen flooring at the commencement of the tenancy. Also, the landlord did not perform the move-in inspection as required by the Act; therefore, I will not hold the tenant responsible for not noticing the broken screen clips that may have resulted in the 2nd floor window screens falling to the ground below. I note that the repair receipt indicates that clips had to be repaired. Finally, with respect to the need for an electrical inspection, I do not find the landlord has substantiated any damage to the electrical system and if the landlord was so concerned about damage to the electrical system, I find a reasonable person would have had it inspected right away, rather than do nothing for three years and then request money for compensation.

I will award the landlord costs to have the carpets cleaned in the amount of \$210.00 as I am satisfied that the house smelled of pet urine and the landlord attempted to have the odour removed. However, I do not accept the landlord's estimate of the loss associated to the downstairs carpet. I note that the downstairs carpet had a "large stain" at the commencement of the tenancy and the carpeting was 11 years old. According to Residential Tenancy Guideline manual, carpets have an average useful life of 10 years. Therefore, I find the downstairs carpet had reached the end of its useful life and the landlord is awarded nothing for the stained carpet downstairs.

Although the landlord has proven that the tenants damaged the exterior siding and failed to remove plumbing installed for the bar sink, the landlord's evidence has failed to sufficiently verify the quantum of the amounts being claimed. Therefore, the landlords' claims for compensation with respect to the exterior siding and plumbing fails to succeed due to a lack of verification of the actual amounts lost. Had the landlord provided estimates, invoices or even pricelists, I may have found sufficient grounds to allow the landlord's claims; however, in this case the landlord did not provide any of these things that would permit me to verify the quantum being claimed.

Given the above, I allow the landlord's claim for damages of \$210.00 with respect to carpet cleaning. As the landlord was only partially successful with this application, I award the landlord \$20.00 of the filing fee paid for this application. Therefore, the landlord is entitled to recover a total of \$230.00 from the tenants.

I calculate that the amount owed to the tenants as follows:

Security deposit and accrued interest	\$670.50
Less: amount awarded to landlord	<u>(230.00)</u>
Net owing to tenants	<u>\$ 440.50</u>

The tenants are provided with a Monetary Order in the amount of \$440.50. The tenants may offset the Monetary Order awarded to them against the balance owing to the landlord pursuant to the Monetary Order previously awarded the landlord. If the tenants have already paid the Monetary Order in favour of the landlords the tenant may enforce payment of the Monetary Order provided with this decision by serving the landlord with the Monetary Order and filing it in Provincial Court (Small Claims).

Conclusion

The landlord is awarded damages and costs of \$230.00. The tenants are provided a Monetary Order equivalent to their security deposit, plus accrued interest, less \$230.00 awarded to the landlord with this decision.

September 30, 2008

Date of Decision
