

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords to obtain a Monetary Order for damage to the unit, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, and to recover the cost of the filing fee from the tenants for this application.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*; each tenant was served via registered mail on March 20, 2009. Mail receipt numbers were provided in the landlords' documentary evidence. The tenants were deemed to be served the hearing documents on March 25, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords and tenants appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Are the landlords entitled to a Monetary Order under Sections 38 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began March 1, 2007 and ended October 31, 2008. Rent was payable on the 1st of each month in the amount of \$1,300.00. On February 20, 2007 the tenants paid a security deposit of \$650.00.

A move-in inspection report was completed on February 28, 2007 and the landlords scheduled a move out inspection for October 30, 2008 at 1:00 p.m. but were requested to postpone the inspection until October 30, 2008 at 8:00 p.m. as the tenants had not completed the move out. The landlords attended the rental unit on October 31, 2008 to conduct the move out and the tenants were still moving. The above scheduled move out inspection dates were not in dispute.

The tenants provided the landlords their forwarding address on the move-out inspection report on October 30, 2008.

The landlords testified that the move-out inspection report was completed between November 1, 2008 and November 3, 2008, in the absence of the tenants, which is when the pictures were taken that the landlord has entered into evidence. The landlords signed off the move-out inspection report on November 24, 2008 after the landlords had the final costs of the required repairs. After signing off the form on November 24, 2008 the landlords mailed a copy of the report to the tenants. The tenants signed the end of tenancy report stating that they "do not agree" with the report and returned a copy to the landlords.

The landlords testified that they have not returned the tenants security deposit and are requesting to retain the security deposit in partial satisfaction of their claim.

The landlords are claiming \$450.73 for the cost of purchasing new carpets and \$464.57 for the cost to remove the old carpets and install the new carpets. The landlords testified that the carpet installer did not dispose of the old carpets. The landlords stated that their claim represents new carpet for the two smaller upstairs bedrooms and the one lower bedroom. The landlords testified that there were stains in the two smaller upstairs bedrooms and a bleached spot in the carpet in the lower bedroom. The landlord provided pictures in support of their testimony.

The landlords testified that the rental house was built in 1957, that the landlords did not know the age of the carpets as they existed when the landlords purchased the house in June 2006.

The tenants confirmed that there were two stains in the two smaller upstairs bedrooms which were caused by children's finger paints. The tenants testified that they did try to remove the stains but were not able to. The tenants testified that the stain in the lower bedroom was caused by their dog, who was ill and who had defecated on the carpet. The tenants stated that the product they used to clean the carpet caused the bleached look, but that the tenants did not use bleach on the carpet.

The landlords testified that they did not contact a professional carpet cleaner to see if the stains could be removed and that they acted on the advice of their cleaning lady who told them the stains would not be able to be removed. The landlords stated that they felt it was cheaper to have the carpets replaced than to try and clean them.

The tenants testified that there was a larger stain on the master bedroom carpet when the tenants took possession of the house and questioned why the landlord hadn't replaced that carpet prior to the tenants taken possession.

The landlords advised that they have now replaced the master bedroom carpet but that they are only submitting a claim for the three other bedrooms and that the invoices they submitted into evidence do not include any costs associated with the master bedroom.

The landlords have submitted a claim to replace two broken windows which are in the downstairs bedroom and look into the carport/garage for a total claim of \$163.81.

The tenants testified that the two windows were broken during their tenancy and that their older son had to vacate the downstairs bedroom as it was too cold with the broken windows. The tenants testified that they did not inform the landlords of the broken

windows and did not at any time during the tenancy request the landlords to repair the windows.

The landlords have submitted a claim of \$91.02 for garbage and carpet disposal. The landlords testified that the tenants left garbage throughout the house and on the exterior of the property which the landlords cleaned up and put in a pile to be hauled away by the waste removal contractor. The landlords testified that they took time away from their own employment to work at the rental unit and that they have not submitted a claim for this time.

The tenants testified that they felt the landlords' pictures entered into documentary evidence only showed a small portion of the rental unit and that the pictures do not show the remainder of the house where the tenants had spent time cleaning. The tenants stated that they had cleaned the fridge and stove and did clean other arrears of the rental unit.

The landlords' witness testified that she was hired to clean the rental unit prior to the tenants taking possession and after the tenants had vacated the rental unit. The witness stated that, in her opinion, when she attended the rental unit after the tenants moved out, her thoughts were that no one spent time cleaning this unit. The witness testified that she felt that her health, or anyone else's health who entered the rental unit, was at risk as there were syringes left lying around. The witness stated that there were locks installed on the outside of the two smaller bedroom doors, there was gum stuck everywhere, tape and tape residue was stuck through out the house on walls, windows and counters, and that she had to use solvents to remove the gum and the tape residue. The witness testified that it took her a full week to clean the rental unit.

The landlords have submitted a claim of \$720.00 for cleaning the rental unit, an amount that has already been paid to the witness. The landlords have submitted into evidence a copy of the witness' invoice.

The landlords testified that the new tenants refused to put anything into the cupboards because of the condition of the cupboards and drawers. The landlords stated that they had to spend numerous hours sanding, painting and staining the inside and outside of the cupboards. The landlords stated that the cupboards existed when they purchased the house and that they did not know the exact age of the cupboards.

The landlords could not explain why their witness' invoice shows a claim for sanding cupboards. The landlords first stated they did all the work on the cupboards and later stated that their witness cleaned and prepared the cupboards for staining and painting. The landlords could not answer how much time their witness spent on the cupboards and the landlords did not have a cell phone number to recall the witness.

The tenants testified that they had lined the cupboards and drawers with wall paper before using them and that the landlords' statements about the condition of the cupboards are in relation to the pre-existing condition of the cupboards and that the cupboards were not varnished when they had possession of the rental unit. The tenants stated that they thought the cupboards were original from when the house was built in the late 1950's.

The Dispute Resolution Officer attempted to call the tenants' witness to add him to the hearing; however the tenants' witness did not answer his cell phone and did not answer his home phone.

The tenants testified that their witness would refute the landlords' witness' statement. The tenants stated that their witness would testify that the witness attended the rental unit to remove some of the tenants' personal belongings and garbage from the rental unit while the cleaning lady was there.

The landlords have submitted a claim of \$101.15 to repair the downstairs exterior door that goes from the carport/garage into the basement. The landlords testified that it

appeared that the door had been kicked in and that they were not able to close and lock the door properly, prior to the repair.

The tenants testified that they had no problem closing or locking the door in question and that they have no recollection of the door being kicked in.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the landlord, bears the burden of proof and the evidence furnished by the Applicant landlord 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 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 regards to the landlords right to claim damages from the tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, 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.

Section 32 (1) of the *Residential Tenancy Act* states that a landlord must provided and maintain residential property in a state of decoration and repair that 1) complies with the health, safety, and housing standards required by law and 2) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 32 (2)(3)(4) of the *Act* stipulates that 1) a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access 2) a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant 3) a tenant is not required to make repairs for reasonable wear and tear.

Claim for New Carpets \$450.73 and Installation of Carpets \$464.57 - Testimony and supports the landlords' claims that additional or new stains were present on the carpets at the time the tenants vacated the rental unit. The move-in inspection report from February 28, 2007, lists one of the smaller upstairs bedrooms as being in fair condition and the other smaller upstairs bedroom as being in poor condition. There is no mention of the condition of the downstairs bedroom carpet on the move in inspection report. The exact age of the carpets is unknown however the carpets did exist at the time the landlords purchased the house in June 2006, just 8 months prior to the move-in inspection report.

Section 7(2) of the *Act* stipulates that a landlord or tenant who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss. I find that by not contacting a professional carpet cleaner for guidance and a quote to possibly clean the carpets, the landlords have failed to prove that it was "cheaper" to replace the carpets than to clean them.

The *Residential Tenancy Policy Guidelines* state that the normal life of a carpet is 10 years old. Based on the aforementioned and picture evidence, I find that the carpets, which were noted as being in fair and poor condition at the beginning of a 19 month

tenancy, were nearing the end of the normal lifespan which is not to say that they could have lasted longer if professionally cleaned.

Based on the above, I find that the tenants admitted to damage being caused to three of the four bedroom carpets during their tenancy, that the landlords should not suffer a loss as a result of this damage, and that although the landlords have proven the above mentioned test for damage and loss I must still consider the age and lifespan of the carpets. I find that the landlords are entitled to a monetary claim in the amount of 1/10 of the amounts claimed for the purchase and installation of the new carpets. $(\$450.73 + 464.57) \times 1/10 = \91.53 .

Replacement of 2 Broken Windows I find that the testimony and evidence supports the landlords claim that the windows were broken during the tenancy. I find that the tenants have not complied with Section 32 of the *Act* as they did not repair the broken windows and did not advise the landlord of the broken windows. Based on the aforementioned I find that the landlords have met the test for damage and loss and I find in favour of the landlords' claim of \$163.81 to replace the two broken windows.

Garbage and Carpet Disposal – As stated above I found that the landlords were entitled to 1/10 of their claim in relation to the removal and reinstallation of new carpet. Based on the testimony and picture evidence submitted by the landlords I find that there was garbage left in and around the rental unit after the tenants vacated the unit. The landlord provided testimony that she had all of the garbage and carpet in a pile so the contractor only had to load the materials from the pile into his truck, and that the waste, including the carpet, filled 2/3 of the contractors truck. Based on the above, I find in favour of the landlords' claim for garbage disposal in the amount of \$31.60 which is comprised of 1 hour of labour @ \$25.00 and 1/10 of the balance of the invoice of \$6.60.

Cleaning – While the legislation stipulates that tenants must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit it does not require that the tenants move heavy appliances. The *Residential Tenancy Policy Guideline 1*

stipulates that if large appliances, such as washer, dryer, fridge, and stove, are not on rollers the tenants are not required to clean behind or underneath them.

The picture evidence supports the witness' testimony that there was tape residue and gum stuck throughout the rental unit and that the rental unit required additional cleaning after the tenants vacated the rental unit. The witness has charged 48 hours at \$15.00 per hour to clean the rental unit. I note that the witness' invoice lists sanding cupboards as part of the work performed which contradicts the landlords' statement that they sanded the cupboards. The landlords later contradicted their own testimony stating that the witness prepared the cupboards and had them ready so that all the landlords had to do was to paint and stain the cupboards. In making my decision I must take into consideration that individuals have a different understanding of what clean is, that I must take into consideration that the pictures submitted into evidence by the landlord, only provide a snap shot of the entire rental unit, and that there are no pictures provided of the alleged exterior garbage and waste left behind by the tenants. Based on the aforementioned I hereby allow the landlords' claim for cleaning in the amount of 24 hours (3 days) x \$15.00 per hour = \$360.00.

Repair to Carport/Garage Door There was contradictory testimony relating to the damage to the door leading from the basement into the carport/garage. I find that the move-in inspection report includes the basement area and that there is no mention of existing damage to the door, at the time the move-in inspection was conducted. I note that the door is mentioned as being damaged on the move-out portion of the form. Based on the aforementioned, I find that the landlords have met the test for damage and loss as listed above, and I find in favour of the landlords' claim of \$101.15 to repair the basement/carport/garage door.

Request to retain the security deposit in satisfaction of monetary claim – The landlords have requested to keep the security deposit of \$650.00 plus interest in partial satisfaction of their claim. Section 38(1) of the *Act* stipulates that if within 15 days after

the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit or pet damage. Based on the above the landlords would have had to file their application for dispute resolution no later than November 15, 2008, fifteen dates after the tenancy ended on October 31, 2008. The landlords' application was filed at the *Residential Tenancy Branch* on March 18, 2009.

Based on the above, I find that the landlords have failed to comply with Section 38(1) of the *Act* and that the landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the amount of the security and pet deposit.

Recover the filing fee – I find that the landlords have partially been successful in their claim and allow their request to recover the cost of the filing fee from the tenants.

Monetary Order – I find that the landlords are entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the amount owed to the tenants for return of double the tenants' security deposit, and that the landlords are entitled to recover the filing fee from the tenants as follows:

New Carpets	\$91.53
Replacement of Two Windows	163.81
Garbage Disposal	31.60
Cleaning	360.00
Repair to Basement / Carport/Garage Door	101.15
Filing fee	50.00
Sub total (Monetary Order in favor of the landlords)	\$798.09
Less Double Security Deposit Owed to Tenants of \$650.00 x 2	\$1,300.00
Interest owed on Security Deposit \$650.00 from Feb. 20, 2007	18.28
Sub Total (Monetary Order in favor of the tenants)	\$1318.28

TOTAL OFF-SET AMOUNT DUE TO THE TENANTS	\$520.19
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Conclusion

I HEREBY AWARD a monetary claim in favor of the tenants. A copy of the tenants' decision will be accompanied by a Monetary Order for \$520.19. The order must be served on the landlords and is enforceable through the Provincial Court 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: June 04, 2009.

Dispute Resolution Officer