

## **DECISION**

### **Dispute Codes**

For the tenant – MNDC, MNSD, FF

For the landlords – MND, MNDC, FF

### **Introduction**

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. The hearing was adjourned and reconvened to today's date to allow the tenant time to re-send her evidence to the dispute Resolution Officer. Both files were heard together.

The tenant seeks the return of her security and pet damage deposits and a Monetary Order for money owed or compensation for damage or loss under the Act and to recover the filing fee. The landlord seeks a Monetary Order for damage to the unit, site or property and for money owed or compensation for damage or loss under the Act and to recover the filing fee.

Both Parties served the other Party by registered mail with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### **Issues(s) to be Decided**

- Is the tenant entitled to recover her security and pet damage deposits?

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act?
- Are the landlord's entitled to a Monetary Order for damage to the rental unit, site and property?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss under the Act?

### Background and Evidence

This tenancy started on June 15, 2006. This started as a fixed term tenancy until June 15, 2007 and then reverted to a month to month tenancy. The tenants' monthly rent was \$1,150.00 which was due on the first of each month. The tenant paid a security deposit of \$575.00 and a pet damage deposit of \$575.00 on June 15, 2006.

### The tenants' application

The tenant testifies that the landlord did not carry out a move out condition inspection with her at the end of the tenancy. The tenant states that she decided to move from the rental unit due to the black mould and other issues with the landlords concerning maintenance to the unit. The tenant has provided photographs of the mould in the unit. The tenant testifies that she gave the landlord her forwarding address in writing on June 01, 2009. The landlord did not return the tenants security and pet damage deposits within 15 days and has not made an application to keep the security and pet damage deposits. During the hearing the tenant requested double the security deposit and stated she misfiled her application by making a request for money owed or compensation under the Act. The tenant has only applied for \$1,150.00 which is the total sum of her security and pet damage deposits.

The landlord does not dispute that he did not complete a move out condition inspection report. The landlord testifies that an inspection was arranged for June 01, 2009 with the tenant however he was late and could not contact the tenant. On June 09, 2009 the tenant met with the landlords again in order to do the inspection however the landlords state the tenant became argumentative and left without completing the inspection.

The landlords state that they did not return the security and pet damage deposits as they tenant had left a lot of damages, cleaning and garbage at the unit which the landlords had to deal with.

### The landlords Application

The landlords testify that after the tenant had moved from the rental unit they found a leak in the crawl space which was full of water and caused mould and damage to the dry wall in the unit.

The landlord's state that the tenant would have been aware of this leak as it was from the water pipe and could be heard leaking; however, she did not mention this leak to the landlords and they incurred additional costs to repair the unit due to the leak. The landlords are not claiming these costs from the tenant.

The landlords testify that they gave the tenant \$100.00 to repair a leaking faucet in the unit. However, the landlords claim the tenant did not repair the faucet, return the money to them or provide them with a receipt for any work carried out by a plumber.

The landlords testify that the tenant repainted the rooms of the house in unacceptable colours and did not remedy this at the end of the tenancy. The landlord has provided two separate quotes for this work. One quote also contains a price to repair the many holes in the wall and one is without this repair. The cheaper quote is for \$1,600.00 and the other is for \$2,800.00. The landlord decided to repaint the unit himself and has charged the tenant \$2,000.00 in an attempt to mitigate the loss.

The landlord testifies that the tenant removed the smoke detector when she moved out and this was replaced at a cost of \$18.99 and \$20.00 for labour. The landlord also states the tenant removed a mailbox situated on the wall at the front of the house. This removal also caused some damage to the stucco. The mailbox was replaced at a cost of 11.47 and the stucco repair was \$15.59. The landlord claims the tenant broke the window in the kitchen. This repair was done on the landlords insurance however he incurred a deductible for this of \$20.00. The landlords claim the tenant damaged the heat registers and these were replaced at a cost of \$7.71. The landlords claim the tenant removed the bi-fold doors which were replaced at a cost of \$28.00.

The landlord testifies that at the end of the tenancy the grass was left uncut and was approximately one foot high. The tenant had also left a large amount of garbage in the yard. The tenancy agreement addendum states that the tenant is responsible for the landscaping of the yard and for mowing the lawn. If the tenant does not mow the lawn the landlord will charge \$75.00 for each time the lawn is mown. The landlord incurred costs to have the lawn mown and to remove the garbage which includes a large tree branch, household items and a storage shed filled with garbage. The cost for this work is being charged at a sum of \$225.75 with additional charges of \$37.00 for the garbage dump fees.

The landlord testifies that the tenant or her dog have damaged the bathtub. There were scratches' in the tub which appears to be from an animal's claw the tub was six years old and was put in when the house was renovated in 2005. The landlord seeks \$750.00 for this cost. The landlord seeks the cost of replacing the counter top in the kitchen. The landlord claims the tenant damaged a section of this counter and just this section could not be repaired so the whole counter top had to be replaced at a cost of \$436.00. The counter was seven years old.

The landlord claims the tenant also damaged the laminate flooring in the living room. There were dog claw scratches over the floor and marks from heavy furniture. This flooring was put down in 2005 and was five years old the total cost to replace the floor was \$891.00 but due to its age the landlords seek a sum of \$440.50 from the tenant. The landlord seeks the cost of replacing a bi-fold door which was missing from the unit at a cost of \$28.00. The landlord claims the tenant did not carry out a thorough clean of the kitchen and also left the stove and fridge dirty. The landlord's wife cleaned this area and the landlord seeks the sum of \$90.00 for this work. The landlord claims the tenant damaged the laundry tub with blue paint. This was been replaced at a cost of \$250.00.

The tenant disputes the landlord's claims for damages and cleaning with the exception of the broken window which she states was her fault. The tenant argues that she spoke to the landlord about the mould issues in the unit. The tenant states that she tried to repaint the walls before she left but due to the mould she stopped painting and left a five gallon bucket of paint for the landlord to use when he had resolved the mould issues. The tenant claims that when she went back to the house the landlord had used her paint to paint the walls. The tenant states she was not aware of the leak in the crawl space.

The tenant claims that she used the \$100.00 the landlord gave her for the repair to the faucet to pay the plumber to come out and look at the faucet. He could not do the repair as he would have had to go through the mud room wall and the tenant could not agree to this without permission from the landlords. The tenant states that she did not get a receipt from the plumber for this job.

The tenant argues that the smoke detector was not in place when she moved into the unit she put her own alarm up and removed it when she moved out. The tenant also argues that the smoke detector is not mentioned on the move in condition inspection. The tenant claims that there was no mail box attached to the wall at the front of the house and the mail box is not mentioned on the move in condition inspection. The tenant argues that the stucco was falling off on the outside of the house and these repairs are the landlord's responsibility.

The tenant claims she replaced the heat registers and argues the landlord should not be charging her for this amount. The tenant argues that the estimate the landlord has provided for the lawn mowing was dated June 30, 2009 one month after she left the property. The tenant claims she took good care of the lawn and yard. After she moved out it would have been the landlord's responsibility. If he failed to cut the grass in a month it would be overgrown. The tenant also argues that it was the neighbour who cut the branch down from his tree and left it in the yard. She claims she asked him to remove it but he did not do so. The tenant also claims that she did not leave debris and garbage in the yard but this must have been put there by others after her tenancy ended.

The tenant claims the bathtub was very old with chipped and damaged enamel. She states she did not put her dog in the bath and the scratches were already there. The tenant claims the landlords did not maintain the property and the kitchen had various problems which the landlord did not attend too. The tenant also argues that the scratches on the laminate flooring are normal wear and tear and were not caused by her dog.

The tenant claims she cleaned the kitchen at the end of her tenancy and the fridge was already dirty when the landlord replaced her old fridge with this one from his house. The tenant argues that she never used blue paint in the house and therefore could not have caused the damage to the laundry tub.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; Sections 23 and 35 of the Act say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

In this instance a move in condition inspection report was completed and signed by the tenant. This report indicates the condition of the rental unit at the beginning of the tenancy. The report does not mention if a smoke detector or mail box were in place. Therefore, without any evidence to confirm if they were in place at the start of the tenancy I must dismiss this section of the landlords claim.

The tenant does not disagree that she did paint some of the rooms of the rental unit and the pictures show that these were colours that the landlords found unsuitable for future tenancies. While I accept that the tenant left paint at the rental unit which the landlords used I find the landlords had to repair, and prepare the walls for painting and then mitigated their loss by doing the painting themselves at a cheaper rate then quoted. Consequently, I have reduced the landlords claim by \$200.00 for the paint left by the tenant and the remainder of the landlords claim is upheld. The landlords are entitled to recover the sum of **\$1,800.00** from the tenant.

With regard to the landlords claim for the heat registers counter top, bathtub, laundry tub, bi-fold doors and laminate flooring I have applied a test for damage or loss claims:

- Proof that the damage or loss exists

- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 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 or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the landlord. 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.

I find that the landlords claim for money owed does not meet all of the components of the above test. The landlords have not submitted any evidence to support their claim for these items. The landlord has not completed the move out condition inspection, the landlords have not provided any photographic evidence of the damage other than some pictures of the laminate flooring and laundry tub and they have not provided any invoices or receipts for the work carried out.

Consequently, these sections of the landlords claim are dismissed.

With regard to the landlord's claim of **\$225.17** for the lawn mowing and removal of garbage from the yard, I find I prefer the evidence of the landlords with regard to their claim that the tenant did not cut the grass or remove the garbage from the yard. With the amount of items left on the lawn I find the tenant would have had difficulty mowing the lawn around these items. The tenant argues that she did not leave the garbage in the yard however the photographs show a significant amount of household items in the yard and storage shed which the tenant did not remove. I find it unlikely that neighbors or passersby would have thrown this amount of items into the yard during the month since the tenant moved out. The tenant claims the tree branch was thrown over by the neighbor but has provided no evidence to support this claim.

Consequently, I find in favor of this section of the landlord claim for **\$225.75** and for **\$37.00** for the fees he incurred taking the garbage to the dump.

With regard to the landlords claim for cleaning costs of **\$90.00**; as one of the landlord's wives cleaned the kitchen at the end of the tenancy and the tenant agreed that the fridge was not

cleaned because it came to her dirty, I find in favor of the landlords claim for cleaning costs. Section 32 of the Act states: a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and other residential property to which the tenant has access. The tenant argues that she did not use the stove during the last month of her tenancy however she lived in the property for three years and would still be responsible for any cleaning at the end of her tenancy to ensure cleanliness is maintained.

As the landlord has been partially successful with his claim I find he is entitled to recover the **\$50.00** filing fee from the tenant.

With regard to the tenants claim for the return of her security deposit; I find the landlord did not conduct a move out condition inspection at the end of the tenancy pursuant to section 35(3) of the Act. I further find the landlord has not made a claim to keep the tenants security deposit within 15 days of receiving her forwarding address in writing pursuant to section 38(1)(d). The tenant would therefore be entitled to recover her security deposit. During the hearing the tenant asked to recover double her security deposit however she did not apply for this amount on her application and it would be unfair to allow her to amend her application during the hearing. I therefore find the tenant would only be entitled to recover \$575.00 for her security deposit and \$575.00 for her pet damage deposit plus accrued interest on both deposits of \$38.05. However, as the landlord has been partially successful with his claim I find that sections 38(4)(b), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the landlords to keep \$1,188.05 from the tenants' security deposit and accrued interest to compensate them for the damages and cleaning as follows:

Preparation and painting	\$1,800.00
Money owed for faucet repair	\$100.00
Lawn mow and garbage removal	\$225.75
Dump fees	\$37.00
Cleaning costs	\$90.00
Filing fee	\$50.00
amount owed to the landlords	\$2,322.75
Less security and pet damage deposits and	(-\$1,188.05)

accrued interest	
<b>Total amount due to the landlords</b>	<b>\$1,134.70</b>

### Conclusion

The tenants' application is dismissed without leave to reapply.

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,134.70**. The order must be served on the respondent 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: March 24, 2010.

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Dispute Resolution Officer