

## **DECISION**

**Dispute Codes**      MNSD, MND, MNDC, FF

### **Introduction**

This hearing was convened by way of conference call to deal with cross applications by the landlords and the tenant. The landlords have applied for a monetary order for damage to the unit and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order that the landlord be permitted to keep all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this application.

The tenant has applied for double the return of the security deposit.

All parties appeared, gave affirmed evidence and were given the opportunity to cross-examine each other on their evidence. A witness for the landlords also attended, gave affirmed evidence and was subject to cross-examination by the tenant.

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

Are the landlords entitled to a monetary order for damage to the unit?

Are the landlords entitled to keep all or part of the security deposit in partial satisfaction of their claim?

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to the return of the security deposit, or double the base amount of the security deposit?

### **Background and Evidence**

This tenancy began on October 31, 2007 as a fixed term tenancy which expired on October 31, 2008 and then reverted to a month-to-month tenancy. Rent in the amount

of \$1,000.00 is due on the 1<sup>st</sup> day of each month, and there are no rental arrears. The rented unit is described as a townhouse unit, and the tenants paid a security deposit in October, 2007 in the amount of \$500.00.

The tenant testified that on October 27, 2009 the landlord received her notice to vacate the unit and on December 23, 2009 the landlords received her forwarding address in writing.

One of the landlords testified that about 2 weeks before moving out, an inspection was done by the parties as a “walk-through” without a written report to see if the unit would be re-rentable right away. She found that the floors needed to be cleaned and stickers needed to be taken off the walls, and repaint. She also found that a corner of the kitchen wall was chipped. She stated that the tenant agreed to do the work, but didn’t do it. She further testified that she intended to do a full written inspection once the tenant moved out, however she went back to the unit on December 2 and found cleaning supplies, garbage and a vacuum cleaner still left in the unit, but the tenant had moved out and was not there when she arrived. The landlord stated that she left 4 messages on the tenant’s phone and cell phone, and called the neighbouring tenant, but did not hear back from the tenant.

On December 2, 2009 the landlord took pictures of the unit and took the vacuum cleaner home assuming the tenant would be back for it and she would call. The tenant did call, said she would go back and finish cleaning but that she was not going to get a carpet cleaner until the following Friday, which was beyond the end of the month, and the tenancy ended on November 30, 2009. The landlord told the tenant not to bother, and her husband took the vacuum cleaner back to the unit, where the tenant met him and retrieved the vacuum cleaner. The landlord did not do a move-out inspection report at that time because a break-in had occurred and the police were there.

The unit was not re-rented until the end of January. The landlords replaced the carpets, removed the stickers from the walls and re-painted the unit. The landlord is claiming \$360.00 for cleaners, \$346.75 for replacing carpets in one bedroom and the stairs, as well as \$283.50 for installation, and \$4.50 to dispose of the old carpet at the dump. The

landlords had contacted a professional carpet cleaner who said that the carpet was not cleanable. The landlord is also claiming \$71.53 for the wood casing for the baseboards and \$8.07 for having keys cut for the front door.

The male landlord testified that the following charges took place for which receipts were provided in advance of the hearing:

- December 12 Changed locks \$22.39
- December 14 purchased putty for wall filler \$21.26
- December 15 blinds replaced \$110.88
- January 6 purchased calking to go around the laminate in the upstairs bedroom \$12.09
- January 13 purchased paint \$132.17
- January 15 purchased new laminate \$475.00
- January 21 blinds in living room and another bedroom \$187.69
- January 27 blinds for the bedrooms replaced \$61.31
- January 27 purchased 3 heat registers to replace broken ones \$13.81
- January 27 purchased moulding between the carpet on the stairs and the laminate \$20.75

A witness for the landlords also testified that she was with the landlord on December 2, 2009 when she attended the unit. The witness testified that it looked like people were coming back because cleaning supplies and the vacuum cleaner were there, and the place still needed cleaning. She further testified that the carpet upstairs was wet and described it as pure filth. She further testified that she witnessed what appeared to be nail polish on the carpet, and the blinds in the majority of the rooms were broken. She also advised that that was the first time she had been in the unit. She described the oven as dirty, and witnessed the landlord take pictures of it, mould on the windows and the bathroom had not been cleaned. A closet door was leaning against a wall which had obviously been pulled off the track in an upstairs bedroom.

The tenant testified that she cleaned the unit except for the oven and the carpets. She disagreed with the landlord's evidence, and that of the witness. Further, she was a tenant there for 2 years, and there's bound to be wear and tear, and there were approximately 3 stickers on the living room wall.

The tenant supplied a move-in condition inspection report in advance of the hearing. It shows the following:

- the kitchen had new vertical blinds
- windows/coverings/screens in the entry and kitchen were “fair”
- walls and trim in the kitchen and living room were “fair”
- master bedroom floor/carpet has “some stains”
- a bi-fold door was off in the master bedroom

### **Analysis**

I rely firstly on Section 35 of the *Residential Tenancy Act*:

**35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

- (a) on or after the day the tenant ceases to occupy the rental unit, or
- (b) on another mutually agreed day.

(2) the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

The *Act* goes on to say that the landlord may complete and sign the inspection report without the tenant if the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or the tenant has abandoned the rental unit. In this case, the tenant did not abandon the unit.

The *Act* further states that:

**36** (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or pet damage deposit, or both, for damage to the residential property is extinguished if the landlord does not comply with section 35 (2).

In the circumstances, I find that the landlord clearly did not offer 2 opportunities to the tenant to conduct a condition inspection report as required by the legislation, and therefore, their right to claim against the security deposit is extinguished.

I must also point out Section 38 of the *Act*, which states as follows:

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

The landlord must do one of the following

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlords did neither and are therefore in breach of the *Act*. The consequence for that breach is set out in subsection (6):

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The Landlord's Application for Dispute Resolution was filed on April 12, 2010, well beyond the 15 days allowed under the *Act*, and therefore, I have no discretion but to award double the amount of the security deposit to the tenant.

Further, although the landlords cannot legally claim against the security deposit, they are not barred from making an application for damages under Section 67 of the *Act*:

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In considering a claim for damages, I must apply the four part test:

- What damage or loss exists;
- That the party claimed against violated the *Act* or the tenancy agreement which resulted in the loss;
- The value of the loss;
- What steps were taken by the person claiming to mitigate the loss.

The main consideration is the condition of the unit when the tenant moved in compared to the condition of it when she moved out. I have no move-out condition inspection report, nor was one completed according to the evidence. The move-in condition inspection report shows that walls and trim were in fair condition when the tenant moved in, however, I have heard no evidence, other than a number of stickers, that they were in any worse shape when she moved out; nor have I heard any evidence about when the walls were last painted. I therefore, make no award in favour of the landlords for paint or putty for wall-filler.

The landlord testified that the house is 15 years old, and the move-in condition inspection report shows that the floor in the master bedroom has stains, and therefore, I make no award in favour of the landlords for laminate.

The landlords have failed to provide sufficient evidence that the condition of the unit was any different when the tenant moved out than when she moved in other than blinds. I do find that if the blinds had been in the condition that the landlord's photographs show at the time of move-in, it would be noted on the move-in condition inspection report. For blinds, I award the landlord \$110.88 for blinds on the sliding glass door, \$61.31 for 2 blinds in one bedroom, and \$187.69 for 2 sets of living room blinds.

I do not find that the tenant is responsible for caulking around the laminate or for moulding between the carpet and laminate on the stairs.

The tenant did over-hold by not vacating and having the unit ready for occupation by another tenant by the end of the month, and therefore, I find that the landlord is entitled to recovery of the amount paid to change the locks, in the amount of \$22.39.

### **Conclusion**

The landlord's application for an order to retain the security deposit is hereby dismissed without leave to reapply.

The tenant's application for double the return of the security deposit is hereby allowed at \$1,000.00.

The landlords' application for a monetary order for damage to the unit and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby allowed at \$382.27. Since both parties have been partially successful, I decline to award the filing fee to either party.

I further order that the amounts be set off from one another, and order that the landlords pay to the tenant the amount of \$617.73. This order may be filed in the Provincial Court and 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: May 06, 2010.

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Dispute Resolution Officer