

## **DECISION**

### **Dispute Codes:**

MNSD, MND, FF

### **Introduction**

This hearing was convened in response to an application by the landlord and a cross application by the tenant.

**The landlord** applied for dispute resolution on December 03, 2009 for;

- A Monetary Order to recover costs for damage caused to the rental unit in the amount of \$2152.80
- Recovery of the filing fee associated with this application in the amount of \$50.

**The tenant** applied for dispute resolution on March 10, 2010 for:

- Return of the security deposit plus interest in the amount of \$642.85.

Both parties attended the conference call hearing and participated with their submissions, testimony and documentary evidence, and were permitted to ask questions and attempt to settle all matters.

### **Preliminary matters**

The parties attempted to come to an agreeable resolve to their applications, which was not successful.

The landlord submitted document evidence at the hearing not supplied in advance of the hearing - in clarification to recent evidence from the tenant - and provided copies to the tenant and this hearing. I determined the evidence as relevant to the proceeding and that it pertained to known matters previously submitted, and did not prejudice the other party. The landlord's evidence was accepted.

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

Is the landlord entitled to the monetary amounts claimed ?

Is the tenant entitled to the monetary amount claimed ?

## **Background and Evidence**

The landlord is claiming compensation of costs for damages to the unit and for cleaning of the unit upon it being vacated by the tenant. The tenant acknowledges responsibility for some damage, some repairs and some cleaning, but not in the amounts claimed by the landlord, and claims return of the security deposit.

The following is undisputed. The tenancy began on September 01, 2000 and ended October 31, 2009 when the tenant was accommodated by mutual agreement with the landlord, into another nearby unit on the same residential property. At the outset of the tenancy the landlord collected a security deposit of \$598 which the landlord still holds. Both parties performed a start of tenancy inspection in 2000; and, an end of tenancy inspection was conducted and a report of the inspection was completed and submitted into evidence: however, the tenant disputes the validity of the report.

The landlord claims that an end of tenancy inspection was arranged with the tenant and started with the tenant present on November 03, 2009, but that the tenant very quickly left the inspection upon becoming upset with the landlord. The landlord completed the remainder of the inspection and signed the inspection report on November 03, 2009. The landlord testified that On November 26, 2009 she then met with the tenant and went over the completed report and the tenant signed the report that she did not agree the report fairly represented the condition of the rental unit for the reason stated that she only agreed to damage to doors, bi-folds (doors), and shelves. The landlord acknowledged filling in the portion of the tenant's declaration agreeing to damages, as per the tenant's agreement. The tenant acknowledges attending the suite on November 03, 2009 and leaving in haste. She testified that the inspection report she signed on November 26, 2009 was void of any details – blank – but signed it, regardless. The tenant testified that upon receiving a copy of the form several days later, it was then completed as submitted into evidence. Therefore, the tenant disputes the contents of the inspection report.

The landlord submitted a quantum of photographs reportedly taken November 03, 2009 purporting to the unclean condition of the rental unit, and to damage to a number of walls, three (3) bifold doors and shelves. In addition the landlord submitted estimates and invoices:

- for the repair to wall damages in the amount of \$525.

for the materials and labour for the replacement of 3 bi-fold doors and closet shelves, and a repair to a door knob in the total amount of \$1087.80.

- The landlord submitted invoices and an accounting of cleaning, from 2 individuals, for 20 hours each, for a total of 40 hours for cleaning, in the total amount of \$540.

The tenant argues that only one set of bi-fold doors was damaged and necessitated replacement, and that the invoiced cost for replacement of the one (1) door is unreasonably high. The landlord testified that the costs claimed are for 3 doors, and that the amount submitted for the repairs by their contractor is - in their experience - not out of the ordinary realm for such work, which includes all materials and labour. The tenant argues that the repair to walls is higher than it should be as some of the purported wall damage was caused by a past repair to the unit by the landlord, which were never fully finished. The landlord's response to the purported past repairs by the landlord was that it was possible but not known by the landlord's representatives, and were prepared to assign benefit of their doubt. The tenant argues that the unit was not left unclean so as to incur an additional 40 hours of cleaning. In addition, the tenant disputes that some photographs submitted into evidence by the landlord are not of the rental unit. The primary photographs in contention are in respect to a photograph of a toilet bowl, a stair railing purported not to have a curvature, purported holes in wood finished bi-fold doors, and a purported photograph of a window with an exterior bush, or foliage to its right. The tenant claims the holes in the photograph are all of one door - the landlord claims they are of 3 doors. The landlord testified that all the photographs are in stamped sequential order. Nonetheless, the landlord and tenant agreed the landlord would re-visit the rental unit on this date and report back to all parties as to the items of the stair railing and the window / bush dispute. In this regard, the landlord did report back on the same date, providing written confirmation from the current tenant, that the railing and window bush items were as originally presented by the landlord in their photographs.

### **Analysis**

I have considered all evidence and all submissions to both claims and have considered all testimony given in the hearing.

#### **As to the landlord's claim:**

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test:

1. Proof the damage or loss exists,

2. Proof the damage or loss were the result, solely, of the actions or neglect of the other party (the tenant) in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with allowance for such items as loss of rent or loss of occupation during the repair, depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

The landlord relies on the move out inspection report and ancillary photographs to establish their monetary claim. The tenant relies on their argument that, as the landlord's evidence is flawed the landlord's evidence has diminished credibility.

**I find** the landlord's submission of photographs, as submitted, are a reliable depiction of the tenant's vacated rental unit.

In respect to the tenant's claim that the landlord's end of tenancy inspection report is flawed, **I find** the tenant had opportunity to participate, but did not. **I find** that for the intent and purpose before this hearing, the tenant's initial appearance for the inspection does not constitute participation by the tenant. I accept the landlord's testimony that in the absence of the tenant's participation the landlord then completed the inspection report according to Section 35 (5) of the *Act*. I prefer the landlord's testimony that once they completed the inspection report they then presented the completed report to the tenant on November 26, 2009, for the tenant's signature to confirm the tenant's determination of the report. It is noteworthy that the tenant's assertion of fraud on the part of the landlord may have been avoided had the landlord complied with the Regulations respecting condition inspection reports.

Section 18 of the Regulations, in part, states as follows:

**Condition inspection report**

18 (1) The landlord must give the tenant a copy of the signed condition inspection report

(b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of

(i) the date the condition inspection is completed, and

(ii) the date the landlord receives the tenant's forwarding address in writing.

The landlord was obligated to give the tenant a copy of the completed inspection report admittedly completed on November 03, 2009, by November 18, 2009. In preferring the landlord's testimony respecting the inspection report, I do not accept the tenant's assertion that they signed a blank inspection report. I also do not find that the landlord's noncompliance with the Regulation either supports or diminishes the tenant's views or position respecting the landlord's claims.

I prefer the landlord's testimony and evidence and **I find** that the landlord's claim for damages and loss largely meet the components of the above test for damage and loss.

**I find** the landlord is entitled to recover the costs for remediation of 3 bi-fold doors, door knob and closet shelves. However, I deduct 25% for reasonable wear and tear and grant the landlord the amount of **\$815.85**.

**I find** the landlord is entitled to recover costs for remediation of wall damage. However, In the absence of a definitive resolve as to any past wall damage / repairs by the landlord, I deduct 10% for the undisputed prior damage / repair by the landlord, and 25% for reasonable wear and tear, and grant the landlord the amount of **\$341.25**.

I accept the landlord's evidence that the rental unit was left unclean. However, on preponderance of the landlord's evidence I prefer the tenant's testimony that the landlord's evidence does not adequately support the rental unit required 40 hours of professional cleaning. I grant the landlord a set total of **\$350** for cleaning.

As the landlord's application had sufficient merit, I grant the landlord recovery of the filing fee in the amount of **\$50**, for a total entitlement for the landlord in the amount of **\$1557.10**.

As to the tenant's claim:

The tenancy ended on October 31, 2009. In concert with the Act and Regulations, the tenant was entitled to two opportunities to arrange an inspection with the landlord: the tenant was not entitled to two (2) inspections. The tenant determined to not participate in the end of tenancy inspection and therefore the tenant's right to claim the deposit is extinguished, and the landlord's legal obligation to administer the security deposit as provided by Section 38(1) of the Act does not apply.

Section 38 of the Residential Tenancy Act provides, in part, as follows (**emphasis for ease**)

#### **Return of security deposit and pet damage deposit**

**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.

**(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].**

As a result, the tenant's application for the return of the security deposit **is hereby dismissed without leave to reapply.**

#### **Conclusion**

**I order** that the landlord retain the deposit and interest of \$642.04 in partial satisfaction of their claim and **I grant** the landlord an order under Section 67 of the Act for the balance due of **\$915.06**. If necessary, this order may be filed in the Small Claims 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*.