

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications. The landlord applied for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenants applied for return of double the security deposit and recovery of the filing fee. Both parties confirmed service of documents upon them and the other named tenant that did not appear at the hearing. Both parties were provided the opportunity to be heard and to respond to the submissions of the other party.

Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit?
2. Has the landlord established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
3. Is the landlord entitled to retain the security deposit or should the deposit be returned to the tenants?
4. Are the tenants entitled to double the security deposit?

Background and Evidence

I heard undisputed testimony as follows. The tenancy commenced March 15, 2009 and ended February 28, 2010. The tenants paid a \$650.00 security deposit prior to moving in and were required to pay rent in the amount of \$1,300.00 per month. On March 8,

2010 the tenant provided the landlord's wife with a forwarding address in writing and on March 23, 2010 the landlord made an Application for Dispute Resolution. The tenants' applied for return of double the security deposit on March 24, 2010.

The parties provided opposing testimony with respect to condition inspections and inspection reports.

The landlord testified a move-in inspection was performed with the tenants and the female tenant signed an unofficial inspection report that he referred to as an "Addendum". A copy of the Addendum was provided to the tenants with the tenancy agreement. The female tenant was present at a move-out inspection but would not sign anything. The landlord subsequently completed a condition inspection report from the Addendum and notes he took during the inspections.

The tenant testified that there was not a move-in inspection performed but only a walk-through when they viewed the rental unit prior to signing the tenancy agreement. The tenant denied that an Addendum indicating the condition of the unit was signed. The tenant testified the first time he saw a condition inspection report was when the landlord mailed documents to the tenants after the tenancy ended.

With respect to the landlord's application, I summarize the landlord's claims and the tenant's response as follows:

<u>Item</u>	<u>Landlord's reason for claim</u>	<u>Amount claimed</u>	<u>Evidence</u>	<u>Tenant's response</u>
Wool rug	Smoke smell	157.50	Estimate	Smoked outside
Electrical outlet Smoke alarm Closet shelf	Tenants broke Tenants disconnected Tenant's repair inadequate	118.12	Invoice	Denied Agreed Repaired by tenant
Cleaning	Kitchen and bathroom soiled, mirrors and windows washed	100.00	Letter from cleaner	Left unit very clean
Deodorizing	Smoke smell in closet, cupboards and bathroom	50.00	Letter from new tenants	Smoked outside
Sink drain	Missing	8.16	Receipt	Was not working properly
Thermostat and wiring	Tenants precluded proper installation of wire behind drywall	367.50	Estimate	Tenant did not have authority to permit technician to cut into drywall
Drywall replacement and painting	Drywall needs to be opened and repaired for installation of thermostat wire	150.00	Estimate	Thermostat wiring and drywall repair not tenant's responsibility
TOTAL		\$1,044.73		

The parties provided considerable testimony concerning the thermostat wiring. The parties agreed on the basic facts that during the winter there was an issue of insufficient heat in the building. A technician attended the unit and repaired the thermostat;

however, the repair did not last long. A technician returned to the unit a second time and it was determined a new wire had to be run to the thermostat. The wire was run on the outside of the drywall.

The landlord submitted that the tenants precluded the technician from cutting open the wall because they had a fish tank set up where the wall needed to be cut open. The tenant denied the landlord's submission that the fish tank was the reason for the wire being on the outside of the wall. Rather, the tenant explained that the technician advised the tenant that the wall needed to be cut open and the tenant responded by stating the technician would have to speak to the landlord.

Upon enquiry, the landlord testified the residential property was likely constructed in the 1970's but that it had been renovated just prior to the tenancy. Both parties agreed that the tenants were late in vacating the rental unit on the last day of tenancy.

Provided as evidence by the landlord were photographs of the rental unit and estimates, receipts and invoices for repairs and cleaning. The landlord provided a copy of the tenant's forwarding address and the condition inspection report. The landlord did not provide a copy of the tenancy agreement or Addendum.

Analysis

Tenants' application

Section 38(1) of the Act requires a landlord to either return the security deposit to the tenant or make an Application for Dispute Resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address

in writing. If the landlord fails to comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

In this case, I am satisfied the landlord made an Application for Dispute Resolution within 15 days of receiving the tenants' forwarding address in writing. Therefore, the tenants are not entitled to double the security deposit.

Where a landlord fails to comply with condition inspection and condition inspection report requirements, the landlord extinguishes the right to the security deposit. While it was in dispute whether a move-in inspection took place, I find the landlord provided insufficient evidence to show that a move-in inspection report was prepared in accordance with the Residential Tenancy Regulations. Therefore, I find the landlord extinguished his right to the security deposit and the tenants are entitled to return of the \$650.00 security deposit.

Landlord's application

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37.

At the end of a tenancy, the Act requires that the tenant leave the rental unit “reasonably clean” and undamaged. Normal wear and tear does not constitute damage. Upon review of all of the evidence before me, I make the following findings with respect to the landlord’s monetary claims.

Carpet/rug cleaning

Residential Tenancy Policy Guideline 1 provides that a tenant is generally responsible for steam cleaning or shampooing carpet where the tenancy exceeds one year. A tenant may still be held responsible for carpet cleaning where the tenancy is less than one year where the tenant soiled the carpet, had pets or smoked in the unit. In this case, I heard the tenant smoked on the balcony. The tenant also stated the windows were open when smoking on the balcony. I find, based on the balance of probabilities, that the carpets required cleaning as the tenancy was nearly one year and they likely smelled of smoke. I award the carpet and rug cleaning costs to the landlord in the amount of \$250.95.

Electrical duplex, smoke alarm, closet shelf repair

Upon review of the photograph of the electrical duplex I find the duplex appears to be quite old and likely beyond its normal useful life. I do not find the landlord entitled to compensation for the duplex.

The tenant acknowledged disconnecting the smoke alarm. I find the tenant responsible for reconnecting it or compensating the landlord for its reconnection. The cost of reconnecting the smoke alarm is inter-mingled with costs for other repairs. Therefore, I approximate the cost of the smoke alarm re-connection to be \$25.00 and I award that amount to the landlord.

Having heard the unit was renovated before the tenancy began I accept that the closet shelf support was not in disrepair when the tenancy began. I also accept that the photograph depicts a shelf that is coming unattached from the wall. While I heard the tenant attempted to reattach the support after the photograph was taken I find the repairman's invoice supports the landlord's assertion that the tenant's repair was inadequate. The cost of repairing the shelf support is inter-mingled with costs for other repairs. Therefore, I approximate the cost of the shelf support repair to be \$25.00 and I award that amount to the landlord.

Cleaning

Upon review of the letter written by the cleaner and considering the tenants were running behind in vacating the rental unit, I accept that the tenants did not leave the rental unit reasonably clean and that additional cleaning was required. I award the landlord the \$100.00 claimed for additional cleaning.

Deodorizing

The landlord submitted in writing that deodorizing was required for the closet, wooden cupboards and bathroom. The landlord provided evidence from the new tenants and

the cleaner that smoke smell could be detected in the closet and that the new tenants repainted the closet. I do not find sufficient evidence of smoke smells in the cupboards or bathroom. It is unclear to me why the smell of smoke would be prevalent in the closet and I assume it came from the tenant's clothes smelling of smoke. I do not find the transfer of smells from fabric constitutes damage. Rather, I categorize this as normal wear and tear where the tenant is a smoker. Further, I am satisfied the landlord was aware that the tenant smoked when entering into the tenancy agreement. Therefore, I do not award the landlord's claim for repainting the closet.

Sink drainer

The tenant acknowledged this item was missing and explained that it was no longer working properly. I find it likely that such an inexpensive item would have a relatively limited useful life and I do not award the landlord any costs for this item.

Thermostat wiring and drywall repair

I have reviewed the estimate prepared by the heating company. I note that the estimate describes how old wiring had to be replaced as it was shorting out. I note the technician had tried fishing the replacement wire in the wall but there was an obstruction. I find the old shorted out wire and the obstruction in the wall is not a tenant responsibility.

The heating company's estimate also states that "the tenant did not approve of cutting into the gyproc"; however, the estimate does not mention a fish tank. I find that a tenant does not ordinarily have the authority to approve of cutting drywall and insufficient evidence that the fish tank was the reason the technician did not cut into the drywall. Therefore, I prefer the tenant's version of events as to what transpired the day the technician attended the property and I find the tenant acted reasonably by not giving the technician approval to cut the drywall. Clearly, the approval should have come from the landlord and it appears the heating company was aware that they were dealing with a tenant in the unit.

In light of the above, I do not find the tenant responsible for paying for costs associated with having gyproc cut open, new wire run in the wall and the cost of closing up the wall.

In summary, I have awarded the landlord the following amounts:

<u>Item</u>	<u>Amount claimed</u>	<u>Amount awarded</u>
Wool rug	157.50	157.50
Electrical outlet	118.12	Nil
Smoke alarm		25.00
Closet shelf		25.00
Cleaning	100.00	100.00
Deodorizing	50.00	Nil
Sink drain	8.16	Nil
Thermostat and wiring	367.50	Nil
Drywall replacement and painting	150.00	Nil
Total	\$ 1,044.73	\$ 400.95

Monetary Order

In accordance with section 72 of the Act, I order the parties to share in the cost of the filing fee paid by the tenant.

In accordance with section 72 of the Act, I offset the landlord's award against the tenants' award and I order the landlord to return the following net amount to the tenants forthwith:

Tenants' award of security deposit	\$ 650.00
One-half of filing fee	25.00
Landlord's award for cleaning and damages	<u>(400.95)</u>
Net amount owed to tenants	\$ 274.05

The tenants are provided a Monetary Order in the amount of \$274.05 to serve upon the landlord to ensure payment is made. The tenants may enforce the Monetary Order by filing it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenants and landlord were partially successful in their respective applications. The tenants have been provided a net award of \$274.05 and have been provided a Monetary Order in that amount to serve upon the landlord.

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: July 29, 2010.

Dispute Resolution Officer