

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for a monetary order for damage to the rental unit and money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67. The tenants applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67. The landlord applied to retain and the tenants applied to obtain all or a portion of the tenants' pet damage and security deposits in partial satisfaction of the monetary order requested, pursuant to section 38. Both parties applied for recovery of their filing fees pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence, to make submissions and to call witnesses with evidence relevant to the issues in dispute. The tenants testified that they sent the landlord a copy of their application for dispute resolution by registered mail on June 4, 2010. The landlord testified that he sent the tenants a copy of his application for dispute resolution on June 11, 2010. Both parties confirmed having received one another's applications for dispute resolution by registered mail. The parties also exchanged evidence packages with one another. I am satisfied that the parties served these documents to one another in accordance with the *Act*.

The tenants originally wished to call a number of witnesses, including their teenaged sons who had provided written statements as part of the tenants' evidence package. As the hearing proceeded, the tenants chose not to present their sons as witnesses. After discussing the tenants' reasons for submitting oral testimony from one of the witnesses, a contractor, they agreed that the witness had no knowledge of the condition of the rental premises when they occupied the rental unit. Under these circumstances, this witness did not participate in the hearing. After the tenants' first witness testified, the

landlord accepted that the second proposed witness, one of the tenants in the other suite on this property, would provide essentially the same evidence regarding the state of the rental unit at the commencement of the tenancy and when the tenants vacated the premises. Based on this agreement between the parties, the second proposed witness did not provide oral evidence.

Issues(s) to be Decided

Is the landlord entitled to a monetary Order for damage and loss arising out of this tenancy? Are the tenants entitled to a monetary Order for money owed or compensation for damage or loss arising out of their tenancy? Which of the parties are entitled to obtain or retain the tenants' pet damage and security deposits? Are either of the parties entitled to recover their filing fees from the other party?

Landlord's Request to Amend his Application for Dispute Resolution

At the commencement of the hearing, the landlord asked for permission to amend his application for dispute resolution. He said that he had grossly underestimated the cost of repairing the rental premises and asked for permission to amend the amount of his requested monetary award from the \$3,500.00 identified in his June 10, 2010 application to \$10,121.42, the actual amount he spent on this rental unit after the tenants vacated the premises. As set out below, I have considered all of the items listed in the landlord's request for a monetary award. However, there is no need for me to rule on whether to amend the landlord's application for dispute resolution because the monetary award I am issuing in the landlord's favour does not exceed \$3,500.00, the amount of his original application.

Background and Evidence

The tenants moved into the rental premises on September 30, 2008 by way of the first of a continuing series of three-month fixed term tenancies. Monthly rent was set at \$1,200.00, although the landlord allowed the tenants a "painting credit" of \$600.00 towards their October 2008 rent. He testified that he did so because the premises were not in "pristine" condition at the commencement of this tenancy. The tenants paid a pet

damage deposit of \$600.00 and a security deposit of \$600.00 on September 30, 2008, which the landlord continues to retain plus interest.

The parties conducted a joint move-in inspection on October 1, 2008 and signed a report to that effect. The tenants testified that they issued their written notice to end tenancy on or about April 1, 2010. They vacated the rental premises on May 30, 2010. The landlord testified that he requested a joint move-out condition inspection on May 30, 2010, but the tenants said that they could not attend at that time. He said that he then arranged to conduct a joint condition inspection on May 31, 2010 at 9 a.m., but the tenants did not arrive until after 1 p.m. The tenants testified that the May 31, 2010 inspection was scheduled for 1 p.m., and that they arrived twenty minutes late for this inspection. They said that by then the landlord had already commenced repairs and renovations and that the condition of the rental premises as they left it could not be accurately determined at that point. Although the landlord is still required to complete a move-out condition inspection report even if the tenant does not participate in that inspection, no evidence was provided to indicate that a move-out condition inspection report was prepared and forwarded to the tenants.

The tenants applied for a monetary Order of \$5,000.00 plus \$1,200.00 for the return of twice their pet damage and security deposits. The tenants' application included :

Item	Amount
Return of Pet Damage Deposit	\$600.00
Return of Security Deposit	600.00
Recovery of Filing Fee for this application	50.00
Loss of Quiet Enjoyment (Alleged harassment by landlord)	400.00
Loss of Use of Washer for 3 weeks	200.00
Mould/Health	1,575.00
Loss of Use of Deck	1,575.00
Total Monetary Award	\$5,000.00

In their initial letter to the landlord, the tenants also requested a return of twice the pet damage and security deposits if the landlord did not return these within 15 days of being notified of their forwarding address. At the hearing, the tenants agreed that the landlord

was not responsible for returning twice these deposits because he applied for dispute resolution within 15 days of receiving their forwarding address in writing.

The landlord's detailed breakdown of the items listed in his application is as follows:

Item	Amount
Stove	50.00
Fridge	50.00
Cleaning Closets, Cupboards & Drawers	75.00
Refinishing Hardwood Floors	3,700.00
Walls	100.00
Bathrooms	75.00
Windows & Patio Doors	100.00
Patios and Decks	50.00
Light Fixtures	50.00
Smoke Alarms	30.00
Painting & Minor Damage Repair	1,590.00
Garbage & Abandoned Property	100.00
Reimbursement of Painting Credit for October 2009 Rent	600.00
Income Rental Loss- ½ of June 2010	600.00
Cost of Replacing Stove	654.20
Cost of Replacing Washer/Dryer & Dishwasher	1,589.22
Filing Fee for this Application	50.00
Postage	10.00
Electrician Services	598.00
Landscaping to Fill in Holes from Tenants' Removal of Rose Bushes	50.00
Total Monetary Award Requested	\$10,121.42

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/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.

Analysis- Tenants' Application for a Monetary Order

The tenants requested a monetary Order of \$400.00 for the loss of quiet enjoyment of their rental premises due to alleged harassment by the landlord. At one point in the hearing, the female tenant said that this claim was for harassment that occurred after their April 1, 2010 notice to the landlord that they were ending their tenancy. She testified that the landlord did not give the tenants proper 24 hour notice to show the premises to prospective tenants. She also provided written and oral evidence that the claim for loss of quiet enjoyment resulted from what she described as constant harassment from the landlord during their tenancy regarding her disability and her employment situation.

I do not find that there is reason to issue the tenants a monetary award for loss of quiet enjoyment of their rental premises due to alleged harassment from the landlord. I note that the tenants signed a series of three-month leases from September 30, 2008 until May 2010 and had ample opportunities to end their tenancy if they were dissatisfied with the landlord's interaction with the tenants. There is conflicting evidence from the parties regarding the notice provided by the landlord to show the rental premises to prospective tenants after the tenants gave their notice to end tenancy. Regarding this issue, I found the landlord's oral evidence more compelling in that he provided undisputed evidence that he grouped the showings together on weekends so as to minimize disruption to the tenants and gave three days notice to do so. I dismiss the tenant's claim for loss of quiet enjoyment regarding alleged harassment by the landlord.

The landlord testified that during the tenants two plus years of tenancy, he had to replace three sets of washers and dryers in this unit. He said that after the final washer and dryer became inoperable he said that he would buy new appliances which would be under warranty. He said that during the approximate two week period when there was no functioning washer or dryer in their rental unit, the tenants used the washer and

dryer in the other rental suite in this property, close friends of the tenants. He provided undisputed testimony that the tenants provided no evidence that they had any out of pocket expenses for laundry during this period.

I accept the landlord's assertion that the tenants may have been able to obtain access to the laundry facilities elsewhere on this property during the period in question. However, in recognition that this substitute arrangement may not have been equivalent to having laundry services in their own rental unit, I allow a monetary award in the tenants' favour in the amount of \$45.00, which compensates them for the loss of this service at a rate of \$15.00 per week for the three weeks identified in their claim.

I dismiss the tenants' claim of \$1,575.00 for mould and health problems during this tenancy. There was conflicting evidence regarding this matter. The landlord attributed any problems incurred to the tenants' failure to look after the rental premises properly. The tenants referred to written evidence they produced from a company they consulted to examine the source of this problem. The tenants produced insufficient evidence of any medical findings regarding any health problems arising from the landlord's alleged failure to provide them with healthy accommodations.

The tenants provided conflicting testimony regarding their claim of \$1,575.00 for lack of use of the deck. While they said that they could not use the deck because of safety concerns, they also admitted that one of their sons shovelled snow from the deck to ensure that it did not cause more safety problems. The landlord admitted that the repairs he conducted were not ideal and that there were leaks in the deck which was situated over the carport. The tenants said that the landlord promised repairs to the deck by the spring of 2009; the landlord denied having made this promise and said that the plywood he placed over weak sections of the deck was sufficient.

I accept that the tenants had reasonable expectations to be able to use the deck when they commenced their tenancy and that their access to the deck was limited by the condition of that deck. I allow the tenants application for a monetary award in the

amount of \$180.00, which is comprised of one year's limited use of the deck at a rate of \$15.00 per month.

I apply these monetary awards of a total of \$225.00 in the tenants' favour to the overall monetary awards issued in the landlord's favour as outlined below.

Analysis - Landlord's Application for a Monetary Order

I attach little weight to the landlord's assertion that the tenants' October 2, 2008 signature of a document entitled Information for Vacating Tenants committed them to paying minimum charges for various items listed in that document and open-ended charges for the items he listed on his \$10,121.42 revised claim for a monetary Order.

There is conflicting testimony as to whether the landlord or the tenants failed to comply with the obligations under section 35 of the *Act* with respect to the joint condition inspection at the end of this tenancy. The landlord said that he gave the tenants two opportunities to conduct the joint move-out inspection and the tenants did not participate. The tenants said that they were 20 minutes late for the scheduled move out inspection and the landlord had already started his renovations and painting before the scheduled inspection. While the parties seem equally credible regarding the timing of the scheduled inspection, the landlord confirmed that he did commence his repairs and renovations before the second scheduled inspection. There is no evidence before me that the landlord complied with the requirement to conduct a condition inspection without the tenants and provide them with a copy of that condition inspection report.

On that basis, I have only considered those portions of the landlord's application for a monetary award where there is evidence regarding the state of the rental premises when this tenancy ended.

Based on my review of the condition inspection information, the photographic evidence and the oral and written evidence of the parties, I accept the landlord's claim that the rental premises were not left in clean condition at the end of the tenancy. There were

no notes that the rental unit required cleaning in the October 1, 2008 move-in condition inspection report signed by both parties, with the exception of the kitchen. However, the landlord also admitted that the premises were by no means in "pristine" condition when the tenants moved into this rental unit. The move-in condition inspection report noted that damage was present and repainting was required for most of the rooms in this rental unit. I also accept the tenants' undisputed testimony that there was considerable garbage and debris that they needed to remove when they moved into the rental premises. I allow the landlord a monetary award of \$150.00 for cleaning and removing garbage resulting from this tenancy.

Although I accept the landlord's testimony and evidence that the rental premises needed to be repainted when the tenants vacated this unit, I find that painting was required to most of the rental unit when the tenants moved into this unit in September 2008. The landlord provided a repainting allowance of \$600.00 to the tenants in lieu of a portion of their October 2008 rent, clear recognition that the premises required repainting at that time. The landlord's June 2010 dissatisfaction with the paint job performed by the tenants does not entitle him to a monetary award to refurbish the rental premises to a state that far exceeded the apparent condition of the unit when the tenants commenced occupancy of this unit. As noted above, the landlord also failed to prepare a condition inspection report at the end of this tenancy. I dismiss the landlord's application for a monetary award for painting and minor damage repair.

I also dismiss the landlord's application for reimbursement of the \$600.00 painting credit he allowed the tenants for October 2008. The landlord could have painted the premises himself in October 2008 or retained the services of a professional painting service. Instead, he decided at that time to grant the painting allowance to the tenants. Based on the evidence presented, I make no monetary award to allow the landlord to recover an allowance he provided almost two years earlier.

During the hearing, the landlord testified that he eventually chose to purchase a new washer and dryer so that he could obtain a service warranty for these products. He said that the replacement for one of the dishwashers in this rental unit cost him \$15.00. I

have considered the landlord's claim for new appliances he maintained needed to be replaced as a result of this tenancy. However, I find insufficient evidence to issue the landlord a monetary award for new appliances, when it seems clear that the appliances being replaced were used and in some cases ceased functioning soon after being installed. I do not find that the tenants should be financially responsible for the landlord's decision to upgrade the rental premises by purchasing new appliances. Under these circumstances, I dismiss the landlord's request for a monetary award to replace the appliances in this rental unit.

The landlord provided written, oral and photographic evidence regarding his claim that the urine smell and damage to his hardwood floors caused by this tenancy was so severe that he had to spend \$3,700.00 in extensive refinishing. The landlord testified that this urine smell resulted from the tenants' pet(s) and was not present when the tenants commenced occupancy. The tenants testified that the urine smell was not immediately apparent when they commenced their tenancy, but over the first month or two became noticeable and remained strong during their entire tenancy. Their signed move-in condition inspection report made no reference to significant problems of this type with respect to the flooring. I am not convinced by the tenants' evidence that the urine smell and damage to the hardwood floor pre-existed their tenancy and for that reason issue a monetary award in the landlord's favour.

The landlord testified that the building is approximately 40 years old and that the cherry wood floors were refinished about 10 years ago. He provided no written evidence regarding the previous refinishing of this flooring.

Residential Tenancy Policy Guideline #37 establishes the average life cycle of hardwood flooring at 20 years. The general condition of this property does not appear to be average and as such I reduce the anticipated life cycle of this hardwood flooring by 10 % to 18 years. If the hardwood flooring was last refinished 10 years ago, the decision to replace this flooring at year 11 of an anticipated 18 year cycle occurred 7 years earlier than would otherwise have been anticipated. Using these calculations, I

issue a monetary award of 7/18 or 38.9% of the \$3,700.00 cost of refinishing the landlord's hardwood floors. This results in a monetary award of \$1,439.30.

I accept the landlord's evidence that he could not rent out this rental unit until the middle of June 2010 while he conducted renovations and repairs required as a result of this tenancy. As I find the tenants only partially responsible for the renovations and repairs undertaken, I allow the landlord's application for a monetary award of one quarter of one month's rent (i.e., \$300.00) for June 2010.

In the absence of a move-out condition inspection report, I dismiss the landlord's application for a monetary award for repairs required by an electrician.

I dismiss the landlord's application for recovery of his landscaping fees, as the general state of repair of the outside of this property does not lead me to believe that the tenants should be held responsible for this item.

I dismiss the landlord's application for postage, as the landlord is only entitled to recover his filing fee for this application out of the costs he incurred to pursue this application. As the landlord is partially successful in this application, I allow him to recover \$25.00 of his filing fee. I allow the landlord to retain the pet damage and security deposits plus interest in partial satisfaction of the monetary award in the landlord's favour.

Conclusion

I issue a monetary Order in the following amount in the landlord's favour.

Item	Amount
Cleaning	\$150.00
Refinishing Hardwood Floors	1,439.30
Loss of ½ month's rent for June 2010	300.00
Less Monetary Award in Tenants' Favour (Loss of Use of Laundry and Deck)	-225.00
Less Security Deposit plus interest (\$600.00 + \$2.29 = \$602.29)	-602.29
Less Pet Damage Deposit plus interest (\$600.00 + \$2.29 = \$602.29)	-602.29
Recovery of Filing Fee for this application	25.00
Total Monetary Order	\$484.72

This monetary Order allows the landlord to retain the tenant's pet damage and security deposits plus interest and allows the landlord to retain one-half of his filing fees for this application. This monetary Order also reflects a monetary award in the tenants' favour for loss of use of laundry facilities and the deck for portions of this tenancy.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.