



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the landlords to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order to keep the tenants security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the tenant on October 06, 2010. The tenant confirmed receipt of these documents and of the landlord's evidence.

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:

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords entitled to keep the tenants security deposit?

Background and Evidence

Both Parties agree that this tenancy started on November 09, 2009, rent is \$1,650.00 per month due on the 9th day of each month and a security deposit of \$825.00 was paid on November 09, 2009. This was a fixed term tenancy which ended at the end of the fixed term on April 09, 2010.

The landlord's testify that the tenant originally rented the unit with two other tenants who have since moved out. The landlords state that at the start of the tenancy the unit was in good condition and the previous tenants had had their security deposit returned to them in full. The landlords state they were not available at the start of the tenancy but a few days later they gave one of the tenants a move in condition inspection form and asked if they could make a start on that and to give the landlords a time to get together to complete the inspection. The landlords testify that they did not hear back from the tenants so asked another of the tenants when would be a good time to do the inspection. In total the landlord's state they asked the tenants on three occasions for a date when the inspection could be completed but the tenants failed to respond to this.

At the end of the tenancy the tenant and landlords did a move out inspection together and the landlord's testify that they found the following damage:

- A curtain rod and tie downs which had been pulled from the wall and the curtain rod was bent beyond repair. The landlord states the tenant said sorry for this damage at the inspection and these items were replaced at a sum of \$45.97. Photographs and receipts provided in evidence.
- The carpets were left very dirty and stained and these had to be professional cleaned at a cost of \$115.50. Photographs and receipts provided in evidence.
- Three dining chairs were left with the foot struts broken. The landlord obtained quotes for this repair work and went with the cheapest quote of \$210.00. Photographs and receipts provided in evidence.

- The bottom arm in the dishwasher had been snapped off. The landlord attempted to repair this but the clips were damaged and they had to purchase a new arm and were able to install it themselves at a cost of \$24.58. Photographs and receipts provided in evidence.
- The back door blinds were bent and one of the blades was broken. The landlords purchased a new blind at a cost of \$24.61 and fitted this themselves. Photographs and receipts provided in evidence.
- Two new saucepans purchased for the tenants use at the start of the tenancy were left in a badly gouged and scratched condition. The scratches were so deep they had removed the Teflon coating from the pans. The landlords did not take photographs of these items as they had already disposed of the pans but the replacement pans were purchased at a cost of \$41.90 and a receipt has been provided in evidence.
- A bathroom cabinet was damaged by a water leak from the toilet. The landlords testify that the tenants did not inform them of this leak and because they were unable to take action to repair the leak the water caused damage to the legs of the bathroom cabinet and also caused mould in the cabinet and on the baseboards. The wooden legs had become rotten beyond repair and the landlords purchased a new cabinet at a cost of \$89.96. Photographs and receipts provided in evidence.

The landlord seeks to recover the taxes paid for these items to a sum of \$21.34.

The landlords testify that the tenant did not return the parking pass at the end of the tenancy. They state there is a section in the tenancy agreement which states they will charge a tenant \$30.00 if the parking pass is not returned. The landlords seek to recover this amount from the tenant.

The landlords testify that the tenant did not clean the rental unit at the end of the tenancy. They spent 16 hours cleaning the rental unit and making the repairs. They seek to recover \$30.00 per hour for this work to the sum of \$480.00.

The tenant testifies that there were curtains up but he is unaware that the curtain rod was bent or how the tie downs were pulled from the wall; he was aware that one of the dining chairs had been broken but was not aware of the damage to the other two chairs; he was not aware that the dishwasher arm was broken as he had used it to do a load the day he moved out and states it was fine then; the blinds were broken by opening and closing the door; he has no knowledge of the alleged damage to the saucepans and states he used them until he moved out; and he was unaware of a leak from the toilet and any damage to the bathroom cabinet. The tenant did not comment on the condition of the carpets. The tenant also states the person he was living with did not return the parking pass.

The tenant disputes the landlords claim for cleaning and labour of \$30.00 per hour. The tenant states that when the landlords originally told him they would not return the security deposit the female landlord told him she was going to charge \$50.00 per hour. The tenant states he filed an application for dispute resolution and a hearing was held in August 2010. However, his application was dismissed as he had filed before giving the landlord his forwarding address in writing.

The tenant states that none of the damages were pointed out during the move out inspection and the landlords have produced this list after that. The tenant states he went back to the unit with his uncle after the move out inspection and the landlords said nothing about the damages at that time. The tenant states he obtained quotes from a cleaning company who could have done the work for \$35.00 per hour and he states he would have used this company if he had been informed by the landlord of the cleaning and repairs required.

The landlords testify that the damages were discussed at the move out inspection and the list was compiled on April 16, 2010. They state they tried to contact the tenant and was told by his Aunt that she had no idea where he had gone.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Sections 23(4), 35(3) of the Act require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection report at the start of the tenancy when the tenants moved in, I find the landlords contravened s. 23(4) of the Act. Consequently, s. 24(2)(a) of the Act says that the landlord's right to claim against the security deposit for damages is extinguished.

I find however, that sections 38(4)(b), 67 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. It is therefore my decision from the evidence provided and the testimonies of the Parties that the landlords are entitled to a monetary award for damages, cleaning and associated labour costs. In order to determine the amount the landlords are entitled to I have applied a test used for damage or loss claims to establish if the claimant has met the burden of proof in this matter:

.

- 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 claimant 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 respondent. 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.

With regard to the landlords claim that the tenant or persons residing at the rental unit caused damage to the curtain pole and tie downs I find in favor of the landlords claim for **\$45.97**. With regard to the landlords claims for carpet cleaning I find the tenant did not clean the carpets at the end of the tenancy and as such the landlords are entitled to recover the sum of **\$115.50** from the tenant. With regard to the broken chairs I find in favor of the landlords claim for **\$210.00** for the repair of these chairs.

With regard to the damage to the dishwasher; As the tenant was the last person to use the dishwasher, and it is clearly seen to be broken from the evidence provided, I find the landlords are entitled to be reimbursed for this repair to the sum of **\$24.58**. With regard to the damage to the blinds again this is the tenants' responsibility to ensure the blinds do not become damaged when opening and closing the door and as such the landlords are entitled to recover the sum of **\$24.61** for the cost of replacing the blinds.

With regard to the damage to the bathroom cabinet; the landlord's evidence shows the damage to the cabinet and as the tenants did not inform the landlords that the toilet was leaking they are responsible for any costs incurred by the landlord to repair the damage. As such the landlords have established their claim for **\$89.96**.

I also find the tenant did not return the parking pass and the landlords may recover the sum of **\$30.00** to replace this from the tenant.

However the landlords have not shown the damage to the saucepans and the tenant denies knowledge of this damage therefore the landlords claim for new saucepans of \$41.90 plus \$5.02 taxes is dismissed.

I find the landlords have established their claim for labour costs in cleaning and repair of the unit to a sum of **\$480.00**. The landlords are entitled to a Monetary Order to the sum of **\$1,036.94** pursuant to s. 67 of the *Act*.

As the landlords have been largely successful with their claim I find they are also entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*.

I also Order, pursuant to Section 38(4)(b) of the Act, that the landlords may retain the full security deposit of **\$825.00** towards the damages, cleaning and labor costs. A Monetary Order has been issued for the following amount:

Damages	\$556.94
Subtotal	\$1,036.94
Less Security Deposit	(-\$825.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$261.94

Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$261.94**. 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: February 08, 2011.

Residential Tenancy Branch