



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlords: as an application for a Monetary Order for damage to the unit and money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; for damage to the unit; to keep the security deposit; and to recover the filing fee associated with his application.

By the tenant: as a (cross) application for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; for the return of the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order, and if so for what amount?

Are the landlords entitled to keep all or part of the security deposit?

Are the landlords entitled to recover the filing fee?

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a one bedroom in a three year old multi-unit complex. Pursuant to a written agreement, the fixed term tenancy started on November 1st, 2010 and was to end on June 30th, 2011. The parties signed a mutual agreement that the tenancy ended February 28th, 2011. The rent of \$1850 was payable on the first of each month. The tenant paid a security deposit of \$925.00. Condition inspection reports were completed at the start and the end of the tenancy, however the tenant did not agree with the details of the move-out portion of the report.

In their documentary evidence, the landlords provided 6 photographs of the unit, showing various scratches and dents into portions of the hardwood floor. The landlords testified that they received the tenant's forwarding address on February 28th, 2011, the date the tenancy actually ended. The landlords testified to the damages caused by the tenant by itemizing their monetary claim as follows:

- Replacement of the hardwood floor: \$6048.00. Landlord R.W. stated that the tenant did not use HE (high efficient) detergent in the washing machine, which resulted in water leakage and warping of the hardwood floor, in addition to dents and scratches throughout. She stated that a third to a quarter of the floor was damaged, and that since this particular wood was no longer available, the whole floor needed to be replaced. She also said that the floor was only two years old and in as-new condition.
- Replacement of the washer motor: \$417.91. Landlord R.W. stated that the tenant was provided with instructions to the washer at the start of the tenancy; she said that she told the tenant to only use HE detergent, which is also indicated on the washer's label. She said that the tenant failed to comply with

these instructions, and also did not advise her of the problem with the washer and subsequent water leakage.

- Repairs to bathroom ceiling: \$281.15. R.W. said that the ceiling started to peel in the walk-in shower because the tenant neglected to aerate the bathroom adequately.
- Missed heat pump servicing appointment on November 2nd, 2010: \$300.00. R.W. said that she was charged this service call when the tenant failed to leave a key with the building manager to access the unit for that appointment. She said that all units were notified by a written notice slipped under the door a week prior.
- Bathroom tiles in walk-in shower: \$100.00 for failing to clean and causing permanent staining.
- Replacement of string to bedroom blinds: \$25.00.
- Estimate for repairs of door chips and burn marks on window ledge: \$200.00.
- Light bulb replacement: \$16.66
- Lost rent due to repairs after the tenancy ended: \$733.33. R.W. said that it took 11 days after the end of the tenancy for the repairs to be completed. She said that she pro-rated the rent per diem to calculate her claim for loss of rental income.
- Additional cleaning: \$60.00. R.W. said that there was dirt under the carpet and that the bedroom was still dirty after the tenant left.

- Filing fee: \$100.00. R.W. amended her application and withdrew the \$25.00 fee for review of a decision or order.

In his documentary evidence, the tenant provided 15 photographs to show that he cleaned the unit at the end of the tenancy; however, they were more panoramic in nature and failed to capture the close-up defects captured in the landlords' photographs, with the exception of the evidence of warping caused by water damage. The tenant disputed the majority of the landlords' claim. He said that he regularly hired a cleaning lady; that the damages to the floor, the washer, and the bathroom ceiling are not on the condition inspection report. The tenant said that he agreed to some of the dents on the floor, but that the washer was working at the end of the tenancy and that he had no knowledge of the warping alleged by the landlords. Concerning the bathroom ceiling repairs, the tenant stated that the property manager said that it was caused by natural corruption, and referred to an email from the landlord dated January 15th, 2011 stating that she would bear the cost of the repairs.

The tenant said he did not move into the unit until November 5th, 2011, and that left for Korea on November 6th and never received the notice of inspection for the heat pump. The tenant agreed that the blind string may need replacement, but disagreed with the claims for the additional cleaning of the unit.

The tenant made a monetary claim as follows:

- Double the return of the security deposit:	\$1850.00
- Less chip on door frame and burn marks:	\$ 200.00
- Less light bulb replacement:	\$ 16.66
- Less multiple small dents on hardwood floor:	\$ 400.00
- Sub-total:	\$1233.34
- Filing fee:	\$ 50.00
- Total:	\$1283.34

Analysis

In order to make a claim for damage or loss under the Act or the tenancy agreement, the party making the claim bears the burden of proof. In this matter, the landlord must prove the existence of damage or loss beyond reasonable wear and tear, and that it stemmed directly from a violation of the tenancy agreement or the Act. Conversely, the tenant must prove his claim against the landlord concerning double the return of the security deposit.

Concerning the landlords' claim; Section 37 of the *Residential Tenancy Act* provides in part that upon vacating a rental unit, the tenant must leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

The tenant testified that he caused a certain amount of damage to the floor, but disagreed with the landlord on the extent of the said damages. I am left with each party's version of what needed to be repaired and how it ought to have been repaired. The condition inspection report the tenant signed at the start of the tenancy indicates that the hardwood floor already had some minor dents. The photographs provide evidence of some damages, but fail to make a distinction between the damages before and those after the tenancy ended.

Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. I have considered reasonable wear and tear and the landlord's claim for new flooring. I am satisfied that some damage was caused by the tenant; however I am not persuaded that replacing the whole floor is a reasonable way to fulfill the landlords' statutory obligation to mitigate their loss. The landlords did not state that the flooring could no longer be used or why it could not be restored. Since I am not convinced that the floor needed replacement, it is not necessary that I consider that this type of floor was no longer available.

The *Residential Policy Guidelines* provide an estimated useful life for various items, including finishes in rental accommodations for reasonable wear and tear. In the case of flooring that useful life is 10 years. Based on the evidence and the tenant's own admission to some damage, I find that the landlord lost a portion of that useful life. The landlord stated that a third to a quarter of the floor was damaged, which represents approximately \$1500.00 to \$2000.00 of the landlord's claim. I find that the landlord lost a third of that useful life by damage beyond reasonable wear and tear and I grant the landlord a claim of \$1250.00 for the damaged floor.

Concerning the washing machine; the parties are at odds as to the instructions provided by the landlord; however the tenant received the owner's manual, and the washer's label specified the use of HE detergent. I find that the tenant was negligent in failing to read the instructions as the person who would take possession of the unit and use the washer. The tenant did not use the right type of detergent and I award the landlords the claim of \$417.91 for the washer repair.

Landlord R.W. did not dispute her email to the tenant that she would cover the charge of the bathroom ceiling repair and therefore, although she said that she changed her mind, I dismiss this portion of the landlords claim.

The notice for inspection of the heat pump came a day after the tenancy started and when the tenant had not yet moved into the unit. The tenant said that he did not receive the written notice; the landlord informed the tenant by email but did not provide him with a date. The tenant moved on November 5th and left for Korea on November 6th. I find insufficient evidence to find that the tenant had knowledge of a November 2nd, 2011 heat pump inspection and that he neglected to leave a key for the property manager. Therefore I dismiss this portion of the landlord's claim.

The tenant agreed that the string for the blinds in the bedroom may have needed replacement and I award the landlord this portion of the claim for \$25.00. The tenant

agreed to some damages on the door frame and I grant the landlords their claim of \$200.00 for these repairs.

The landlord did not provide evidence concerning additional cleaning, or for the bathroom tiles in the walk-in shower: nor was this indicated on the condition inspection report and I dismiss these two claims of \$60.00 and \$100.00 respectively. The report identified light bulb replacement and I award the landlords \$16.66.

Concerning the landlords' claim for loss of rental income for 11 days; this claim is not compatible with the landlords' choice to end the tenancy since the tenant's obligation to pay rent is dependent upon the landlord's ratification of the agreement. In order to hold the tenant accountable while mitigating their loss, a remedy for the landlords would have been to continue the tenancy while exploring with the tenant a solution to the problems identified in this dispute; or to seek assistance through the Residential Tenancy Branch or the dispute resolution process before ending the tenancy. I find that the landlord may not end the agreement on one hand, and expect the tenant to pay for future loss of rental income on the other. Once the landlord ended the tenancy, I find no legal basis to award the landlord payment for future loss of rental income and I dismiss this portion of the landlords' claim.

Turning to the tenant's claim for double the amount of the security deposit: Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing. The landlords did file for dispute resolution on time and therefore the tenant's application is dismissed.

Conclusion

The tenant's application is dismissed. The landlords established a claim of \$1909.57. Since they were partially successful, they are entitled to partial recovery of the filing fee

for \$50.00 and a claim totalling \$1959.57. I authorize the landlords to retain the tenant's \$925.00 security deposit and pursuant to Section 67 of the Act, I grant the landlord a Monetary Order for a balance of \$1034.57. This Order may be registered 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*.

Dated: June 28, 2011.

Residential Tenancy Branch