



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application 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. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

On a procedural note, the teleconference call was ended after approximately one hour due to inappropriate conduct by both parties, despite several warnings given to each party to cease interrupting the other party. Rule 8.7 of the Rules of Procedure provides that disrupting the other party's presentation with questions or comments will not be permitted and that a person that does not comply with the Dispute Resolution Officer's instructions may be excluded from the proceeding. Since both parties frequently disrupted the other party's testimony, I determined and informed the parties that I would end the teleconference call and base this decision upon testimony I had heard up to that point and the documentary evidence before me.

Issue(s) to be Decided

1. Has the landlord established that the tenant damaged the rental unit and if so, the value of the loss?
2. Has the landlord established an entitlement to damage or loss under the Act, regulations or tenancy agreement?
3. Is the landlord authorized to retain all or part of the security deposit?

Background and Evidence

It was undisputed that the tenancy commenced January 23, 2010 and the tenant paid a \$510.00 security deposit. The tenant was required to pay rent of \$1,020.00 on the 1st day of every month. The fixed term tenancy expired on December 31, 2010 and then

converted to a month-to-month basis. The tenant gave one month's written notice to end the tenancy effective February 28, 2011.

The parties were in dispute as to what occurred at the end of the tenancy. The landlord submitted the following statements:

- A move-out inspection was initially scheduled for 1:00 p.m. on February 28, 2011;
- The landlord posted two Notices of Final Opportunity to Schedule a Condition Inspection on the rental unit door on February 27, 2011 for inspection times of 2:45 p.m. and 5:00 p.m. on February 28, 2011;
- At 2:45 the unit was still full of possessions and the tenant was advised that the next inspection would be at 5:00 p.m.;
- At approximately 4:00 p.m. the tenant came to the landlord's office and advised the landlord's staff that the unit would not be ready for 5:00 p.m.
- The tenant was advised to call the resident manager when he was ready for inspection;
- The tenant did not call the resident manager for an inspection;
- The landlord found the keys to the unit in the landlord's mailbox on March 2, 2011;
- The landlord performed a move-out inspection with a witness on March 7, 2011 without the tenant present.

The tenant responded by making the following statements:

- The tenant vacated the rental unit February 27, 2011;
- The elevator was booked for 1:00 – 3:00 on February 27, 2011 but moving took longer than expected due to the tenant's back problems;
- The moving of the tenant's possession was completed at approximately midnight February 27, 2011;
- The tenant left the keys on top of the fridge in the rental unit;
- The tenant phoned the landlord's office to advise the landlord he was experiencing delays in preparing the unit for a move-out inspection;
- The tenant was sent to the hospital due to his back problems but attended the residential property at 4:45 p.m. and viewed the unit with the maintenance person;
- The tenant saw Notices posted on his door which were removed by the maintenance person;
- The maintenance person had a move-out inspection report in his hand but did not complete it while the tenant was present; and,

- The tenant participated in a move-out inspection with the maintenance person at 4:45 p.m. and the landlord extinguished its right to claim against the security deposit by not completing the inspection report with him present.

The landlord responded to the tenant's statements as follows. The maintenance person does not do move-out inspections with tenants. The tenant was at the landlord's office with the maintenance person at approximately 4:00 p.m. and the landlord advised the tenant to phone the resident manager when the unit was ready for inspection.

The landlord had the maintenance person available to testify for the hearing; however, since the call was ended, for reasons explained in the Introduction, I did not hear from the witness.

In making this application the landlord is seeking compensation of \$577.00 from the tenant. During the hearing the landlord indicated he would settle the dispute for the amount of the security deposit. The tenant did not agree to settle and indicated he wished to proceed with each of the landlord's claims. Below, I have summarized the landlord's submissions and the tenant's responses to each of the claims:

Item	Amount	Landlord's reason	Tenant's response
Suite cleaning	96.00	Not sufficiently cleaned.	As above.
Drape cleaning	55.00	Not cleaned.	As above.
Carpet cleaning	65.00	Not cleaned.	As above.
Damaged bedroom drapes	85.00	Drapes torn. Age unknown. Claiming estimated replacement cost although actual cost higher. Drapery taken from stock.	Took landlord's drapes down at beginning of tenancy to use his own drapes. Landlord's drapes stored in closet. Did not re-hang drapes at end of tenancy.
Garbage removal	150.00	Tenant left abandoned possessions and garbage in unit. Claim reflects two men loading garbage and taking to dump.	Left a bag of garbage, television and a box to be disposed of. Agreed to charge.
Labour for lock change	45.00	Tenant changed locks without permission. Charged for one hour of staff person's time.	Tenant did change locks. Asked landlord for permission to change locks but did not get

			permission. Keys were left in unit and amount of claim excessive.
Over-holding	66.00	Charged tenant two days because tenant did not return keys until March 2, 2011.	Keys left in unit February 27, 2011.
Total claim	\$ 577.00		

Analysis

The tenant raised the issue of extinguishment of the security deposit during the hearing. The Act provides that at the end of the tenancy the landlord and tenant must inspect the rental unit together and failure to do so results in an extinguishment of the security deposit by one of the party's. Based upon the disputed verbal testimony I heard at the hearing I found neither version of events more persuasive than the other. Therefore, I find I am unable to determine which party extinguished their right to the security deposit.

In light of the above, I do not order retention or return of the security deposit based upon extinguishment. Rather, I have considered the landlord's claims for damages and offset the security deposit against those claims pursuant to section 72 of the Act.

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. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The Act requires that a tenant leave a unit reasonably clean and undamaged at the end of the tenancy. In this case the tenant has agreed that he did not clean or remove all garbage at the end of the tenancy. I award the landlord the claims the tenant agreed to

during the hearing. I have analyzed the remainder of the landlord's claims and make the following findings.

Damaged bedroom drapes

The parties were in dispute as to whether the tenant is responsible for tearing of the bedroom drapery. The move-in inspection report shows the drapery was in "good" condition at the beginning of the tenancy and the landlord provided an invoice showing the landlord spent \$119.62 for replacement drapery. The tenant had taken down the drapery, stored it and did not attempt to re-hang the drapery at the end of the tenancy. Therefore, I find the landlord established a need for replacement drapery and the tenant unable to accurately describe the condition of the drapery at the end of the tenancy.

In light of the above, I find the tenant responsible for the torn drapery. The second issue to determine is the value of the loss associated with the torn drapery. 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. Drapery has an estimated useful life of 10 years.

In this case, the landlord was unable to provide an estimated age of the bedroom drapery in order to verify the loss. I find a reasonable award to the landlord is one-half of the replacement cost. Therefore, the landlord is awarded \$60.00 for replacement drapery.

Labour for changing lock

The tenant acknowledged changing the locks without the landlord's permission. Nor did the tenant have the authority of a Dispute Resolution Officer to change the locks. I found the landlord's submission that the lock installed by the tenant was a different lock than those used by the landlord, which required the lock to be changed, to be reasonable.

I have considered the landlord's claim that changing the lock cost the landlord \$45.00 for one hour of the maintenance person's time. The landlord had given the tenant a document containing information for vacating tenants during the last month of tenancy. I note the document provides that tenants will be charged \$16.00 per hour for cleaning. While I appreciate maintenance personnel are likely paid more than cleaners, I find the landlord did not provide sufficient evidence to demonstrate the maintenance staff cost the landlord \$45.00 per hour. Therefore, I find a reasonable award for changing the locks to \$25.00 and I award that amount to the landlord.

Over-holding

The landlord is claiming two days of over-holding based on the submission the keys were not returned to the landlord until March 2, 2011. This was disputed by the tenant. I found the disputed verbal testimony insufficient to determine when and how the keys were returned by the tenant. Since the landlord bears the burden of proof I find the disputed evidence insufficient to determine how and when the keys were returned. Therefore, I do not grant the landlord's request for two days of over-holding.

I am satisfied, however, by the consistent testimony of the parties that the tenant did not leave the unit reasonably clean and free of garbage by on February 28, 2011, as required by the Act, and the landlord had to have the unit cleaned after the tenancy ended. Therefore, I award the landlord the equivalent of one-day's rent to perform these tasks which is approximately \$33.00.

Filing fee

Considering presentation of both parties, including their conduct during the hearing, I find it reasonably likely both parties contributed to this dispute. Therefore, I order the parties to share in the cost of the filing fee and the landlord is awarded one-half of the filing fee.

In light of all of the above finding, I have determined the landlord entitled to compensation calculated as follows:

Item	Amount claimed	Amount awarded
Suite cleaning	96.00	96.00
Drape cleaning	55.00	55.00
Carpet cleaning	65.00	65.00
Damaged bedroom drapes	85.00	60.00
Garbage removal	150.00	150.00

Labour for lock change	45.00	25.00
Over-holding	66.00	33.00
Filing fee		<u>25.00</u>
Total claim	\$ 577.00	\$ 524.00
Less: security deposit		<u>(510.00)</u>
Balance owed		\$ 14.00

As the balance owed to the landlord is small and the landlord indicated he is willing to accept the security deposit in satisfaction of this application I do not provide a Monetary Order to the landlord. Rather, I authorize the landlord to retain all of the security deposit in full satisfaction of this application.

Conclusion

The landlord has been authorized to retain the security deposit in full satisfaction of the claims against the tenant.

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 12, 2011.

Residential Tenancy Branch