

DECISION

Dispute Codes:

MND, MNDC, MNSD, FF.

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the cost of repairs, cleaning and the filing fee. The tenant applied for the return of double her security deposit and the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order to recover the cost of repairs, cleaning and the filing fee? Is the tenant entitled to the return of double her security deposit and the filing fee?

Background and Evidence

The tenancy started on February 22, 2010. The tenant moved out on March 31, 2011. The rent was \$1,200.00 due on the first day of each month. Prior to moving in, the tenant paid a security deposit of \$600.00

The landlord testified that the rental unit was renovated in December 2009 and filed evidence by way of invoices to support her testimony. The landlord had the hardwood floors sanded and finished and installed new carpet in the unit. The tenant agreed that the unit was in acceptable condition when she moved in. The landlord filed photographs depicting the condition of the unit at the start of the tenancy.

The landlord testified that on the day the tenant moved out, she visited the rental unit at 5 pm and the tenant requested more time. The landlord returned at 7:30 pm. The landlord testified that the tenant declined a move out inspection and requested the landlord to conduct an inspection on her own, mail her a list of deficiencies and deduct the cost from the security deposit. The landlord left the tenant to finish the cleaning and when she returned the tenant had left without cleaning the unit. Since the new tenants were due to move in immediately, the landlord started cleaning up and with help, the cleaning was completed by 1:30 am.

The landlord stated that at the end of the tenancy, the hard wood floors had deep scratches and filed photographs of the damage. The landlord stated that this damage was not repaired as the new tenant wanted to move in immediately. The work involves a lot of dust and for the convenience of the new tenant, the landlord decided to do it after the new tenancy ends. The landlord has claimed an estimated cost of repair. She has based this estimate on the cost of sanding and finishing that she had incurred prior to the start of tenancy.

The landlord stated that the carpets were cleaned that weekend and despite the actual higher costs of repairs and cleaning, the landlord deducted a minimal amount of \$250.00 from the security deposit and returned the balance of \$350.00 to the tenant on April 13, 2011.

The landlord filed photographs of the unit prior to and at the end of tenancy and invoices to support her claim. The landlord is claiming the following:

1.	Cleaning (labour \$160.00 and carpet cleaning \$153.89)	\$313.89
2.	Refinish hardwood floors	\$450.00
3.	Fix broken mirror	\$100.00
	Total	\$863.89

The tenant testified that the landlord did not conduct a move out inspection and made a deduction off the security deposit without her consent. The tenant stated that the photographs are undated and there is no proof that these photographs were taken after her tenancy ended. The tenant did not file any photographs to depict the condition of the rental unit at the time she moved out.

The tenant testified that she cleaned the unit and was not responsible for the cleaning and repair to the hardwood floor. During her testimony, the tenant stated that she was not very sure about the condition of the unit when she moved out because five months had passed since then.

The tenant testified that the mirror was damaged prior to the start of tenancy. The landlord agreed that one corner was chipped at that time, but stated that at the end of the tenancy there was a crack that ran right across the mirror, from top to bottom.

The tenant agreed that she received \$350.00 within 15 days of the end of tenancy, but stated that she did not authorize the landlord to make a deduction off the deposit. The tenant is claiming \$850.00 which represents the return of double the security deposit (\$600x2) minus the amount that she has received (\$350.00).

Analysis

Landlord's application:

Based on the sworn testimony of both parties and documentary evidence filed by the landlord, I find that the rental unit was renovated just prior to the start of the tenancy. The landlord filed photographs that show that the unit was not cleaned by the tenant at the end of tenancy. The tenant did not file any evidence to support her testimony of having left the unit in a clean condition. Therefore, I find that the tenant left the unit in an unclean condition and accordingly, I find that the landlord is entitled to the cost of cleaning in the amount of **\$313.89**.

The landlord filed a photograph of the damaged hardwood but has not yet incurred costs to repair the damage. *Residential Tenancy Policy Guideline #16* states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Based on evidence and testimony of both parties, I find that the damage is cosmetic but is significant enough to require repair. Based on the landlord's estimated claim of \$450.00 to repair the damage, I find it appropriate to award the landlord **\$200.00** as a minimal award.

The landlord testified that the mirror was damaged in one corner at the start of the tenancy. Even though the crack ran the length of the mirror at the end of the tenancy, I find that the existing damage may have increased with daily use and accordingly the tenant is not responsible for the cost of repair.

The landlord has proven most of her case and is therefore entitled to the recovery of her filing fee of **\$50.00**.

Tenant's application:

Section 38(1) of the 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 forwarding address is received in writing.

Based on the sworn testimony of both parties, I find that the landlord failed to repay the entire security deposit or make an application for dispute resolution within 15 days of the end of tenancy to retain a portion of the security deposit and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord returned \$350.00 to the tenant and currently holds the balance of \$250.00. The landlord is obligated under section 38 to return double this amount.

Therefore the tenant has established a claim of **\$500.00** and since she has proven her case is entitled to the recovery of the filing fee of **\$50.00**.

Overall the landlord has established a claim of \$563.89 and the tenant has established a claim of \$550.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of **\$13.89**.

I grant the landlord an order under section 67 of the *Residential Tenancy Act*, for **\$13.89**. This order may be filed in the Small Claims Court and enforced as an order of that Court

Conclusion

I grant the landlord a monetary order in the amount of **\$13.89**.

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: September 02, 2011.

Residential Tenancy Branch