

DECISION

Dispute Codes:

MND; MNDC; MNSD; FF

Introduction

This is the Landlords' application for a Monetary Order for damage to the rental unit; compensation for damage or loss under the Residential Tenancy Act (the "Act"); to apply the security deposit towards partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlords testified that they served the Tenants with the Notice of Hearing documents and documentary evidence, including copies of their invoices and estimates, by courier to the Tenants at their new residence. The Landlords testified that they served the Tenants with a second evidence package, including photographs of the rental unit at the end of the tenancy, on September 19, 2011. The Landlords did not provide copies of the courier waybills in evidence.

The Tenants acknowledged receipt of the Notice of Hearing package at the end of June, 2011, but stated that they did not receive copies of the Landlord's invoices and estimates. The Tenants acknowledged receipt of the photographs contained in the second evidence package. The Tenants testified that they provided the Landlords with copies of their documentary evidence by registered mail sent on September 12, 2011. The Tenants provided a copy of the registered mail receipt and tracking number in evidence.

Based on the testimony of both parties, I am satisfied that the Tenants received the Notice of Hearing documents, including a copy of the Landlords' Application and Monetary Order Worksheet. I am also satisfied that the Tenants received copies of the photographs provided in evidence. The Landlords did not provide sufficient evidence that they had provided the Tenants with copies of the invoices and estimates, and therefore I did not consider them in making my determinations. I took the Landlords' oral testimony with respect to the cost of the Landlords' claims.

Issues to be Decided

1. Are the Landlords entitled to a monetary award pursuant to the provisions of Section 67 of the Act?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on August 1, 2010, and ended on March 15, 2011, by mutual agreement. A copy of the Mutual Agreement to End tenancy was provided in evidence.

Monthly rent was \$1,300.00, due on the first day of each month. The Tenants were responsible for paying 2/3rd of the utilities and for garbage pick-up. The Tenants paid a security deposit and pet damage deposit in the total amount of \$1,300.00 on July 18, 2010.

There was no Condition Inspection Report prepared that complies with the provisions of the Act and Regulation at the beginning or the end of the tenancy.

The Landlords provided the following testimony:

The Landlords stated that they had provided the Tenants with a list of repairs and a list of cleaning that the Tenants had to complete before March 15, 2011. The Landlords provided copies of the two lists in evidence.

The Landlords testified that they did a “walk through” of the rental unit with the female Tenant a couple of weeks after the tenancy ended. The Landlords stated that the Tenants did not make all of the repairs required, including:

- Planter repaired and dirt replaced from dogs digging;
- Carpets shampooed;
- Screen in sliding glass door repaired;
- Holes and scrapes on walls filled in and painted in all rooms;
- Closet door in master bedroom replaced;
- Closet door in middle bedroom put back on;
- Door in far bedroom replaced;
- Lawnmower repaired.

The Landlords testified that none of the cleaning that was indicated on the second list was completed.

The Landlords testified that the carpets were 7 to 10 years old but were in good shape at the beginning of the tenancy. They stated that the carpets were soaked with dog urine at the end of the tenancy and did not come clean and fresh after the Landlords had them professionally cleaned. The Landlords seek to recover the cost of replacing the carpets in the amount of **\$4,417.45**. The carpets have not yet been replaced.

The Landlords testified that there was a piece of wood missing from a door; metal racks were down in the closet; closet doors were broken; the Tenants gave the curtains to their friends; a purpose-built screen door was damaged and replaced by one that did not fit; there was damage to many walls and the towel bar was ripped out in the bathroom; there was a hinge missing in the door of the spare bedroom; the master bedroom door was also damaged; the Tenants replaced a door handle with a mismatched door handle; the Tenants' dog destroyed a planter; the fan blades were missing from the fan; and a floor vent was bent. The Landlords testified that the closet door frames were not standard size and that adjustments had to be made to the frames before hanging new doors. The male Landlord testified that he is a finishing carpenter, and that his time was worth \$45.00 per hour. He stated that the Landlords live in a different location than the rental unit, and he seeks compensation for his hotel accommodation, meals and fuel costs. The Landlords seek compensation in the amount of **\$1,800.00** for 40 hours of work in repairing the rental unit, together with **\$988.82** for materials and travel expenses.

The Landlords also seek **\$1,440.00** for the cost of painting the interior walls; **\$700.00** for the labour cost of cleaning the rental unit at the end of the tenancy; and **\$683.25** for the cost of materials for cleaning and painting.

The Landlords' witness provided the following testimony:

The witness is the Landlords' daughter, lives in the basement suite of the rental property, and acts as agent for the Landlords by accepting rent payments and doing routine inspections of the rental unit.

The witness testified that the missing drapes were not new and cost her approximately \$30.00 at the beginning of the tenancy. She stated that the custom made screen cost approximately \$200.00, and that the replacement screen the Tenants installed did not fit the window properly.

The witness testified that the carpet was not new at the beginning of the tenancy, but was in like-new conditions with a few scuffs, but no holes. She stated that all of the appliances were working at the beginning of the tenancy, there were no holes in the

walls and the fan was whole. The witness testified that the Landlords have not replaced the fan or the fan blades.

The witness testified that it cost \$1,440.00 to repair and paint the walls at the end of the tenancy. She stated that she did the general cleaning of the rental unit herself and billed the Landlords \$700.00.

The Tenants provided the following testimony:

The Tenants testified that they agreed that the Landlords could keep \$400.00 of the security deposit for the cost of shampooing the carpets, but did not agree to any other damages. The Tenants testified that they provided the Landlords with written confirmation of their forwarding address on March 17, 2011. They stated that they did not have time to shampoo the carpets at the end of the tenancy. The Tenants submitted that the carpets could not be in such condition that they needed to be replaced because the Landlords have not replaced them and there are new tenants living in the rental unit.

The Tenants testified that the metal organizers in the closets were of poor quality and broke from the weight of their clothes. They stated that the shelves and dowelling installed by the Landlords to replace the metal organizers were of superior quality to the metal closet organizers.

The Tenants testified that there were 4 sheer curtains, but that one sheer was ripped by their dog. The Tenants stated that they still have the 3 sheers and the chocolate brown drapes that were in the bedroom. They stated that they had removed the curtains, cleaned them and placed them on a window sill to be rehung and that a friend who helped them to move placed them in a box that was taken away with their belongings. The Tenants stated that the same thing happened with the fan blades and that they also still have them.

The Tenants agreed that the custom made screen was damaged beyond repair and that they replaced it with a generic screen that did not fit properly.

The Tenants also agreed that they were responsible for the damage to two door hinges.

The Tenants stated that they patched the walls, but did not repaint them. They stated that they bought new frames and doors and left them in the front area of the rental unit. The Tenants testified that the mismatched door knob was already there at the beginning of the tenancy, but that the door had been damaged by the Tenants.

The Tenants stated that the metal floor vent was near the sliding glass doors and that their kids had bent it.

The Tenants stated that the witness also had a dog of the same type as the Tenants' dog and that the dogs would play with each other. The Tenants testified that the planter was damaged, but that it both dogs were responsible. The Tenants testified that they bought 40 – 50 litres of soil and replaced the dirt in the planter at the end of the tenancy.

The Tenants testified that they cleaned the rental unit at the end of the tenancy and provided written statements of the three people who they paid to clean and remove garbage from the rental unit. The statements indicate that the Tenants paid \$170.00 for cleaning and \$70.00 for removal of garbage.

The Landlords gave the following reply:

The Landlords acknowledged that they received the Tenants' forwarding address on March 17, 2011.

The Landlords testified that they did not find any new doors in the rental unit at the end of the tenancy.

Analysis

The Tenants testified that they still have three of the missing four sheers, the curtains that were in one of the bedrooms, and the fan blades. **I hereby order the Tenants to return these items to the Landlords' agent, the witness, by October 12, 2011.**

Tenants are responsible for leaving the rental unit reasonably clean and undamaged, save for normal wear and tear, at the end of a tenancy.

This is the Landlords' claim for damage or loss under the Act and therefore the Landlords have the burden of proof to establish their claim on the civil standard.

To prove a loss and have the Tenants pay for the loss requires the Landlords to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Landlords did not provide sufficient evidence to prove their claim for the cost of replacing the carpets. The carpets were older carpets and the estimate the Landlords verbally provided was for new carpets. There was insufficient proof of the condition of the carpets at the beginning of the tenancy (for example, a condition inspection report). The Landlords testified that the carpets were ruined, but their new tenants have been using the same carpets. However, the Tenants agreed that they had not shampooed the carpets at the end of the tenancy and that they had agreed \$400.00 could be retained from the security deposit. I allow this portion of the Landlords' claim in the amount of **\$400.00**.

The Tenants agreed that their dog broke the screen and that they replaced it with an ill fitting one. I find that \$200.00 for a custom made screen is a reasonable amount and award the Landlords **\$200.00** for this portion of their claim.

Based on the testimony of both parties, I am satisfied that the Tenants are responsible for the damage to the floor vent. The Landlords did not provide documentary evidence with respect to the cost of replacing the floor vent and I award the Landlords a nominal amount of **\$20.00**.

The Tenants stated that they patched the holes in the walls. The photographs indicate that there were relatively large patches made on three walls. The Tenants did not paint over the patches. The Residential Tenancy Branch Policy Guidelines provide the useful life of indoor paint to be 4 years. The Landlords and their witness indicated that the walls were in very good condition when the Tenants moved into the rental unit and the Tenants did not dispute this. Based on the testimony of both parties, the photographs provided, and the fact that the paint was in good condition but aging, I find that the Landlords have established a monetary award in the amount of **\$720.00** (1/2 of the reported cost to paint the interior of the rental unit).

The Landlords did not provide sufficient evidence that the Tenants had not left the rental unit in a reasonable state of cleanliness (with the exception of the carpets, which has already been decided) and therefore I dismiss the Landlords' claim with respect to the cost of general cleaning of the rental unit.

The Landlords chose to live in a separate location from the rental unit. I find that the Landlords are not entitled to the cost of travelling to and from the rental unit, their meals, or their overnight accommodation.

The witness acknowledged that her dog also dug up the planter. The Landlords did not provide sufficient evidence that the Tenants' dog was responsible for the damage to the

planter, nor did they provide sufficient evidence of the cost of repairing the planter. This portion of their application is dismissed.

Based on the testimony of both parties, I find that the Landlords have provided sufficient evidence that they had to replace hinges on two doors; re-hang the doors; repair a door; and re-hang closet doors. I accept the Landlords' testimony that the closet door frames were not standard size and that adjustments had to be made to the frames before hanging the doors. Based on the photographs provided, I find that a handy-man would not have the skill required to repair these items. I award the Landlords **\$810.00** for this portion of their claim (18 hours at \$45.00 per hour).

The Landlords have been partially successful in their claim and I find that they are entitled to recover half of their filing fee in the amount of **\$50.00**.

The Landlords have established a monetary award calculated as follows:

Description	Amount awarded
Cost of shampooing the carpets, as agreed, to be deducted from security deposit	\$400.00
Cost of replacing custom screen door	\$200.00
Cost of replacing metal floor vent	\$20.00
Compensation for painting to cover patches on walls	\$720.00
Compensation to Landlords for labour to repair doors and frames	\$810.00
Partial recovery of filing fee	<u>\$50.00</u>
TOTAL MONETARY AWARD	\$2,200.00

Security deposits and pet damage deposits are held in a form of trust by a landlord for the tenant, to be applied in accordance with the provisions of Section 38 of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

In this case, the Landlords received the Tenants' forwarding address in writing on March 17, 2011. The Landlords filed against the security deposit on June 22, 2011. The Landlords did not return the security deposit and pet damage deposit, or file for dispute resolution, within 15 days of receipt of the Tenants' forwarding address.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the deposits. In this case, I find that the Tenants gave the Landlords permission to retain \$400.00 of the deposits, and therefore the Tenants are entitled to an amount equal to double the amount of the residue, calculated as follows:

Total security deposit and pet damage deposit paid	\$1,300.00
Less the amount the Tenants agreed could be deducted	<u>-\$400.00</u>
Balance remaining	\$900.00
Entitlement pursuant to Section 38(6)	<u>x 2</u>
Total amount of entitlement	\$1,800.00

I hereby set off the Tenants' entitlement against the Landlords' monetary award. The Landlords have already received the \$400.00, as set out above.

Landlords' monetary award less the \$400.00 already received	\$1,800.00
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Therefore, after setting off the Tenants' entitlement, there will be no Monetary Order provided to the Landlords.

Conclusion

I hereby order that the Tenants return the curtains and fan blades to the Landlords' agent by October 12, 2011.

Pursuant to the provisions of Section 38(6) of the Act, the Tenants are entitled to the amount of **\$1,800.00** from the Landlords.

The Landlords are entitled to a monetary award in the amount of \$2,200.00. After deducting the \$400.00 already received from the security deposit, the balance owed to the Landlords is **\$1,800.00**.

After setting off the Tenants' entitlement, there will be no Monetary Order provided to the Landlords.

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: October 03, 2011.

Residential Tenancy Branch