# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit and pet damage deposit in partial payment of those amounts.

The Landlord, M.W., said she served the Tenants with the Application, Notice of Hearing and some documentary evidence by registered mail on August 12, 2011. The Tenants admitted that they received these documents and I find that they were served as required by s. 89 of the Act. However, the Landlord, M.W., said she also served the Tenants and the Residential Tenancy Branch with additional documentary evidence (that is, copies of invoices and an amended application) on November 9, 2011 by Express Post. The Tenants claimed that they did not receive these documents and as of the time of the hearing, they had not been received by the Dispute Resolution Officer.

RTB Rule of Procedure #3.5 says that any evidence upon which an Applicant intends to rely at the hearing must be served on the Respondent no later than 5 calendar days (as they are defined under the Rules) prior to the hearing and received by the Residential Tenancy Branch no later than 5 business days prior to the hearing. The Landlords provided no evidence that they served documents on November 9, 2011 as they alleged. However, even if I accept that the Landlords mailed the documents as they claimed, I find that they have not complied with the rules regarding service of evidence; in other words, the Landlords would have had to mail the documents to the Tenants no later than November 4, 2011 and the Residential Tenancy Branch would have had to have received the same documents no later than November 3, 2011.

The Landlord, M.W., sought an adjournment of this matter to allow the Tenants an opportunity to receive the late documentary evidence however I find that the Landlords have already had 3 months to submit their documentary evidence and as a result, their adjournment request was denied. Accordingly, the Landlords' documentary evidence sent on November 9, 2011 is excluded pursuant to Rule of Procedure 11.5(b).

Issue(s) to be Decided

1. Are the Landlords entitled to cleaning and repair expenses and if so, how much?
2. Are the Landlords entitled to keep the Tenants' security deposit and pet damage deposit?

Background and Evidence

This tenancy started on May 1, 2010 and ended on July 30, 2011 when the Tenants moved out. Rent was $795.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of $397.50 and a pet deposit of $200.00 at the beginning of the tenancy.

The Landlords said they incurred plumbing expenses on July 13, 2011 to repair a toilet. The Landlords said the toilet overflowed due to debris (screws, small metal balls and coins) lodged in the pipes. The Landlords claimed that due to the fact that the Tenants used the toilet for approximately a year without any problems, it was likely the result of their act or neglect that it was damaged. The Tenants claimed that the toilet in question did not flush properly throughout the tenancy and that they complained repeatedly to 3 different building managers about it. The Tenants said the toilet flushed slowly and they often had to use a plunger to get it to flush. The Tenants said that when they signed the plumber's work order on July 13, 2011, it said that the toilet was not flushing properly because it was not vented properly. The Tenants also claimed that the objects found in the toilet resembled a "flush kit" likely from a previous repair.

The Landlords also claimed that at the end of the tenancy, the carpets in the rental unit needed to be cleaned and sanitized to remove pet urine odours from a bedroom closet. The Tenants claimed that a few days after they moved in they detected a strong urine odour from the bedroom closet in question. The Tenants said they gave the building manager a list of deficiencies which included a request to address this issue but they were advised to clean the carpet themselves. The Tenants said they purchased a carpet cleaner during the tenancy because they got a puppy and were concerned about "accidents." The Tenants said they cleaned the carpets during the tenancy and again at the end of the tenancy.

The Landlords further claimed that at the end of the tenancy, the window coverings needed to be cleaned. The Tenants claimed that at the beginning of the tenancy, they removed the existing stained curtains and replaced them with their own. The Tenants said they stored the other curtains in a box until the end of the tenancy and then re-hung them. Consequently, the Tenants argued that the window coverings were in exactly the same condition as they were at the beginning of the tenancy.

The Tenants also claimed that they set up a move out inspection with M.W., however, she did not attend at the pre-arranged time and they had to arrange another for the following day. The Tenant, A.P., said she returned to the rental property the following day but discovered that the Landlord, M.W., had already completed the move out inspection form and asked her to sign it which she did. M.W. denied this allegation and claimed that she completed the move out inspection report with A.P.

Analysis

Section 21 of the Regulations to the Act says that "in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless the landlord or the tenant has a preponderance of evidence to the contrary." I find that the Condition Inspection Report completed by the Landlords does not comply with s. 20 of the Regulations Act for the following reasons:

- It does not include the full legal names of the Landlord and Tenants;
- It does not include an address for service of the Landlord;
- It does not include the date of the move in or move out inspection;
- It does not include a space for a statement identifying any items in need of maintenance or repair at the beginning of the tenancy;
- There is no signature for the Landlord on the move in condition inspection report; and most significantly,
- It does not include a space for a tenant to indicate agreement or disagreement with the landlord's assessment of any items of the condition of the rental unit;

Sections 24(2)(c) and 36(2)(c) of the Act say (in part) that if a Landlord does not complete a condition inspection report as required by the Regulations to the Act, the Landlords' right to make a claim against the security deposit and pet damage deposit for damages to the rental unit is extinguished. I find that the Landlords' condition inspection report is lacking in a number of significant respects and accordingly, I find that the Landlords' right to make a claim against the Tenants' security deposit and pet deposit for damages to the rental unit is extinguished and that part of their claim is dismissed without leave to reapply. Accordingly, ***I order the Landlords pursuant to s. 38(5) of the Act to return the Tenants' security deposit and pet damage deposit to them forthwith.***

Section 32(1) of the Act says that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that make it suitable for occupation by a tenant. Section 32(2) of the Act says that a Tenant is responsible for damages caused by his or her act or neglect but is not responsible for reasonable wear and tear. In this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) that the Tenants caused damage to a toilet and are therefore responsible for repairs to it. The Landlords must also show that the Tenants did not leave the rental unit reasonably clean at the end of the tenancy. This means that if the Landlords' evidence is contradicted by the Tenants, the Landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Landlords claim that the Tenants are responsible for repairs to a toilet at the end of the tenancy because there is no evidence that the toilet did not function properly throughout the tenancy. However, the Landlords did not provide any evidence of an

alleged act or neglect and in particular did not provide a copy of the plumbing invoice or work order in their possession or control. The Tenants claim that the toilet did not function properly throughout the tenancy and that they made a number of complaints to various building managers but nothing was done until the toilet began to overflow (which the Landlord denied). Given the contradictory evidence of the Parties on this issue and in the absence of any corroborating evidence from the Landlords to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenants were responsible for the toilet malfunctioning and that part of the Landlords' claim is dismissed without leave to reapply.

The Landlords also claimed that the Tenants did not leave the carpets reasonably clean at the end of the tenancy and in particular, they argued that the Tenants' pets left urine odors in a bedroom closet. The Tenants denied this and claimed that a few days after the tenancy started, they gave the building manager a list of deficiencies which included a complaint about strong pet odors in the bedroom closet carpet. Neither party provided any corroborating evidence on this matter. The move out condition inspection report includes a notation about a strong urine odor, however for the reasons set out above, I give that report little weight. Given the contradictory evidence of the Parties on this issue and in the absence of any reliable, corroborating evidence from the Landlords to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenants are responsible for the cost to clean and deodorize a carpet and that part of the Landlords' claim is also dismissed without leave to reapply.

The Landlords further claimed that they had to clean window coverings at the end of a tenancy because they were dirty. The Tenants claimed that they did not use the window coverings during the tenancy and that they were in exactly the same condition at the end of the tenancy as they were at the beginning of the tenancy. Given the contradictory evidence of the Parties on this issue and in the absence of any corroborating evidence from the Landlords to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenants are responsible for the cost of cleaning window coverings and that part of the Landlords' claim is also dismissed without leave to reapply.

Conclusion

The Landlords' application is dismissed in its entirety. The Tenants are entitled to the return of their security deposit and pet deposit and the Landlords are hereby ordered to return them to the Tenants forthwith. 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: November 14, 2011.

Residential Tenancy Branch