



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting her to retain the security deposit in partial satisfaction of the claim and a cross-application by the tenant for an order for the return of double her security deposit and the return of her key deposit.

The hearing was held over 2 days, first by telephone conference call and then reconvened as an in person hearing. Both parties participated on both days of the hearing.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on or about July 1, 2009 and ended on or about July 31, 2011. They further agreed that at the outset of the tenancy, the tenant paid a \$550.00 security deposit and a \$100.00 deposit for keys and fobs. I address the parties' claims and my findings around each as follows:

1. **Landlord's claim: Mailbox lock.** The landlord seeks to recover the \$89.60 cost of replacing locks on the mailbox at the end of the tenancy. The tenant acknowledged that she still had the key but claimed that she did not return it because the landlord did not immediately return the deposit she had paid. The landlord provided an invoice showing that he paid to have the lock replaced. The tenant had an obligation to return the keys at the end of the tenancy and refused to do so. She was not entitled to hold the keys ransom and was free to make a claim for the return of her deposit if the landlord had not returned the deposit after having received the keys. I find that the tenant should reasonably have anticipated that changing the locks to the mailbox would have been required if the landlord had no means of accessing the mailbox and therefore I find that the tenant should be held liable for the cost of installing new locks. I award the landlord \$89.60.

2. **Landlord's claim: Replacement of mirrored door.** The landlord seeks to recover \$327.04 as the cost of purchasing a mirrored door to replace one that was damaged during the tenancy and a further \$100.00 as the cost of labour to replace the door. The parties agreed that the door was in good condition at the beginning of the tenancy and was cracked at the end of the tenancy. The tenant claimed that in 2010 when the landlord arranged for carpet to be removed from the unit and laminate installed, the workers damaged the door. The tenant claimed that she verbally reported the damage to the woman who worked as the landlord's property manager at the time and was told not to worry about it. The landlord testified that when the property manager stopped working for the landlord, she gave the landlord all the paperwork concerning the unit and there was no indication in the paperwork that any report of damage had been made. The landlord testified that she attempted to contact the property manager by telephone, but the manager hung up the phone without speaking with her. I find that the tenant bears the burden of proving that the damage was caused by someone other than herself. During the hearing the tenant's agent insisted that he could easily produce a written statement from the property manager confirming that the damage had been done by the landlord's workers, but despite having almost 3 months in which to secure this statement, he did not provide it in advance of the hearing. I am not persuaded that the landlord's workers caused the damage to the mirrored door and accordingly I find that the tenant must be held liable for the cost of replacing the door. As there is no evidence that the damaged door was new, I find it appropriate to discount the award by 50% to reflect the probable age of the damaged door. I award the landlord \$213.52
3. **Landlord's claim: Painting.** The landlord seeks to recover \$2,000.00 as the cost of repainting the unit, \$100.00 as the cost of painting moulding and the fireplace mantle, and \$230.00 as the cost of painting window trim and baseboards. The landlord testified that during the tenancy, the tenant was given permission to paint the unit. The landlord provided the paint and the tenant provided the labour. The landlord alleged that the tenant painted carelessly, allowing paint to get on the ceiling, mouldings, electrical outlet and switchplate covers, light fixtures and other areas. The tenant argued that the landlord gave her permission to paint because the unit was badly in need of painting at the outset of the tenancy and disputed that repainting was required. Having viewed the landlord's photographs, it is clear that the painting was done poorly and the rooms were not properly masked and covered before painting. Although the landlord gave permission for the tenant to paint, it stands to reason that the landlord expected that care would be taken to paint properly, applying even coverage and ensuring that paint was not spattered about. Although the landlord did not pay for labour when the tenant painted, she did pay for the cost of paint and I find it unreasonable that the landlord should have to bear the cost of repainting again so soon. I find that the landlord should have expected that it would be at

least 4 years before repainting was required and I therefore find that the tenant deprived the landlord of 2 years of the useful life of that paint. I find that the landlord should bear the cost of labour as under normal circumstances, she would have had to pay for labour at the time the tenant repainted. The cost of materials and labour is not separated in the invoice provided by the landlord's contractor, leaving me to award what I believe to be a reasonable sum. I find that an award of \$200.00 will adequately compensate the landlord and I award her that sum.

4. **Landlord's claim: Fixture replacement.** The landlord seeks to recover \$174.90 as the cost of replacing light fixtures, bulbs and doorknobs at the end of the tenancy and a further \$300.00 for labour to replace those items as well as to replace 2 toilets. The landlord testified that there were numerous burned out light bulbs at the end of the tenancy and that light fixtures in both bathrooms, track lighting in the kitchen, doorknobs and toilets had all been spattered with paint. The landlord offered no explanation as to why paint could not have been removed from the light fixtures, toilets and doorknobs. Given the photographs showing how haphazardly the tenant had painted, I accept that there was paint spattered throughout the unit. However, I see no reason why the paint could not have been removed rather than the landlord pursuing the vastly more expensive option of replacing the affected items. I find it appropriate to award the landlord the value of removing paint rather than replacing the affected items and I find that an award of \$50.00 will adequately compensate her and I award her that sum. The tenant claimed that she removed the landlord's light bulbs, replaced them with energy efficient bulbs and at the end of the tenancy, put the landlord's bulbs back in place. She also testified that during the tenancy she repeatedly asked the landlord to replace burned out bulbs, which the landlord did not do. The tenant was required to replace burned out bulbs during the tenancy and while she may have replaced the landlord's bulbs at the end of the tenancy, I find it more likely than not that they burned out during the course of the tenancy. I find that the tenant must be held responsible for the cost of replacing bulbs. However, as the bulbs purchased by the landlord were purchased at the same time as the new light fixtures, I find it more likely than not that the bulbs were purchased to fit the new fixtures rather than because bulbs were burned out. I therefore dismiss the claim for the cost of replacing bulbs.
5. **Landlord's claim: Replacing switchplate and electrical outlet covers.** The landlord seeks to recover \$215.00 as the cost of replacing the covers on switchplate and electrical outlets which had been painted over by the tenant. The tenant acknowledged that she painted over the plates, but claimed that when she tried to remove one, it broke and she was told by the former property manager not to remove any more. I find that the tenant had an obligation to mask and protect the covers rather than painting over them. The landlord had mistakenly listed the charge for supplies twice, once apart from labour and

once together with labour and at the hearing advised that she wished to withdraw the claim for the supply invoice as it was subsumed within the charge from her tradesperson. I find that the tenant must be held liable for the cost of replacing the covers as the labour involved in removing the paint would be far too extensive considering the limited value of the plates. I award the landlord \$215.00.

6. **Landlord's claim: Other misc. repairs.** The landlord seeks to recover \$40.00 as the cost of replacing towel and toilet paper racks in the two bathrooms, \$50.00 as the cost of replacing 2 smoke detectors and \$10.00 as the cost of removing paint from the cover of the bathroom fan. The landlord claimed that all of these items were damaged by paint and that the bathroom fan cover was not replaced because a replacement could not be found, so the paint was removed from it. The charges for all but removing paint from the cover of the fan include both materials and labour. Again, I accept that there was paint on the items in question. However, I find that the landlord should have made efforts to remove the paint and I find it appropriate to award the value of removing paint rather than the replacement cost of the items in question. I accept that it cost \$10.00 to remove paint from the fan and I find that an award of \$30 will adequately compensate the landlord for the cost of removing paint from the fan as well as the other items. I award the landlord \$30.00.
7. **Landlord's claim: Cleaning.** The landlord seeks \$150.00 as the cost of cleaning the rental unit. The landlord claimed that the bathrooms and kitchen were not adequately cleaned at the end of the tenancy. The tenant argued that the unit was completely clean. The landlord provided photographs of soiled tiles in the bathroom and soiled burners and fan cover in the kitchen. The tenant claimed that the landlord staged the photograph in the kitchen to make it appear that the stove burners were soiled. I find it very unlikely that the landlord staged the photograph and I find that the stove, fan and bathroom tiles were not adequately cleaned. As no other photographs were provided, I find that these were the only areas which required additional cleaning and I find that 90 minutes of labour would have been sufficient to complete this cleaning. At a rate of \$20.00 per hour, I find that an award of \$30.00 will adequately compensate the landlord for cleaning and I award her that sum.
8. **Landlord's claim: Loss of income.** The landlord seeks to recover \$3,300.00 in lost income for the months of August – October inclusive. The landlord claimed that because the tenant refused to surrender the keys to the rental unit, she was unable to re-rent the unit. At the hearing, the parties agreed that the locks were changed in early August when the parties met to inspect the condition of the unit. Although the tenant refused to return keys, I find that because the landlord changed the locks, there was no reason why the landlord could not have re-rented the unit. Further, the landlord had an obligation to

mitigate her losses by making every effort to re-rent the unit as quickly as possible. The landlord provided no evidence whatsoever showing that she advertised the unit. I dismiss the claim.

9. **Tenant's claim: Double security deposit.** The tenant seeks to recover double her security deposit. She provided evidence showing that her attorney mailed her forwarding address to the landlord on August 18 via regular mail. The landlord testified that the party at the address to which the letter was set was out of town and did not return home until September 8. The landlord filed the application to retain the deposit on September 9. Section 90(a) provides that when documents are mailed, they are deemed received on the 5th day after mailing. However, this is a rebuttable presumption and I accept that the party at that address was out of town during the period in question and did not receive the address until September 8. Section 38(1) of the Act provides that the landlord must return the security deposits 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. If she fails to do so, she is liable under section 38(6) for double the amount of the deposit. In order to establish her claim for double the deposit, the tenant must prove that the landlord received her forwarding address more than 15 days before having filed her claim to retain them. As I have found that the landlord received the address just one day before filing her claim, I find that the tenant is not entitled to an award of double the deposit and I dismiss the claim.
10. **Tenant's claim: Return of key and fob deposit.** The tenant seeks to recover the \$100.00 deposit paid for keys and fobs. As stated earlier, the tenant had refused to return the keys and fobs at the end of the tenancy, claiming that she first needed to receive the deposit. At the hearing, the landlord indicated that she still needed the fobs. The tenant returned the keys and fobs to the landlord at the hearing and as the tenant has already been charged for the cost of replacing the mail box lock, I find that she is entitled to recover the full amount of the deposit. I award the tenant \$100.00.
11. **Filing fees.** The landlord seeks to recover the \$100.00 filing fee paid to bring her application and the tenant seeks to recover the \$50.00 filing fee paid to bring her claim. As the landlord was only partially successful, I find that she is entitled to recover just one half of the filing fee and I award her \$50.00. The tenant was also partially successful, but I find that because she had refused to return the keys and fobs as she was obligated to do, she brought upon herself the need to make this application as the landlord had not yet refused to return the key deposit and may well have returned it, eliminating the need for the application. I find that the tenant should bear the cost of her filing fee.

Conclusion

In summary, the tenant's claim for the return of double the security deposit has been dismissed as has her claim for the cost of the filing fee and she has been awarded \$100.00 for the fob deposit. The landlord has been successful in the following claims:

Mailbox lock replacement	\$ 89.60
Painting	\$200.00
Fixture replacement	\$ 50.00
Removing paint from fixtures and doorknobs	\$ 50.00
Replacing covers	\$215.00
Misc. Repairs	\$ 30.00
Cleaning	\$ 30.00
Filing fee	\$ 50.00
Total:	\$928.12

Setting off the tenant's award as against that of the landlord leaves a balance of \$828.12 owing by the tenant to the landlord. I order the landlord to retain the \$550.00 security deposit in partial satisfaction of this claim and I grant her a monetary order under section 67 for the balance of \$278.12. This order may be filed in the Small Claims Division of the Provincial 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: December 16, 2011

Residential Tenancy Branch