



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 was scheduled to deal with the landlord's application for monetary compensation for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The landlord and one of the named respondents appeared at the hearing.

Preliminary and procedural matters

The landlord had named two co-tenants in filing this application and submitted that he served the hearing documents by registered mail. The landlord provided a copy of one registered mail receipt dated October 4, 2011 that indicates the registered mail was sent to the tenant that appeared at the hearing. As each respondent must be served with an Application for Dispute Resolution I amended the application to exclude the other named tenant that was not served. Accordingly, this decision names only the co-tenant that was served with the landlord's application.

The landlord raised an issue of late service of evidence upon him. He stated that he did not receive the tenant's evidence until December 12, 2011. I noted the Residential Tenancy Branch received evidence from the tenant on December 2, 2011 and December 5, 2011; however, the tenant could not provide me with sufficient evidence that her evidence was sent to the landlord within the required time limit provided under the Rules of Procedure. As the person that serves documents has the burden to prove when they served their documents upon the other party, I excluded the tenant's evidence from consideration. The tenant was provided the opportunity to give verbal testimony in support of her position.

For consistency, I also excluded the landlord's photographic and documentary evidence that was received by the Residential Tenancy Branch on December 7 and 8, 2011 as such submissions were received late in accordance with the Rules of Procedure.

In light of the above, the only documentary and photographic evidence considered in making this decision are those provided by the landlord with the application. For clarity, I have considered an email entitled "Dam Deposit"; a painter's quote; the move-in inspection report; and, the photographs provided at the time of filing.

I note that the landlord's late evidence included a request for additional monetary compensation; however, the landlord's application was not amended in accordance with the requirements of the Rules of Procedure. Thus, the only claims I have considered further are those that were identified with the application filed on October 3, 2011.

I also determined that the parties have participated in a previous dispute resolution proceeding whereby the tenant was granted a Monetary Order for return of double the security deposit, after an authorized deduction for a damaged futon (file no. 774265). As decisions are final and binding, the matter cannot be considered again and this decision does not alter the previous decision or order. Accordingly, I have not considered the landlord's requests for retention of the security deposit or compensation for the damaged futon.

On a procedural note, the landlord often presented vague, evasive and unresponsive testimony during the hearing of December 14, 2011. The landlord was cautioned several times that I needed to obtain certain relevant information in order to consider his requests for compensation and I requested on several occasions that he answer the questions asked of him. After 1.5 hours of hearing time on December 14, 2011 I determined it was necessary to adjourn the hearing in order to provide both parties the full opportunity to make their submissions. The hearing was reconvened on January 11, 2012 at which time both parties appeared and concluded their submissions.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for damage to the rental unit?
2. Has the landlord established an entitlement to compensation from the tenant for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

A co-tenancy with four tenants formed November 21, 2010 and ended April 29, 2011. The monthly rent was \$2,300.00 and the landlord had collected a \$2,300.00 security deposit. The rental unit was furnished.

It was undisputed that a move-in inspection report was prepared at the beginning of the tenancy; however, the landlord could not recall if a copy of the report was given to the tenants within the time limit required under the Act. The tenant submitted she received a copy of the move-in condition report with the hearing documents.

At the time of the move-out inspection the landlord submitted two or three of the co-tenants, including the tenant, were present at the move-out inspection and the landlord made notes concerning damages on the bottom of the tenancy agreement. However, the landlord submitted the tenants left "in a huff" because they did not agree with the landlord's assessment of damages and after the tenants left the landlord continued to inspect the property and found other damages.

The tenant submitted that the four co-tenants were present during the move-out inspection, as evidenced by their signatures under the landlord's notes on the bottom of the tenancy agreement. The tenant submitted that five items were noted by the landlord and the parties discussed their respective positions with respect to those five items. The tenants had agreed they damaged the futon but disputed they were responsible for the other damages identified by the landlord during the inspection. The tenant denied they left "in a huff" as they stayed long enough to sign the bottom of the tenancy agreement to acknowledge they had viewed and discussed these items.

The five items the landlord noted on the bottom of the tenancy agreement were as follows:

1. Damage to kitchen sink
2. Broken futon
3. Damage to kitchen wall
4. Damage to floor
5. Hydro

In filing this application, the landlord claimed compensation totalling \$4,091.00 and provided an itemized list of the following items:

<u>Item</u>	<u>Claim</u>	<u>Comments</u>
Broken leg on two lawn chairs	100.00	One broken leg
Broken futon	168.00	Acknowledged by tenants
Broken door lock	110.00	Replacement labour & lock
Damage to kitchen sink	950.00	\$650.00 to refinish sink; \$170.00 for plumber; \$150.00 for cartage
Damaged kitchen wall	325.00	\$175.00 for painter; \$150.00 for plasterer
Damaged flooring	950.00	Sanding and finishing
Stove cleaning	75.00	3 hours @ \$25.00/hr
General cleaning	75.00	Unit not left clean
Broken dresser front	250.00	Smashed drawer
Broken lamp in hallway	150.00	Arm broken
White sheets	50.00	Washed with something red
Damaged wall in bedroom	250.00	Plaster & paint
Damaged wall in hallway	75.00	Plaster & paint
Garbage removal	65.00	\$50.00 for 2 hours labour \$15.00 for dump fee
TOTAL	\$4,091.00	

Hydro

The landlord provided the following submissions with respect to hydro:

The tenants were responsible for 85% of the hydro bill as 15% was attributable to the lower suite. The landlord paid the hydro bill for November 2010. The tenants made a direct deposit to the landlord for the December 2010/January 2011 bill although the landlord could not recall exactly what date or the amount. The tenants paid the landlord \$500.00 in February. The landlord submitted that the tenants have not paid toward the bill he received in May 2011 in the amount of \$587.00 for the period of March 4, 2011 through May 3, 2011.

During the hearing the landlord indicated he was agreeable to reducing the bill for four days the tenants were not residing in the unit or \$32.00, leaving a balance of \$458.00 still owed by the tenants.

Upon further enquiry, the landlord acknowledged the \$500.00 paid by the tenants in February 2011 was greater than their portion of the December/January bill which he calculated to be \$288.00 during the hearing. Thus, after applying the overpayment the landlord was agreeable to reducing his total claim for hydro to \$246.00 [\$458.00 + \$288.00 – \$500.00].

The tenant provided the following responses:

The tenant submitted that there were three units under the same hydro account. The tenants made one direct deposit to the landlord's account in February 2011 for the amount they were told they owed up to that date. The tenants did not give the landlord \$500.00 in February but gave the landlord \$500.00 in cash on April 2 for which he provided an email dated April 3, 2011 thanking them for the money. The \$500.00 was given to the landlord based upon an estimate by the landlord to include consumption for April. The tenant was of the position that the tenants' hydro responsibilities have been paid.

Lawn chairs

The landlord submitted that at the end of the tenancy two lawn chairs were damaged and they cost \$50.00 – \$60.00 each. The chairs were 10 – 12 years old and had aluminum webbing.

The tenant submitted that the chairs were in a communal area. The tenant attributed the damage to the chairs to a large amount of snow that fell off the roof and onto the chairs.

Futon

The landlord has already been compensated for the damaged futon by way of the previous dispute resolution proceeding.

Door lock

The tenant submitted that this item did not appear on the itemized list of damages served upon her. I noted that this particular item was in different coloured ink as all the other items and was numbered as though it was added after other items. Upon enquiry, the landlord did not satisfy me that he served the tenant with an identical list that was given the Residential Tenancy Branch. Therefore, I did not consider this claim further under the principle of natural justice which provides a party to a dispute has the right to be notified of the claim against them.

Kitchen sink

The sink is an old farm house type of sink over 25 years old. The landlord submitted that it was in good condition at the beginning of the tenancy but at the end of the tenancy it appeared dull, and had marks and chips. The landlord obtained a verbal quote to refinish the sink for \$650.00. In addition, the landlord will have to incur costs to have a plumber disconnect and reconnect the plumbing (\$170.00); and to have it

removed from the countertop and wall (\$300.00). The landlord speculated that washing a cast iron fry pan in the sink may have caused the damage.

The tenant submitted that the sink was old and when they inspected it at the beginning of the tenancy they were not taking note of whether it was shiny or dull. The tenants used the sink normally and were not advised of any special care that was required. Further, the unit was fully furnished with all kitchen supplies. The cast iron fry pan was supplied to them by the landlord. If they were not to wash the fry pan in the sink they should have been provided an alternative means of washing it.

Kitchen wall damage

The wall in front of the futon was damaged. The landlord spoke with a plasterer and determined the plasterer charges \$50.00 per hour. The landlord understands three trips will be required to repair plaster.

The tenant was of the position the landlord's claim is excessive. The tenant was of the position the wall was subject to reasonable wear and tear.

Kitchen floor damage

Prior to the tenancy the landlord lived in the rental unit for approximately 10 years. The flooring was a durable vinyl flooring material overtop of old wood. Shortly before the tenancy commenced the landlord removed the vinyl flooring and then primed the wood, applied floor enamel, and then two clear coats. At the end of the tenancy the enamel was chipped and gouged, especially under the kitchen table and chairs.

The landlord obtained a verbal quote of \$950.00 to have the floor sanded and refinished. The landlord submitted that the floors require professional sanding now because the wood floors are deeply gouged.

The tenant submitted that the floors were painted and the chips in the enamel are from using the landlord's chairs that were provided to them. The tenant denied that the wood floors are deeply gouged.

Stove cleaning

The landlord submitted the stove was crusty and greasy. It took three hours to clean using an industrial cleaner.

The tenant submitted that the stove was thoroughly cleaned at the end of the tenancy.

General cleaning

The landlord had to vacuum the unit again, wash the floors again, and found food debris in the pantry. The unit was “not left immaculate”.

The tenant submitted that the unit was left more than reasonably clean although the tenant acknowledged there was some debris left under the oven.

Damaged dresser

The landlord submitted that the dovetails on one of the drawers were broken. The landlord purchased \$2,500.00 worth of furniture before tenancy commenced and the landlord estimated the dresser cost \$250.00.

The tenant was unaware of any damage to a dresser and it was not an item they discussed at the time of the move-out inspection.

Damaged hallway lamp

The landlord submitted that the arm on a brass lamp on the hallway table was broken. The lamp was 5 – 7 years old and the amount claimed was an estimate for the cost of a new brass lamp.

The tenant submitted that the lamp was on a communal table in a common foyer. The broken lamp was not discussed during the move-out inspection.

Sheets

The landlord is claiming replacement cost for a set of sheets. The landlord claimed the sheets were new at the beginning of the tenancy but they were stained during the tenancy. The landlord expected that the sheets would last at least a year. The current tenants do not use these sheets.

The tenant submitted she is unaware of any damage to the sheets and if they are stained it would be attributable to normal wear and tear.

Damaged bedroom wall

The landlord estimates that the plasterer will need to spend five hours to repair the damaged corner.

The tenant submitted she is unaware of damage to the bedroom wall and pointed out that it was not noted during the move-out inspection.

Damaged hallway wall

The landlord estimates 1.5 hours will be needed for the plasterer to repair this wall.

The tenant submitted that the hallway wall is in a communal area.

Garbage removal

The landlord submitted that the tenants left garbage behind which had to be taken to the dump along with the damaged futon.

The tenant submitted that perhaps one garbage bin of household refuse remained at the end of the tenancy. The tenant submitted that the landlord had declined their offer for a replacement futon so the tenant does not agree to pay for disposal of the old futon.

Analysis

Upon consideration of the documentation and photographic evidence I have accepted, as outlined in the Introduction portion of this decision, and in consideration of the verbal testimony I heard, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. 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 burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I accept that both the landlord and the tenants participated in a move-out inspection on April 29, 2011 and that while both parties were together the landlord noted five issues of concern, four of which pertained to damage to: the futon; the kitchen floor; the kitchen sink and the kitchen wall. In this decision I have considered whether the landlord has established that the tenants are responsible for compensating the landlord for damage to these items (except the futon) and additional hydro costs; however, I have dismissed the remainder of the landlord's claims for damage and loss for the following reasons.

Having heard the tenants participated in the move-out inspection and signed a document acknowledging the landlord identified certain damaged items I find it unlikely the tenants stopped part way through an inspection to sign a document and then leave. Rather, I find it more likely than not that the inspection had been completed with the landlord noting four items of damage plus a concern over hydro charges. I find that the photographs of other damage property do not satisfy me as to when the damage occurred. I also find a lack of documentary evidence in support of many of the claims such as estimates, invoices and receipts.

With respect to the kitchen floor I accept that there are chips in the floor enamel based upon the photographs and the undisputed testimony that there are chips. However, I am not satisfied that this was the result of anything other than normal use of a table and chairs provided by the landlord for use on an old wood floor in a kitchen. Having heard the floor was covered in durable vinyl when the landlord lived in the unit I find I am not satisfied me that the landlord's applications of a primer, enamel and clear costs were sufficient to withstand the stress a floor must endure under everyday use. Since tenants are not responsible for deterioration attributed to normal wear and tear I dismiss the landlord's claims for floor refinishing.

With respect to the kitchen sink I accept that the bottom of the sink appears dull in the photographs. Upon review of the move-in inspection report I find that the format and content of the report does not comply with the requirements of the Residential Tenancy Regulations; however, I have reviewed the landlord's report in an effort to determine the sink's condition at the beginning of the tenancy. The report is two pages and contains a section entitled "Kitchen Bathroom"; however, there is no space provided for the assessment of the kitchen sink. Nor is there a comment about the condition of the kitchen sink elsewhere on the report. Therefore, I find that I am left with consistent testimony that the sink was old at the beginning of the tenancy and I find this to be insufficient to determine whether the sink was shiny at the beginning of the tenancy as submitted by the landlord. Since the landlord has failed to establish the condition of the sink at the beginning of the tenancy I find he has failed to establish the tenants damaged the sink and I dismiss this portion of the landlord's claim.

With respect to the kitchen wall I note that the move-in inspection report indicates the walls in the kitchen were in very good condition and upon review of the landlord's photograph it appears as though there is damage beyond wear and tear. However, the damaged area appears rather small and I find the landlord's estimate of \$150.00 to be unsupported by corroborating evidence such as a written estimate from a plasterer.

Therefore, based upon the evidence before me, I find a more reasonable award to be \$50.00 and I award that amount to the landlord.

With respect to the claim for hydro I was provided conflicting verbal testimony as to whether the tenants owed money for hydro and the landlord did not provide documentation to show the amount of the hydro billings or the payments received from the tenants. Since the landlord has the burden to prove his claim, I find the landlord has failed to meet the criteria required of him, as outlined above. Therefore, I make no award for hydro.

As the tenant acknowledged that debris remained under the oven at the end of the tenancy I award the landlord \$10.00 for time spent sweeping and mopping this area of the floor.

In light of the above, I have awarded the landlord \$60.00 for damage to the kitchen wall and cleaning the floor under the oven. The remainder of the landlord's claims have been dismissed without leave to reapply.

Conclusion

The landlord has been provided a Monetary Order in the amount of \$60.00 to serve upon 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: January 25, 2012.

Residential Tenancy Branch