



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNSD, FF

For the landlord – MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to both Parties applications. The tenant has applied for the return of double the security deposit and to recover the filing fee from the landlord for the cost of this application. The landlord has applied for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witness on their evidence. The original hearing was adjourned to allow the tenant to reserve his evidence package to the landlord. The hearing was reconvened on this date. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this reconvened hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to recover double the security deposit from the landlord?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit? Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy started on May 16, 2010. This started as a fixed term tenancy for one year and reverted to a month to month tenancy at the end of the fixed term. Rent for this unit was \$1,175.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$587.50 on May 07, 2010.

The tenant's Application

The tenant testifies that he vacated the rental unit on September 30, 2011 and gave the landlord his forwarding address on this date on the move out inspection form. The tenant testifies that the landlord failed to return his security deposit within the required 15 days and did not file an application to keep the deposit within 15 days. The tenant states he therefore request double his security deposit to the sum of \$1,175.00.

The landlord testifies that the tenant only gave the landlord notice to end the tenancy by e-mail on September 06, 2011. The landlord states she acknowledged receipt of this Notice but as the tenant did not give the required one clear months notice to end the tenancy that the earliest the tenant could legally end the tenancy would have been October 31, 2011. Therefore, the landlord testifies that she sought advice from an information officer at the Residential Tenancy Branch and from the landlords lawyer who said she could apply later to keep the tenants security deposit. The landlord states as Christmas was approaching she did not apply to keep the tenants security deposit until December 23, 2011. The landlord dispute the tenants claim for double the security deposit because there were damages and unpaid rent for the unit.

The landlord's Application

The landlord testifies that the tenant first gave his intention to end the tenancy by text message on September 01, 2011. This did not give a date the tenant wanted to vacate the unit. The landlord testifies she received an e-mail from the tenant giving Notice to end his tenancy for October 01, 2011 and received this on September 06, 2011 (copy provided in evidence). The landlord testifies that as the tenant did not meet the requirements under the *Act* to provide one clear months notice to end his tenancy the landlord seeks to recover unpaid rent for October, 2011 to the sum of \$1,175.00. The landlord testifies that new tenants were moving into the rental unit on October 01, 2011 at 1.00 p.m.

The landlord testifies that the tenant failed to clean up animal urine which had seeped under the kitchen cabinets. The landlord seeks to recover the cost of the chemicals for this work at a sum of \$12.71. The landlord testifies that she saw the tenant's dog urinate on two occasions in the kitchen.

The landlord testifies that due to this animal urine seeping under the cupboards it caused damage to the particle board of the kitchen cabinets. The particle boards started to break up due to this moisture. The landlord testifies that she hired a contractor to pull out the cabinets to inspect for moisture to determine if any moisture was seeping in elsewhere but none was found so it was determined that the damage was caused by the animal urine. The cabinets had to be replaced at a cost of \$241.93 and the knobs on the units had to be replaced at a cost of \$23.90. As the kitchen counter had to be removed because of the cabinets this also had to be replaced at a cost of \$79.36. The landlord also seeks to recover the sum of \$300.00 for the contractor to remove the damaged cabinets and the counter and to install the new ones. The landlord also seeks to recover the cost of having to replace the kitchen faucets as they had to be replaced with ones that were up to code. The landlord seeks to recover the costs of a plumber to do this work at a sum of \$238.28. The landlord testifies that the kitchen cabinets, faucets and counter were properly the original ones installed in the unit and were therefore approximately 28 years old.

The landlord testifies that the tenant had not cleaned the carpets at the end of the tenancy. The landlord testifies there was some staining left on the carpets. The landlord testifies she hired a person with a carpet cleaner to clean the carpets and seeks to recover the cost for this labour at a sum of \$77.00 plus the cost of the carpet cleaning chemicals to the sum of \$22.37.

The landlord testifies that the tenant caused damage to the closets doors. The landlord testifies the tenant would hang clothes drying on the doors which damaged the particle board causing the screw that held the doors in to pop out. The landlord testifies that the doors were original doors approximately 25 years old and could not be matched so both doors had to be replaced at a cost of \$77.96.

The landlord testifies that there was an Allen key used to reset the garbage disposal left in the unit. The landlord testifies this key was missing at the end of the tenancy and the last she saw of it was

when the landlord used it to reset the garbrator after the tenant complained it was not working. The landlord seeks to recover the sum of \$6.99 to replace this Allen key.

The landlord testifies that the tenant caused damage to the vinyl kick board in the bedroom which was not repaired at the end of the tenancy. The landlord testifies it appeared as if the tenant's bed leg had caught this board and due to the damage it could not be re-glued to the wall but rather the whole length of board had to be replaced at a cost of \$18.27. The landlord testifies that these baseboards were properly the original boards and were approximately 28 years old. The landlord testifies she has not provided the receipt for this.

The landlord seeks to recover the cost of replacing the drawer fronts in the kitchen cabinets where the tenant had broken off the integral handles. The landlord seeks to recover the sum of \$25.60 for four drawer fronts.

The landlord seeks to recover the sum of \$165.00 for a contractor to come and carry out the repairs to the Vinyl kick board, the drawers the door knobs and the by fold closet door.

The landlord testifies the tenant failed to leave the rental unit in a reasonably clean condition at the end of the tenancy. The landlord testifies many areas required additional cleaning to make the unit suitable for the new tenants. The landlord testifies that she cleaned for 2.5 hours the night the tenants moved out and another two hours was spent just scrubbing the dog urine from the tile grout. The next day the landlord and another person spent 9.25 hours cleaning the rest of the unit. The landlord has provided photographic evidence of the areas they had to clean. The landlord seeks to recover the sum of \$420.00 for this work charged at \$30.00 per hour.

The landlord testifies that the tenant dumped a mattress in the parkade of the building. The landlord testifies that she recognised this as being the mattress from the tenants unit. The strata left a note concerning this and requested that it be moved. The landlord testifies that the Strata charged the landlord \$100.00 to remove this mattress to the dump. The landlord has not provided a copy of the receipt for this claim.

The landlord testifies when the tenancy started the unit was partially furnished. As the tenant acquired some of his own belongings the landlord removed some of the items left in the unit for

the tenant. The landlord testifies that at the end of the tenancy there were glass bowls missing and the landlord seeks to recover the cost of these at a sum of \$12.99.

The landlord seeks to retain the tenant's security deposit of \$587.50 in partial satisfaction of her claim.

The landlord calls her witness. This witness helped the landlord clean the rental unit the day after the tenant vacated the unit. The witness testifies that the unit had been left tidy and vacuumed but had not been cleaned thoroughly. The witness testifies that they spent about six or seven hours cleaning the unit including scrubbing the floors, the fridge the oven and stove top, the kitchen cupboards had small items left in them which indicated they had not been cleaned, the patio was left dirty, the walls, the bathroom and the drapes all had to be cleaned, the laundry had to be cleaned and the microwave oven was left so dirty it could not be cleaned and had to be thrown away. The witness testifies that the unit was not suitable for the new tenants to move into.

The tenant declines to cross examine this witness.

The tenant disputes the landlords claim for unpaid rent. The tenant testifies that he gave the landlord ample notice to end the tenancy and should not be held responsible for unpaid rent for October, 2011.

The tenant disputes the landlords claim that he caused damage in the rental unit. The tenant testifies that any damage was caused by natural wear and tear as the unit and the items the landlord is claiming he damaged were over 25 years old. The tenant claims when he went to the unit to do the inspection the closet doors had been removed and were lying on the floor and he has no knowledge that the particle board was damaged or the a screw had popped out.

The tenant disputes that his dog urinated in the kitchen and states the damage to the kitchen cupboards was caused because the person who fitted the dishwasher failed to remove the package cardboard under the dishwasher and this became full of moisture which created the smell and the subsequent damage to the particle boards. The tenant testifies when the landlord's contractor pulled out the dishwasher the contractor mentioned the rotten board left

under the dishwasher and there was no mention of dog urine. The tenant states he removed his dog from the unit a month before the tenancy ended.

The tenant disputes removing the key to the garbrator and testifies that he never saw this key and never used a key for the garbrator.

The tenant disputes that he caused damage to the vinyl baseboards in the bedroom. The tenant testifies that these baseboards were at least 25 years old and if they had started to come away from the wall it was due to normal wear and tear.

The tenant disputes causing damage to the drawer fronts and again states the drawers were very old and any damage was caused through normal wear and tear. The tenant also disputes the landlord's claims for contractor's costs as this damage was not caused by his actions or neglect. The tenant also disputes the landlords claim to fit new faucets as the faucets were old and if they did not meet code this was the landlord's responsibility.

The tenant testifies that the mattress in the landlord's photographs was not his and he still has the mattress he used in the rental unit in his new unit. The tenant also disputes that the landlord was charged any costs from the Strata.

The tenant disputes that he left the unit in an unclean condition. The tenant testifies that he cleaned the unit thoroughly before the end of his tenancy and states his photographic evidence of the unit support this. The tenant questions when the landlord's photographs were taken as they are undated.

The tenant disputes breaking or removing any glass bowls from the unit. The tenant testifies that the landlord has not provided a copy of the move in condition inspection report and has not provided any photographs of the unit taken at the start of the tenancy. The tenant also testifies that he is not responsible for having the carpets cleaned as he had them professional cleaned each month and in July, 2011 when the landlords contractor was in the unit the contractor left some debris on the carpets.

Analysis

The tenant's application

Section 38(1) of the *Act* says that a landlord has 15 days from the date the tenancy ends or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on September 30, 2011. As a result, the landlord had until October 15, 2011 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. The landlord argues that the tenancy did not legally end until October 31, 2011. However, because the tenant moved out on September 30, 2011 this is the date the tenancy ended. I find the landlord did not return the security deposit and did not file an application to keep the deposit until December 23, 2011. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$1,175.00** pursuant to section 38(6)(b) of the *Act*.

The landlord's application

With regard to the landlords claim for unpaid rent for October, 2011; I refer the parties to s. 45(1) of the *Act* which states

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenant did not provide written Notice to end the tenancy until September 06, 2011. This notice was acknowledged by the landlord and had an effective date of October 01, 2011. The tenant vacated the unit on September 30, 2011. The landlord would therefore be entitled to

recover unpaid rent for October, 2011 due to insufficient Notice given by the tenant. However, as the landlord testified and documented in her written submissions that a new tenant was moving into the unit at 1.00 pm. the next day the landlord would have received Octobers rent from the incoming tenant and is not entitled to charge rent to both tenants for the same unit. Therefore the landlords application to recover unpaid rent is dismissed without leave to reapply.

With regard to the landlords claim for damages; I have carefully considered the landlords claim in this matter and have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I have also taken into account the age of the kitchen cupboards, counter top, baseboards, faucets and closet doors and found from the landlords own admission that these items were at least 25 years old. The useful life of cabinets and counter tops is recommended to be 25 years, for closet door the recommended useful life is 20 years and for vinyl baseboards the recommended useful life is 10 years. The faucets had to be brought up to code and this would not be deemed to be the responsibility of the tenant. I am also not satisfied that the landlord has meet the burden of proof in this matter to show that the damage was caused by the actions or neglect of the tenant that went beyond normal wear and tear. A tenant cannot be held

responsible to upgrade a rental unit when items are past their useful life and consequently the landlords claim for damages for these items cannot succeed and is dismissed without leave to reapply.

In light of this, I also dismiss the landlord associated costs for contractors' fees to repair and replace the above items

With regard to the landlords claim for cleaning the carpets, the tenant argues that he cleaned the carpets every month and the landlord's contractor left some wood and debris on the carpets in July, 2011. The landlord argues that the tenant could not have cleaned the carpets each month because there was a stain on the carpets and the landlord testifies her contractor did leave a small amount of sawdust on the carpets which she would have removed had the tenant asked her to do so. I find in this matter that the tenant had a dog for most of the tenancy; I refer the parties to the Residential Tenancy Policy Guidelines #1 which refers to the landlords and tenants responsibility for the rental unit and states, in part, that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged.

Consequently, I find the tenant failed to clean the carpets at the end of the tenancy as required and uphold the landlords claim for carpet cleaning. The landlord is entitled to a monetary award to the sum of **\$99.37**.

With regard to the landlords claim for cleaning the unit, I am satisfied from the evidence presented and the testimony of the landlord and her witness that the tenant did not leave the rental unit in a clean condition. Both parties have provided photographic evidence and I find the tenants pictures are taken of rooms where as the landlords pictures are close ups of areas relating to the landlords claim and are corroborated by the landlord witness's testimony.

Consequently, I uphold the landlords claim for cleaning to the sum of **\$420.00**. The landlords

claim for \$12.71 to clean and remove animal urine is dismissed as the landlord has provided insufficient evidence to show that the tenant's dog urinated on the kitchen floor.

With regards to the landlords claim for \$100.00 paid to the Strata to remove a mattress from the parkade; the landlord claims this mattress was left in the parkade by the tenant; the tenant disputes this and states it was not his mattress and he still has his mattress in his new unit. The landlord testifies that she recognised this mattress as being the tenants however as the landlord has provided no evidence to corroborate this and no evidence from the Strata to show the costs associated in removing the mattress. Consequently, this section of the landlords claim is dismissed.

With regard to the landlords claim to recover the costs of the missing or broken glass bowls and garbrator key; The landlord claims these bowls and the garbrator key were left in the unit for the tenants use and at the end of the tenancy they could not be found. The tenant argues that he did not remove or break any bowls during his tenancy and had never seen a key for the garbrator. The landlord has provided no corroborating evidence to support her claim that the bowls and key were left in the unit and no evidence to show that these were missing at the end of the tenancy. Consequently, this section of the landlords claim is also dismissed without leave to reapply.

As the tenant has been successful with his claim to recover the security deposit, the landlords claim to keep the deposit is dismissed without leave to reapply.

As the tenant has been successful with his claim I find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*. As the landlord has only been partially successful with her claim I find the landlord is entitled to recover half her filing fee of **\$25.00** from the tenant pursuant to s. 72(1) of the *Act*.

As Both Parties are entitled to a monetary award I have offset the landlord's monetary award against that of the tenant as follows.

Double security deposit to the tenant	\$1,175.00
Filing fee for the tenant	\$50.00
Total amount due to the tenant	\$1,225.00

Carpet cleaning for the landlord	\$99.37
Cleaning costs for the landlord	\$420.00
Filing fee for the landlord	\$25.00
Total amount due to the landlord	\$544.37
Total amount now due to the tenant	\$680.63

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$680.63**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord's monetary claim has been offset against the amount owed to the tenant.

The remainder of the landlords claim is dismissed without leave to reapply.

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: February 20, 2012.

Residential Tenancy Branch