



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for unpaid rent; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit is a four bedroom single detached home. Pursuant to a written agreement, the tenancy started on January 17, 2006. The rent at the end of the tenancy was \$1375.00 per month. The tenant paid a security deposit of \$625.00 which, with accrued interest according to the Residential Tenancy Branch interest calculator was calculated at \$646.97 when the tenancy ended on January 31, 2012.

The landlord testified that the tenants had to move out of the unit on November 27, 2011 due to a plumbing leak that caused significant damage. He stated that the damages in this application were not caused by this problem, and that they relate to other areas of the house not affected by the leak.

The landlord stated that he met the tenant on January 31st, 2012 to address a number of issues with cleaning the house after doing a quick walk-through. He stated that he met the tenant again on February 6, 2012; he said that he produced a document that was not the original move-in inspection report, and that the tenant then declined to do the move-out inspection. The landlord said that he did a walk-through on the 6th, took photographs, and transferred his observations later on the original inspection report. The landlord then referred to a statement of claim provided in his evidence, in which he itemized repairs, costs and estimates.

In his documentary evidence, the landlord also provided approximately 80 photographs in support of his claim, showing various soiled areas of the house that included, but were limited to; the carpets, linoleum, walls, windows, and the outside grounds.

The landlord submitted invoices and estimates for the following monetary claim:

- Flooring estimate (Bedroom & closet):	\$ 727.92
- Flooring estimate (Master bedroom):	\$ 593.37
- Repair estimate due to pet odour & urine stain:	\$1448.16
- Materials, labour, and various yard clean up:	\$ 547.96
- New faucet estimate:	\$ 263.20
- Sub-total:	\$3580.61
- Less security deposit:	\$ 646.97
- Total owed to landlord:	\$2933.64

Concerning the yard, the landlord said that he told the tenant that any yard work would have to be dismantled at the end of the tenancy; he said that when the tenants removed borders and edgings, he expected that the dirt would be removed as well.

Concerning the faucet, the landlord said that the tenant replaced the original faucet with a leaky one that needed to be replaced.

The landlord said that the carpets were 10 years old, and the linoleum 25 years old.

The tenant testified that there was no damage to any of the carpets, however agreed that he patched one hole in one of the bedroom; this was captured by one of the landlord's photographs.

The tenant also agreed that the carpets were dirty and needed cleaning. He said however that it was problematic because he no longer lived in the house and that there was a continual traffic of contractors actively doing repairs and renovations.

The tenant said that he met the landlord at the house on January 31st, 2012, and that he asked for the condition inspection report. He said that the landlord did not produce the report, and that he produced a list that outlined a number of issues concerning cleaning. That list, which was provided in the tenant's documentary evidence, itemized a number of cleaning tasks and replacement costs adding up to \$2835.00, including a new carpet in an upstairs bedroom. The tenant said that he complied with all the issues addressed on the landlord's list; however he did not agree that his pets destroyed the carpet. Nor did the tenant recall that he had to remove the dirt in the garden, but only the borders.

The tenant stated that he met the landlord again on February 6th with an independent witness. The tenant said that the landlord told him that everything looked great and to call it even. The tenant said that if everything was great he should have his security deposit back. He said that the landlord did not offer to do a move-out inspection, and that the condition inspection report he later received did not show a move-out date. In

his documentary evidence, the tenant provided 30 photographs to show how he kept the grounds during the tenancy; some deficiencies with the house, although they do not bear any impact on the landlord's claim; pre-existent damage at the bottom of the stairs; holes caused by the contractors, and damage to the tenant's own belongings by the contractors. The photographs also show that an excavator was used to dig a portion of the house to install a drain. The tenant also provided a witness statement who was present during the move-out inspection, wherein the witness declares that the landlord did not provide a copy of the move-in inspection, that the parties did not enter the home to do an inspection with the tenant, that the landlord said that everything looked great, and that the problem started when the tenant asked the landlord for his security deposit. In that same letter, the witness states that the landlord's claim is full of lies and mistruths; however he does not elaborate on that assertion.

The tenant said that the landlord added to his original list once he requested the damage deposit. Concerning the leaky faucet, the tenant said that he did not replace it. He said that a pipe broke and that he called a plumber to do an emergency repair for which he paid \$258.00 and was not compensated by the landlord. He said that some of the landlord's photographs were taken before he cleaned portions of the house, such as the mould build up around the windows removed on February 5th. The landlord clarified that these photographs were taken in the latter part of January. The tenant also said that the carpets had been removed and could not be cleaned when he returned. The landlord replied that they were removed because it was evident to him that they were not going to be cleaned by January 31st. The parties then questioned each other, and the tenant reminded the landlord that he had agreed that he would allow him to finish cleaning after January 31st. I then asked the landlord why the photographs of the carpets were dated February 6th if the carpets were removed on January 31st. The landlord then corrected his testimony and stated that some photographs were taken on January 31st, some on February 6th, and some after.

Concerning the pet urine and smell under the stairs, the tenant said that there was pre-existent water damage, as confirmed on the move-in inspection report. He stated that

his cats did not spray onto the walls and that the odour was likely from the litter boxes only. He said that he made every attempt to contain the smell in this one area. The landlord pointed to the photograph, showing that the bottom drywall nails were rusted through by uric acid, and that the workers had to wear respirators while doing the work.

Concerning the hole in the door, the tenant accepted responsibility and stated that he could get a replacement one for \$10.00. The landlord said that his cost was \$130.00 with installation.

The tenant did not agree with the balance of issues not mentioned in the landlord's original list totalling \$547.96, which he calls inflammatory because he asked for the return of his security deposit.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord to prove his claim against the tenant.

Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss.

With this in mind, I have reviewed the documentary submissions and the parties' testimony and make the following determination:

Section 35 provides in part that the landlord must offer the tenant at least 2 opportunities, as prescribed, for an inspection, and that the landlord must complete a condition inspection report with the tenant in accordance with the regulations, which includes providing the tenant with a copy of the report. Section 36(2) provides in part that the landlord's failure to comply with section 35 extinguishes his right to claim against a security deposit. The landlord stated that he did not have a copy of the original report, and the move-out report he later provided did not show the date as required by regulation. Regardless of the exchange between the parties on February 6th on this issue, the landlord did not comply with the Act or the Regulation and I find that his right to claim against the security deposit is extinguished. Therefore I dismiss this aspect of the application.

Concerning damages, the landlord's testimony was contradictory concerning the dates of the photographs. It was discovered at the hearing that some were taken while the tenancy had not yet ended, some were erroneously dated, and some were taken after February 6th, 2012. I find as such the landlord's photographic evidence of little value as it is not reliable. The tenant did not dispute the condition of the carpets; he argued that they were removed before he could clean them. Since the landlord had allowed the tenant more time to clean after the tenancy ended, coupled with work crews accessing the unit for two months, it no longer allows me to assess liability for damages against the tenant. Therefore I am unable to ascribe a monetary value for damages beyond reasonable wear and tear caused by the tenant for all the issues addressed by the landlord, with the exception of those agreed upon by the tenant.

Further, the *Residential Policy Guidelines* provide an estimated useful life for various items, including finishes in rental accommodations for reasonable wear and tear. In the case of carpet and linoleum that useful life is 10 years. Given the age of these items I find that they had expended their useful life and therefore it is not reasonable to expect the tenants to pay for full replacement cost.

The tenant agreed that he damaged a door. The tenant quoted \$10.00 and the landlord said it cost \$130.00 to replace. The landlord is not expected to find the lowest bidder; the landlord provided a receipt for this repair and I award the landlord \$130.00 as claimed.

The move-in report is silent concerning the exterior of the property and the landlord only addressed the garden bed at the hearing, and the reason for an excavator in the yard; I accept that the parties agreed to return the yard work in its original condition, and that the dirt inside the bed was not removed. I award the landlord \$32.00 as claimed.

Concerning the faucet; the landlord did not provide sufficient evidence to prove that the tenant installed this faucet and I dismiss this aspect of the claim.

Turning to the urine smell and stains under the stairs; while I agree that there was pre-existent damage, as explained to the tenant if the odour is such that it lingers after he leaves, the landlord is entitled to recover the cost of eliminating the odour. The tenant had two cats and a small dog; I am satisfied that the odour permeated the area in question. I award the landlord the deducted amount of the total invoice repair for this portion of the work as follows: \$1293.00 minus \$625.00 = \$668.00 plus 12% tax: \$80.16 for the sum of \$748.16.

Conclusion

The landlord established a claim of \$910.16. I authorize the landlord to retain the tenant's \$646.97 security deposit for a balance owing of \$273.19. Since the landlord was partially successful, I award the landlord partial recovery of the filing fee for \$25.00. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$298.19.

This Order may be registered in the Small Claims 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: March 07, 2012.

Residential Tenancy Branch