

## **DECISION**

Dispute Codes      MNSD, MNDC, MND, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on May 28, 2012 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for the return of double the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on May 7, 2012 for:

1. A Monetary Order for damage to the unit - Section 67;
2. An Order to keep all or part of the security deposit – Section 38;
3. A Monetary Order for compensation – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to the recovery of their filing fees?

### Background and Evidence

The tenancy started with the Tenants and their mother on October 1, 2006. No move in inspection took place. Additional tenancy agreements were signed to current and the latest tenancy agreement with the Tenants alone started August 1, 2010 on a fixed term to July 31, 2011. Although the tenancy ended on July 31, 2012, the final move-out of the Tenants occurred on August 8, 2012.

Rent of \$2,650.00 was payable monthly and the Landlord is holding \$1,325.00 as a security deposit, with \$1,200.00 being collected from the 2006 tenancy, an additional amount of \$100.00 collected on August 1, 2009 and \$25.00 on August 1, 2020. The security deposits were transferred to each of the following tenancy terms from the onset of the tenancy. The Tenants sent their forwarding address in writing to the Landlord on April 23, 2012 by registered mail.

The Tenants provided one key to the Landlord on August 1, 2012 and the remaining keys on August 8, 2012. The Landlord began work on the unit from August 1, 2012 onward and while the Tenants were still removing their belongings. The Tenant states that the Landlord approved their delayed move-out as the unit was being placed for sale and the Landlord was going to be at the unit painting. The Landlord denies this approval and states that he was unable to contact the Tenants after July 31, 2012. The Tenants state that the Landlord had their phone numbers and that the Tenants did not receive any communication from the Landlord after July 31, 2012. No move-out inspection took place with the Tenants and the Landlord conducted the inspection alone on August 1, 2012. The Landlord claims \$706.67 for the Tenants leaving belongings in the unit an extra eight (8) days.

The Landlord states that the Tenants damaged the carpets during the tenancy and that the carpets were replaced as a result. The Landlord claims \$4,090.66, including a \$200.00 cost for dumping. The Landlord provided an invoice for the carpet but not the dumping cost. The Tenants state that the carpets were stained and smelled of urine at move-in and that the Landlord promised to replace the carpets. The Tenants state that the Tenants previous had a cat.

The Landlord states that the Tenants left the unit unclean and damaged. The Tenants state that a cleaner was hired and completed a clean-up of the unit and that the Landlord was in the unit painting and making repairs prior to August 8, 2012. The

Tenants state that the photos provided by the Landlord were taken before the Tenant had all their belongings out of the unit.

The Landlord states that the Tenants left garbage at the unit, including a barbeque that the Landlord had to remove and that the Tenants left the garage floor stained with oil. The Landlord states that the Tenants also left the deck floors and sidewalk dirty requiring the Landlord to power wash the garage floor, sidewalk, and decks. The Landlord claims \$550.00 for costs to remove the garbage and power washing. The Landlord provided a receipt for this amount that notes the monies received for outside clean up and garbage removal. There is no indication of the amount allocated to garbage removal nor is there any itemized statement in relation to the outside clean-up. The Tenant states that all their large item garbage, including the barbeque was removed themselves at a cost of \$300.00 and that if the Landlord removed any of the Tenant's garbage, it would have been a few small items only. The Tenants question whether the receipt is actually from the Landlord's garbage from the work being done in the unit in preparation for the sale of the unit. The Tenant states that the garage floor and decks were not clean at move in and the Tenants had asked the Landlord to clean the decks but the Landlord failed to do so. The Tenant states further that the garage floor was stained through normal wear and tear and the stains were not excessive.

The Landlord claims \$450.00 for the cost of hiring a person to clean the unit but provided no invoice or receipt for this cost. The Landlord states that the carpets were not cleaned and claims \$150.00 for the Landlord's cost to have the carpets cleaned. The Landlord provided an invoice dated August 24, 2012 for this cost. The Tenants states that they hired a cleaner to clean the house at move-out and that the living room and family room carpets were steam cleaned by the Tenants themselves. The Tenant states that the Landlord was painting and doing renovations to the unit prior to the date of the steam cleaning being claimed.

The Tenants do not dispute that the lawn required mowing at move-out for a cost of \$50.00.

The Landlord states that the kitchen counter top was damaged by water left on the counters and required replacement. The Landlord states that the carpets on the top floor of the unit were bad and required removal. The Landlord replaced the carpets with laminate flooring. The Landlord states that the whole house required painting. The Landlord provided a letter noting a global amount of \$12,000.00 for all of this work, including the repair of the fence. The Landlord estimates that from this amount the counter top cost \$1,000.00 and the house painting cost \$7,000.00.

The Tenants state that the kitchen faucet was repaired during the tenancy causing water damage to the counter top and that no hole was in the countertop during the tenancy. The Tenants state that the upper floor carpets were bad at move-in and that the Landlord had assured the Tenants that they would be replaced but that the Landlord never did this. The Tenants state that during the tenancy they offered to pay for half the cost of the placement of hardwood flooring but that the Landlord refused due to the expense.

The Landlord states that the dishwasher did not work and required replacement at the cost of \$396.00. No invoice or bill was provided for this replacement cost.

The Landlord states that the garage door required repair and claims \$80.00. The Landlord provides a very illegible receipt or invoice dated September 29, 2012 for this cost. The Tenant states that half way through the tenancy the Landlord repaired the garage door and that the garage door worked fine at move out.

The Landlord states that a basement curtain and vertical blinds required replacement or repair and claims \$134.00. No invoice was provided for this cost.

### Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable

steps were taken by the claiming party to minimize or mitigate the costs claimed, and that ***costs for the damage or loss have been incurred or established.***

A tenant is not liable to pay rent after a tenancy ends unless the Tenant remains in possession of the premises. If the tenant remains in the unit, the Tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. Given that the Landlord had possession of the unit on August 1, 2012 and commenced repairs to the unit, and considering that the Landlord was selling the unit and therefore did not suffer any loss by the Tenants not removing all of their belongings until August 8, 2012, I find that the Landlord is not entitled to compensation for the Tenants belongings being in the unit until August 8, 2012. I therefore dismiss this part of the Landlord's claim for compensation.

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary.

Given the lack of invoices for the cost to replace the dishwasher, for dumping costs in relation to the carpet removal in 2011, for cleaning of the unit, and for the curtains and blinds, I find that the Landlord has failed to establish these costs and I therefore dismiss this part of the Landlord's claim.

As I find the Tenant's evidence to be persuasive in relation to the state of the unit and carpets at move in and considering the lack of a move-in inspection report, I find that the Landlord has not substantiated on a balance of probabilities that the Tenants were responsible for the replacement of the carpets on the upper floor with laminate flooring and to the replace of the carpet in 2010. I therefore dismiss these claims of the Landlord.

Given the invoice of the Landlord that does not itemize or differentiate the costs for the garbage removal and power washing, considering that no move-in inspection report was completed and considering the Tenants' statements that the garage floor and decks were not clean at move in, I find that the Landlord has not, on a balance of probabilities, established that the Tenants caused any damages or that the Landlord has established the costs for these claims. I therefore dismiss these claims of the Landlord.

Given the evidence that the Landlord did work on the unit from August 1, 2012 onward and given the receipts for costs for carpet cleaning and garage door are dated following the work done by the Landlord, I find that the Landlord has not substantiated on a balance of probabilities that the Tenants caused the carpets to require cleaning or the garage door to be fixed. I therefore dismiss these claims of the Landlord.

Given that the costs for the replacement of the counter top and painting of the house are not distinguishable, I find that the Landlord has not substantiated these costs and I therefore dismiss these claims of the Landlord.

As the Tenants do not dispute the cost for cutting the lawn, I find that the Landlord is entitled to a monetary amount of **\$50.00**. Given the significantly limited success of the Landlord, I make no order in relation to the recovery of the Landlord's filing fee.

Section 38 of the Act requires a landlord to return a security deposit to a tenant within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. This section further requires that where the landlord has not met the obligation to return a security deposit within the required timeframe, the landlord must pay the tenant double the amount of the security deposit. As the Tenant provided the Landlord with a forwarding address in writing by registered mail sent April 23, 2012 and considering that the Landlord made an application for dispute resolution on May 7, 2012, within fifteen (15) days of receipt of this letter, I find that the Landlord is not required to repay the Tenants double the security deposit. The Tenants are however entitled to return of their security deposit. As the Tenants were

successful with their application, I find that the Tenants are also entitled to recovery of their **\$50.00** filing fee.

Based on the undisputed evidence that the Landlord collected \$1,200.00 as a security deposit on October 1, 2006, noting that interest of \$37.85 is payable on this amount and that zero interest is payable on the amounts collected by the Landlord from August 1, 2009, I find that the interest payable on the total security deposit of \$1,325.00 amounts to \$37.85. The Tenants entitlement is \$1,325.00 (security deposit) plus \$37.85 (interest) plus \$50.00 (filing fee) for a total entitlement of **\$1,412.85**. From this amount, I deduct the **\$50.00** entitlement of the Landlord, leaving **\$1,362.85** owing from the Landlord to the Tenant.

#### Conclusion

I grant the Tenant a monetary order under Section 67 of the Act for **\$1,362.85**. If necessary, this order may be filed 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: July 05, 2012.

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Residential Tenancy Branch