



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with applications from the landlords and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The parties confirmed that the tenants vacated the rental unit by May 24, 2012 on the basis of the tenants' notice to end this tenancy by May 31, 2012. The tenants' notice to end this tenancy was conveyed by way of a February 10, 2012 email, received by the landlords. The tenants confirmed that they received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on July 24, 2012. The landlords confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenants by registered mail on July 11, 2012. I am satisfied that the above documents were served to one another by the parties and that the parties were prepared to proceed with this teleconference hearing on the appointed time and date scheduled.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Which of the parties are entitled to the tenants' security deposit?

Are the tenants entitled to a monetary award for losses arising out of this tenancy? Are either of the parties entitled to recover their filing fees from one another?

Background and Evidence

While I have turned my mind to all the extensive documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

This tenancy for a rental home commenced on August 1, 2010 by way of a one-year fixed term tenancy. A copy of a second one-year fixed term Residential Tenancy Agreement (the Agreement) was also entered into written evidence by the parties. This second fixed term commenced on August 1, 2011 and was scheduled to end on July 31, 2012. Monthly rent was set at \$2,385.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$1,175.00 security deposit and \$1,175.00 pet damage deposit, both paid on July 9, 2010.

The parties agreed that joint move-in and joint move-out condition inspections occurred on July 31, 2010 and May 24, 2012, respectively. The parties entered into written evidence copies of the condition inspection reports prepared by the landlords and forwarded to the tenants. The landlords' interests in the joint move-out condition were looked after by the male landlord as the female landlord was feeling ill that day. The landlords entered oral and written evidence that additional deficiencies were subsequently identified following the joint move-out condition inspection. I advised the parties at the hearing that I did not find that the results of the joint move-out condition inspection were in any way compromised by the failure of the female landlord to participate in that inspection. I informed the parties that I considered representation by the male landlord during the joint move-out inspection constituted sufficient landlord representation during that process.

The landlords' original claim for a monetary award of \$5,000.00 was amended to \$11,100.00 prior to the hearing. The landlords based much of their original June 5, 2012 claim for a monetary award on a series of estimates they had received for damage to the rental unit (e.g., cleaning, the repair of damage to hardwood floors, walls, windows, doors, repainting, the yard, etc.) These estimates totalled \$4,427.36 in the landlord's original application. In their original application, the landlords also requested recovery of rent that they considered owing for June 2012. They noted that the tenants had cancelled payment on a June 2012 rent cheque they had issued to the landlords.

The landlords' amendment to their original application to \$11,100.00 was based on an estimated cost of \$6,100.00 to replace carpet in this rental home. They provided the following explanation with their amended application:

...As carpets did not come clean, replacement of all carpeting was required. This was due to extreme pet urine odour, stains and several "stains" that turned out to be chew holes after closer inspection (during professional carpet cleaning). Evidence provides will be pictures, written letters from 3rd parties and invoices for carpeting...

In the landlords' subsequent detailed July 24, 2012 written and photographic evidence package, they outlined the following 14 items of their claim which resulted in a requested monetary award of \$10,432.14. They explained that these figures resulted from updated costs and estimates for their losses and the damage to the rental home.

Item	Amount
Unpaid June 2012 Rent	\$2,385.00
Filing Fee	100.00
Cleaning Services	327.00
Painting Services	1,904.00
Dishwasher Repair	300.00
Replacement of Missing Shower Heads	62.28
Replacement of Missing Heat Register Cover	9.98
Damage to Living Room Wood Floors	228.48
Damage to Family Room Wood Floors	806.40
Carpet Cleaning	234.04
Replacement of Carpeting	3,545.43
Yard	150.00
Replacement of Lavender Shrubs	83.93
House Alarm Repair	150.00
Broken Bedroom Door & Pantry Cabinet Door	145.60
Total Revised Monetary Award Requested	\$10,432.14

The tenants disputed the landlords' claim for a monetary award. In the tenants claim for their own monetary award of \$2,639.00, they sought reimbursement for the following items:

Item	Amount
Return of Security & Pet Damage Deposits	\$2,350.00
Losses Arising from Water Damage to Tenants' Desk	900.00
Less Amounts Agreed to as per Signed f Deficiency List	-611.00
Total Monetary Award Requested	\$2,639.00

The tenants also requested the recovery of their \$50.00 filing fee. They maintained that they should not be held responsible for the landlords' claim for unpaid rent for June 2012, as the landlords did not make adequate attempts to rent this home to another tenant for that month.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I will address the items identified in the parties' applications in the order set out in their applications, with the exception of their respective requests for the recovery of their filing fees which I will consider at the end of each parties' application.

Analysis – Landlords' Application for Unpaid Rent

The landlords applied for a monetary award of \$2,385.00 to compensate them for their loss of rent for June 2012. They testified that they were able to find new tenants for this rental home as of July 1, 2012. According to the terms of the one-year fixed term tenancy they signed with these new tenants, the landlords will be receiving \$2,400.00 each month for the duration of this one-year fixed term.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the July 31, 2012 date specified in that Agreement. As such, the landlords are entitled to compensation for rental losses they incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*. There is undisputed evidence that the tenants did not pay any rent for June 2012, the only month of their fixed term tenancy, claimed by the landlords. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

There was conflicting evidence from the parties as to the extent to which the landlords attempted to mitigate the tenants' rental losses for June 2012.

The landlords gave oral and written evidence to support their assertion that they took all adequate steps to try to re-rent the premises so as to reduce any rental losses incurred for this rental property. The landlords testified that the primary obstacle to renting this home for June 2012 was that its size and number of bedrooms would typically attract families with school-aged children. The landlords said that such prospective renters are seldom willing to uproot their children from their existing schools one month before the end of their school year. The landlords provided oral and written evidence with respect to their efforts to locate new tenants, including rental listings on popular websites and a number of showings of the rental home.

The tenants maintained that the landlords did little to try to find other tenants until shortly before the end of their tenancy. The tenants said that they had offered to pay for advertising and were willing to make the rental home available earlier than their scheduled end date to this tenancy so as to enable the landlords to find other tenants for June 2012. The tenants also entered undisputed oral and written evidence that the landlords' sincerity in trying to mitigate the tenant's losses was compromised by the landlords' listing of the premises for a higher monthly rent than the tenants had been paying. They also noted that the landlords had included items in the listing that were clearly deficient (e.g., an old photo of a deck that had been removed; advertising of new appliances when the appliances were used; advertising of the premises as newly painted when no such painting had yet occurred).

In response, the landlords testified that it is typical renting practice to ask for more than they were willing to accept for this type of home. They also explained that they included some items that were not yet present in the rental home as a way of attracting more interest in this potential rental.

Although I have questions as to the landlords' method of placing inaccurate advertisements on the rental listing websites, I do not find that the tenants demonstrated that this detracted from the landlord's attempts to locate new tenants for this rental home. Since only two months remained on their fixed term tenancy agreement, I find that the landlords have provided an adequate explanation for why they listed the rental home for slightly more than the tenants had been paying. In general, I find on a balance of probabilities that the landlords took adequate measures to try to mitigate the tenants' rental losses for June 2012. I find considerable merit to the landlords' assertion that the tenants' selection of May 31, 2012 as the date to prematurely end their fixed term tenancy rather than a month later was a much greater factor in the landlords' loss of rental income for June 2012 than any lack of effort on the landlords' part. I also accept the landlords' evidence that there would have been little point in trying to locate new tenants immediately after receiving the tenants' emailed notice to end their tenancy in February 2012. The landlords did attract prospective renters and were able to find a new tenant for July 1, 2012. For these reasons, I find that the landlords did attempt to the extent that was reasonable to re-rent the premises so as to minimize the tenants' exposure to rental losses for the unfulfilled portion of their remaining fixed term tenancy. As such, I am satisfied that the landlords have discharged their duties under section 7(2) of the *Act* to minimize the tenants' rental losses.

I find that the actual rental loss incurred by the landlords for the tenants' failure to comply with the terms of their Agreement was \$2,370.00 (i.e., \$2,385.00 unpaid rent for June 2012, less the \$15.00 in additional rent that the landlords received for July 2012, the last month of the tenants' fixed term tenancy). I allow the landlords a monetary award of \$2,370.00 for their loss of rent for June 2012.

Analysis – Landlords' Application for Damage

The onus is on the landlords to prove on the balance of probabilities that the tenants caused the damage (and losses) claimed and that this damage was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I reject the landlords' claim that the May 24, 2012 inspection was a "walk-through inspection" and not a joint move-out condition inspection at the end of this tenancy. I reject the landlords' claim that they were entitled to a subsequent final move-out "follow-up" inspection because the female landlord was not in attendance at the May 24, 2012 inspection and some items had not yet been addressed. The landlords' written evidence maintained that this subsequent inspection was allowed "both for K (the female landlord) to make any additions that she notices and also to update any amendments to the inspection based on what the tenants might have accomplished in the previous two days." As the tenants were satisfied with the joint move-out condition

inspection, as outlined in the report prepared by the landlords for that inspection, I find that the condition of the premises was essentially as confirmed by the male landlord representing both landlords' interests on May 24, 2012, subject to the tenant's agreements regarding deficiencies arising out of their tenancy.

Section 37(2) of the *Act* also requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. Based on the move-in and move-out condition inspection reports, the written and photographic evidence of the parties, emails entered into written evidence by the parties, and the sworn testimony of the parties, I find on a balance of probabilities that the tenants did not comply in full with section 37(2) of the *Act*. I allow the landlords a monetary award of \$140.00, an amount that compensates the landlords for 7 hours of cleaning at a rate of \$20.00 per hour.

In considering a number of the items claimed by the landlords, I have given consideration to Residential Tenancy Branch Policy Guideline 40 which identifies the useful life of items associated with residential tenancies for the guidance of Dispute Resolution Officers in determining claims for damage.

Damage(s)

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the dispute resolution officer may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item...

If the dispute resolution officer finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the dispute resolution officer may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 establishes that the useful life of interior painting is set at four years (48 months). During the hearing and in their written evidence, the landlords provided varying estimates of when portions of this two level rental home were last painted. At one point, the female landlord testified that approximately one-half of the rental unit was painted six or seven years before this tenancy commenced. She estimated that the other one-half of the rental unit was painted shortly before the tenancy began. At other times in their evidence, the landlords stated that none of the upstairs was painted during this tenancy.

I find that the landlords are not entitled to any monetary award for repainting for that one-half of the rental unit that had not been painted since six or seven years before this

tenancy started. For the remaining one-half of the rental unit, I allow the landlord a monetary award for repainting the interior of the remainder of the rental unit 26 months before it would normally be due for repainting (i.e., after May 24, 2012 rather than August 2014, the end of the 48 month repainting cycle). This results in my award of \$515.67 (i.e., $\$1,904.00 \times 50\% \times 26/48 = \515.67) to the landlords for repainting.

I dismiss the landlords' application for a monetary award for the repair of the dishwasher in this rental unit without leave to reapply. The female landlord testified that this work has not been conducted and the landlords have not incurred any actual losses for this item. In coming to this determination, I also note that the new tenants are paying a higher monthly rent than was being paid by the tenants in this application without the landlords' repair of this item.

The landlords entered undisputed written evidence of the tenants' agreement to be charged \$60.00 for the replacement of the register, soap dispenser and shower head in the bathroom. This evidence is consistent with the tenants' application for a monetary award. I allow the landlords a monetary award of \$62.98, the actual amount of the invoices for the missing shower heads and \$9.98, the actual amount of the invoice for the replacement of the missing heat register cover.

The landlords testified that they have not incurred costs in having the scratches in the hardwood floors removed. However, the landlords entered into written evidence two of the tenants' documents confirming that they agreed that some scratches to the hardwood flooring had occurred during their tenancy. In one of these documents, the tenants provided a detailed breakdown on their agreement to compensate the landlords \$100.00 to repair the scratches to the floors. The tenants' application for dispute resolution included a recognition that they were responsible for \$100.00 of damage to the landlords' floors. Based on the tenants' agreement to this estimate of damage, I issue the landlords a monetary award in the amount of \$100.00 for damage to the landlords' hardwood floors in this rental unit. I find that the landlords' failure to repair these floors limits the landlords' eligibility to a monetary award to the \$100.00 identified in the tenants' application and documents. As noted above, the landlords were successful in re-renting the premises to new tenants at an increased monthly rent without repairing the hardwood floors, further evidence that the landlords have not incurred additional losses arising out of this damage to the flooring.

Based on the evidence submitted, I find that the tenants agreed to the landlords' professional cleaning of the carpets in this rental home. Although the tenants' agreement was to a \$200.00 professional carpet cleaning, I allow the landlords' a monetary award of \$234.04, the actual amount of their costs for this carpet cleaning.

The landlords submitted written evidence that the carpets were badly stained and had such strong pet urine odours that they had to be replaced when the odour could not be removed after professional carpet cleaning. The joint move-out condition inspection report noted some stains, damage and normal wear and tear to the carpeting in this rental unit. Policy Guideline 40 establishes that the useful life of indoor carpeting is 10 years. In this case, the landlords entered undisputed sworn testimony that the carpets in the rental unit were approximately 6 ½ years old when they were replaced. As such, I find that the landlords are entitled to recover the remaining 35% of the useful life of the carpets, a monetary award of \$1,240.90 (i.e., $.35 \times \$3545.43 = \$1,240.90$).

I dismiss the landlords' application for a monetary award for expenses incurred in restoring the yard to its previous condition without leave to reapply. I do so as the joint move-out condition inspection report does not identify any problems with the condition of the yard at the end of this tenancy, other than the damage to three shrubs. I allow the landlords' application for a monetary award of \$74.94 to reflect written evidence provided by the landlords' in support of their application for this item. In doing so, I note that the tenants submitted written evidence confirming that they acknowledged damaging the previous shrubs during this tenancy.

I dismiss the landlords' application for a monetary award for the repair of their house alarm without leave to reapply. I do so as this item was not identified as damaged in the joint move-out inspection report and the landlords did not submit an invoice to substantiate their loss for this item.

I issue a monetary award in the landlords' favour in the amount of \$145.60 for the repair of a broken bedroom door and a pantry cabinet door. This was the last amount claimed for this item in the landlords' application for dispute resolution. The tenants did not dispute the landlords' claim that these items were damaged during this tenancy. The tenants included allowances in their application for dispute resolution for these items.

I allow the landlords to retain the tenants' security and pet damage deposits in partial satisfaction of the monetary award issued to the landlords. No interest is payable over this period. As the landlords were partially successful in their application, I allow them to recover one-half of their filing fee for their application.

Analysis – Tenants' Application

I dismiss the tenants' application for a monetary award to replace their desk. I do so as the tenants have not submitted any receipts regarding losses they incurred in this regard and have not replaced this desk.

As the tenants were not successful in their application, they bear their filing fees for their application.

Conclusion

Item	Amount
Unpaid June 2012 Rent	\$2,370.00
Cleaning Services	140.00
Painting Services	515.67
Replacement of Missing Shower Heads	62.28
Replacement of Missing Heat Register Cover	9.98
Damage to Hardwood Flooring	100.00
Carpet Cleaning	234.04
Replacement of Carpeting	1,240.90
Replacement of Shrubs	74.94
Broken Bedroom Door & Pantry Cabinet Door	145.60
Less Security and Pet Damage Deposits	-2,350.00
One-Half Landlords' Filing Fee	50.00
Total Monetary Order	\$2,593.41

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 08, 2012

Residential Tenancy Branch