



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for 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; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on August 15, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant CH attended the hearing the other tenant TS did not attend the hearing and the tenant CH states the landlord served TS to CH's address although TS does not reside there. TS has therefore not been served with the hearing documents and his name will not be included on any Orders made.

The tenant CH, the landlord's agent and a witness for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch. The landlord provided documentary evidence to the tenant however the tenant's evidence has not been considered as it was filed late and was not sent to the landlord.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

The parties agree that this tenancy started on June 01, 2009 and the second tenant TS moved into the unit on October 01, 2010. The tenancy ended on August 03, 2012. Rent for this unit was \$825.00 per month due on the 1st of each month. The tenant CH paid a security deposit of \$412.50 on June 01, 2009. The parties also agree that no move in condition inspection was completed at the start of the tenancy and the tenant CH gave the landlord his forwarding address in writing on August 09, 2012. The other tenant TS has not provided his forwarding address.

The landlord testifies that they had a previous hearing on July 20, 2012 and an Order of Possession was issued to the landlord for July 31, 2012. The tenants refused to move out and the bailiffs were instructed to remove the tenants' belongings on August 03, 2012. The landlord seeks to amend their claim to recover the costs for the bailiffs of \$1,031.32 and for unpaid rent for August, 2012 of \$825.00. The landlord agrees that these items have not been included on their claim although an invoice for the bailiffs has been included in the landlord's documentary evidence.

The landlord testifies that the tenants left the carpets and linoleum in a filthy condition which resulted in the carpets and linoleum having to be removed and replaced. The landlord testifies that this was particularly bad in the tenants TS's bedroom where it appeared as if ash had been rubbed into the carpet as it was left black and the smell was extremely bad from over 42 large pop bottles filled with urine left on the bedroom floor. The landlord testifies that there was a smell from marijuana. The carpets were generally left heavily stained. The landlord testifies that they did attempt to clean the carpets in one bedroom but the carpet and underlay had to be removed and the subfloor treated to get rid of the smell.

The landlord testifies that the tenants had not removed what appeared to be meat from the fridge. This meat had spoiled and had run out of the back of the fridge, damaging the linoleum. The landlord testifies that the linoleum had to be removed and replaced. The

landlord has provided photographic evidence showing a stain on the linoleum. The landlord testifies that she only started as a property manager in 2012 and does not know how old the carpets and linoleum were but thinks they were a few years old and could have been new when the tenant CH moved in, in 2009. The landlord seeks to recover the sum of \$2,223.20 and has provided an invoice to remove and replace the carpets and linoleum.

The landlord testifies that because the tenants left rotten meat in the fridge the smell was so awful that the fridge could not be cleaned. The landlord testifies that the landlord had replaced the fridge in the last few months of the tenancy with a second hand fridge which was approximately two years old. The landlord testifies that they had to replace the fridge with a new fridge at a cost of \$537.60 and the landlord has provided some photographic evidence showing the fridge and the invoice to replace it. The landlord also seeks the sum of \$25.00 paid to the store to remove the old fridge.

The landlord testifies that the tenants failed to clean the rental unit as the bailiffs were called to remove the tenants. The landlord has provided an invoice from the cleaning company for five hours work at \$18.00 per hour plus tax to the sum of \$100.80. The landlord has provided photographic evidence of the unit.

The landlord calls their witness EU who is the maintenance man at the building. The witness testifies that he spent time removing a broken toilet, removing the fridge, fixing a hole in the wall in the hallway outside the tenants unit, removing and reinstalling doors and closet doors when the carpet was replaced, removing and re-hanging drapes and cleaning out one of the tenants rooms which was so bad the bailiffs refused to go in the room. The witness testifies that the other tenant's bedroom was left in a revolting condition with over 40 bottles of urine, left over coffee at least two years old, a black bed sheet and pillow, a bag of marijuana and clothes strewn everywhere.

The witness testifies that the unit smelt really bad from the rotten meat which had overflowed into the pan used to collect water under the fridge. This pan had overflowed onto the floor and through into the unit below. The linoleum had absorbed the smell and there was a chunk of meat lodged in the back of the fridge. The witness testifies that the other

tenant put his foot through the wall in the hallway outside the unit and although no one saw him do this they knew it was him. This other tenant also broke off his key in the new lock and the lock had to be replaced twice. Five sets of drapes had to be removed, washed and re-hung and the drape rod in the other tenant's bedroom was broken and had to be replaced. The witness testifies that head office told him the cost for this work was \$500.00. The witness testifies that he helped a contractor remove the garbage and a mattress to the dump and they seek to remove \$250.00 for this work. The witness testifies that they had to get a lock smith in to remove the lock the tenant put on a bedroom door and to remove and replace the front door lock. The landlord seeks to recover the sum of \$114.18 for the locksmith's work. The witness testifies that he filled in a time sheet showing the hours spent on this unit and the landlord seeks to recover the sum of \$785.00 for his work at \$31.25 an hour.

The landlord seeks an Order to keep the security deposit of \$412.50 to offset against the damages.

The tenant disputes the landlords claim. The tenant testifies that the carpet and linoleum were original in the unit and the building is 30 or 35 years old. These items were not new at the start of the tenancy. The tenant disputes the landlord's photographic evidence and states the pictures only show the other tenants bedroom carpet to be filthy and not the hallway and his bedroom. The tenant testifies that the first time he ever saw into the other tenant's room was when they moved out.

The tenant testifies that the linoleum was also very old and the pictures were taken five days after the tenants left and only show a small stain which could have been caused by the landlords or the bailiffs. The tenant testifies there was no damage to the linoleum except old age. The tenant disputes the landlords claim that the rest of the carpets and linoleum in the bathroom and living room were stained or damaged and states the landlord has provided no evidence to support this.

The tenant cross examines the landlords witness. The tenant asks the witness if the tenant informed the witness that the tenants were having problems with their toilet and what the witness did. The witness testifies that the tenants did inform him of problems with their toilet

and the witness changed the shut off value. The tenant asks the witness if the tenants continued to have problems with the toilet and did the tenants inform the witness. The witness replies that he heard nothing else from the tenants and the damage was caused by the tenants because the lid of the toilet was broken. The witness testifies that he did not take a photograph of this damage.

The tenant asks the witness if he replaced the fridge in February. The witness replies that he did replace it with a fridge from another unit. The witness states he does not know how old the replacement fridge was. The tenant asks the witness if the tenants' fridge was not new, why did the landlord replace that fridge with a new fridge. The witness replies that the fridge had to be replaced because he could not get the smell out of it.

The tenant testifies that the landlord's picture showing a hole in the wall was taken five days after they moved out of the rental unit. The tenant testifies that he has no knowledge of this hole.

The tenant testifies that they did not clean the drapes at the end of the tenancy but the drapes were the original drapes and were very old. The tenant disputes that he smoked in the unit and testifies that the other tenants only smoked in his room or on the balcony.

The tenant testifies that at a previous hearing it was discussed that the tenants had changed the locks because of a shooting in a neighbouring unit. The tenant testifies that he returned the keys to the bedroom door, the front door and the building to the landlord KS on August 03, 2012.

The tenant testifies that on the morning of August 03, 2012 he went to work and when he returned the bailiffs were in the unit removing their belongings. The tenant testifies that they were not given the opportunity to clean the unit at the end of the tenancy as the police advised the tenants not to return to the building. The tenant testifies that the landlord did not give the tenants opportunity to attend a move in or a move out condition inspection.

The tenant summarizes by stating that the complex is 35 years old and their unit had the original carpets and drapes and had not been painted in four years, the washroom was in good working order and the unit, with the exception of the other tenant's bedroom, was in good condition. The tenant testifies that the landlord has been completing similar repairs to other units and is trying to hold the tenants responsible for this work.

The landlord testifies that the other tenant TS returned to the building in the evening of August 03, 2012. He came in swearing and very angry. The landlord had security in the building and called the police. The tenant was trying to kick the door down to the unit as the locks had been changed and he broke off a key in the lock. The landlord testifies that as TS went back down the stairs he kicked a hole in the wall. The landlord testifies that although she did not see him do this she heard it happen.

The landlord testifies that there is nothing in the file about the tenants being given permission to change the locks. The landlord disputes the tenants claim that the tenant did not smoke marijuana in the unit. The landlord testifies she went to the unit on March 10 and when the tenant opened the door there was a strong smell of marijuana and smoke in the unit.

The landlord testifies that they did not have a forwarding address for the tenants until August 09, 2012 so could not contact the tenants to take part in a move out inspection as the work had to be completed quickly due to the smell.

Analysis

I refer the parties to s.32(2) and 32(3) of the *Act* which deals with the tenants obligations to repair and maintain the rental unit and states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the

landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Therefore in considering the landlords claim for damage to the unit, namely the carpets; the linoleum, changing the locks; cleaning the unit, damage to the fridge; and removal of a mattress and garbage. The caretakers time to clean the drapes and replace rod; removal of a toilet; repair to a hole in the wall in the hallway common area, time spent with the lock smith, time spent to clean out one tenants room, removal of doors and closet doors for fitting new floors and other duties;

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 find the landlord has sufficient evidence to show that the carpet in one tenants bedroom was severally dirty and stained, however there is little documentary evidence to corroborate the landlords claim that the other carpets or linoleum were left in an unreasonable condition that required replacement. I would also like to draw the landlord's attention to the useful life information under the Residential Tenancy Policy Guidelines # 40 which states the useful life of carpets and linoleum is 10 years. The landlord could not corroborate how old the carpets were while the tenant has claimed the carpets and linoleum were at least 20 to 25 years old. Consequently, I must deny the landlords claim for \$2,223.20 for the removal and fitting of new flooring in the rental unit as there is no evidence to show that the carpets were less than 10 years old.

With regard to the landlords claim for a new fridge; while I accept that the cleaning of soiled or rotten meat products from a fridge is unpleasant, I am not satisfied that the fridge could

not have been successful cleaned with a cleaning product available on the market today. Consequently, I deny the landlords claim of \$537.60 and the landlord's claim of \$25.00 to remove the fridge.

With regard to the landlords claim of \$785.00 for work completed by the landlords maintenance man; some of the work completed by the maintenance man was to remove doors for the new flooring as this part of the claim has been denied no further claim for this work will be accepted. This also includes any hours spent dealing with the fridge issue. I further find the landlord has no evidence to support their claim that the tenants damaged the toilet or that TS made a hole in the wall in the common area. Consequently I must reduce the landlords claim for the caretaker's time. I do accept the landlords claim for the caretakers time spent cleaning out the tenant's bedroom and his time in removing and re-hanging the drapes and other minor duties. Consequently, I find the landlord is entitled to recover the nominal sum of **\$300.00** for the caretaker's time.

I find that as the drapes had to be removed, washed and re-hung that this was the tenants' responsibility and the tenant agreed they had not cleaned the drapes. However the landlord has claimed the sum of \$500.00 for this work yet has also claimed a portion of this in the caretaker's hours. Therefore, while I accept the landlord had to do this work. I find the landlord's claim of \$500.00 to clean the drapes and replace a broken rod to be extravagant and I limit the landlords claim accordingly to **\$150.00** to clean the drapes as there is no evidence to show a broken rod.

I am satisfied that the tenants failed to clean the rental unit at the end of the tenancy and the landlord incurred additional costs over and above the caretakers time when the unit was cleaned by professional cleaners. The tenant argues that as the bailiffs removed their belongings they were not allowed to return to the unit. However, the tenants should have ensured they moved from the unit on the effective date of the Order of Possession that had been served upon them and the tenants should have allowed time to clean the unit at the end of that date and time specified on the Order. Consequently, I find the landlord has met

the burden of proof in this matter and the landlord is entitled to recover the sum of **\$100.80** for this work.

With regard to the landlords claim for \$250.00 to remove garbage and a mattress; the landlord testified that the caretaker and a contractor had to remove these items to the dump however the landlord has not provided a receipt showing either the contractor fees or the dump fees to satisfy their claim for \$250.00. However I am satisfied that the landlord did have to remove garbage from the tenants unit therefore I will allow a nominal portion of this claim to the sum of **\$100.00**.

With regard to the landlords claim for the locksmith; the landlord has provided a receipt showing the work completed to remove and replace two locks. The tenant has testified that he did return the keys but has no evidence to support this and I find it would be unlikely that the landlord would go to this added expense if the keys had been returned. Consequently, I uphold the landlords claim to the sum of **\$114.18**.

The landlord requested orally to amend their claim to include costs for bailiffs to remove the tenants and to recover rent for August, 2012. In the absence of a formal and proper application for that issue, I declined to hear or determine that issue, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this process.

As the landlord has been partially successful with their claim I find the landlord is entitled to recover half the \$100.00 filing fee paid for this application to the sum of **\$50.00**.

The landlord is entitled to recover the following sum:

Caretakers time for some work completed	\$300.00
Cleaning drapes	\$150.00
Cleaning	\$100.80
Garbage removal	\$100.00

Locksmith	\$114.18
Filing fee	\$50.00
Total amount due to the landlord	\$814.98

With regard to the landlords claim to keep the security deposit; the landlord failed to complete a move in condition inspection report at the start of the tenancy or give the tenant opportunity to take part in an inspection at that time. Section 24 (2) of the Act states:

The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Consequently pursuant to s. 38 (5) and 38(6) of the Act which states:

The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Consequently I find the landlord should have returned the tenant's security deposit within 15 days of receiving the tenants forwarding address in writing as the landlord's right to file a claim against the security deposit has been extinguished. The tenant is therefore entitled to recover double the security deposit to the sum of **\$825.00**.

Sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep \$814.98 from the tenants' security deposit in satisfaction of the landlord's successful portion of their monetary claim. The balance of **\$10.02** must be returned to the tenant and a Monetary Order has been issued to the tenant for this sum.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to keep the sum of **\$814.98** from the tenant's monetary award of **\$825.00**.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$10.02**. The order must be served on the landlord and is enforceable through the Provincial Court 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: October 31, 2012.

Residential Tenancy Branch

