Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting her to retain the security deposit and a cross-application by the tenants for a monetary order and an order compelling the landlord to return the security deposit. Both parties participated in the conference call hearing.

At the hearing the landlord stated that she had been served with the tenants' application and evidence on October 26 and had not had opportunity to submit a written response. I asked the landlord whether her written response would just be a written narrative which could be given verbally or whether she had documents or photographs that she wished to submit. The landlord testified that she had copies of notes given to the tenants that she would have submitted. I asked the landlord if she was requesting an adjournment and she stated that she would like to proceed. As no requests for an adjournment were made and as the parties were prepared to proceed, the hearing continued.

The landlord argued that the tenants' claim was defective because they had not signed a paper submitted to provide details of their claim. As there is no requirement in the Act, Regulations or Rules of Procedure that such a document be signed, I advised

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Are the tenants entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on April 1, 2011, at which time an $875.00 security deposit was paid, and ended on July 31, 2012. There was significant disagreement about whether the parties inspected the unit together at the outset of the tenancy as required by section 23 of the Act. The landlord claimed that the parties walked through the unit and inspected the unit while the tenants claimed that the

landlord filled out the condition inspection report in their absence and asked them to sign the document. I find it more likely than not that the condition inspection report accurately reflects the condition of the unit at the outset of the tenancy. Even if the tenants did not inspect the unit with the landlord, they signed the report indicating that they agreed that it was accurate and I find that they must be bound by that agreement.

The tenants refused to participate in an inspection of the unit at the end of the tenancy despite having been served with a notice of final opportunity to schedule a condition inspection.

I address the landlords' claims and my finding around each as follows.

1. **Carpet cleaning.** The landlords seek to recover $114.24 as the cost of cleaning the carpets at the end of the tenancy. The landlords provided a receipt showing that they had the carpets cleaned and provided photographs showing that the carpets were soiled. The tenants claimed that they had the carpets cleaned prior to vacating the premises. The tenants were obligated to leave the carpets in reasonably clean condition and the landlords' photographs show that the carpets were not reasonably clean. Even if the tenants had the carpets cleaned, that cleaning was inadequate and I find that the tenants must be held responsible for the cost of cleaning. I award the landlords $114.24.

2. **Doorbell.** The landlords seek to recover the $17.90 cost of replacing a doorbell. The landlord testified that the doorbell was purchased just before the tenancy began and was affixed to the rental unit using the tape provided with the doorbell. The tenants testified that the doorbell was there at the beginning of the tenancy, but disappeared at some point during the tenancy. While it is clear that the doorbell was lost during the course of the tenancy, I am not satisfied that its loss can be attributed to the tenants. I am not satisfied that affixing the doorbell to the rental unit using tape was an effective means and I find that the tenants should not be held liable for its loss. I therefore dismiss this claim.

3. **Screen.** The landlords seek to recover $15.15 as the cost of replacing the screen on a kitchen window and provided a receipt showing the cost of that replacement. The landlord testified that the windows in the house were new when they purchased the house in December 2010 and that all the windows had screens. At the end of the tenancy, the screen on the kitchen window was missing. The tenants testified that the kitchen window had never had a screen. I find it more likely than not that all of the windows in the house had screens as it seems unlikely that the previous

owners would have ordered screens for all but one window. I find that the tenants should bear the cost of replacing the screen and I award the landlord $15.15.

4. **Painting.** The landlords seek to recover $532.00 as the cost of repainting the rental unit and provided an invoice showing the cost of the service. The landlords provided evidence showing that the tenants painted the unit and testified that they did so without the landlords' permission. The landlord provided photographs showing that some of the drywall in the home was replaced by the tenants but not repainted and that a semi-gloss paint was used in one room rather than an eggshell finish as had been originally on the walls. The tenants acknowledged that they repainted the unit but testified that they colour-matched the walls and returned them to the same colour when they vacated the unit. They testified that they replaced drywall because the walls were mouldy due to sewer backups and that they did so because their son had respiratory problems.

   I find that some repainting was required at the end of the tenancy. The invoice shows that the staircase and entrance, bathroom and basement walls were repainted. The photographs show that repainting was required in both the bathroom and the basement and the condition inspection report indicates that the entryway was freshly painted at the outset of the tenancy. Although the tenants claimed that the entryway was not completely painted, I find that the report accurately represents the condition of the unit at the start of the tenancy. I accept that the drywall may have been mouldy due to the sewer backups, but I find that the tenants had an obligation to inform the landlords of the issue and either allow the landlords to perform repairs or obtain their permission to perform repairs on their own. In any event, the tenants should have repainted the walls more effectively than they did.

   Residential Tenancy Policy Guideline #40 lists the useful life of building elements and identifies the useful life of interior paint as 4 years. As the tenancy lasted for one year, I find that the tenants deprived the landlords of ¾ or 75% of the life of the paint and I find that they are liable for 75% of the cost of repainting. I award the landlords $399.00

5. **Flooring.** The landlords seek to recover $280.00 as the cost of replacing flooring in the ensuite and provided an invoice showing their charges. The landlord testified that the flooring was installed just before they purchased the rental unit and that water had soaked into the floor and subfloor, which was wet when the landlords inspected. The landlords' photographs show damage to the floor. The landlord testified that when she inspected the rental unit she noticed that a towel had been stuffed behind a toilet. The tenants denied having damaged the flooring, testified

that they had experienced no leaks whatsoever in the ensuite and testified that the towel had simply been dropped on the floor when the tenant was finished using it.

The condition inspection report makes no note of damage to the flooring and I find that the flooring was in good condition at the start of the tenancy. I accept the landlord's testimony that the subfloor was wet at the end of the tenancy and I find that the subfloor could not have been soaked through unless water had soaked the floor during the tenancy. I find it more likely than not that the tenants either caused flooding in the ensuite or failed to report a leak that was caused through no fault of their own. Regardless of how the flooding originated, I find that the tenants failed to report the issue to the landlord and therefore must be held liable for the cost of replacing the floor. Policy Guideline #40 identifies the useful life of flooring as 10 years and I find that the tenants deprived the landlords of 9/10 or 90% of the life of the floors and therefore should be responsible for 90% of the replacement costs. I award the landlords $252.00.

6. **Toilet removal and replacement.** The landlords seek to recover $132.65 as the cost of replacing a toilet in the basement of the rental unit, $75.00 as the labour involved with the replacement and $75.00 as the cost of removing the toilet from the ensuite to enable the flooring to be installed and replacing the toilet when the flooring work was complete. The landlords presented evidence showing that the tank of the downstairs toilet was cracked. The tenants testified that they did not cause the damage to the toilet and stated that they did not use the toilet, so had shut the water off to the toilet. They acknowledged that they had replaced the drywall behind the toilet but denied having damaged the toilet in the process.

   I do not accept the tenants' explanation that they did not use the toilet in the basement. I find it highly unlikely that if they did not use the toilet, they would have shut off the water to the toilet and I find that it is more likely that they damaged the toilet while replacing the drywall and shut off the water to avoid a leak. I find that the tenants must be held responsible for the cost of replacing the toilet and I award the landlord $132.65 for supplies and $75.00 for labour. I find that the landlord is also entitled to recover 90% of the cost of labour for temporarily removing the toilet from the ensuite and I award the landlords $67.50 for a total award of $275.15.

7. **Bathtub repair.** The landlords claim $140.00 as the cost of repairing damage to a bathtub and provided an invoice showing the cost of repair. The landlord testified that the bathtub was in good condition at the start of the tenancy. The tenants denied having caused the damage and claimed that the male landlord, who did not participate in the hearing, had showed them the damage at the start of the tenancy.

Because the condition inspection report does not mention damage to the bathtub and as I have already found that the report accurately reflects the condition of the unit, I find it more likely than not that the tenants caused the damage to the bathtub. I find that the landlords are entitled to recover the cost of repairs and I award them $140.00.

8. **Cleaning and yard work.** The landlords claim $160.00 for 8 hours of cleaning at a rate of $20.00 per hour, $20.00 as the cost of cleaning blinds and $200.00 for 8 hours of yard work at a rate of $25.00 per hour. The landlords' photographs show that the area underneath the oven was not cleaned, several cupboards were not cleaned and that the back yard was overgrown. The landlord further testified that she had to remove garbage left behind by the tenants. The tenants claimed that they thoroughly cleaned the unit and did the yard work, proving photographs of the interior of the unit and of the front yard.

   The tenants are responsible to leave the rental unit reasonably clean, not spotless. I find that the tenants' photographs show that the unit was reasonably clean and I find that the only areas inside the house which the landlord has proven were not reasonably clean are the area under the stove and 2 cupboards. As this cleaning would in my view take less than 10 minutes to accomplish, I find that the claim is so insignificant that it does not attract compensation. I dismiss the claim for the cost of cleaning the unit and cleaning the blinds.

   The tenants were responsible to complete yard work during the tenancy. While they appear to have met their responsibility with respect to the front yard, I find that the back yard was overgrown and required some maintenance. Part of the landlords' claim for yard work includes removing weeds from a graveled area beside the house as the landlord testified that the area had been freshly graveled at the beginning of the tenancy but was overgrown with weeds at the end of the tenancy. Given the state of the area, I find it more likely than not that when the gravel was laid, there was no barrier between the ground and gravel, which allowed the weeds to grow freely. Without the landlord providing special equipment to maintain that area, including weed killer, I find that the tenants could not reasonably have been expected to keep the area weed free as the gravel could not be mowed. I award the landlords $100.00 which represents 5 hours of work at a rate of $25.00 per hour as I can find no reason to apply a higher labour rate for exterior work than interior work. This award encompasses yard work as well as the minimal amount of garbage removal that was required.

9. **Door replacement.** The landlords seek to recover an estimated $1,300.00 as the cost of replacing the front door of the rental unit. The landlords provided photographs showing a small amount of damage to both the interior and exterior of the front door. The landlord testified that she saw the tenant's cat scratching the door and also observed an area on the inner door to which an attempt at repair had been made. The tenants testified that they do not believe that their cat could have caused the damage in question and further testified that they did not make the attempt to repair the door as shown in the landlords' photographs.

   Again relying on the condition inspection report, I find it more likely than not that the tenants caused the damage to the door as I find that the door was likely inspected at the outset of the tenancy. The landlords are seeking the cost of replacing the door, but I find that the damage is minimal and does not affect the function of the door. As the damage is only cosmetic, I find that the landlords are limited to recovering the door's diminution in value. I find that an award of $80.00 will adequately compensate the landlords and I award them that sum.

10. **Late payment fee.** The landlords seek to recover $25.00 as a late payment fee pursuant to the terms of the tenancy agreement. The parties agreed that when the landlord went to the bank on July 3, there were insufficient funds in the tenants' account to cover their rent cheque. As the tenants were obligated to have sufficient funds in the account on the first day of the month, I find that the landlords are entitled to the late payment fee and I award them $25.00.

11. **Filing fee.** The landlords seek to recover the $50.00 filing fee paid to bring their application. As the landlords have enjoyed some success, I find that they should recover the fee and I award them $50.00.

Turning to the tenants' claim, the tenants seek to recover 4 months of rent as they claim that the landlord harassed them continually during that period. The tenants testified that she repeatedly left them notes instructing them to do such things as weed the garden, that she contacted them via telephone at home and at work and that on one occasion she attended at the rental unit and told their teenage son that the family would be evicted if they did not pay the rent. The tenants suspected that the landlord entered their unit while they were not home as they say there is no way she could have known that they had kittens unless she had entered the unit to see them.

The landlord denied having harassed the tenants and at first testified that she only contacted them when rent was due. When questioned further, she acknowledged that she contacted them to arrange inspections and to arrange to show the unit to

prospective tenants at the end of their tenancy. The landlord denied having told their teenage son that they would be evicted. At first she denied ever having spoken to their son, but then stated that her communication with him only involved asking where his parents were. When questioned further, the landlord eventually acknowledged that she had spoken to the son, that he had telephoned his mother and that she had then used the son's telephone to speak with the mother.

Given the inconsistencies in the landlord's testimony, I find it more likely than not that she told the tenants' son that the family would be evicted. Although I am not persuaded that her other communications were inappropriate or excessive, I find that this communication with a teenage child was completely inappropriate and was an abuse of her position. I find that this behaviour can be characterized as harassment and I find that the tenants are entitled to compensation. I find that an award of $300.00 will adequately compensate the tenants and I award them this sum.

The tenants also claimed the return of double their security deposit. I dismiss that claim as the tenants provided their forwarding address in writing on August 13 and the landlords filed their claim 9 days later on August 22. Under the Act, a landlord has 15 days to make a claim before being penalized.

I dismiss the tenants claim for the cost of the damage deposit they had to pay in their new location as there is no legal reason whereby the landlords can be held responsible for that sum. I also dismiss the claim for moving expenses as the tenants chose to end the tenancy. Although the tenants claimed that they would not have moved had the landlords not harassed them, they had the option of pursuing a remedy with the Residential Tenancy Branch and chose to move rather than preserve their tenancy.

The tenants seek to recover their filing fee. As the tenants have been substantially unsuccessful in their claim, I find it appropriate to award the tenants $50.00, which is half of the fee paid.

Conclusion

In summary, the landlord has been successful as follows:

Carpet cleaning	$ 114.24
Painting	$ 399.00
Flooring	$ 252.00
Toilets	$ 275.15
Bathtub repairs	$ 140.00
Cleaning and yard work	$ 100.00
Door replacement	$ 80.00

Late payment fee	$ 25.00
Filing fee	$ 50.00
Total:	**$1,450.54**

The tenants are awarded $350.00 which represents $300.00 for loss of quiet enjoyment due to harassment and $50.00 of their filing fee.

Setting off these awards as against each other leaves a balance of $1,100.54 owing by the tenants to the landlords. I order the landlords to retain the $875.00 security deposit in partial satisfaction of the claim and I grant the landlords a monetary order under section 67 for the balance of $225.54. This order may be filed in the Small Claims Division of the Provincial 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: November 05, 2012

Residential Tenancy Branch