



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND

Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties participated in the conference call hearing.

Both parties submitted evidence to the Residential Tenancy Branch within 5 business days of the hearing, contravening Rule 3.5 of the Rules of Procedure. As the parties testified that they had had opportunity to review and respond to the evidence, I have considered it. At the hearing, there was some dispute over the condition of the rental unit at the outset of the tenancy. The landlord claimed that he had completed a condition inspection report at the beginning and the end of the tenancy and the tenant denied having signed such a report at the beginning of the tenancy.

As I believed that the report was a crucial part of the evidence, I asked the landlord to give a copy of the report both to the tenant and to the Branch and I asked the tenant to give a response to the report in writing both to the landlord and to the Branch. Although the landlord should have submitted the report with his original evidence, I found that as neither party had been in compliance with the Rules of Procedure with respect to evidence and as the tenant was given opportunity to respond to the report, I found that the value of the evidence outweighed any potential for prejudice.

With his written response to the move-in condition inspection report, the tenant also responded to other evidence offered by the landlord during the hearing. As I limited the post-hearing submissions to evidence surrounding the condition inspection report, I have not considered the tenant's additional comments.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on November 1, 2008 at which time the tenant paid a security deposit, and that the tenancy ended on August 15, 2012. The landlord claimed that the tenant paid an \$800.00 deposit while the tenant claimed to have paid \$812.00. The parties did not submit a copy of the tenancy agreement or receipts to show the amount paid.

The parties agreed that they came to an oral agreement that the landlord could retain from the security deposit \$120.00 to clean the carpets and \$60.00 to replace a broken refrigerator drawer.

While the tenant claimed that the parties did not conduct an inspection of the unit at the beginning of the tenancy or produce a report, the tenant acknowledged that his wife attended the move-out inspection of the unit at the end of the tenancy. He stated that his wife told him that the landlord asked her to sign the report but said that it was alright if she didn't. The landlord testified that the tenant's wife refused to sign the report.

Two of the pages in the condition inspection report are both marked "page 2 of 4 pages". The second of those pages shows that it was used to reflect the condition of a third bedroom and the ensuite bathroom, as there was only room on the report to show the condition of 2 bedrooms and 1 bathroom. The tenant claimed that the fact that the landlord created an addition page to accommodate those extra rooms brought the landlord's credibility into question

The tenant also took issue with a blank copy of page one, across which had been written "Cancel" and with his name having been printed in a box on the last page of the report by someone other than himself.

As a preliminary finding, I find that the second of the "page 2 of 4" was created simply to accommodate additional rooms and as it was clearly marked as such, there is no cause to question the landlord's credibility. I further find that as the additional, cancelled copy of page one contains no information on which the landlord is seeking to rely, its existence is irrelevant.

The tenant's name was added in a box on page 3 which gives opportunity for the tenant to agree or disagree with the contents of the report at the end of the tenancy. It is readily apparent that the landlord simply filled in the tenant's name with the expectation that his wife would either indicate agreement or disagreement after the move-out inspection was completed. Neither "agree" or "disagree" was checked and it is clear to

me that the landlord has in no way attempted to suggest that the tenant agreed with the move-out condition inspection report. I find the addition of the tenant's name irrelevant.

I find that because the tenant signed the condition inspection report at the outset of the tenancy and agreed that the report accurately represented the condition of the unit, that the report may be wholly relied upon as an accurate representation of the unit's condition.

The tenant also suggested that because the move-out condition inspection report was not signed by his wife, the landlord had not met his obligations under the Act with respect to the report. As explained at the hearing, the landlord's obligation is to conduct an inspection with the tenant or his agent and to give that party an opportunity to sign. The landlord cannot force a party to sign a document and I find that the landlord gave opportunity to sign and the tenant's wife, acting as his agent, chose not to sign. I find that the landlord has met his obligations under the Act with respect to the condition inspection report.

Having dealt with the matter of the condition inspection report as a preliminary matter, I address the landlord's claims and my findings around each as follows.

- 1. Carpet replacement.** The landlord seeks to recover \$853.68 as the cost of replacing the carpet in the living room and stairs and provided an invoice to show that the carpet was replaced on August 22, 2012. The landlord testified that he brought in a professional to inspect the carpet and that this individual told him that the stains in the carpet could not be removed. The landlord provided photographs of the living room carpet showing several significant stains and testified that the carpet was installed in 2006. The tenant acknowledged that the carpet was not stained at the outset of the tenancy but argued that the landlord should have made an attempt to clean the carpet prior to replacing it.

The landlord has the burden of proving on the balance of probabilities that the damage was caused by the tenant, the cost of repairs and that the repairs were required. It is clear that the tenant caused damage, but I am not satisfied on the evidence that the damage could not have been repaired through cleaning with commercial grade cleaners. I find that some additional treatment would have been required at an additional cost and I find it appropriate to award the landlord \$50.00, which I believe would have been the approximate cost of stain treatment and deep cleaning.

I note that even had I found the tenant liable for the cost of replacing the carpet, his liability would have been limited to the loss of useful life of the carpet. As the carpet

was 6 years old at the time of the loss and as Residential Tenancy Policy Guideline #40 identifies the useful life of carpets as 10 years, I would have limited the landlord's recover to 40% of the cost of the carpet in any event. Further, the landlord's photographs do not show significant stains on the staircase and I am not satisfied that the carpet on the staircase required replacement.

- 2. Blind replacement.** The landlord seeks to recover \$1,016.47 as the cost of replacing aluminum blinds at the end of the tenancy. The landlord testified that the blinds were installed in the unit in 2006 and that at the end of the tenancy, they were damaged. He provided photographs of some of the blinds and testified that although the tenant replaced the living room blinds at his own expense, the blinds did not fit the window properly and were not aluminum blinds. The tenant had also removed the blinds from 2 windows and left them for the landlord to re-install. The tenant acknowledged that some of the blinds were damaged and testified that the blinds which he replaced fit the window. The tenant argued that the landlord should not be entitled to the full amount claimed because the landlord had purchased custom blinds rather than purchasing blinds off the shelf which would have cost significantly less.

I find it more likely than not that the tenant damaged the blinds during the tenancy. Although the tenant claimed that the blinds he purchased to replace the damaged living room blinds fit the window, as the landlord's photographs show that they did not meet the bottom window sill, I find it more likely than not that the blinds did not fit properly. As for the tenant's argument that the landlord should have purchased less expensive blinds, the tenant provided no evidence to show that a less expensive alternative was available that would properly fit the windows in question. As "off the shelf" blinds do not come in sizes that fit every window, I find that the landlord was entitled to replace the blinds with custom blinds to ensure a proper fit.

Residential Tenancy Policy Guideline #40 identifies the useful life of blinds as 10 years. As the blinds had already used 3/5 of their useful life, I find that the landlord is entitled to recover 2/5 of the value of the replacement and I award the landlord \$406.59.

- 3. Hardwood floor repair.** The landlord seeks to recover \$1,212.40 as the cost of labour, materials and HST to replace an area of the hardwood floor which he claims was damaged by the tenant. The landlord testified that at the end of the tenancy, he noticed an area of the floor in a carpeted bedroom that was raised. Upon pulling back the carpet and underlay, the landlord discovered that the hardwood floor beneath the carpet had warped. The landlord testified that he spoke with the

tenant's wife at the time the unit was inspected at the end of the tenancy and she advised that a cooler had leaked in the bedroom, causing the damage to the floor. The tenant testified that he did not know anything about a cooler and further testified that he did not know when the pictures were taken.

Given the extent to which the floor was raised as a result of the warping, I find it unlikely that the tenant would not have brought the issue to the landlord's attention had the warping occurred prior to the beginning of the tenancy. I find that the tenant likely caused the damage and I find that the landlord should recover the cost of repair. The landlord's invoice shows that 50 square feet of flooring was replaced and the landlord's photographs do not show that much damage having been done. As it is not possible to determine the exact amount by which the claim should be depreciated due to the age of the flooring and to reflect that more flooring was likely replaced than required, I find that an award of \$200.00 will adequately compensate the landlord and I award him that sum.

- 4. Kitchen countertop replacement.** The landlord seeks to recover \$1,064.00 as the cost of replacing the kitchen countertop, which sum includes HST. The landlord provided photographs showing that the countertop was badly damaged, with nicks and scorch marks. The condition inspection report shows that at the beginning of the tenancy, the countertop was in good condition and the landlord testified that the counter had been installed in 2006. The tenant claimed that the countertop was in poor condition at the beginning of the tenancy.

I accept that the condition inspection report accurately reflects the condition of the rental unit at the outset of the tenancy and I find that the damage to the countertop was caused by the tenant. Residential Tenancy Policy Guideline #40 identifies the useful life of countertops as 25 years. I find that the tenant deprived the landlord of 19 years, or approximately 1/5 of the useful life of the countertop and I find that the landlord is entitled to recover 4/5 of the cost of replacing the countertop. I award the landlord \$851.20.

I note that the landlord made no claim for recovery of the filing fee paid to bring this application and accordingly I have made no award in that respect.

In the absence of a tenancy agreement or receipt showing how much of a security deposit was paid, I find that the tenant paid \$812.00 as a security deposit. As the tenant agreed to a deduction of \$180.00 from the security deposit, I find that there is \$632.00 remaining in the deposit.

Conclusion

The landlord has been successful in the following claims:

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|--------------------------------|-------------------|
| Carpet replacement | \$ 50.00 |
| Hardwood floor repair | \$ 200.00 |
| Kitchen countertop replacement | \$ 851.20 |
| Total: | \$1,507.79 |

I order the landlord to retain the \$632.00 balance of the security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$875.79. 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 26, 2012

Residential Tenancy Branch