



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords 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; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords entitled to keep the tenants security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on December 01, 2011 for a fixed term that was due to expire on November 31, 2012. The tenant moved from the rental unit on September 25, 2012. Rent for this unit was \$2,000.00 per month plus utilities. Rent was due on the 1st day of each month. The tenant paid a security deposit of \$1,000.00 on November 29, 2011 and gave the landlords a forwarding address in writing on September 30, 2012.

The landlord WF testifies that they completed a move in and a move out condition inspection with the tenant at the start and end of the tenancy. The landlord has provided a copy of the notes made during these inspections. The landlord WF testifies that they found a dent in the fridge door approximately three inches long. The landlord has provided a quote from a company to replace the door skin due to this dent. This quote is for \$446.15 plus labour. The landlord has provided photographic evidence showing the fridge door in evidence.

The landlord WF testifies that when they initially looked at the inside of the oven it just looked dirty. The landlord testifies that they put on the self clean function and later found that the floor of the oven was in fact, damaged with scrapes on the lining. The new tenant who had moved in was a friend of this tenant and she told the landlords that this tenant had said that she hoped the landlord did not look in the oven. The landlord testifies that the oven cavity will have to be replaced and they have provided a quote for this work showing a cost of \$253.95 plus labour. The landlord has provided photographic evidence showing the interior of the oven in evidence.

The landlord WF testifies that when they did the walk through inspection with the tenant they at first thought the cooktop was dirty. However, upon cleaning the cooktop they found one of the burners had lots of scratches in the glass. The landlord has provided a quote for the replacement of the cooktop to the sum of \$379.45 plus labour. The landlord has provided photographic evidence showing the glass cooktop in evidence.

The landlord WF testifies that these repairs have not yet been carried out as it will take three to four months to order the parts. The landlords also seek to recover the sum of \$560.00 quoted for labour costs. The landlords have provided a copy of the quote in evidence.

The landlord WF testifies that the tenant caused damage to a pot light in the downstairs bathroom and a light switch which has popped out of its casing. The landlord WF testifies that he replaced the bulb in the potlight but it still would not work. The landlord testifies that the shower pipe was kinked and the shower head was spraying water all over the bathroom. The landlord suggests water may have caused damage to the potlight and if the tenant had informed the landlord that the shower head was spraying water the landlord could have replaced it. The landlord WF states he has since had the shower head replaced and has only charged the tenant for his labour. The landlord seeks to recover the sum of \$72.80 for the replacement potlight and switch and has provided an invoice from the electrician who did this work.

The landlord WF testifies that three window screens were damaged in the house. The tenant replaced two of these screens and claimed that through the term of the lease there were attempted break-ins at the property and the tenant suggested that the landlords made a claim for the screens on their insurance. The landlord WF states the third screen requires replacement and the landlord seeks to recover the sum of \$28.00 as this is the sum paid by the tenant for one of the other screens. The landlord testifies that this screen has not yet been replaced.

The landlord WF testifies that the tenant had told them that she had professional cleaners in to clean the unit. However, if this was the case, these cleaners did not do a good job and the landlord's wife had to clean the unit again. The landlords seek to recover the cost of cleaning supplies purchased for this work along with the cost for replacing burnt out bulbs. The landlord seeks to recover the sum of \$93.82 and \$36.84 for the bulbs and supplies. The landlords have provided receipts for these items.

The landlord JF testifies that she had to clean above the cabinets, had to clean the stove top, had to clean behind the fridge, which pulled out on wheels. The grout in the kitchen tiles had to be cleaned with special cleaner to remove stains, there was a substance on the kitchen cabinets which looked like nail polish; there was time taken for WF to screw in drawer fronts and the dishwasher; the bathroom floor had to be cleaned, the on-suite shower had to have the silicone removed and replaced, the on-suite drawers could not be cleaned successfully as the finish in the drawers was left damaged by the tenant. There was a small stain left on the carpets which even the tenants carpet cleaner had identified and could not remove. The landlord WF testifies that he and his wife did the cleaning and minor repairs for nine hours and they seek to recover \$40.00 per hour to a total sum of \$360.00.

The landlords also seek to recover \$10.61 for registered mail costs and \$47.20 for the costs of having photographs produced for the hearing. The landlord testifies that the total of their costs are \$2,288.00 however they have limited their claim to \$2,091.00 plus the \$50.00 filing fee.

The landlords seek an Order to keep the tenants security deposit of \$1,000.00 to offset against the damages and cleaning.

The tenant disputes the landlords claim. The tenant testifies that she does not know how the fridge became damaged and states it is a small scratch and not a dent and has not compromised the use of the fridge door. The tenant testifies that the oven interior became damaged when a metal surface of a pan melted and lifted the surface of the oven floor. The tenant also disputes the landlords' claim that the cook top was damaged so badly and states the landlords' pictures have embellished the look of the scratches. The tenant testifies she only used pans on the cook top and the landlords have no justification in replacing the whole glass cook top due to a few scratches.

The tenant disputes that she damaged the switch and states the switch just popped out of the casing and the casing is not damaged. The tenant testifies that she does not know what happened to the potlight as the tenant states she did not use that shower. The tenant

testifies that during the walk through at the end of the tenancy the landlord tested this shower and it did not spray everywhere.

The tenant disputes the landlords claim for the damaged screen. The tenant testifies it was the landlord who suggested that the damaged screens looked as if there had been an attempt at a break in. The tenant agrees she replaced two of the screens but states she did not replace the third screen as the tenant thought the landlords were acting unfairly as they are part of the external area of the property are therefore the landlords' responsibility.

The tenant agrees with the landlords claim for burnt out light bulbs and testifies that she was not aware they had burnt out. The tenant disputes the landlords claim for cleaning supplies and their labour costs and testifies that the house had been professional cleaned at the end of the tenancy. The tenant has provided photographic evidence showing the cleaned unit. The tenant agrees that they failed to clean behind the fridge and that this would have been her reasonability. The tenant has provided carpet cleaning and professional cleaner's receipts.

The tenant testifies that the landlords did not use the proper move in and move out inspection forms and although the tenant has signed the landlords inspection sheets there was nowhere on these that the tenant could have signed to disagree with the landlords findings. The tenant testifies that the landlord has also added things to his sheets after the tenant signed them and has put 'added later' on the sheets. The tenant disputes therefore the landlords claim to keep the security deposit for damages.

The landlord and tenant cross examine each other and the landlord states that the damage to the fridge door is a dent and not just a scratch and appears to have been caused when the tenant had the oven door open and then opened the fridge door onto the oven door. The landlord states that these are high-end appliances and they need to continue to look in good condition when the landlords come to sell the property. The landlord testifies that in the year that they used the cooktop they did not scratch it.

The landlord testifies that he did not tell the tenant it looked like a break and enter by the damage to the screen doors but rather that it looked as if someone had tried to pry the

screen off. It was the tenant who referred to attempted break in's through the term of the tenancy. The landlord refers to the tenant's statement that she went above and beyond what was required for cleaning. The landlord refers to their pictures showing close up details of areas not cleaned and these were marked on the move out inspection sheet.

The landlord JF testifies that although she was not present for the walk through inspection the new tenant made a comment about the level of cleanliness and stated she would have to hire a cleaner. The landlord JF testifies that that is why JF went back and cleaned the unit four days after the new tenant had moved in.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 32 of the *Residential Tenancy Act* which states:

32. 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.

(3) 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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

Having considered the verbal testimony and the documentary evidence of the landlords I find the landlords have the burden of proof to show that the damage or loss exists and that it was caused by the actions or neglect of the tenant in contravention of the *Act* or agreement. The landlords must then provide verification of the actual amount required to compensate the landlords for the claimed loss or to rectify the damage and must show what steps the landlords took to minimize the loss of damage pursuant to s. 7(2) of the *Act*.

I am satisfied with the evidence before me that the fridge door, the oven and the cooktop were damaged by either the tenant's actions or neglect. However, the landlord has claimed an amount which does not allow for any depreciation of these appliances. Consequently, I limit the landlords claim accordingly and reduce the landlords claim for replacements parts by 20 percent. Therefore, the landlords are entitled to **\$356.92** for the fridge door; **\$203.16** for the oven skin; and **\$303.56** for the cooktop. I further find the landlord is entitled to recover the labour charges as quoted to make these three repairs to the sum of **\$560.00**.

I have considered the arguments concerning the damage to the window screens and find the tenants arguments hold little weight as the tenant has replaced two of the screens and argues that she is not responsible for this damage as it is external damage. In fact the tenant is responsible for the interior and the exterior damage to a rental unit and therefore I find the landlord has established a claim for the damaged screen less 20 percent depreciation to the sum of **\$22.40**.

The tenant agrees that some light bulbs must have burnt out and does not dispute the landlords claim for these. Therefore I have calculated the cost of the bulbs from the landlords' documentary evidence and find this to be **\$36.42**.

I have considered the landlord claim that the tenant caused damage to a potlight and a light switch; however I find the landlord has not established that this items were damaged due to the tenant's actions or neglect and not a malfunction on the part of the potlight and switch. Consequently, this section of the landlords claim is dismissed.

With regards to the landlords claim for additional cleaning including supplies and labour. I have considered both parties arguments in this matter and the documentary evidence provided. Under the *Residential Tenancy Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have

not shown that the tenants failed to meet the "reasonable" standard of cleanliness required and this section of the landlords claim is dismissed.

With regard to the landlords claim for registered mail costs and the costs incurred for photographs. There is no provision under the *Act* for me to award any costs other than the filing fee for any work undertaken to prepare for this hearing or to send documents to the other party. Consequently, this section of the landlords claim is dismissed.

As the landlord has been partially successful; with their claim for damages I find the landlords are entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*.

The landlords are entitled to a monetary award to the sum of **\$1,532.46** pursuant to s. 67 of the *Act*.

With regard to the landlords claim to keep the security deposit I refer the parties to s. 19 and 20 of the Residential Tenancy Regulations which state:

Disclosure and form of the condition inspection report

19 A condition inspection report must be

- (a) in writing,
- (b) in type no smaller than 8 point, and
- (c) written so as to be easily read and understood by a reasonable person.

Standard information that must be included in a condition inspection report

20 (1) A condition inspection report completed under section 23 or 35 of the *Act* must contain the following information:

- (a) the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;

- (b) the address of the rental unit being inspected;
- (c) the date on which the tenant is entitled to possession of the rental unit;
- (d) the address for service of the landlord;
- (e) the date of the condition inspection;
- (f) a statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:
 - (i) entry;
 - (ii) living rooms;
 - (iii) kitchen;
 - (iv) dining room or eating area;
 - (v) stairs;
 - (vi) halls;
 - (vii) bathrooms;
 - (viii) bedrooms;
 - (ix) storage;
 - (x) basement or crawl space;
 - (xi) other rooms;
 - (xii) exterior, including balcony, patio and yard;
 - (xiii) garage or parking area;
- (g) a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;
- (h) any other items which the landlord and tenant agree should be included;

- (i) a statement identifying any damage or items in need of maintenance or repair;
- (j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;
- (k) the following statement, to be completed by the tenant:

I,

Tenant's name

☐ agree that this report fairly represents the condition of the rental unit.

☐ do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

- (l) a space for the signature of both the landlord and tenant.

(2) In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act [*condition inspection: end of tenancy*] must contain the following items in a manner that makes them clearly distinguishable from other information in the report:

- (a) a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;
- (b) if agreed upon by the landlord and tenant,
 - (i) the amount to be deducted from the tenant's security deposit or pet damage deposit,
 - (ii) the tenant's signature indicating agreement with the deduction, and
 - (iii) the date on which the tenant signed.

While the landlords hand written inspection reports do contain some of the required information they do not include all information as shown above in accordance with the regulations and the tenant was not given the opportunity to disagree with either of the reports. When a landlord does not complete a condition inspection report in accordance with the Regulations then the landlord extinguishes their right to file a claim against the security deposit for damages and must return the security deposit to the tenant within 15 days of receiving the tenants forwarding address in writing or the end date of the tenancy whichever is the later.

Consequently s. 38 of the *Act* says that if a landlord has not returned the tenants security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on September 30, 2012. As a result, the landlord had until October 15, 2012 to return the tenants security deposit. I find the landlord did not return the security deposit and the landlord has extinguished their right to file a claim against the deposit as the landlord failed to use an inspection report that complied with the regulations.

Therefore even though the tenant has not applied for double the security deposit, I am required to order that the landlords must pay double the amount of the security deposit to the tenant to the sum of **\$2,000.00**.

However, as the landlords have been successful in part with their claim for damages it is my decision that the landlords are entitled to offset their monetary award from the security deposit awarded to the tenant as follows:

Damages to the rental unit	\$1,482.46
Filing fee	\$50.00
Less tenants award for security deposit	(-\$2000.00)
Total amount to be returned to the tenant	\$467.54

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. The landlord's monetary award of \$1,532.46 has been offset against the tenant's monetary award of \$2,000.00 leaving a balance due to the tenant of **\$467.54**. A Monetary Order has been issued to the tenant for this sum. The order must be served on the landlords 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: January 08, 2013.

Residential Tenancy Branch

