



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' pet damage and security deposits (the deposits) 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:

- authorization to obtain a return of double their deposits 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 agreed to a revision in both of their applications to reflect both given names of the male landlord, as appears above.

The landlords testified that on September 5, 2012, they received the tenants' notice that they were planning to end their tenancy by October 1, 2012, by email. The landlords testified that they both received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on October 24, 2012. Tenant NM testified that she received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on October 23, 2012. Although the other tenant testified that she did not receive the copy of the landlords' dispute resolution by registered mail sent to her, she did confirm that Tenant NM had provided her with a copy and both tenants were prepared to proceed with this hearing. I am satisfied that the parties served their dispute resolution and written evidence packages to one another in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to a monetary award for losses and damage arising out of this tenancy? Which of the parties are entitled to the tenants' deposits? Are the tenants entitled to a monetary award equivalent to the amount of their deposits as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Are either of the parties entitled to recover the filing fee for this application from one another?

Background and Evidence

This tenancy commenced as a six-month fixed term tenancy on September 1, 2011. When the initial term ended, the tenancy continued as a periodic tenancy. Monthly rent by the time the tenants vacated the rental unit on October 2, 2012, was set at \$1,800.00, payable in advance on the first of each month, plus utilities. The landlords continue to hold the tenants' \$900.00 security deposit and \$100.00 pet damage deposit, both paid on September 1, 2011.

The parties agreed that they conducted a joint move-in condition inspection on September 1, 2011 and a joint move-out condition inspection on October 2, 2012. Signed copies of both of these reports, copies of which were provided to the tenants, were entered into written evidence. Both tenants signed a portion of the joint move-out report confirming that they agreed that the report fairly represented the condition of the rental unit when they moved out. This statement referred specifically to the following items that were identified as having been damaged and for which they were responsible:

2 carpets – bedrooms- carpet on stairs- ceiling painted rec room, Flooring on main, toilet, window sill, ...mud on stairwell an rec room.

However, the tenants did not sign a statement apparently prepared by the landlords after that inspection on October 16, 2012 in which they agreed to the landlords' retention of their deposits.

The tenants' application for a monetary award of \$1,950.00 sought the return of double their deposits because they maintained that the landlords had not complied with the provisions of section 38 of the *Act* with respect to the return of their deposits.

Between the receipts that the landlords submitted into written evidence, their other written evidence and their sworn oral testimony, the landlords' application for a monetary award of \$3,033.34 appears to have included the following:

Item	Amount
Unpaid October 2012 Rent	\$1,800.00
Professional Carpet Cleaning	257.60
Cleaning and Repairs (\$820.00 - \$160.00 = \$660.00)	660.00
Painting	160.00
Supplies for Cleaning & Painting (\$413.34 - \$257.60 - \$40.00 = \$115.74)	115.74
Screen Repair	40.00
Total of Above Items	\$3,033.34

Analysis – Security Deposit

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, the tenants provided a forwarding address to the landlords in writing on October 2, 2012, the same date that their tenancy ended. Although the landlords entered written evidence that they tried to contact the tenants at the tenants' forwarding address within 15 days of the end of their tenancy to no avail, there is no evidence that they attempted to return the tenants' deposits to that forwarding address within 15 days. The landlords have not obtained the tenants' written authorization at the end of the tenancy to retain any portion of the tenants' deposits. The landlords' application for dispute resolution for authorization to retain the tenants' deposits was not received until late in the day on October 18, 2012, outside the 15-day time limit established under section 38 of the *Act*.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the deposits with interest calculated on the original amount only. No interest is payable over this period.

Analysis- Landlords' Application for a Monetary Award

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. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for October 2012, the tenants would have needed to provide their notice to end this tenancy before September 1, 2012. Section 52 of the *Act* requires that a tenant provide this notice in writing.

In this case, the tenants did not provide their notice to end this tenancy before September 1, 2012. In addition, I find that the tenants' email does not constitute notice in writing as is required by section 52 of the *Act*. They also remained in the rental unit after the end of September 2012, and did not actually yield vacant possession of the premises to the landlords until October 2, 2012. For these reasons, I find that 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 sections 45(1) and 52 of the *Act*.

There is undisputed evidence that the tenants did not pay any rent for October 2012. 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.

The female landlord testified that she placed an advertisement for the rental unit on a popular rental website on October 12, 2012. The landlords did not enter into written evidence a copy of that advertisement. The female landlord said that repairs had to be undertaken after the tenants vacated the premises before the rental unit could be shown to prospective renters. She estimated that this work was completed by October 18, 2012. The landlords were able to find a new tenant for these premises who took possession as of November 9, 2012.

Based on the evidence presented, I accept the landlords' undisputed oral testimony that the landlords did take some measures to mitigate the tenants' losses by commencing advertisement of the rental unit as of October 12, 2012. However, the landlords received the tenants' notice to end this tenancy on September 5, 2012, and took no measures to try to re-rent the premises for October 2012, until October 12, 2012. As of October 2, 2012, the landlords realized that some repairs and cleaning was required. However, I do not find that the work required was so extensive as to have delayed the landlords' advertising of the rental premises from September 5, 2012 until October 12,

2012. By October 12, 2012, it would be unlikely that tenants could be located who would be interested in taking occupancy of the rental unit for October 2012.

I find that the landlords have only partially met their responsibility under section 7(2) of the *Act* to mitigate the tenants' losses for October 2012. However, in recognition of the tenants' failure to vacate the rental unit until October 2, 2012 and the work that needed to be done to ready the premises for a prospective new tenant, I find that the landlords are entitled to a monetary award equivalent to one week's loss of rent for October 2012. This results in a pro-rated monetary award in the landlords' favour in the amount of \$406.45 ($\$1,800.00 \times 7/31 = \406.45) for the landlords' loss of rent for October 2012.

I have also given careful consideration to the landlords' claim for damage arising out of this tenancy. While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, invoices, receipts, the signed joint move-in and move-out condition inspection reports, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here.

The tenants testified that they were not contesting the landlords' claim of \$257.60 for professional carpet cleaning of the rental unit. I issue a monetary award in the landlords' favour in that amount for carpet cleaning.

The only receipt that the landlords entered into written evidence with respect to the repair of the screen door was for \$33.60. I issue a \$33.60 monetary award to the landlords for the \$33.60 cost of repairing damage to the tenants' screen door that arose during this tenancy.

Residential Tenancy Branch Policy Guideline #40 establishes the useful life of various items in a residential tenancy for the guidance of Arbitrators considering damage claims. With respect to claims for interior painting, the useful life of an interior paint job in a rental unit is set at four years. At the hearing, the male landlord testified that the rental unit was completely renovated four years earlier, at which time the entire premises were last repainted. The male landlord estimated that the painting supplies cost \$11.74. The receipts entered into written evidence by the landlords revealed a paint cost of \$39.84 ($\$35.57 \times 1.12 = \39.84). From his written evidence, the male landlord testified that \$160.00 of the \$820.00 labour cost for cleaning, repairs and painting were devoted exclusively to painting.

Based on the landlords' evidence, I find that the painting of this rental unit occurred approximately three months before the expiration of the four year useful life for the existing paint job which was undertaken when the premises were extensively renovated. Although this could lead to the issuance of a very small monetary award for supplies

and labour to the landlord, I also notice that some of the labour included in the landlords' schedule for Friday, October 5, 2012, was associated with the repair and priming for the painting that occurred on Sunday, October 7, 2012. Under these circumstances, I find that whatever minimal monetary award I would issue to the landlords for painting on October 7, would be offset by a corresponding reduction in their entitlement to a monetary award for labour on painting preparation for October 5, 2012. For these reasons, I dismiss the landlords' application for a monetary award for painting without leave to reapply.

Based on the evidence before me, including the tenants' signed joint move-out condition inspection report, I find that the tenants did not leave the rental premises "reasonably clean and undamaged" but for reasonable wear and tear as is required by section 37(2) of the *Act*. I find that the landlords are entitled to a monetary award for cleaning and general repairs of damage arising out of this tenancy. I note that with the exception of the dirty carpets, the damage to the screen door and the need to repaint, the differences between the notations on the joint move-in and move-out condition inspection reports do not reveal a major deterioration in the condition of the rental premises. For this work, the landlords' submitted a list of work conducted by a janitorial service of 35 hours at an hourly rate of \$20.00 per hour from October 2 to October 5, 2012 (the non-painting portion of the landlords' labour claim). At the hearing, Tenant NM objected to the extent of this labour conducted by a cleaning company. She testified that the landlords insisted on hiring their own cleaning company to perform this work.

In considering the landlords' claim for cleaning and repairs, I find that the amount of cleaning and repairs seems excessive given the oral, written and photographic evidence. For example, the landlords have claimed for four hours of "assessment" at a rate of \$20.00 per hour. Although I will allow some of the landlords' claim for cleaning and repairs, I limit this monetary award to 16 hours of work, the equivalent of 2 full eight hour days of cleaning and repairs at the requested \$20.00 per hour. I issue a monetary award in the landlords' favour in the amount of \$320.00 for cleaning and repairs.

At the hearing, the male landlord gave oral testimony that the cost of supplies for cleaning, repair and painting was \$413.34. While this is the same figure cited in the landlords' written evidence, this figure is described as "Total Receipts" in the written evidence on the carpet cleaning receipt. My tally of the landlords' eligible receipts (less paint, carpet cleaning and screen repair) results in a total of \$82.30 ($\$9.71 + (\$69.20 - \$39.84) + \$11.13 + 20.36 + 11.74 = \82.30) for supplies associated with cleaning and repairing the rental unit. I issue a monetary award in the amount of \$82.30 to the landlord for these supplies.

As both parties were successful in their applications, I find that both parties bear responsibility for their own filing fees.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants to recover double their deposits, less the landlords' awards for unpaid rent and damage arising out of this tenancy:

Item	Amount
Less Return of Deposits (\$900.00 + 100.00 = \$1,000.00)	\$1,000.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1,000.00
Less Portion of Landlords' Loss of Rent for October 2012	-406.45
Less Professional Carpet Cleaning	-257.60
Less Allowable Cleaning and Repairs (16 hours @ \$20.00 = \$320.00)	-320.00
Supplies for Cleaning & Repairs	-82.30
Screen Repair	-33.60
Total of Tenants' Monetary Order	\$900.05

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(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: January 22, 2013

Residential Tenancy Branch

