



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlord applied for a Monetary Order for damage to the unit, site or property; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenants applied for return of double the security deposit, less the amount owed to the landlord for hydro. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the property and/or damage or loss under the Act regulations or tenancy agreement in the amount claimed?
2. Are the tenants entitled to double the security deposit?

Background and Evidence

The tenancy commenced October 1, 2009 and ended October 31, 2012. The tenants paid a security deposit of \$950.00 in September 2009. The tenants lived in the main unit of the house and the landlord lived in the basement suite. In addition to monthly rent, the tenants were required to pay the landlord 2/3 of the water bills and 2/3 of the hydro bills.

Landlord's Application

Below I have summarized the landlord's claims against the tenants, as amended, and the tenant's response to the claims.

<u>Item</u>	<u>Amount claimed</u>	<u>Landlord's reasons</u>	<u>Tenant's responses</u>
Bedroom laminate flooring damage	\$ 1,806.65	Approx. 9" x 1" gouge in floor. As laminate is the sealed type the flooring in the entire room must be replaced. Originally obtained verbal quote for \$930.00. Later, obtained written estimate for \$1,806.65.	Acknowledge gouge likely from exposed nail at bottom of bed frame. Claim is excessive as: partly due wear and tear; and floor could be patched or repaired.
Fridge	147.93	Tenants broke water/ice dispenser lever.	Acknowledge part broke during tenancy. Due to normal use and aging.
Blinds	45.00	Three blind spinners broken off. \$15.00 each to repair per verbal quote.	Unaware of broken spinners or seeing any spinners detached from blinds.
Blinds	86.00	Two pullers broken. \$43.00 each to repair. Tenants advised of high winds and potential for damage if doors left open.	Strings broke due to wind catching French doors. Tenants took precautions to brace doors but very high wind area. The blinds in the basement suite have the same damage.
Barbeque	Unknown	Landlord's bbq loaned to tenants for their use. Blew over in wind. Part broken off and not replaceable.	Blew over due to wind. No estimated value of loss.
Faucet handle	280.00	Faucet handle broken. Functional but handle has to be manually put back on to use.	Wear and tear. There was a missing screw. Tenants advised landlord of broken handle during tenancy and landlord's handyman put Teflon tape on it rather than

			replace it.
Water bill	137.71	Tenants' portion of water bill still outstanding.	Agreed.
Hydro bill	231.17	Tenants' portion of hydro bill still outstanding.	Agreed.
Total claim	\$ 2,734.46		

The landlord submitted that the house was newly constructed in September 2007. The builder lived in the rental unit for approximately six months and then the landlord and his former spouse occupied it before this tenancy began.

I was not provided a move-in or move-out condition inspection report for review. The parties provided different versions of events with respect to the completion of such reports.

Move-in inspection report

The landlord submitted that a move-in inspection report was completed and given to tenant; however, the landlord had misplaced his copy of the report. The tenant recalls an inspection at the time of moving in but does not recall the landlord preparing or giving him a report.

Move-out inspection report

It was undisputed that there was a communication breakdown during the move-out inspection that took place October 30, 2012; however, each party pointed to the other party as being hostile. It was undisputed that the landlord left the inspection before a report was completed. The tenant then left the keys at that property and proceeded to leave.

I heard that the landlord had invited the tenant to participate in another move-out inspection on November 6 or 9, 2012 but that the tenant declined the invitation. The tenant explained that he declined because he has given an inspection report to the landlord on October 30, 2012 and that the rental unit had since been occupied.

Tenants' Application

The tenants are requesting that their security deposit be doubled as they did not receive a refund within 15 days of the tenancy ending and the landlord extinguished his right to claim against the deposit for damage.

The landlord submitted that he filed this application within 15 days of the tenancy ending and sent the hearing documents to the tenants that same day.

Analysis

Upon consideration of everything presented to me, I provide the following reasons and findings with respect to each application.

Landlord's application

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The Act requires that a tenant leave a rental unit reasonably clean and undamaged. The Act provides that normal wear and tear is not damage. Normal wear and tear refers to the natural deterioration that is the result of reasonable use and the aging process.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same position had the damage not occurred. Where an item has a limited useful life and it is necessary to replace the item due to damage, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

Bedroom Laminate flooring

Upon review of the photographs, I find that the flooring was damaged by the tenants' failing to protect the floor from the exposed nail on their bed frame and that the damage is more than normal wear and tear. I find the tenants responsible for compensating the landlord for the loss appropriate for the damage.

I find the landlord's request to recover the full cost to replace the entire floor unreasonable given the laminate is six years old and laminate flooring has a useful life of 10 years. I also find it unreasonable to expect the tenants to pay for replacing the entire floor given the rather small area of damage. Therefore, I find it appropriate to award the landlord \$200.00 as a reasonable approximation of the devaluation of the property.

Fridge

It was undisputed that the lever for the ice/water dispenser on the fridge was broken during the tenancy.

On the balance of probabilities, I reject the tenant's position that it broke due to normal wear and tear considering the following factors:

- The fridge was only six years old;
- The lever(s) are intended to be pushed inwards only and not pulled outwards;
- The tenants had young children living in the home;
- The tenant also argued "normal wear and tear" when he acknowledged the laminate flooring was damaged by an exposed nail on the bed frame.

Therefore, I grant the landlord's request to recover \$147.93 from the tenants for repairing the fridge.

Blinds – broken spinners

Considering the tenant was unaware of damage to the blind spinners, and in the absence of a move-in or move-out inspection report, I find the landlord failed to satisfy me that the three blind spinners were broken or broke during the tenancy due to the tenants' actions or neglect. Therefore, I dismiss this portion of the landlord's claims.

Blinds – broken pulls

It was undisputed that the pulls were broken during the tenancy. At issue is whether the tenants are responsible for the damage. Based upon testimony I heard at the hearing, I am satisfied the tenants were fully aware of the effects of the wind on the French doors and, as such, I find the tenants obligated to ensure they took reasonable action to secure the doors and/or blinds so as to avoid damage.

I find it is insufficient to argue that blinds in other units have the same damage as a defence. The person occupying each of the units is responsible for taking sufficient action to secure the doors or the blinds of their unit.

Given the damage that has resulted, I find the tenants responsible for the compensating the landlord the cost to repair the pulls. I find the landlord's request for \$43.00 for each blind to be reasonable and I grant the landlord's request for \$86.00.

Barbeque

This was not an appliance, service or facility provided to the tenants under the tenancy agreement. Nor, was I provided an amount that the landlord was seeking to recover. Therefore, I find the landlord did not establish a basis for seeking compensation from the tenants for this item and this portion of the landlord's claim is dismissed.

Broken faucet

It was undisputed that the faucet was broken during the tenancy and a handyman temporarily repaired it with plumber's tape. Considering there was a missing screw I am not satisfied the handyman's repair was sufficient. Nor has the landlord's evidence satisfied me that the tenants' actions or neglect was the cause of the broken faucet before or after the temporary repair. I also note that the landlord's claim to recover the cost of a new faucet is unreasonable given there was six years of use of the existing faucet. Therefore, I deny this portion of the landlord's claim.

Water and hydro bills

The amounts requested by the landlord were agreed to by the tenant. Therefore, I grant the landlord's claim for \$137.71 and \$231.17 respectively.

Tenants' Application

The Act provides that a landlord loses the right to claim against a security deposit for damage to the unit if the landlord fails to comply with condition inspection report requirements. I am satisfied the landlord failed to meet his obligation to prepare condition inspection reports and lost his right to claim against the security deposit for damage. However, the landlord retains the right to claim against the deposit for other amounts, such as rent or utilities.

The Act provides that a landlord has 15 days from the date the tenancy ended, or upon receipt of the tenants' forwarding address, whichever date is later, to refund a security deposit or file an Application for Dispute Resolution. Where a landlord fails to comply with this obligation, the security deposit is doubled.

In this case, the landlord filed against the security deposit within 15 days of the tenancy ending. Further, the landlord had claims against the security deposit for amounts other than damage. Therefore, I the tenants are not entitled to doubling of their deposit.

Filing fee and Monetary Order

As the landlord was partially successful in his application, I award the landlord one-half of the filing fee he paid for his Application. I make no award for recovery of the filing fee paid by the tenants as I find their application was largely unnecessary.

I calculate the landlord entitled to recover the following sum from the tenants:

Damage to laminate flooring	\$ 200.00
Damage to fridge	147.93
Damage to blinds	86.00
Water bill	137.71
Hydro bill	231.17
Filing fee (one-half)	<u>25.00</u>
Total awarded to landlord	\$ 827.81

I offset the landlord's award against the security deposit pursuant to section 72 of the Act. The landlord is ordered to return to the tenants, without further delay, the balance of the security deposit of \$122.19. The tenants have been provided a Monetary Order in the amount of \$122.19 to serve upon the landlord and file in Provincial Court if necessary.

Conclusion

The landlord was partially successful and has been authorized to retain \$827.81 of the tenants' \$950.00 security deposit. The tenants are entitled to credit of the single amount of their security deposit but their request for double has been denied. The landlord is ordered to return \$122.81 to the tenants without further delay. The tenants have been provided a Monetary Order in the amount of \$122.81 to serve and enforce as necessary.

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: February 26, 2013

Residential Tenancy Branch

