



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF, O

Introduction

This hearing dealt with cross applications. The tenant applied for return of double the security deposit and a refund of hydro she paid for the basement suite tenants. The landlord applied for monetary compensation for damage to the rental unit and the tenant leaving possessions stored at the property. 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. Is the tenant entitled to return of double the security deposit?
2. Has the tenant established an entitlement to recover hydro from the landlord?
3. Is the landlord entitled to compensation for damage to the property and storage?

Background and Evidence

The tenancy commenced October 1, 2010 and the tenant paid a security deposit of \$987.50. The tenant was required to pay rent of \$1,975.00 on the 1st day of every month. The tenancy ended November 30, 2012.

A move-in condition inspection report was not prepared by the landlord. The landlord did not schedule a move-out inspection with the tenant and but invited her to join him for an inspection on December 1, 2012. She was not available at the time. The landlord proceeded to prepare a move-out inspection report on December 1, 2012 without the tenant present.

Tenant's Application

The tenant submitted that she gave her forwarding address to the landlord, in writing, on November 30, 2012 by leaving it for him on the kitchen island. The tenant also sent her forwarding address to the landlord via a text message sent December 5 or 6, 2012.

The landlord stated that he did not receive a forwarding address left on a piece of paper on the kitchen island as the tenant submitted. The landlord acknowledged that he received a forwarding address via a text message in early December 2012.

It was undisputed the tenant did not authorize the landlord to make any deductions from the tenant's security deposit in writing.

The tenant had the hydro bill in her name and the basement suite tenants were to pay her 30% of the bills. The tenant had trouble collecting the hydro owed by the most recent basement suite tenants. The tenant has requested the landlord compensate her for 30% of the hydro bills the basement suite tenants did not pay her, or \$157.20.

The landlord was of the position that the payment of 30% of the hydro bills is up to the tenant to collect from the basement suite tenants. The landlord also stated that he had not received copies of the bills for which the tenant is seeking compensation. I noted that the tenant did not include copies of the subject bills as evidence for this proceeding.

Landlord's Application

The landlord submitted that the tenant left the rental unit damaged and unclean at the end of the tenancy. Below, I have summarized the landlord's claims and the tenant's responses.

Item	Amount	Landlord's reasons	Tenant's responses
Kitchen faucet	\$ 98.36	Handle broken because wrong screw inserted into handle during tenancy. Landlord had attended the unit once during the tenancy to tighten the screw.	Faucet had to be serviced several times. Handle frequently came loose.

Window coverings	126.37	Two blinds in skylights damaged and required replacement. One blind was completely destroyed.	Blinds were pleated fabric and appeared to be cut due to wear and tear.
Flooring	1,512.00	Master bedroom engineered flooring had several deep gouges. Obtained estimate to sand and refinish. Invited tenant to get her own quote but she did not.	Gouges that appear in landlord's photos look worse than actual damage. Caused by box spring placed directly on floor. Unintentional damage. Tenant has friends/family members able to replace the 12 boards damaged.
Smoke alarm	27.08	Missing at end of tenancy.	Unaware of missing smoke detector. Not pointed out by landlord on last day of tenancy.
Cleaning	320.00	Two people for 8 hours cleaned unit.	Tenant and family members cleaned unit. Landlord had commented that unit looked good on last day of tenancy. Landlord had people cleaning and painting before end of tenancy.
Pocket door repair	40.00	Pocket door smashed in at knob. Two hours to repair.	Unaware of damage to pocket door.
TOTAL DAMAGE CLAIM	\$ 2,123.81		

The landlord submitted that the rental unit was last renovated in late 2008 or early 2009 and that the majority of the items subject to this dispute were installed at that time.

The landlord also seeks compensation of \$50.00 as the tenant left possessions in a storage area until December 6, 2012. The tenant responded by stating that the landlord

had indicated to her that it was “no big deal” if she left some items in the storage area. The tenant also pointed out that she had permitted the landlord to enter the rental unit and paint the unit in preparation for the new tenants before her tenancy was over without compensation.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to each Application for Dispute Resolution.

Tenant's Application

When a landlord fails to prepare condition inspection reports in accordance with the requirements of the Act, the landlord extinguishes the right to claim against the security deposit for damage. I find the landlord extinguished his right to claim against the security deposit for damage when he failed to prepare a move-in inspection report with the tenant. Therefore, I find the landlord has no claim against the security deposit.

The tenant requested the return of double the security deposit. In order for the tenant to establish an entitlement to double, the tenant bears the burden to prove she gave the landlord her forwarding address in writing.

I find the disputed verbal testimony, in the absence of any other corroborating evidence, to be insufficient to conclude the tenant gave the landlord her forwarding address in writing on November 30, 2012 by leaving it on the kitchen island. Further, leaving a document on a kitchen island for the other party to find is not an acceptable method of giving the other party a document.

Section 88 of the Act provides that where a party must give the other party a document it is to be given in one of the ways provided under section 88. Sending a text message is not a permissible method of giving another party a document under section 88 of the Act. Therefore, I do not consider the tenant's text message of December 5 or 6, 2012 as giving the landlord her forwarding address in writing in a manner that complies with section 88.

In light of the above, I find the tenant did not satisfy me that she gave the landlord her forwarding address in writing in a manner that complies with section 88 prior to filing her Application for Dispute Resolution seeking double the security deposit. Therefore, I award the tenant return of the single amount of the security deposit, or \$987.50.

With respect to the tenant's claim for hydro, I find the tenant's position that the landlord must compensate her if the basement suite tenants do not pay their share of hydro to have merit. Her position is supported by Residential Tenancy Policy Guideline 1, which provides the following section:

SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.
2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

In keeping with the above, I find the landlord obligated to pay the tenant the portion of the hydro bill the basement suite tenants have failed to pay. The landlord may then pursue the basement suite tenants for hydro he has paid on their behalf.

Since the landlord is obligated to pay a share of the hydro bills owing by the basement suite tenants I find the landlord entitled to be provided copies of the hydro bills that the tenant seeks to recover from the landlord in order to verify the amount requested. As the landlord has not yet been provided with copies of the subject hydro bills, I find the tenant's claim premature and I dismiss this portion of the tenant's application with leave. I strongly encourage the parties to resolve the issue of the hydro bills between themselves; however, the tenant may file another Application for Dispute Resolution if this portion of her claim remains unresolved.

Landlord's Application

A tenant is required to leave a rental unit undamaged at the end of a tenancy. Reasonable wear and tear is not considered damage. Where a tenant leaves a rental unit damaged and does not repair the damage prior to the end of their tenancy the landlord may seek compensation from the tenant.

Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, 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.

Kitchen Faucet --

I accept that the kitchen faucet was approximately five years old and broken at the end of the tenancy as this was largely undisputed. However, I find the landlord's claim for the full replacement cost is unjustified when I take into consideration depreciation of the former faucet and that it had been problematic during the tenancy. While the faucet may have been problematic, this does not entitle the tenant to attempt a repair without the landlord's consent. In this case, the tenant's attempt to fix the faucet actually worsened the operation of the faucet. Taking into account all of these factors, I find a reasonable award to the landlord to be \$40.00 for replacement of the faucet.

Window coverings --

It was undisputed that the window coverings were damaged at the end of the tenancy; however, the extent of the damage and the cause of the damage were in dispute. In the absence of other corroborating evidence, such as photographs, I find the disputed verbal testimony insufficient to conclude the blinds were significantly damaged by the tenant's actions. I also note that the new blinds were purchased weeks after the tenancy ended. Therefore, I deny this portion of the landlord's claim.

Flooring --

Based upon the undisputed testimony of the tenant I accept that the flooring in the master bedroom was scratched during her tenancy. Based upon my review of the photographs presented to me I accept that the flooring was significantly scratched and that the extent of the scratches constitutes damage. I accept the landlord's position that a reasonable remedy for the scratches is to sand and refinish the floor in that room. I find the landlord has substantiated the cost to sand and refinish the floor and I award the landlord \$1,512.00 as claimed.

Smoke alarm --

In the absence of other evidence to corroborate the landlord's position I find the disputed verbal testimony insufficient to conclude the smoke detector was missing at the end of the tenancy due to actions of the tenant. I also note that a smoke detector receipt is dated weeks later. Therefore, I dismiss this portion of the landlord's claim.

Cleaning --

Considering the landlord was permitted in the rental unit before the tenancy had ended in order to paint and make minor repairs I find I am unsatisfied by the disputed

testimony that the tenant is responsible for further cleaning. Rather, if there was some cleaning required due to the tenant's failure to do so, I find the landlord more than compensated by the tenant permitting him the ability to access and make improvements to the property during the final days of her tenancy. Therefore, I deny this portion of the landlord's claims.

Pocket door repair --

The landlord provided a photograph of the damaged pocket door; however, I find the disputed verbal testimony insufficient to conclude when the damage occurred. Further, I note that the pocket door is damaged because a door knob or pull was installed on the pocket door. Typically, pocket doors have a recessed handle so that the door is free to slide within the "pocket". Therefore, I find it likely that the installation of a door knob or pull was the incorrect application for a pocket door and was very likely to get damaged with normal use of the door. For these reasons, I deny the landlord's request for the tenant to pay for this repair.

Storage --

Based upon the testimony of both parties, I find insufficient evidence to conclude there was an agreement reached between the parties for the tenant to pay the landlord for use of a storage area for a few days. Nor, do I find evidence that the tenant's use of the storage area for a few days caused the landlord to suffer a quantifiable loss or loss of any significance. Therefore, I deny this portion of the landlord's claim.

Monetary Order

As both claims had merit I make no award for filing fees.

Pursuant to section 72 of the Act I offset the tenant's award against the landlord's awards and provide the landlord with a Monetary Order in the net amount calculated as follows:

Awards to landlord –		
Faucet	\$ 40.00	
Flooring	<u>1,512.00</u>	\$ 1,552.00
Security deposit awarded to tenant		<u>(987.50)</u>
Monetary Order to landlord		\$ 564.50

Conclusion

The tenant was awarded \$987.50 for return of her security deposit and the tenant's claim for hydro against the landlord was dismissed with leave to reapply. The landlord

was awarded \$1,552.00 for damage to the rental unit. The awards have been offset and the landlord provided a Monetary Order for the net balance of \$564.50.

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: May 3, 2013

Residential Tenancy Branch