



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlord applied for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant applied for return of her security deposit.

Issue(s) to be Decided

1. Is the landlord entitled to compensation for damage to the unit and/or damage or loss under the Act, regulations or tenancy agreement in the amount claimed?
2. Is the tenant entitled to return of the security deposit?

Background and Evidence

The tenancy commenced February 1, 2009 and the tenant paid a security deposit of \$600.00. The monthly rent was due on the 1st day of every month. At the end of the tenancy the tenant was paying rent of \$1,251.60 per month. The tenancy ended December 31, 2012.

The landlord did not prepare a move-in inspection report but submitted that the unit was refurbished just prior to the tenancy and submitted pictures of the unit taken on January 18, 2009.

On January 1, 2013 the landlord inspected the property without the tenant as she had communicated to him that she would not be returning to the property. The landlord took pictures and prepared a document detailing the condition of the property at that time. After serving the tenant with a Notice of Final Opportunity to Participate in a Condition Inspection, the parties inspected the property together on January 15, 2013 and the landlord brought the inspection report he had previously prepared. The tenant did not

agree with the landlord's assessment of damage and cleaning the landlord asserted she was responsible for and the tenant would not sign the landlord's report.

Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

Loss of rent

The landlord re-rented the unit as of February 1, 2013 and is seeking to recover loss of rent from the tenant for the month of January 2013. The landlord submitted that the tenant is responsible for the loss of rent due to the condition she left the rental unit and her refusal to permit the landlord to show the unit during the month of December 2012. The landlord originally stated that he started advertising the unit after the tenancy ended but then changed his testimony to say that he started advertising in December 2012 but that there were two "no shows" during the month of December 2012.

The tenant acknowledged that the landlord had contacted her about showings of the unit in December 2012 and that he did not show up for the appointments. The tenant submitted that she did not refuse the landlord entry but that requested the landlord provide her with written 24 notice prior to entering the unit. Finally, the tenant submitted that she gave her notice to end tenancy on November 30, 2012 and had mostly moved out of the property by December 15, 2012. As indicated below, the tenant denied that she is responsible for the poor condition of the rental unit or the landlord's inability to re-rent the unit for January 2013.

The landlord did not provide copies of the advertisements he had posted in the month of December 2012.

Walls/plaster

The landlord submitted that the tenant damaged the walls with screws and nails, and chipped the walls. In addition, the walls were dirty and greasy. A photograph depicts a poorly filled and unsanded screw hole on one wall. The landlord is claiming \$20.00 for materials and \$155.00 for labour.

The tenant stated she attempted to repair screw holes by applying filler.

Baseboards

The landlord submitted that the tenant damaged portions of the baseboard requiring him to remove and replace 50 feet of baseboard, and then prime and paint the new baseboard. The landlord submitted two photographs of two damaged sections of baseboard. The landlord did not submit receipts for the purchase of new baseboard.

The landlord explained that he has various building materials in inventory. The landlord is claiming \$50.00 for materials and \$140.00 for his labour.

The tenant suggested the pictures of the damaged baseboard are not of her unit.

Floors and vents

The landlord submitted that the floors required cleaning, especially under the fridge and stove and miscellaneous garbage was left behind. In addition, the heat vents were very dirty and had to be vacuumed and cleaned. The landlord is seeking \$75.00 for his labour.

The tenant submitted that the fridge was not movable as there was a piece of wood under it. The landlord responded by stating that fridge was replaced during the tenancy and the fridge that was there at the end of the tenancy was on rollers.

The tenant acknowledged she did not pull the stove out to clean under or the sides of the stove.

The tenant claimed she washed the heat vents and stated the heat vents do not look the vents that were in her unit.

Doors

The landlord submitted that several doors were scuffed and had greasy fingerprints on them. The landlord is seeing \$37.50 for his time to clean the doors.

The tenant claimed the doors were not greasy but that they were old and worn and in need of painting.

Cupboards/countertops

The landlord submitted that the cupboards and shelves required additional cleaning and the countertop had burns on it. The landlord is seeking \$30.00 to clean the cupboards and \$290.00 to replace the countertop. The landlord claimed that the countertops were new in 2009. The landlord explained that he purchased a new "L" section of countertop for \$160.00 and replaced it himself. The landlord did not provide a receipt for the purchase but claimed he had one available.

The tenant submitted that the countertop was burned at the beginning of the tenancy but that the landlord's pictures from January 2009 are not taken close enough to see the pre-existing damage.

Lights

The landlord submitted that the globe of one of the kitchen light fixtures was missing. As there are two matching light fixtures in the kitchen he had to replace both. The landlord claimed that the light fixtures were new in 2008 or 2009. The landlord is seeking \$55.00 to replace two light fixtures but did not supply a receipt for the purchase.

The tenant submitted that the missing globe fell off during her tenancy and that she left it in one of the cupboard's in the kitchen.

Windows/blinds

The landlord submitted that the window sills, casings, and blinds were left dirty. In addition, the living room blind was damaged and required replacement. The landlord is seeking \$105.00 for his labour and \$60.00 for a new blind. The landlord did not provide a receipt for the new blind.

The tenant submitted that the blind in the living room was very old and broken at the beginning of her tenancy.

Stove top/hood fan/fireplace

The landlord submitted that the stop top was chipped, requiring repair with a porcelain gel. The hood fan was greasy and the light bulb burnt out. The fireplace was not clean and full of ashes. The landlord is seeking \$15.00 for materials and \$55.50 for his labour.

The tenant submitted that the stove top was old and already chipped when she moved in.

Sink/exhaust fan

The landlord submitted that the kitchen sink was left unclean and stained. In addition, the bathroom exhaust fan was completely clogged and unable to work properly. The landlord replaced the fan and is seeking \$40.00 from the tenant for the fan along with \$40.50 for his labour.

The tenant submitted that the kitchen sink was old and that she left it as clean as it would get. The tenant claimed she dusted the outside of the exhaust fan but did not open it up. It always worked sluggishly during her tenancy.

Garden

The landlord submitted the tenant left numerous abandoned pots, planters, tools and other miscellaneous items in the yard. The landlord requested compensation of

\$190.00 to take these items to the dump. Upon further enquiry, the landlord acknowledged that the load he took to the dump included other items of garbage that he had gathered. The landlord indicated that he thought it was reasonable for the tenant to pay for 100% of his time to go to the dump (\$100.00) plus \$25.00 of the dump fee.

The tenant acknowledged that the pot containing cigarette butts and one planter were hers. The tenant submitted that other tenants left the remainder of the garbage on the property.

Evidence

Documentation provided to me for this proceeding included copies of: the landlord's monetary claim and written assessment of the property prepared in January 2013; the Notice of Final Opportunity to Schedule a Condition Inspection; the tenant's notice to end tenancy; and, various letters and email communication between the parties. The landlord also provided photographs purportedly taken of the unit in January 2009 and January 2013.

The tenant suggested that some of the photographs supplied by the landlord as evidence of the condition of the property at the end of the tenancy were not pictures of her unit. The tenant explained that there were four units at the property and that at any given time one of the units was usually under repair or renovation. The tenant pointed to specific photographs of appliances in support of her position. The landlord countered each of the tenant's allegations with an explanation that those particular appliances had been replaced during the tenancy.

Tenant's application – the tenant applied for return of her security deposit.

Analysis

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

Landlord's Application

Under the Act, a tenant is required to leave a rental unit reasonably clean and undamaged at the end of the tenancy. Normal wear and tear does not constitute damage.

A landlord is required to schedule, participate and prepare condition inspection reports at the beginning and end of every tenancy. The purpose of such inspection reports is to establish the condition of the rental unit at the beginning and end of the tenancy so as to avoid disputes. The tenant is also required to participate in condition inspections if the landlord gives the tenant two opportunities to do so.

The Act imposes consequences upon parties who do not fulfill their respective inspection obligations as a motivation to fulfill their obligations. In this case, the landlord clearly violated the inspection requirements first when he failed to schedule a move-in inspection with the tenant and prepare a move-in inspection report with her.

As there is no move-in inspection report, it is now upon me to determine whether the landlord has other sufficient evidence to contradict the tenant's assertions that certain items were already damaged when the tenancy began.

Further, as the landlord is the party seeking compensation from the tenant, the landlord bears the burden to prove his claim. This includes providing evidence that the tenant violated the Act, regulations or tenancy agreement; that the violation caused the landlord to suffer a loss; verification of the value of the loss; and, that the landlord took reasonable action to mitigate the loss.

Should the landlord establish that the tenant is responsible for leaving the unit unclean and damaged, I find the monetary value sought by the landlord is exaggerated, as demonstrated by his garbage removal claim and upon review of the hours he claimed for cleaning and the hourly rate of \$30.00 he claimed for cleaning. Further, awards for damages are intended to be restorative and where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. The landlord did not reduce any of his claims by depreciation. For these reasons, I find the landlord's submissions lacking credibility.

I also found the tenant's refusal to take responsibility for nearly everything put forth by the landlord, in spite of pictures clearly showing a lack of cleaning, lessened her credibility. Further, I found it unlikely that the landlord took pictures of a different unit to submit as evidence against the tenant especially considering the landlord had an explanation for all of the discrepancies noted by the tenant and the tenant's lack of corroborating evidence as to such a fraudulent action.

In hearing from both parties, the animosity between the tenant and the male landlord was obvious and I find it more likely than not that the relationship between the tenant and the male landlord had deteriorated significantly, especially at the end of the

tenancy. I find it likely that their acrimony has factored into the opposing and inflexible positions that they presented to me and that the reality of the situation and the landlord's actual losses somewhere in between each of the parties respective positions.

As the parties provided mostly disputed verbal testimony and the landlord's written report of the condition of the property at the end of the tenancy was disputed by the tenant, I was left with photographs as the primary form of evidence. While photographs are often helpful in assessing the condition of the property difficulty arises where photographs taken at the beginning of the tenancy are not nearly as close-up as the photographs taken at the end of the tenancy and/or the photographs are not taken of the same areas of the unit. For these reasons, I found it difficult to compare the move-out photographs to a corresponding photograph taken at the beginning of the tenancy in several instances.

In awarding the landlord compensation for repairing damage I find his hourly rate of \$30.00 reasonable considering some skill and tools are required. However, I find such a rate for cleaning unreasonably high and I have awarded the landlord amounts for cleaning based upon \$20.00 per hour. 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*.

Loss of rent

Since the tenant gave the landlord sufficient notice to end the tenancy, the landlord must show that the unit was not re-rented for January 2013 due to damage caused by the tenant in order to receive compensation for loss of rent. Considering I heard the landlord had started advertising sometime in December 2012 but that there was not one showing of the unit during that month I find I am unsatisfied the unit did not rent due to damage caused by the tenant. I find it just as likely the unit did not rent due to other reasons, including; market conditions, the time of the year, among other things. Therefore, I deny the landlord's claim for loss of rent.

Walls/plaster

It is reasonable to expect that tenants will hang artwork on their walls and a reasonable number of small holes are considered normal wear and tear, as provided under Residential Tenancy Policy Guideline 1. The policy guideline provides, however, that an unreasonable number of holes or large holes constitute damage.

The landlord produced one photograph of a large screw hole in the wall and the tenant's attempt to fill the hole. The tenant acknowledged the photograph depicted her attempt to fill the hole. I accept that the hole is large, not sufficiently repaired by the tenant, and

that this part of the wall was left damaged. However, I find the landlord's claim for \$175.00 unreasonable based upon this one photograph of damage and I award the landlord \$60.00 (2 hours at \$30.00) to repair this damage wall. I find the landlord provided insufficient evidence of dirty or greasy walls warranting a further award to the landlord.

Baseboards

I accept the photographic evidence that there were two sections of damaged baseboard. I find the tenant's submission that the landlord may have taken photographs of damage in another unit unlikely as the landlord satisfied me that the photographs were of the tenant's unit in refuting each of her statements of such.

I find the evidence insufficient to establish that 50 feet of new baseboard had to be installed and that the landlord suffered as loss of \$50.00 for the material. Considering the damaged sections required removal, new baseboard cut and installed, filled, sanded and painted I find the landlord's claim for labour of \$140.00 within reason. Therefore, I award the landlord \$140.00 for his labour.

Floors and vents

I accept the photographic evidence that the tenant did not sufficiently clean the floors, especially under the stove and fridge, or the vents in the rental unit, and that it took 2.5 hours to clean these areas. I reject her submission that the vents did not look like hers as being unlikely and I am satisfied the picture is of the vent is located in her unit. I compensate the landlord for his 2.5 hours of labour at \$20.00 per hour for an award of \$50.00.

Doors

I accept the photographic evidence that the doors were greasy and required cleaning. I find the landlord's claim that the back door took one hour to clean to be unlikely. I award the landlord ½ hour at \$20.00 per hour for an award of \$10.00.

Cupboards/countertop

I accept the photographic evidence that the cupboards required additional cleaning and I accept that an hour to do so is reasonable. I award the landlord \$20.00 for this portion of the claim.

With respect to the countertop, it was undisputed that the countertop was burned at the end of the tenancy. The issue was whether it was already burned when the tenancy began. I find the photographs taken at the beginning of the tenancy are taken too far away and from the wrong angle to determine whether they were burned or not at the

beginning of the tenancy. Further, I note that the edge of countertop appears chipped at the beginning of the tenancy, bringing into question the landlord's assertion that the countertop was new in 2009, the same year the tenancy commenced. Therefore, I find insufficient evidence to conclude the tenant is responsible for damaging the countertop and I deny this portion of the landlord's claim.

Lights

The landlord did not supply evidence to support his claim of \$55.00 as the cost of new light fixtures. Therefore, I deny this portion of his claim.

Windows/blinds

I was not provided any photographic evidence of dirty window sills or casing. Rather, I was provided a photograph of one dirty blind. I award the landlord one hour or \$20.00 to clean the blind. I deny the landlord's claim for a new blind as I was not provided evidence to support the value of the claim and the photographs at the beginning of the tenancy are not sufficient to refute the tenant's submission that the blind was already broken at the beginning of the tenancy.

Stove/hood fan/fireplace

It was undisputed that the stove was chipped at the end of the tenancy. Whether it was chipped at the beginning of the tenancy, as alleged by the tenant, is undeterminable based upon the distant photograph of the stove provided to me. Nor did the landlord verify the value of the claim for porcelain gel. Therefore, I make no award for repair to the stove.

I accept the photographic evidence that the hood fan was left greasy and stained, and that the fireplace was left with ashes and debris. I grant the landlord the 1.4 hours, as submitted, to clean these items. At \$20.00 per hour I award the landlord \$28.00.

Sink/exhaust fan

I accept the photographic evidence that the sink was not left reasonably clean. I reject the tenant's position that the sink was as clean as it would get. Rather, I find it likely the sink was stained but that it was a stainless steel sink and there are cleaning products that will remove such stains. I accept the landlord's submission that it took .4 of an hour to clean the sink and at \$20.00 per hour I award the landlord \$8.00.

The inside of the exhaust fan was undeniable clogged with dust and lint at the end of the tenancy based upon the photographs. However, I find I am not satisfied that this was cleaned prior to the tenancy based upon the photographic evidence and the tenant's testimony that it always worked sluggishly. Nor, did the landlord provide

verification of the cost of a replacement fan. For these reasons, I deny the landlord's claim for a replacement exhaust fan.

Garden

Although there appears to be abandoned possessions in the yard of the property, I find the landlord failed to demonstrate that all of the items belonged to the tenant when I consider this is a multiple unit property and she denied many of the items were hers. Nor did the landlord provide evidence to verify that he took any of the items to the dump or the cost of doing so. Taking into account the tenant acknowledged leaving a couple of items behind I award the landlord some labour for having to deal with few items the tenant acknowledged leaving behind. I award the landlord \$10.00 for his time and effort to add the tenant's few items to the rest of the garbage he disposed of.

Tenant's application –

I grant the tenant's request for return of her security deposit as the landlord had extinguished his right to make claims against it for damage when he failed conduct a move-in inspection with the tenant and prepare a move-in inspection report.

Monetary Order

I make no award for recovery of the filing fee as I find both applications had merit. I offset the landlord's awards against the security deposit awarded to the tenant, as provided under section 72 of the Act, and I provide the tenant with a Monetary Order for the net balance of:

Security deposit owed to tenant		\$600.00
Less: amounts awarded to landlord		
Walls/plaster	\$ 60.00	
Baseboards	140.00	
Floors and vents	50.00	
Doors	10.00	
Cupboards/countertops	20.00	
Lights	nil	
Windows/blinds	20.00	
Stove/hood fan/fireplace	28.00	
Sink/exhaust fan	8.00	
Garden	10.00	
Loss of rent	<u>nil</u>	<u>346.00</u>
Monetary Order to tenant		\$254.00

Conclusion

The tenant has been awarded \$600.00 and the landlord has been awarded \$346.00. The awards have been offset and I provide the tenant with a Monetary Order for the net amount of \$254.00 to serve upon the landlord 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: May 1, 2013

Residential Tenancy Branch