Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent or utilities; damage to the rental unit or property; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit and pet deposit. 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.

Due to multiple issues under dispute the hearing was held over two dates. Both parties appeared at both scheduled hearing dates.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation in the amount claimed?
2. Are the landlords authorized to retain all or part of the security deposit and pet deposit?
3. Should the security deposit and pet deposit be doubled under section 38 of the Act?

Background and Evidence

The tenancy commenced July 1, 2011 and the tenants paid a security deposit of $600.00 and a pet deposit of $600.00. The rent was $1,280.00 payable on the 1st day of every month. The landlord and the male tenant participated in a move-in inspection together and a condition inspection report was prepared.

At the end of November 2012 the tenants communicated to the landlord that they intended to end the tenancy at the end of December 2012. The landlord's son was residing in another unit in the building and decided to move into the subject rental unit

as it better suited his needs. As such the landlord did not advertise the rental unit for rent.

The tenants moved their possessions out of the unit in mid-December 2012 and the female tenant met with the landlord's son to conduct a move-out inspection on January 3, 2013. The female tenant refused to sign the condition inspection report and refused the offer landlord's offer to refund $500.00 of the deposits. A forwarding address was provided to the landlord's son on January 3, 2013 and it appears on the condition inspection report.

The condition inspection report appears to indicate that the male tenant had authorized the landlord to retain the security deposit and pet deposit; however, all parties were in agreement that the male tenant was not present at the move-out inspection. The landlord suggested the male tenant signed his name in the incorrect space at the time of the move-in inspection. The male tenant submitted that he is a property manager and would not make such a mistake; thereby, implying his signature was forged.

On January 11, 2013 the landlord filed an Application for Dispute Resolution seeking compensation from the tenants and authorization to retain the deposits; however, at the hearing held on April 3, 2013 the landlord's agent withdrew the Application for Dispute Resolution in its entirety. The landlords were granted leave to reapply by the Arbitrator and in the written decision the Arbitrator stated: "This decision does not extend any applicable time limits under the *Act*." The landlords reapplied on April 16, 2013 and that Application is the subject of this hearing.

The landlords submitted an extensive list of repairs and cleaning required in the unit after the tenancy ended, including numerous photographs. The tenants provided a response to each of the landlords' claims. While I heard and considered each part of this claim at length, with a view to brevity I have only summarized the parties' respective positions below.

Item	Landlords' position	Tenants' response
Entry door and entry door jam	Scratched. Required sanding and painting. Last painted 3 years ago. Requires re-painting every 4 -5 years.	Scratches are normal wear and tear. Tenant asked landlord for touch-up paint but was not provided such.
Tile flooring in kitchen and bathroom	Ground in dirt. Required extensive cleaning with heavy duty abrasive cleaner.	It is not dirt in the tiles but grout that was left to set too long.

Item	Landlords' position	Tenants' response
Walls	Walls required cleaning to remove yellow substance and hair. Numerous scuffs. Numerous holes and gouges had to be filled and sanded prior to painting.	Scuffs and picture hanging holes are normal wear and tear. Many photographs provided by landlord are not of the tenants' unit. Yellow substance and hair not in tenants' unit.
Painting	Entire unit had to be painted. Unit was last painted one month prior to start of tenancy.	As above. Asked landlord for touch up paint and was given no response or paint.
Bedroom door jambs	Scratched by tenants' cats. Trim boards had to be repaired or replaced.	Landlord's photographs are not of tenants' unit. Tenants' photographs show no damage or dirt.
Window trim	Trim had to be stripped, sanded and painted due to tenants' cats scratching window sills.	As above.
Window mounts	Had to be removed, cleaned and re-installed to remove cat hair and dirt.	As above.
Master bedroom window	Rubber seal had to be removed to remove mould and properly clean.	As above.
General cleaning	Floors, toilet, sinks, cabinets, bathtub, laundry room and storage area required additional cleaning.	As above. Tenants left unit very clean. Laundry and storage areas are common property for other tenants to use and are not the responsibility of the tenants to keep clean.
Driving to purchase supplies for repairs, cleaning and painting	4.5 hours spent driving to purchase materials for repairs, cleaning and painting.	Tenants not responsible for repairs, cleaning and painting.
Fence and exterior siding	Fence panel falling over and scratches on exterior	Fence was subject to high winds due to proximity to

Item	Landlords' position	Tenants' response
	shingles due to tenant leaning surf board against the building. Initial fix was not satisfactory so part of fence was completely re-built.	ocean. Fence has to be repaired multiple times during tenancy. There was a shrub against the house that likely caused scratches on the siding. These repairs are not tenants' responsibility.
Dimmer switch	Tenant installed dimmer causing a short and requiring an electrical repair.	Tenant did install dimmer switch which worked fine during the tenancy.
Loss of revenue	Loss of revenue due to time spent repairing, cleaning and repainting unit.	Not tenants' responsibility.
Rent for garage	Tenant rented garage for $50.00 per month and did not pay last month.	Undisputed.
Flower pot	Flower pot on patio was hit by tenant's car. Valued at $180.00.	Flower pot belonged to another tenant and not the landlord. Tenant has dealt with that other tenant with respect to this matter. In any event, the flower pot is not worth $180.00 as claimed by the landlord. The landlord does not have evidence to support such an amount.
Lawnmower	No pull cord and no oil in the motor of the five year old mower. Tenants responsible for grass cutting. Cost $145 to repair or $210 to replace lawnmower. Claiming for replacement.	No response requested of tenants as tenants are not responsible for maintenance of lawnmower under the Act or tenancy agreement.
Time and costs incurred to file and prepare for this dispute.	Dismissed this portion of claim summarily, except for the cost of the filing fee, as such costs are not recoverable under the Act.	

The landlords requested a total of $4,986.01 as compensation for the above items. For most items, the landlords have included the cost of supplies and materials for cleaning and repairs plus labour at the rate of $28.50 per hour based upon the average hourly rate of a carpenter.

In support of the tenants' position that several of the pictures submitted as evidence by the landlords were not of the rental unit, the tenants compared a picture of the bedroom door jamb submitted by the landlord (noting the change in direction of the bedroom flooring) to the tenants' pictures showing that the wood flooring in the unit was all of the same direction. The tenants also compared photographs of two apparently different entry doors since one has a left hand swing and the other has a right hand swing. Further, the landing in front of one entry door is made of a different material than the paving stones in front of the tenants' unit. Therefore, the tenants submitted that the tenants' photographs should be relied upon to determine the condition of the rental unit at the end of the tenancy.

The landlord denied that pictures of other units were submitted as part of the landlords' evidence. The landlord's son explained that he is certain the pictures of the door jamb are of the rental unit as the rental unit is the only unit with laminate flooring. The landlord's son submitted that other units have hardwood flooring. In the landlord's written description of the photographs, the landlord provided a photograph of another entry door to demonstrate the lack of damage to that entry door even though the two entry doors were painted at the same time.

The landlords had submitted an unsigned type-written witness statement in support of the landlords' submissions about the condition of the unit after the tenancy ended. The tenant submitted that the authenticity of the written statement could not be verified and should not be considered. In response, the landlord called a witness to testify. The witness was connected to the teleconference all and parties were provided the opportunity to ask questions of the witness. The witness testified to the following:

- He attended the unit in early January 2013 at the request of the landlord' son for the purpose of observing its condition.
- The unit was not properly cleaned.
- The walls were scuffed and dented.
- The door jamb was scratched at the frame.
- Window sills were gritty and dirty.
- The cabinet door was askew.

- The tile flooring was dirty.
- The witness was a former tenant of a different unit in the building and had been in the subject unit several times prior to this tenancy and the tile floors were not stained.
- The tile flooring was difficult to keep clean and that at the end of his tenancy cleaning the tiles floors was a very large chore.
- There was not a tree or shrub at the side of the house where the fence is located.

The landlords provided a letter purportedly written by another tenant in the building. In the letter the author confirms that the tenant stored a surfboard against the side of the building. The tenant questioned the authenticity of the letter on the basis the purported author is highly intelligent and would not have written a letter with typographical errors such as the one submitted as evidence. The landlord stated that the witness was unavailable to testify during the hearing as she was out of the country.

Finally, the tenants pointed out that the tenancy ended at the end of December 2012, the landlord has had the tenants' forwarding address since January 3, 2013 and the landlords continue to hold the deposits. The tenants are of the position that the deposits should be doubled due to the landlords' failure to comply with the Act with respect to handling of the deposits.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. 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.

In this case, the landlords bear the burden of proof. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Act requires that a tenant leave a rental unit "reasonably clean" and undamaged. The Act provides that wear and tear from the aging process and reasonable use is not damage. Further, awards for damages are intended to be restorative and not a betterment or gain for the claimant. Accordingly, 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.*

The Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the requirements of the Act and Regulations is the best evidence of the condition of a rental unit unless there is a preponderance of evidence to the contrary.

I have accepted the condition of the rental unit recorded on the move-in inspection report fairly reflects the condition of the unit at the start of the tenancy as the tenants did not indicate otherwise. However, since the tenants disagreed with the landlord's son's assessment of the condition of the rental unit at the end of the tenancy I do not rely upon the move-out inspection report as being the best evidence of its condition. Therefore, I have had to rely upon the other evidence presented to me, most of which was in dispute, in my analysis that follows.

Considering the above and everything presented to me for this proceeding, I provide the following findings and reasons with respect to the landlords' claims against the tenants.

Entry door and entry door jam

Based upon the photographs I accept that the entry door and door jamb were significantly scratched and chipped and I find this to be more than normal wear and tear when I compare the tenants' door to another entry door at the property with much less damage.

I note that the landlord's son sent an email to the tenants on December 17, 2012 to point out there were many scratches on the door. He goes on to say "I don't want to paint more once you guys are gone, same for the black trim." The landlord's son requests the tenants cover the door with a blanket when they move to avoid additional scratches. In response, the tenant requested touch up paint for the walls to "paint over where our picture hooks were". I find the emails do not support the tenant's submissions that he requested touch up paint for the entry door or door jamb. Therefore, I find the tenants responsible for damaging the entry door.

I do not award the landlords the full amount they are requesting for sanding and repainting the door and door jamb as exterior paint has a limited useful life. The landlord had submitted that the exterior doors were last painted three years ago and are repainted every 4 – 5 years. Therefore, I grant the landlords a partial award of 25% based upon the useful life of the paint that was lost due to the damage caused by the tenants. As I am unable to determine the cost of the exterior paint from the receipts provided I do not include the cost of paint in this award. Therefore, I calculate the landlords' award as being 25% of the labour spent sanding and painting or $16.39 [$28.50 x (1.5 + .8 hours) x 25%].

Tile flooring

It was undisputed that the tile flooring was stained at the end of the tenancy. The issue was whether the staining was dirt or grout. As the tiles were installed before the tenancy commenced then it follows that the grout would have been present before the tenancy commenced. Considering the move-in inspection indicates the flooring was in good condition and there was no notation of grout staining at that time; and, the witness' testimony that the tile flooring was not stained previously, I find, on the balance of probabilities, that the staining was not grout. Therefore, I prefer the landlords' submissions and I accept that the tile staining was a result of ground in dirt caused during tenancy.

I award the landlords the cost of the tile cleaning supplies of $15.65 and I find the landlords' submissions that three hours were spent scrubbing the floors to be reasonable. Therefore, I award the landlords $101.15 [($28.50 x 3 hours) + $15.65].

Walls and painting

The repainting of the unit constituted a significant portion of the landlords' claim due to the hours spent preparing and painting the unit, as well as the cost of paint. I have significant reservations about this part of the landlords' claim as the photographs appear to show that the wall colour was changed from yellow to white and the landlord's son moved into the rental unit. Changing a wall colour typically involves more time and paint to apply multiple coats. Further, the landlords did not make any allowance for wear and tear and their claim against eh tenants.

Upon review of both sets of photographs and the testimony of both parties and the witness, I accept that there were picture hanging holes and scuffs on the walls. It is important to note that Residential Tenancy Policy Guideline 1 provides that landlords should expect tenants to hang pictures and that the picture hanging holes are considered normal wear and tear unless the holes are exceptionally large and there are

an exceptional number of holes. Further, interior paint has a limited useful life of only four years.

I accept that there was some scuffing present on some of the walls and that this may be more than reasonable wear and tear. However, I also accept, based upon the emails submitted and the parties' submissions, that the tenant requested touch-up paint for the purpose of repairing wall damage. The landlords did not present anything to indicate they provided the tenant with the touch up paint, provided a paint colour code, or otherwise responded to his enquiry. As such, I find I am unsatisfied the landlords acted to mitigate their loss by having the tenants do the work with the matching paint colour. When a landlord chooses to do the work himself it is unjust to then claim for his time to do so.

In light of the above, I find I am not satisfied the walls were repainted due entirely to the actions of the tenants as opposed to wear and tear and the landlord's son desire to paint the unit a different colour of his liking.

For all of these reasons, I deny the landlords' claims for wall repair, preparation and painting.

Bedroom door jambs

Upon review of the landlords' photographs and the tenants' photographs I find I am unsatisfied the door jams were significantly scratched. The tenants' photographs, although taken from a distance, do not appear to show any indication of significant scratches. Further, I have reservations about the landlords' photograph as being a door jamb in the rental unit when I consider the change in direction of the flooring seen in the photograph. Therefore, I make no award to the landlord for damage to the bedroom door jambs.

Window trim

Upon review of the landlords' photographs of window trim I find the image is consistent with peeling paint as opposed to cat scratches. Therefore, I make no award for damage to the trim caused by cats.

Window frame cleaning

The landlords' photographs depict window frames that are mouldy and covered in animal hair. The tenants denied that these are photographs of the windows in their unit. Although the tenants provided photographs of their unit, their photographs were taken from a distance and with the blinds lowered. Therefore, I find I cannot compare the photographs.

When I look at the landlords' photograph #20 it appears to be the living room corner window in the tenants' unit and it shows a window frame that is mouldy and covered in animal hair. It was undisputed that the tenants had three cats in the unit. Further, the landlords' witness also testified that the windows were dirty, gritty and covered in cat hair.

In light of the above, I find, on the balance of probabilities, that the windows were as described by the landlords. Therefore, I grant the landlords' request to recover the time spent cleaning the window frames, including removal of the window mounts. The landlord is awarded $171.00 ($28.50 x 6 hours).

General cleaning

The overall cleanliness of the unit was in dispute and I was faced with the difficult task of considering close up photographs taken by the landlord as compared to the distant photographs taken by the tenant. Upon consideration of the following, I find, on the balance of probabilities, that the rental unit required additional cleaning:

- I note that the tenants' photograph #3 shows dirt on the baseboard where it meets the wall and cabinet. This is consistent with a close up picture taken by the landlord (#12). The landlord provided several other photographs showing dirt build up in the corner of the baseboard where it meets the wall and the walls had the same yellow colour as seen in the tenants' photographs.
- The tenants had three cats in the rental unit and much of the cleaning was to remove hair.
- The testimony of the witness who confirmed the unit was dirty and covered in cat hair.
- I had found the windows and tile flooring to be dirty, as submitted by the landlords, previously in this decision.

While I accept the rental unit required additional cleaning, the tenants are not responsible for cleaning common areas used by other tenants. Further, I find that charging carpenter rates for cleaning to be unreasonable and I limit the landlords' cleaning award to $120.00 ($20 x 6 hours).

Fence and exterior shingles

I was presented disputed testimony that the tenant stored a surfboard against the exterior of the house and fence. There is evidence of scratching on the exterior shingles in the area where the tenant allegedly stored his surfboard. The tenant

asserted that the scratches were from a shrub. However, I find there is nothing in photographs to indicate a large shrub was in that space and the landlords' witness confirmed that a tree or shrub was not in that location. Therefore, I find, on the balance of probabilities, that the scratches are from the surfboard and I hold the tenants responsible for repainting of the shingles.

I find the reason the fence panel became detached from the house to be less clear. The fence panel appears to have been installed in such a way as to be problematic as evidenced by the lack of a backer board and layers of caulking. Further, I accept the undisputed testimony of the tenants that the fence had to be repaired on multiple occasions and the fence was subject to high winds coming from the nearby oceanfront.

The landlords had grouped the fence repair and the shingle repair together in claiming 3.5 hours of labour. Considering the landlord's son actually rebuilt this section of fencing, I find it likely more tie was attributable to the fence repair and I estimate a reasonable award for the shingle damage to be one hour or $28.50.

Dimmer switch

When a tenant makes an alteration to a rental unit the tenant should have the prior permission of the landlord. If the alteration made by the tenant is unprofessional or problematic the tenant is responsible for repairing or returning the property to its original condition. Having heard the tenant installed a dimmer switch himself and the landlords have an invoice from an electrician to correct the installation I award the landlord the $84.00 paid to the electrician.

I make no award for the dimmer switches purchased by the landlords after the tenancy ended as installing dimmer switches is generally an improvement over ordinary toggle type switches and paying for improvements is not the responsibility of the tenant.

Travel time and other supplies

The landlords included 4.5 hours of travel time to purchase supplies for painting, repairs and cleaning. As the landlord has only been partially successful in its claims for painting, repairs and cleaning, and I find I cannot extract the time spent for different tasks from the landlords' submissions, I make no award for travel time.

The landlords also included several receipts from Home Depot in their claim. The landlords described many of the purchases as merely "supplies" in detailing their monetary claim. Some items that appear on the receipts are more easily identifiable; however, others are less clear. As it is upon the applicant to provide sufficiently clear evidence in support of their claim I have further awarded the landlords for purchases of

materials that I can clearly identify as items the landlords are entitled to recover from the tenants.

In light o the above, I award the landlords the cost of Pine-Sol cleaner for general cleaning of the unit which was $4.80 including taxes.

Loss of rent

I accept that this unit remained vacant during the month of January 2013 considering the dates of the receipts for paint and other supplies purchased after the tenancy ended. While I accept that the subject rental unit required additional cleaning I find it likely that much of the delay in moving in to this unit and out of the other unit was attributable to the unit being re-painted as evidenced by the number of labour hours claimed for prepping and painting the walls. As I have denied the landlords' claims for repainting it follows that I deny the claim for loss of rent.

Rent for garage

This portion of the landlords' claim was undisputed and I grant the landlords' claim for $50.00 in rent for the garage.

Flower pot

I find I was not provided sufficient evidence as to the value of this item. Further, the disputed testimony did not satisfy me that the flower pot was the property of the landlords.

Filing fee

As the landlords' claim had some merit I award the landlords one-half of the filing fee or $25.00.

Security deposit and pet deposit

The landlords are holding $1,200.00 in deposits belonging to the tenants. The tenants have submitted the deposits should be doubled. I have considered whether the deposits should be doubled pursuant to section 38 of the Act.

The Act permits a landlord to obtain a tenant's written consent to make deductions from a deposit. Although the inspection report contains a signature, purportedly of the male tenant, indicating the tenant consented to deductions totalling $1,200.00, considering the male tenant was not present at the move-out inspection I find the tenants did not authorize the landlords to withhold the deposits at the end of the tenancy. The Act prohibits a landlord from requiring that the landlord shall automatically keep all or part of

the deposit; therefore, even if the male tenant authorized the deductions at the time of the move-in inspection such an agreement not enforceable under the Act.

Without the tenant's written consent to retain a deposit, section 38(1) requires the landlord to either return the deposit to the tenant or make an application for dispute resolution claiming against the deposit within 15 days from the later of: the day the tenancy ended; or, the date the landlord received the tenant's forwarding address in writing. Should a landlord fail to comply with the requirements of section 38(1) the landlord loses the right to claim against the deposit and must pay the tenant double the deposit under section 38(6).

It is undisputed that the landlord was provided a forwarding address on January 3, 2013. While the landlords initially filed against the deposits on January 11, 2013 the landlords subsequently withdrew that application. Withdrawing an application and obtaining leave to reapply is essentially a nullity. In other words, it is as though the application did not happen. As such, filing an application, even within the time limits to do so, and then withdrawing the application does not extend the time limits under the Act. To be clear on this point, the Arbitrator who recorded the withdrawal specifically stated in the decision that time limits were not extended.

In light of the above, I find the landlords filed against the deposits on April 16, 2013 which is more than 15 days after receiving the tenants' forwarding address and the tenants are now entitled to return of double the deposits or $2,400.00 [2 x ($600.00 + $600.00)].

Monetary Order

Pursuant to section 72 of the Act I have offset the amount owed to the tenants against the amounts awarded to the landlords. I provide the tenants with a Monetary Order in the net amount calculated as follows:

Item	Award
Entry door and entry door jam	$ 16.39
Tile flooring in kitchen and bathroom	101.50
Window frame and window mount cleaning	171.00
General cleaning (labour)	120.0
Fence and exterior siding	28.50
Dimmer switch	84.00
Supplies	4.80
Rent for garage	50.00
Filing fee	25.00
Award to landlords	$ 601.19
Security deposit and pet deposit (doubled)	$2,400.00
Monetary Order	$1,798.81

As provide under Residential Tenancy Policy Guideline 17: *Security Deposit and Set-Off* I provide the tenants with a Monetary Order in the amount of $1,798.81 to serve upon the landlords and enforce as necessary.

Conclusion

The landlords have been awarded $601.19 and the tenants have been awarded double the security deposit and pet deposit in the amount of $2,400.00. The tenants have been provided a Monetary Order in the net amount of $1,798.81 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: August 09, 2013

Residential Tenancy Branch