



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlords applied for a Monetary Order for compensation for damage to the rental unit and damage or loss under the Act, Regulations or tenancy agreement; as well as, authority to retain the security deposit and pet deposit. The tenants applied for return of double 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.

Preliminary and Procedural Matters

At the outset of the original hearing the tenant's son appeared in the capacity of a witness. The tenant's son was excluded from the hearing and the parties were informed that the tenant's son may be called at a later time as a witness.

Due to the multiple issues under dispute the original hearing date had to be adjourned and reconvened for a second hearing date. Notices of Adjourned Hearing were sent to both parties and both parties appeared at both reconvened hearing.

As the reconvened hearing was nearing an end and after I orally gave my decision with respect to doubling the tenants' deposits the landlords disconnected from the teleconference call. I waited approximately 7 minutes for the landlords to reconnect during which time they did not. I proceeded to explain the remainder of the dispute resolution process to the tenant and ended the call.

Issue(s) to be Decided

1. Have the landlords established an entitlement to receive compensation from the tenants in the amounts claimed?
2. Are the tenants entitled to return of double the security deposit and pet deposit?

Background and Evidence

The tenancy commenced August 1, 2012 and ended February 28, 2013. The tenants paid a security deposit of \$1,200.00 and a pet deposit of \$200.00. The tenant and an agent for the landlord (referred to by initials DR) completed a move-in inspection report.

On February 28, 2013 the tenant, landlord, and landlords' agent DR participated in a move-out inspection together. I heard that DR was present at the move-out inspection so that the same amount of detail would be reflected on the move-out inspection report as that which appears on the move-in inspection report. I also heard that the move-out inspection took approximately 3 hours to complete. A move-out inspect report was prepared and the tenant provided his forwarding address on the move-out inspection report. The tenant signed the move-out inspection report acknowledging responsibility for the following damage: fridge crisper, door downstairs, oil removal on floor, and painting of wall patches. The parties did not agree upon a specific amount of compensation for the above noted damage and the tenant did not authorize a specific amount to be deducted from his deposits.

The parties met at the property again on March 6, 2013 to review the estimates obtained by the landlord. The parties were in disagreement over the amount of compensation sought by the landlord. The tenant offered to compensate the landlords \$500.00; however, the landlord refused the offer. Ultimately, the parties could not agree on an amount to deduct from the deposits and the tenant did not authorize a deduction of any amount. On this date the tenant provided his forwarding address to the landlord again on a piece of paper given to the landlord.

The tenant submitted that the move-out inspection report was not provided to him until the landlords served him with the evidence in support of the landlords' Application. The landlords submitted that the tenant failed to take a copy of the move-out inspection report when he attended the property on March 6, 2013. The tenant denied that the move-out inspection report was presented to him on March 6, 2013. The landlord testified that it was on the kitchen counter where the parties were reviewing the estimates.

The landlords filed to retain the deposits and recover \$3,996.63 from the tenants on March 22, 2013.

The tenants filed to recover double the security deposit and pet deposit on the basis the landlords failed to provide a copy of the inspection report and return the deposits to the tenants within the time limits required under the Act.

The landlords were of the position that they had filed their Application for Dispute Resolution to retain the deposits within the time limit provided under the Act. Further, the landlord had tried to negotiate with the tenant and needed to obtain estimates. The tenant also indicated he wanted to negotiate with the landlords but that the landlords' requests for compensation were unreasonable.

Although I heard a considerable amount of testimony from the parties over two hearing dates with respect to the condition of the rental unit, I have only summarized the respective positions of the parties in the name of brevity.

<u>Item</u>	<u>Amount claimed</u>	<u>Landlords' reasons</u>	<u>Tenant's response</u>
Painting	760.00	Tenant attempted to patch holes. Tenant's attempt to paint over patches was inadequate as patches still visible. Claim includes repainting wall near staircase, kitchen nook, family room, skylight in guest bathroom, and downstairs door. Landlord had skylight inspected after tenancy and determined the condensation and mould was the result of the tenants not using bathroom fan and having more occupants in house than landlords had anticipated. House was last painted just prior to start of tenancy.	Tenant took responsibility for repainting of wall near staircase, family room and downstairs door. Tenant denied responsibility for repainting of kitchen nook and skylight. Tenant pointed to move-in inspection report noting condensation and water stains on skylight. Tenant asserted that bathroom fan was used in guest bathroom.

Carpet cleaning	302.40	The carpets were left stained with pet urine, food and drinks. The stains were removed after the landlords had the carpets professionally cleaned. Landlord asked tenant if his cleaners would come back to clean again but tenant refused.	The tenant had the carpets cleaned at the end of the tenancy and provided a statement from his carpet cleaner. No stains were noted when the move-out inspection was conducted Feb 28 but the landlord pointed to several small spots when the tenant attended the property March 6. Landlord wanted to bring in his own carpet cleaners, not the tenant's cleaners.
Mould removal	280.00	Mould formed in the skylight area of the guest bathroom. The landlords attribute this to the tenants and occupants not using the bathroom fan and having 5 adults live in the rental unit (3 of whom used that bathroom). Tenants did not complain of mould during tenancy. No mould issues since tenancy ended. House currently occupied by one person.	The tenants and occupants used the fan in the bathroom. The leaking and condensation was noted at the time of the move-in inspection. The tenant claimed he brought up the issue of the moisture in the bathroom 3 or 4 times and the landlords did not take any action to address it during the tenancy.
Sprinkler repair	101.02	Broken sprinkler head near driveway. Visible tire marks in grass.	The tenant was unaware of any of the occupants breaking a sprinkler head. The tenant acknowledged it may be possible the movers drove over the sprinkler head. However, the sprinklers were maintained by a yard

			maintenance company during the tenancy. During the tenancy the tenant notified the landlord that there was apparent flooding in certain areas after the sprinklers had been running.
Fridge crisper	130.99	The pull out tray was broken and had to be replaced. Fridge was 5 years old. Impossible for landlord's agent to rip out crisper given the small space between fridge and island.	The tenant acknowledged the broken crisper on the move-out inspection report but was of the position it was attributable to wear and tear. Landlord's agent ripped crisper out with force.
Basement door	28.97	Damaged	Undisputed.
Toilet seat	31.34	Gouged and pitted toilet seat required replacement. Last replaced in 2009.	Unaware of any damage to toilet seat. Tenant's wife kept house clean.
Kitchen floor	371.99	Damage caused by tenants' chairs. Laminate flooring installed in 2010. Only claiming 1/3 of cost to replace flooring to reflect area damage in "L" shaped part of kitchen caused by the chairs.	Damage caused by actions of contractors who were there to remediate water damage. Contractors were in the house with equipment. Contractors took floor protection away but brought equipment back in.
Dining room floor	849.07	Hardwood floor installed in 1995. Gouges too deep to refinish floor. Claiming ½ of the cost of new flooring.	Flooring was already scratched. See move-in inspection report.
Garden hose and cart	110.85	Bought in 2010 and left for tenants to use. Missing at the end of the tenancy. Seeking replacement cost for new hose and cart.	Tenant never saw a hose and cart at the property. No idea where it went. Planters were also taken away before start of

		Gardeners confirmed with landlord that hose and cart was there during the tenancy. Notes left in the house at the beginning of tenancy refer to hose and cart for tenants' use.	tenancy. There was another small hose that was left for the tenants to use.
Stained glass screen	150.00	Privacy screen left in master bedroom ensuite. Missing at end of tenancy. Wind would not have blown over. Purchased in 2010.	Glass screen was unsecured and broke when a gust of wind blew it over.
Clean oil stains	240.00	Oil stains in garage and on basement floor. Tenants not authorized to store motorbikes in storage area. Twelve hours spent cleaning oil stains.	Undisputed there were oil stains in garage and basement. Was told basement storage area appropriate to use to store motorbikes as this space had been used to store lawnmower.
Clean walls of dirt, grease, body stains	400.00	Additional cleaning required for: master bedroom toilet, guest bedroom, study, basement store room walls and trim in multiple rooms. Although house appeared clean the tenants' cleaners did not clean the house "thoroughly and completely". Landlords claiming twenty hours for cleaning.	Paid cleanings to clean house thoroughly. Move-out inspection report reflects condition of unit. Unaware of greasy stains landlords have pointed to.
Kitchen cupboards	240.00	Exterior of kitchen cupboards left very greasy. Landlord's claiming eight hours to clean cupboards.	As above.
Total	\$3,996.63		

In seeking compensation for labour performed by the landlord the landlords used an hourly rate of \$40.00. The landlords explained during the hearing that \$40.00 represents \$20.00 per hour for each landlord. Therefore, I have recorded the man hour equivalent in recording the landlords' claims for their labour. For example: the landlords claimed cleaning oil stains on the floor took six hours at \$40.00 per hour and I reflected the landlords are seeking compensation for the 12 hours.

Analysis

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

Tenants' application

Pursuant to section 38(1) of the Act, where a tenant does not authorize the landlord to make deduct a specific amount from the security deposit or pet deposit, in writing, the landlord must either return the security deposit and pet deposit to the tenant, or file an Application for Dispute Resolution seeking to retain all or part of the deposits within 15 days from the later of: the day the tenancy ends or the date the landlord received the tenant's forwarding address in writing. Were a landlord violates the above requirement the landlord must pay the tenant double the security deposit and pet deposit pursuant to section 38(6) of the Act.

In this case, the tenant did not authorize the landlord to make any specific deduction from the security deposit or pet deposit. The tenant provided the landlord with a forwarding address, in writing, on February 28, 2013 as reflected on the move-out inspection report signed on February 28, 2013.

The landlords filed an Application for Dispute Resolution claiming against the deposits on March 22, 2013 which is more than 15 days after the tenancy ended and the tenant provided a forwarding address in writing. Therefore, I find the tenants entitled to return of double the security deposit and pet deposit.

Given the tenants were successful in their Application; I further award recovery of the filing fee paid by the tenants.

In light of the above, the tenants are awarded a total of \$2,850.00 [(\$1200.00 + \$200.00) x 2 + \$50.00].

Landlords' Application

As the applicants, the landlords bear the burden to prove their claim for damage and cleaning. The burden of proof is based on the balance of probabilities. To establish an entitlement to compensation for damage and cleaning, the landlords must prove the following:

1. That the tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the landlord took reasonable action to minimize the damage or loss.

The Act requires that a tenant leave a rental unit undamaged and “reasonably clean”. The Act provides that reasonable wear and tear is not considered damage. Where a tenant damages the rental unit the tenant is responsible for repairing the damage. If the tenant does not repair the damage by the end of the tenancy the landlord may seek compensation from the tenant to make the repairs.

It is important to note that awards for damages are intended to be restorative. As such, 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 item replaced I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements* where necessary.

The Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with 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. The Act places the burden to prepare a condition inspection report in accordance with the Act and the Regulations upon the landlord.

In this case, I was presented with a move-in inspection report and a move-out inspection report prepared by the landlord or landlord's agent. The landlord's agent DR was present for the move-in and move-out inspection thus I am satisfied the move-out inspection report was completed with the same level of detail as the move-in inspection report. Further, I heard the move-out inspect took approximately 3 hours to complete and that amount of time is sufficient to inspect the property. Therefore, I find the condition inspection reports presented to me as evidence fairly represent the condition of the rental unit and I have relied upon those reports in determining the condition of the rental unit at the beginning and end of the tenancy.

I have given the landlord's photographs less evidentiary weight than the move-out inspection report as an indication of the condition of the rental unit at the end of the tenancy considering the photographs were taken some time after the landlord regained possession of the unit and the photographs were taken without the tenant present. However, where the landlord has otherwise demonstrated the tenants damaged the property by way of the move-out inspection report, I have utilized the photographs in an effort to determine whether the landlords' claims for compensation for those items are reasonable.

Taking into account the above, and upon consideration of the evidence before me, I make the following awards to the landlord for damage and cleaning.

<u>Item</u>	<u>Findings and reasons</u>	<u>Award</u>
Painting	The tenant acknowledged further painting was required for the walls at the staircase and the family room, and the downstairs door. The tenant denied responsibility for damage to the kitchen nook and bathroom skylight. The move-out inspection report indicates the wall in the dining area of the kitchen had a "spot". The landlords provided a photograph of the tenant's patch in the kitchen area. I accept that the patch in the kitchen dining area was visible and that additional painting was required. The move-in and move-out inspection report indicate that the bathroom skylight had leaked and was dipping down the wall. Having heard the rental unit was painted just before the tenancy started and at the beginning of the tenancy there as already water staining on the skylight walls I reject the landlords' position that the tenants are responsible for repainting the skylight walls. Considering interior paint lasts 4 years and the length of the tenancy, and my findings that the tenants are not responsible for the skylight painting, I find it reasonable to award to the landlords \$500.00 of the \$760.00 they paid for painting.	\$ 500.00
Carpet cleaning	The move-out inspection report reflects one room with stains on the carpet which is in the "back family	50.00

	room". Both parties provided opposing evidence as to the cleanliness of the carpet after the tenants had the carpets cleaned. Considering the move-out inspection report reflects only one area with stain, I find the landlords' disputed evidence does not satisfy me that the tenants are obligated to pay for all of the carpets to be re-cleaned. Therefore, I award the landlords \$50.00 to re-clean the back family room.	
Mould removal	Considering the landlords testified the house was painted just prior to the start of the tenancy and at the time of the move-in inspection report it was noted that there was condensation on the skylight and water staining on the skylight walls I am not satisfied the tenants are responsible for remediating mould in the skylight area. The landlords did not demonstrate that they investigated or remediated the moisture issue during the tenancy despite their agent noting a problem at the start of the tenancy. The tenant claimed that the bathroom fan was turned on which leads me to question whether the fan was performing adequately. Further, the fact that one adult now lives in this multiple bathroom house and mould has not resurfaced does not satisfy me that the tenants are responsible for causing the mould. Therefore, I hold the landlords responsible for performing this repair and deny their request for compensation from the tenants.	Nil
Sprinkler repair	The move-out inspection report does not reflect any damage to the sprinkler system. Further, the repair invoice shows that the landlord as billed to "check the system, replace batteries, adjust the height of the rotors" in addition to replacing a broken "marlex". I find the majority of this invoice relates to ordinary maintenance and not damage. I note that the broken marlex" cost \$2.95 to replace. Taking into account depreciation, if the tenant were responsible for breaking the "marlex" I find any award the landlords would be miniscule. Therefore, I make no	Nil

	award to the landlords for this item.	
Fridge crisper	The move-out inspection report reflects that the tenant took responsibility for damage to the fridge crisper. Taking into account the fridge was 5 years old and appliances have a typical life expectancy of 15 years, I award the landlords the cost of the repair x 10/15 years.	87.27
Basement door	This claim was undisputed and I grant the amount claimed.	28.97
Toilet seat	The move-out inspection report makes no indication of a damaged toilet seat. Further, I find a 5 year old toilet seat to be at or near the end of its useful life and I make no award to the landlords for a new toilet seat.	Nil
Kitchen floor	The move-out inspection report does not reflect damage to the kitchen floor. The parties provided opposing testimony as to how the flooring was damaged. I find the tenant's submissions that the floors were damaged by the contractors during a water leak repair to be plausible; therefore, I find the landlords' disputed submissions is not sufficient to meet their burden to prove the tenants are responsible for the damage. Therefore, I make no award for a portion of the cost of new kitchen flooring.	Nil
Dining room floor	The move-in and move-out inspection report indicate there were scratches on the dining room floor. Therefore, I find the landlords have not satisfied me that the tenants are responsible for compensating the landlord for 18 year old flooring with pre-existing scratches.	Nil
Garden hose and cart	The parties were in dispute as to whether the landlords provided a hose and cart for the tenants to use during their tenancy. I find there is no indication on the tenancy agreement or the move-inspection report that demonstrates these items were provided to the tenants. Nor was I provided any evidence from the gardeners that the hose and cart were present during the tenancy. Therefore, I deny this	Nil

	portion of the landlords' claim.	
Stained glass screen	The tenant acknowledged that the screen broke during the tenancy and attributed this to the screen being unsecured and blown over by a gust of wind. I find the tenant had a reasonable duty of care to protect the screen since he was aware it was unsecured when the window was opened. I find the landlords did not provide evidence to verify that a 12 x 20" glass screen had a value of \$150.00 at the end of the tenancy. Therefore, I grant the landlords a nominal award of \$50.00.	50.00
Clean oil stains	The tenant acknowledged responsibility for oil stains on the floor. However, I note the move-inspection report indicates there were some oil stains already. Taking this into account I find the landlords' claim for 12 hours of labour to be excessive. I find a more realistic award to reflect four hours of labour. Therefore, I award the landlords \$80.00.	80.00
Clean walls of dirt, grease, body stains	A tenant's obligation is to leave a rental unit "reasonably" clean. This standard is not the same as perfectly clean or impeccably clean. I find the landlord's comments that the house cleaning performed by the tenant's cleaners was not "thorough and complete" indicates the landlord expected the house to be to a higher standard of cleanliness than is required by law. Further, the move-out inspection report does not indicate further cleaning was required. Therefore, I find the landlords' claims for an additional 20 hours of cleaning to be unsubstantiated and I deny this portion of this claim.	Nil
Kitchen cupboards	As above.	Nil
Total award		\$ 796.24

I make a small award to the landlords for recovery of the filing fee to bring their total award up to \$800.00. I do not award more of the filing fee to the landlords as I heard he tenant had offered to settle this dispute for an amount much closer to the amount I awarded the landlords and I find it likely this dispute could have been resolved between

the parties had the landlords understood the tenants' obligations under the Act and been more reasonable in their requests for compensation.

Monetary Order

Pursuant to section 72 of the Act I offset the amounts awarded to the landlords against the amount awarded to the tenants and I provide the tenants with a Monetary Order in the net amount of \$2,050.00 [\$2,850.00 – \$800.00].

The tenants are provided a Monetary Order in the sum of \$2,050.00 to serve upon the landlords and enforce as necessary.

Conclusion

The tenants were awarded \$2,850.00 and the landlords were awarded \$800.00. A Monetary order in the net amount of \$2,050.00 has been provided to the tenants 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 27, 2013

Residential Tenancy Branch

