



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing him to retain the security deposit in full satisfaction of the claim and a cross-application by the tenants for an order for the return of the security deposit. The tenants did not participate in the conference call hearing but appointed J.W. to represent them.

J.W. stated that the tenants did not receive a breakdown of the landlord's claim and therefore did not know the details of what he was claiming, but stated that he did not have the landlord's evidence in front of him at the hearing. The landlord testified that he served the tenants with the same documents he gave to the Residential Tenancy Branch. Because J.W. did not have the landlord's documents in front of him to determine whether the breakdown had simply been overlooked in the multiple pages of evidence, I find it more likely than not that the tenants received the breakdown.

The landlord claimed that the tenants did not serve him with the second page of their application for dispute resolution and therefore he had no notice of the tenants' claim. J.W. stated that he saw the tenants serve the complete hearing package on the landlord. At the hearing, I advised the landlord that the tenants were claiming the return of their deposit and as the landlord had made an application to retain the deposit, the usual course of practice is to order the landlord to return all or part of the deposit if unsuccessful. Because the landlord would have been ordered to return the deposit in any event, I find that even if the landlord was not served with notice of the claim, it does not prejudice him as he would have been ordered to return the deposit if unsuccessful in any event.

Issue to be Decided

Is the landlord entitled to retain the security deposit?

Background and Evidence

The parties agreed that the tenancy began on November 30, 2009 at which time the tenants paid an \$860.00 security deposit and ended on April 30, 2013. The parties completed a condition inspection of the unit at the beginning and at the end of the tenancy, although the inspection of the unit at the end of the tenancy was fraught with conflict which resulted in the police attending. The tenants refused to sign the move out condition inspection report.

The landlord seeks to recover \$147.00 as the cost of cleaning the rental unit. The landlord provided photographs taken before the tenancy began as well as photographs taken after the tenancy ended. He claimed that it took 4 professionals 3 hours each to adequately clean the rental unit. The photographs show dust, cobwebs, a lightly soiled stovetop and oven, dust and debris in corners and mildew on window sills and tracks as well as other minor problems. J.W. acknowledged that he has never been inside the rental unit, but stated that the tenants' position is that the unit was left reasonably clean. With respect to the mildew around the windows, J.W. argued that the landlord should have shown the tenants how to clean this area.

The landlord seeks to recover \$308.00 as the cost of repairing holes in the walls of the rental unit, 2 of which were 1" in diameter, and priming and repainting 5 walls. The landlord provided a document entitled "Estimate" which was dated May 5, 2013. The landlord testified that the work was performed on May 1 and insisted that he had provided the actual invoice rather than just an estimate. The landlord testified that the more significant damage was done when the tenants installed brackets for window coverings above the windows. J.W. testified that he can't recall having seen damage in the landlord's photographs and stated the tenants' position is that there was no damage other than reasonable wear and tear.

The landlord seeks to recover \$89.25 as the cost of repairing the dishwasher at the end of the tenancy and said that when he conducted the move-out condition inspection, he started the dishwasher and discovered that it leaked. The landlord testified that shortly before the tenants moved in, there were issues with the dishwasher, which was connected to the garbage disposal, and the landlord hired an electrician to disconnect and bypass the garbage disposal, after which the dishwasher functioned normally again. The landlord pointed to the move-in condition inspection report which stated: "Garborator (Inactive)" and testified that he told the tenants not to use the garbage disposal as it was not functional. The landlord's invoice states that the "leak was caused by clogged garburator". The landlord theorized that the tenants reconnected the garbage disposal. J.W. testified that the tenants told him that they had not used the

dishwasher during the tenancy. The landlord testified that on a number of occasions during the tenancy, he asked the tenants whether they were encountering problems with the appliances and they always told him “no.” J.W. testified that the landlord was unresponsive during the tenancy when the tenants reported problems. The landlord denied being unresponsive.

The landlord seeks to recover \$133.88 as the cost of repairing the kitchen faucet. The landlord provided a photograph showing that the faucet had a steady stream of water spraying upwards when the water was turned on and testified that the plumber told him that the faucet was probably caused by use of excessive force. J.W. argued that the problem with the faucet was more likely the result of reasonable wear and tear.

The landlord seeks to recover \$115.00 in lost income for the month of May, which represents the 3 days before the incoming tenants could move into the unit. J.W. stated that the tenants’ position was that they should not be held responsible for any lost income.

Both parties seek to recover the \$50.00 filing fees paid to bring their applications.

Analysis

Section 32(4) of the Act states that tenants are not required to make repairs for reasonable wear and tear. Section 37(2)(a) states that when tenants vacate a rental unit, they must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. In order for the landlord to succeed in his claim, he must prove that the damage goes beyond what may be characterized as reasonable wear and tear.

I accept that the photographs provided by the landlord are an accurate depiction of the condition of the rental unit at the end of the tenancy. In my view, the photographs show a rental unit which, except for the stove, oven, hood fan filter and window sills, is reasonably clean. The tenants were not required to leave the unit spotless and I find that they are responsible for only the time involved with lightly dusting the unit and cleaning the stove, oven, hood fan filter and window sills and tracks. I do not accept J.W.’s argument that the landlord should have shown the tenants how to clean the window tracks. The tenants were responsible for this cleaning and if they did not know how to perform it, they had an obligation to find the answer either through their own research or by asking the landlord. I find that 3 additional hours of cleaning was required in order to bring the unit to a reasonably clean state.

The landlord claimed that 3 hours of work by each of 4 professionals resulted in a charge of \$147.00 for total of 12 hours of labour. This shows an hourly charge of \$12.25 per hour. I therefore award the landlord \$36.75 for 3 hours of cleaning.

The landlord's photographs show that the tenants caused damage to the area above the windows and that there were a number of smaller, less significant areas of damage to other walls. Some of the damage may be characterized as reasonable wear and tear, but I find that the damage caused by the installation of the brackets to hold the window coverings and the large screws put into another wall go beyond reasonable wear and tear. I therefore find that the landlord is entitled to recover 75% of the \$308.00 claimed for the cost of repairing the walls and repainting and I award him \$231.00.

I am not satisfied on the evidence that the landlord adequately explained to the tenants that the garbage disposal did not work and should not be used. The "Inactive" notation on the condition inspection report does not in my view clearly express that the appliance is broken or that it should not be used. I find it very unlikely that the tenants reconnected the garbage disposal and I find it more likely than not that the disposal was not properly disconnected from the dishwasher and that it stopped working because the tenants used it without knowing it was broken. Although I would have expected that the tenants would have reported this problem to the landlord, I find that because the disposal was non-functional from the outset of the tenancy, the tenants cannot be held responsible for the cost of repairing the dishwasher as the invoice shows that the repair was necessitated by the non-functioning garbage disposal. The claim is therefore dismissed.

I am not satisfied that the damage to the faucet was caused by anything other than reasonable wear and tear and for that reason I dismiss the claim.

The landlord testified that the painting and wall repairs were completed on the day after the tenancy ended. I accept this testimony and I find that 2 additional days of income were lost because the landlord insisted on cleaning the unit to a higher standard than was required by the Act and also to repair appliances for which he was responsible. I find that the landlord should recover just one day of lost income. There were 31 days in the month of May and at a monthly rate of \$1,150.00, the daily rental rate is \$37.10. I award the landlord \$37.10.

As the landlord has been largely successful in his claim, I find that he should recover the filing fee paid to bring his application and I award him \$50.00.

I dismiss the tenants' claim for recovery of their filing fee as their claim was unnecessary.

Conclusion

The landlord has been successful in the following claims:

Cleaning	\$ 36.75
Wall repairs and repainting	\$231.00
Loss of income	\$ 37.10
Filing fee	\$ 50.00
Total:	\$354.85

I order the landlord to retain \$354.85 from the security deposit and to return the \$505.15 balance to the tenants forthwith. I grant the tenants a monetary order under section 67 for \$505.15. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 12, 2013

Residential Tenancy Branch

