



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Landmark Realty Mission Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord – MND, MNR, MNSD, FF

For the tenant – MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), regulations or tenancy agreement; for a Monetary Order for the return of the security deposit; and to recover the filing fee from the landlord for the cost of this application.

The hearing was originally convened on August 12, 2013. The hearing was adjourned at that time as the tenant had not received some of the landlord's evidence sent by registered mail and the Arbitrator had not received some audio evidence. The tenant and landlord's agents attended the reconvened conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order to recover unpaid utilities?
- Is the landlord entitled to keep the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order to recover the security deposit?

Background and Evidence

The parties agree that this tenancy started on September 01, 2010 for a fixed term of six months. The tenancy reverted to a month to month tenancy after that time. Rent for this unit was \$900.00 per month plus 40 percent of utilities. Rent was due on the 1st day of each month. The tenant paid a security deposit of \$450.00 on August 10, 2010. Both parties attended a move in and move out inspection of the unit and the tenant provided a forwarding address in writing on March 31, 2013 with her notice to end tenancy.

The landlord's application

Unpaid rent or utilities

The landlord's agent JA testifies that the tenant paid a set amount each month for utilities. Reconciliations were done between the amounts paid by the tenant and the utility bills. At the end of the tenancy reconciliation was done and this shows that the tenant owes an amount of \$323.07. The landlord has provided copies of the utility bills to the tenant in the past and the remainder of utility bills have been provided in documentary evidence.

The tenant testifies that she did not receive all the utility bills. The tenant refers to the landlord's reconciliation for July, which shows an amount outstanding of \$46.12. The

tenant testifies that she went to the landlords in September and kept asking for a copy of the bills but these were not provided. The tenant testifies that she had increased her monthly payments by \$10.00 so that there would not be a shortfall when the next reconciliation was done. The tenant testifies that from September 2012 to March 2013 the tenant paid \$85.00 per month. The tenant testifies that she did not pay the monthly utilities for April, 2013. The tenant testifies that the bills were not worked out fairly as the tenant above had six people living in her unit for over a year and the tenant only had two in her unit. The person living above the tenant is the landlord's agent CT.

The landlord's agent CT testifies that she is a family of four and not six. There were visitors to her unit but they did not live there. CT testifies that they have the same size unit and use the same appliances. CT pays 60 percent of the utilities and the tenant pays 40 percent. The tenant has never asked for a review of the percentage share of the utilities.

Damage to the unit, site or property

The landlord's agent JA testifies that the tenant caused some damage to the bathroom cabinet doors. This appears to be water damage. The doors have not been replaced and the landlord seeks to recover \$100.00 for the depreciation to the cabinet doors. The landlord has provided a costing to replace the doors of \$98.58 plus tax and labour costs to replace the doors. The landlord has provided photographs showing the damage to the doors and the evidence of the cost for new doors.

The landlord's agent JA testifies that the unit was in a pretty good condition however there were some minor cleaning issues to the baseboards, window sills and under the washer and dryer. The landlord's agent testifies that it is documented for the tenant that if a cleaner has to go into a unit the tenant will be charged a minimum amount for the call out of \$40.00. The landlord has provided photographic evidence showing some areas of the unit that require cleaning.

The landlord's agent JA testifies that the tenant had done some wall repairs in the unit. However the tenant had used some mismatched paint to touch up the repairs. This resulted in large areas of the walls requiring repainting. The landlord's agent testifies that her husband did this work for the landlord and the landlord therefore only seeks to recover \$50.00. The landlord's agent testifies that the tenant did not request any paint nor did the tenant advise the landlord that she was going to repaint. The landlord's agent testifies that there was some paint cans in the unit but this was not a colour match for the walls in the unit. If the tenant had advised the landlord that she was going to paint then the landlord would have provided the right paint for the walls. The landlord testifies that the unit was last repainted around April; 2010. The landlord has provided photographic evidence of the mismatched paint on the walls.

The landlord's agent JA testifies that there was some damage to the stair nose. This area had a deep gouge across the stair nose in the hallway. The landlord's agent testifies that her husband did the repair and filled, sanded and restrained the gouge. The landlord seeks to recover \$50.00 for this work. The landlord has provided photographic evidence of the stair nose.

The landlord's agent testifies that the tenant had caused some damage to a door casing. There was a large chunk out of the casing which had been glued back in. The tenant had also caused some damage to a baseboard in the bathroom. The area of baseboards under the end of the tub were swollen and discoloured due to water damage. The landlord's agent testifies that these areas have been repainted and not replaced and the landlord seeks \$20.00 for this work. The landlord has provided photographic evidence of the door casing and baseboards.

The landlord has provided a copy of the move in and move out inspection reports in documentary evidence. The move out report documents the areas as claimed by the landlord. The total amount of the landlords claim for damages is \$230.00.

The landlord seeks an Order to keep the security deposit of \$450.00 in partial satisfaction of the landlord's monetary claim. The landlord also seeks to recover the \$50.00 filing fee

The tenant disputes the landlord's claim. The tenant testifies that she took pictures of the bathroom cabinet doors and the landlord's pictures have been modified in August, 2013. The tenant disputes that any damage to the cabinet doors was caused by the tenant.

The landlord's agent testifies that the photographs have not been modified. The landlord's agent disputes that she would even know how to do that and testifies that the change in date is when the photographs were transferred from one storage disc to another.

The tenant disputes the landlord's claim that the unit had areas that were unclean. The tenant testifies that the unit was left spotless and when the landlord mentioned some dirt on the washer it was one small piece of fluff as shown in the tenant's photographs. The tenant testifies that she had two friends help her clean the unit. The tenant testifies that when she moved into the unit the unit was dirty and the appliances were not cleaned. The tenant testifies that this is documented on the move in inspection along with other problems in the unit.

The tenant disputes the landlord's claim for painting the walls. The tenant testifies that the landlord's agent JA's husband showed the tenant which paint to use and said the tenant was welcome to paint if the tenant wanted at the start of the tenancy. The tenant testifies that it is not her fault the paint did not match after three years as the walls were faded. The tenant testifies that she did not ask the landlord about painting and had only painted in three areas.

The tenant disputes the landlords claim for repair to the stair nose. The tenant testifies that this gouge was there at the start of the tenancy and is marked on the move in inspection report.

The tenant disputes the landlords claim for the door casing and baseboard painting. The tenant testifies that there was already a mark on the door casing as mentioned ion the move in report. The tenant testifies that the hot water tank exploded during the tenancy and water went everywhere. The tenant testifies that she called the landlord and they came out to see the water damage and replaced the hot water tank. The tenant testifies that the water damaged the kitchen floor and the bathroom floor was not damaged as it is linoleum however the baseboards were damaged in this area.

The landlord disputes the tenant's claims. The landlord's agent testifies that there was a deep chip out of the door casing but that one was on the opposite side to the larger chuck that was broken off. The landlord's agent refers to their photographic evidence showing the door casing and the chip and separate chuck.

The landlord disputes the tenants claim concerning the water damage to the baseboard. The landlord testifies that the water tank did need to be replaced but the location of the water tank would have meant water traveling down the hallway and there is no damage to the laminate flooring in that area or the kitchen flooring. The landlord's agent therefore states that the area of baseboard in the bathroom could not be the only area damaged if it was caused by the water from the hot water tank.

The landlord's agent CT testifies that the hot water tank is half way down the hallway and would have damaged other baseboards on the way to the bathroom. As this is not damaged it is clear that the damage was caused by water from the bathtub as the damage is directly located under the bathtub.

The tenant's application

Security deposit

The tenant testifies that the landlord did not return the security deposit within 15 days of receiving the tenants forwarding address and did not file an application to keep the security deposit within 15 days. The tenant therefore seeks to recover double the security deposit to an amount of \$900.00.

The landlord disputes the tenants claim and testifies that they received the tenants forwarding address in writing on March 31, 2013 and the tenancy ended on April 30, 2013. The landlords filed on May 15, 2013 so they did file to keep the security deposit on the 15th day.

Money owed or compensation for damage or loss

The tenant testifies that she had to live in toxic living conditions as the landlord's agent CT would yell, scream and threaten the tenant in front of the tenant's eight year old daughter. The landlord's agent JA was also rude to the tenant when doing her check outs in the last month the tenant resided in the unit. The tenant testifies that it became horrible to live in the unit and the tenant seeks to recover April's rent of \$900.00.

The tenant testifies that she was assaulted by the landlord's agent CT at the move out inspection when CT shoulder checked the tenant in the hallway. The tenant testifies that she had to seek medical attention to get her shoulder put back in. The tenant seeks to recover \$2,000.00 for the assault against her by the landlord's agent CT.

The tenant testifies that the landlord's agent CT reported the tenant to the Ministry of Children and Families for abusing her daughter. The tenant testifies that this was unacceptable and CT said the tenant had anger issues. The tenant testifies that during the move out inspection CT said she had reported the tenant to the Ministry and screamed at the tenant that the tenant smelled of booze. The tenant testifies that she was investigated by the Ministry and the file has been closed as they found the allegations unfounded. The tenant testifies that this was unacceptable as she used to work for the Ministry of Children and Families and the tenant has submitted a letter from

the social worker stating that the file has been closed. The tenant seeks to recover \$1,000.00 in compensation from the landlord. for having to deal with this issue.

The tenant refers to the audio evidence provided by the landlord. The tenant testifies that areas of this evidence have been cut out.

The landlord's agent JA testifies that the Audio evidence has not been altered or cut and JA would not know how to do this. JA testifies that the audio evidence was taken during the move out inspection and continued after the inspection while the agents were in the car. The landlord's agent JA testifies that they decided to record the move out inspection in fear of allegations by the tenant.

The landlords agent CT disputes the tenants claim that the tenant lived in a toxic living environment. The landlord's agent CT testifies that they believe the tenant was hostile towards CT because the tenant thought that CT reported the tenant to the Ministry. CT testifies that they decided to record the move out inspection as the tenant is very angry with CT. CT testifies that she did not in fact report the tenant to the Ministry but the report did come from CT's household as events were heard that raised concerns about the tenant's daughter. The Ministry only investigated because they thought they needed to. CT testifies that all citizens are obligated to report any concerns and this incident was reported by CT's 13 year old daughter as she had taped an event that occurred downstairs and that was what was taken to the Ministry.

The landlord's agent CT testifies that she did not assault the tenant, in fact it was the tenant who pushed CT in the hallway and the audio evidence makes that clear as CT states on the audio recording that she would like the tenant to do that somewhere else. The landlord's agent CT also refers to the end of the tape when the agents were in the car and did not realize the tape was still running. CT states to JA about how she controlled herself and that her arm came up in self defense. CT testifies that the tenant has no proof that CT assaulted her.

The landlord's agent JA testifies that they were in the hallway and JA was at one end with one of the tenants friends. The tenant and CT passed in the hallway and then CT came up to JA and told JA what had happened CT was upset. JA testifies that she did not see what took place.

The tenant argues that she has two witnesses who saw the assault. CT was aware that the tenant had some existing injuries and when CT shoulder checked the tenant the tenant testifies that she did yell and push CT back. The tenant testifies that JA would have seen this take place.

The tenant calls her first witness KW. The tenant asks the witness if the witness saw CT shoulder checks the tenant into the wall and was CT being aggressive and toxic. The witness responds yes. The tenant asks the witness if the witness saw JA being rude to the tenant and trap the tenant in her car. The witness responds yes the tenant was going through the forms and JA was very rude and kept trying to grab the papers. The tenant asks the witness to describe JA's behaviour during the inspection. The witness responds that JA was moving around and picking fault there was nothing wrong with the house, the walls were washed and the floors were clean. The tenant asks the witness what were the comments made about the paint. The witness responds that JA said it would not work. The tenant asks the witness to state what the witness felt was inappropriate during the check out. The witness responds when the woman from upstairs said she had called the Ministry and the witness thinks the woman called the tenant a bitch. The tenant asks the witness about the comments made about the paint. The witness responds that JA made a comment saying the paint did not match and the tenant said it was paint left there and said it did not match because it was old. The tenant asks the witness if the inspection was hostile. The witness responds yes because of the two women. The tenant asks the witness if the witness thinks the tape has been altered or cut. The witness responds that it's not all on the tape and the landlord's agent did not inform the tenant that they were being taped.

The landlord's agent JA cross examines the witness. JA asks if the witness could confirm if JA raised her voice or swore at the tenant. The witness responds that no but you were hostile towards the tenant. JA asks if the tenant swore or raised her voice. The witness responds that yes the tenant did because she was upset.

CT testifies that there have been many references to CT yelling in the tenants face and saying that the tenant smelled of booze. CT testifies that she did not raise her voice but did say that the tenant smelled of booze. CT testifies that this discredits the witness's statement.

The tenant calls her second witness TK. The tenant asks if the witness could explain the landlord's agent's behaviour during the check out. The witness responds that they were rude and were yelling in the tenants face. The tenant asks if the suite was clean. The witness responds yes. The tenant asks if there was any damage in the suite. The witness responds no. The tenant asks if the witness saw the landlord's agent CT shoulder check the tenant. The witness responds that No she did not see that. The tenant asks the witness if she has heard the tape and has anything been deleted. The witness responds yes.

The landlord 's agent CT testifies that this witness has started that she heard JA yelling at the tenant but the last witness stated that JA was not yelling.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

The landlord's application

With regard to the landlords claim for unpaid utilities; I am satisfied with the evidence before me in the form of utility bills, the reconciliation between the bills and the amounts paid by the tenant each month that there is an amount owed in utilities by the tenant. It

is therefore my decision that the tenant owes an amount of 323.07 in unpaid utilities. I am not satisfied that the tenant has shown that there were six people living in the unit upstairs which would have made the percentage of utilities between the unit unfair. If the tenant had concerns of this nature the tenant should have brought those concerns to the attention of the landlord to investigate and make a fair adjustment to the tenant's share of the bills. Consequently the landlord is entitled to recover to recover **\$323.07** from the tenant.

With regard to the landlords claim for damage to the unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

In this test the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I have considered the evidence before me and find the landlord has documented the damage on the move out condition inspection report concerning the cabinet doors and has provided photographic evidence showing the damage to the inside of the doors. The tenant's photographic evidence does not show the inside of the cabinet doors. As the move in report does not show any damage to these doors at the start of the tenancy then it is reasonable to assume that this damage occurred during the tenancy. The landlord has not replaced the doors but would be entitled to recover an amount for the depreciation of the doors due to this damage. Consequently I find the landlord is entitled to recover the amount of **\$100.00** from the tenant.

With regard to the cleaning of the unit the landlord agrees that the unit was in a pretty good condition with some minor cleaning issues. The tenant disputes this and states the

unit was clean. Under the *Residential Tenancy Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the tenant for the extra cleaning. In this case it is my decision that the landlords have not met the burden of proof that the tenant failed to meet the "reasonable" standard of cleanliness required and the landlords claim for \$40.00 is dismissed.

With regard to the landlords claim for painting some walls in the unit; I find from the evidence presented and the testimony from both parties that the tenant did paint the walls with a mismatched paint. The tenant has testified that she asked the landlords agents husband who said to use this paint however as the landlords agents husband is not the landlord or an agent of the landlord for this unit then the tenant made an assumption that the paint in the cans was a good match for the walls. As it turned out this paint did not match, and this resulted in the walls having to be repainted. I find the amount charged for this work to be reasonable and therefore I find the landlord has met the burden of proof that the tenant painted the walls with mismatched paint and I uphold the landlords claim for **\$50.00**.

With regard to the landlords claim for damage to the stair nose; the tenant argues that this damage was in place at the start of the tenancy and is documented on the move in inspection report. Having reviewed that report I find there is no mention of a gouge in the stair nose at the start of the tenancy. This mark is however documented at the end of the tenancy and therefore I find the landlord has met the burden of proof that this was caused during the tenancy through the tenant's actions or neglect. I find the amount claimed of **\$20.00** to be reasonable for these repairs and therefore uphold the landlords claim.

With regard to the landlords claim for damage to the door casing and bathroom baseboards; the tenant argues that the damage to the door casing was in place at the start of the tenancy. However upon review of the landlord's documentary evidence and

photographic evidence it is clear that this chunk was not documented on the move out inspection but rather a smaller area was shown at the start of the tenancy. It is therefore clear that this damage to the door casing occurred during the tenancy. I further find the tenants arguments that the water tank exploding causing the water damage on the baseboards in the bathroom. I find if the water tank had exploded as described then there would be further evidence of water damage between the water tank and bathroom and there would have been more water damage shown on other baseboards. As this damage is consistent with water leaking from the corner of the bathtub I find the landlord has meet the burden of proof in this matter and I therefore award the landlord the cost of **\$20.00** for these repairs.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant.

It is my decision that the landlord is entitled to keep the tenants security despot of \$450.00. This amount will be offset against the landlords claim for utilities and damage as follows:

Unpaid utilities	\$323.07
damages	\$190.00
Subtotal	\$513.07
Plus filing fee	\$50.00
Less security deposit	(-\$450.00)
Total amount due to the landlord	\$113.07

The tenant's application

With regard to the tenants claim to recover double the security deposit; the tenant claims the landlord did not file their claim to keep the security deposit within 15 days, The landlord actually filed their application on the 15th day and as such the tenant

would not be entitled to double the security deposit. As the landlord has been awarded the security deposit of \$450.00 I find the tenants claim to recover it is dismissed.

With regard to the tenants claim for money owed or compensation for damage or loss; I have applied the same test for damage or loss claims as for the landlords claim. In this matter the burden of proof lies with the tenant to show that the landlords created a hostile environment, that one of the landlords agents assaulted the tenant, caused undue stress by reporting the tenant to the Ministry of Children and Families for an unfounded allegation and that the other agents for the landlord was rude during the inspection.

The tenant has provided no evidence that this was a toxic environment during the last month of the tenancy. The tenant's witnesses contradict each other's testimony that the landlord's agent JA was rude and yelled at the tenant. In fact the landlord's evidence in the form of audio evidence shows that in fact the landlord's agents were both civil to the tenant during the inspection and it was the tenant who yelled on occasion and was rude. There is no evidence to support the tenant's claim that sections of the landlords audio evidence has been altered as having listened to the evidence the evidence flows with the conversations between the parties present. The tenant has provided no evidence to show that the landlord's agent shoulder checked the tenant. One of the tenants witnesses has testified that she saw this however the audio evidence contradicts this testimony and the tenant has provided no doctors report showing that she had to have her shoulder put back in or any other injury to the tenant as a result of this alleged assault.

The tenant has failed to provide any evidence to show that the landlord's agent CT threatened the tenant in any way. The landlord's agent CT agrees that the Ministry was informed of an incident that occurred between the tenant and the tenant's daughter and I agree that it is a citizen's right and duty to report any suspicious of abuse towards a child. It appears that due to this investigation by the Ministry the tenant harbored some resentment towards the landlord's agent CT.

Consequently it is my decision that the tenant has failed to meet the burden of proof regarding any aspect of her claim for compensation and therefore I dismiss the tenants claim.

As the tenant has been unsuccessful with her claim the tenant must bear the cost of filing her own application.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$113.07**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply.

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: September 23, 2013

Residential Tenancy Branch

