



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, RPP, FF

Introduction

This hearing dealt with two related applications. File L is the landlords' application for a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. File T is the tenants' claim for return of double the security deposit and return of personal property. Both parties appeared and had an opportunity to be heard. As the parties and circumstances are the same on both applications, one decision will be rendered for both.

Issue(s) to be Decided

- Are the tenants entitled to return of double the security deposit?
- Are the tenants entitled to an order for return of personal property and, if so, upon what terms?
- Are the landlords entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced October 1, 1989. The tenants paid a security deposit of \$375.00 on September 29, 1989. The tenancy allowed the tenants to smoke in the unit. Although there were other proceedings between the parties the tenancy ultimately ended on February 28, 2013 pursuant to a Mutual Agreement to End Tenancy.

On February 22, the day the parties signed the Mutual Agreement to End Tenancy, they agreed that the move-out inspection would occur at 1:00 pm on February 28. Also on that date the landlord gave the tenant a move-out sheet that, in addition to describing the cleaning expectations, including the following information:

- "Change your address with Canada Post. Please note that if you not contact Canada Post, all mail coming to this address will be 'Returned to Sender'."
- "Set a time and date with the building manager for your condition inspection. The Condition Inspection Report must be completed together by the landlord and the tenant. Do not leave this until the last possible minute. You will be given 2 opportunities to complete a condition inspection."
- "You must vacate your suite by 1:00 pm on the last day of your tenancy."

(I have not included the various points of emphasis in the original such as italics, bold and red print.)

Some of the relevant information contained in the description of basic cleaning requirements was: "Wash and rinse walls and baseboards entirely using TSP. All marks, scuffs, nicotine, dirt and grease must be washed from the walls."

On February 28 at 1:00 pm the tenants were not ready for an inspection. The landlord did not go to the rental unit and the tenants did not contact the landlord at that time.

Around 2:00 pm the male tenant went to the landlord's unit. She was eating her lunch. The two parties gave different versions of events but the end result was that the male tenant was very angry. His wife testified that when he came back to the rental unit her husband was livid. He told her they were done. She said she had more to do but her husband told her they were done. She said there was nothing more she could do. They left all the keys they had on the counter and left without saying anything more to the landlord. They left a closet full of stuff, cleaning supplies and other items behind.

Later that afternoon the landlord left a Notice of Final Opportunity to Schedule a Condition Inspection under the door giving March 1, 2013 at 11:00 am as the new date for the inspection. The landlord did not hear from the tenants and took possession of the rental unit at 5:00 pm on that date.

In addition to finding the keys and other items left behind by the tenants, the landlord discovered that the unit was extremely stained by nicotine and that other aspects of the cleaning had not been completed.

The landlords claimed the following time for cleaning:

- 9 hours to clean the balcony glass and rails.
- 6 hours to clean the windows and window tracks.
- 40 hours to clean the nicotine and dirt from the walls, doors and shelving.
- 4 hours to clean the refrigerator and stove.
- 1.5 hours to clean the bathtub and bathroom tiles.

The tenants say they spent two days washing the walls but did not get a good result because the underlying paint job was so old and thin. They did admit that they had not cleaned the balcony. The female tenant said she and her son had scoured the refrigerator and done the best they could with the stove. The tenants' main argument is that this is unfair they should be charged for cleaning a place that is going to be painted anyway. The tenants also argued there is no proof that the landlords actually did the work claimed, and the rate and time charges were excessive.

The landlords claimed for the following repairs:

- Repair the balcony floor. There were a number of small cuts in the balcony membrane. Water got under the membrane and bubbled it. The landlords had to pull back the membrane, let the plywood dry for several days, and repair the membrane. In total, the landlords claim 3 hours of labour. The landlords say that if the tenants had reported the cuts during the tenancy they would have repaired them as part of normal maintenance. The tenants say they did report the situation.
- Replace the bathroom grout. The landlord says the grout was so stained by nicotine that despite her best efforts she was not able to clean it. She was able to remove the nicotine staining from the tiles. She says that neither the tiles nor the grout were damages so they removed the grout and replaced it with new grout. The existing tiles were left in place during this process. The landlords claim four hours for this task. The tenants say the grout was cracked and needed to be replaced anyway.
- The ceilings are textured plaster (commonly referred to as “popcorn” ceilings) and could not be washed. The landlords painted the ceilings with a product known as “Kilz” to hide the nicotine discolouration and applied a nicotine sealant to the ceilings and to the bathroom. The landlords claim three hours of labour for this item.
- Repairing and restringing the drapery tracks. The landlord claims two hours labour. The tenants say these are the original drapery tracks.

The landlords claim for the following materials:

- Five gallons of “Kilz” in the amount of \$132.00. A copy of the receipt was included in the landlords’ evidence package.
- \$40.00 for cleaning supplies. No invoices were included for this claim.
- \$50.00 to change the lock and \$18.00 to replace six keys. No invoices were included for this claim.

The landlord testified that they kept the items left in the rental unit, a detailed list of which was filed in evidence, for several months but the tenants never contacted them. Eventually, those items were disposed of. The landlords claim \$50.00 for taking garbage and electronics to two different sites. This claim also includes the disposal fees paid at each location.

The tenants ask for an order compelling the landlords to return certain personal property. This claim relates solely to mail that has not been received by the tenants since they moved. The tenants testified that they never filed a change of address notification with Canada Post.

The tenants testified that they sent a letter with their forwarding address in writing by ordinary mail on March 22, 2013. They subsequently had someone slide an envelope with another copy of the same letter under the landlord's door on September 4, 2013. The landlord said she found it on September 4.

The landlords' application for dispute resolution was filed on September 19, 2013. The tenants' application was filed on October 16, 2013.

Analysis

Are the tenants entitled to return of double the security deposit?

As explained in *Residential Tenancy Policy Guideline 35: Transition – Security Deposits*, by legislation the requirement for a start of tenancy condition inspection does not apply to a tenancy that started before January, 2004.

Section 17 of the *Residential Tenancy Regulation* states that a landlord must offer a tenant a first opportunity to schedule a condition inspection by proposing one or more dates and times for the inspection. If the tenant is not available at a time offered by the landlord the tenant may propose an alternative to the landlord. The landlord must consider the dates suggested by the tenant before giving the tenant a second opportunity by providing the tenant with a notice in the approved form.

On February 28 the tenants were not ready to proceed with a move-out inspection at 1:00 pm. They subsequently left the building without telling the landlord they had given up possession of the rental unit or giving the landlord their forwarding address.

Section 88 of the *Residential Tenancy Act* sets out the methods by which the notice may be given to a tenant. Basically these are personal service, ordinary or registered mail sent to the forwarding address provided by the tenant, leaving a copy in a mail box or mail slot for the address at which the tenant resides, or attaching a copy to a door or other conspicuous places at the address at which the tenant resides. Sliding a notice under a door is not a permitted means of service.

By sliding the notice under the door and not posting it to the door the landlord failed to properly serve the notice. This results in the landlord contravening section 35(2) of the

Act. Pursuant to section 36(2) this failure extinguishes the landlord's right to claim against the security deposit pursuant to section 38(1). This provision does not extinguish the landlord's right to file a monetary claim for damages but it does affect the landlord's options under section 38.

Section 38 provides that within fifteen days after the date the tenancy ends or the date the tenant provides their forwarding address in writing, whichever is later; the landlord must either repay the security deposit or make an application for dispute resolution claiming against the security deposit. It does not matter whether the landlord knows where the tenant is living or could find out if they made inquiries. The clock does not start ticking until the tenant has provided their forwarding address in writing to the landlord.

A landlord who has not complied with section 35(2) does not have the option of filing an application once it receives the tenant's forwarding address in writing; they can only return the security deposit within the fifteen period or be subject to the section 38(6) penalty – payment of double the amount of the security deposit.

Section 88 also sets out the means by which a tenant may deliver their forwarding address in writing to the landlord. The list is basically the same. The problem with sending a document by ordinary mail is that there is no documentary proof that the item was mailed, or if it was, the date on which it was mailed. Once again, sliding a notice under a door is not a permitted means of delivery so the letter delivered on September 4 did not meet the requirement of section 38(1). I find that the tenants have not yet provided their forwarding address in writing to the landlord and that the fifteen day time limit has never started.

Are the tenants entitled to an order for return of personal property and, if so, upon what terms?

The tenant's claim for return of personal property is dismissed. Any difficulties with mail could have been avoided if the tenants had done what people who are moving usually do – file a change of address with Canada Post. Once a tenancy is ended, a landlord has no responsibility for ensuring that a tenant gets their mail.

Are the landlords entitled to a monetary order and, if so, in what amount?

Section 37(2) of the *Act* states that when a tenant vacates a rental unit the tenant must leave the rental unit reasonable clean and undamaged, except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant.

The obligations for both landlords and tenants regarding maintenance and cleaning are set out in some detail in *Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises*. The sheet given to the tenants by the landlord reflects the standard set out in the *Guideline*.

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord for damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser. The Residential Tenancy Branch has developed a schedule for the expected life of fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Branch Guideline 40: Useful Life of Building Elements* and is available on-line at the Residential Tenancy Branch web site, as are all the other Guidelines I have referred to.

As a decision maker in a specialized tribunal I have acquired specialized knowledge which I may draw upon when considering evidence and making decisions. \$25.00 per hour is the rate generally charged by cleaners, either individuals or companies. This is the rate that will be applied to all claims for cleaning. \$30.00 per hour is a very reasonable rate for painting, repairs, or handyman services. This is the rate that will be applied to all claims for painting, repairs, or other handyman-type services.

The tenancy agreement allowed the tenants to smoke in the unit. Although the tenants were allowed to smoke they were still required to leave the rental unit clean. The colour and condition of the walls is consistent with nicotine residue. With proper cleaning this can be removed.

It was understood by all parties that the unit would be repainted after the tenants moved out. This fact did not release the tenants from their obligation to leave the rental unit in a reasonably clean condition. Paint cannot be applied to dirty walls. Washing the walls with TSP would be the necessary first step to painting and it is for this reason that I dismiss the tenants' allegation that the landlord did not clean the walls before the unit was painted.

Having looked at all the photographs I find that the tenants did not leave the rental unit reasonably clean as required by the statute and I find that landlords' calculation of time

required reasonable. I allow the landlords a total of \$1487.50 for cleaning, calculated as 59.5 hours at \$25.00 per hour.

Although the landlords did not file receipts for the cleaning products used I am able to award general damages when specific costs are not proven. Given the size of this project I find \$40.00 is a reasonable estimate of the materials used to clean this unit and I allow this claim.

Given the volume of items left in the unit I find that \$50.00 is a very reasonable claim for disposal, especially if that includes the disposal fee. This claim is allowed in full.

The claim for repair of the balcony floor is dismissed. The landlord testified that if the need for repairs to the membrane had been reported during the tenancy they would have been repaired as part of routine maintenance. The time allocated to this task is no more than several small repairs during the tenancy. There is no evidence that the cumulative damage and work required at the end of the tenancy was significantly greater than the cumulative damage and work required if there had been several small repairs during the tenancy.

The claim with respect to the drapery tracks is dismissed. There were well beyond the expected useful life of such an element in a rental unit. As such any claim for replacement of the tracks would have been dismissed. So too must any claim for repair.

The claim for painting the ceilings is dismissed. When the landlord entered into this tenancy agreement it would have known that these types of ceilings cannot be washed and yet it agreed to let the tenants smoke in this unit. By doing so, it accepted responsibility for any subsequent staining or discolouration to the ceilings caused by cigarette smoke.

The photographs show the bathroom tiles and grout to be in very good condition at the end of this tenancy, except for the nicotine staining. I accept the landlords' argument that replacing the grout was only required because of the discolouration. The claim of \$120.00 for grout replacement is allowed.

The claim for lock and key replacement is dismissed. The expected useful life of locks in a rental unit is twenty years. These locks were due for replacement.

Filing Fee

As the landlord was substantially successful on its claim it is entitled to reimbursement from the tenants of the \$50.00 fee they paid to file it. The tenants are not entitled to a similar order as their application was dismissed.

Conclusion

I find that the landlords have established a total monetary claim of \$1747.50 comprised of cleaning in the amount of \$1487.50; cleaning supplies in the amount of \$40.00; garbage disposal in the amount of \$40.00; grout replacement in the amount of \$120.00; and the \$50.00 fee paid by the landlords for this application. I order that the landlords may retain the deposit and interest of \$584.80 in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of \$1162.70. If necessary this order may be filed in the Small Claims Court and enforced as an order of that court.

The tenants' claims are dismissed.

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: October 31, 2013

Residential Tenancy Branch