



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants 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 permitted to keep the security deposit?

Background and Evidence

The parties agree that this tenancy started on July 01, 2011 although the tenants moved into the unit on June 15, 2011. This was a fixed term lease for two years and expired on June 30, 2013. The tenants vacated the unit on or about July 07, 2013. Rent for this unit was \$3,000.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$1,500.00 on June 15, 2011. The parties also agree that the landlord did not conduct condition inspections of the property with the tenants at the start and end of the

tenancy. The tenants provided a forwarding address in writing to the landlord, on July 07, 2013. The landlord confirmed receipt of this.

The landlord testifies that the house was brand new at the start of the tenancy so no inspection was required with the tenants. At the end of the tenancy the landlord found that the tenants had painted some portions of the walls in the kitchen, dining room and basement using mismatched paint. The landlord testifies that he had forwarded to the tenants information about the paint but the tenants did not notify the landlord of any damage to the walls or of the tenants painting over this damage. The landlord testifies that the tenants did a "crappy" job painting over the damage and there remained other unrepaired damage in the master bedroom where the tenants left scars on the walls. The landlord testifies that they also found numerous dents and holes in the walls that required repair and repainting. The landlord has provided photos of the mismatched paint and other wall damage. The landlord has provided an invoice from the painter who rectified this damage and seeks to recover the amount of \$1,784.83 from the tenant.

The landlord testifies that the tenants left a broken light fixture hidden in a kitchen cabinet. The landlord emailed the tenant about this and the tenant replied saying they had tried to buy a new light. The landlord testifies that this light was a matching set with other lights but the landlord could not find a matching light to replace the broken one. The landlord testifies that he will have to purchase a new set of lights so they continue to match and has provided a photo of a set of lights at a sale price of \$399.00 plus tax.

The landlord testifies that the tenants caused damage to a door frame for an exterior door. The door trim is separating from the frame. The landlord testifies that the door frame was not like this at the start of the tenancy. The landlord testifies that when they purchased the house they did a deficiency list with the builder and this was not on it. The landlord has provided an estimate from a contractor to repair this door frame for \$577.50 which includes tax. The landlord has also provided photos of the damage.

The landlord testifies that the tenants did not replace burnt out light bulbs in the home. They had changed some bulbs but used different types of bulbs that did not match. The landlord testifies that he has now replaced all the bulbs with LED bulbs. The landlord testifies that as

the home did not have LED bulbs in place at the start of the tenancy and these are more expensive, the landlord does not seek to recover the full cost of the LED bulbs from the tenants. The landlord has provided receipts in evidence for over \$600.00 for LED bulbs however the landlord limits his claim to \$120.00. The landlord has provided some photos of some burnt out bulbs and mismatched bulbs.

The landlord testifies that the tenants broke a plastic end from the blind pull. The landlord has provided a photo of this and seeks to recover \$5.00 to replace this end piece. The landlord has not provided a receipt for this.

The landlord testifies that the tenants did not clean the unit to the required standard. The stove top and burners were left dirty; there was a dusty blind; a dirty vent in the bathroom ceiling; and a greasy fan over the stove. An area of the exterior planking was left dirty and the garage floor was left dirty and stained. The landlord testifies that they have had to clean the house and spent eight hours cleaning. The landlord seeks to recover \$50.00 per hour to a total amount of \$400.00. The landlord has provided photos of these unclean areas in evidence.

The landlord testifies that the tenants damaged the lock on the bathroom door. The landlord could not find a matching lock so has had to order a similar lock at a cost of \$36.96. The landlord has not provided a receipt in evidence but has provided photos of the lock.

The landlord testifies that the tenants left a door stop and guard broken. The landlord has replaced these items and has provided the receipt for \$3.98. The landlord has also provided a photo of the damage and testifies that the door guard is metal and the tenants would have had to use some force to break this.

The landlord testifies that the tenants caused damage to the dishwasher. The landlord noticed this damage after the tenants had left and the landlord emailed the tenant asking about the damage. The tenant replied stating it was damaged by a repairman however the tenant had not notified the landlord of the damage and have provided no evidence to show it was damaged by the repairman. The landlord has provided a photo of this damage. The

landlord has estimated that this will cost \$150.00 to repair but has not provided an estimate or the repair.

The landlord testifies that he has had to drive around for at least a day to try to find parts to repair the damage caused by the tenants. The landlord seeks to recover the gas used in doing this of \$50.00.

The landlord testifies that the tenants left the baking pans from the new oven in the garage and these were left with baked on food and grease. The landlord testifies that these were new at the start of the tenancy and were still in their plastic bags. The landlord has provided photos of these baking pans. The landlord seeks to recover the amount of \$100.00 to replace the baking pans. The landlord agrees he has not tried to clean the pans and has not provided an estimate or receipt for new pans.

The tenants dispute the landlord's claims. The tenant testifies that they painted over some marks on the walls using the paint left over from the builders. The tenants' testify that these paint cans were labelled for each room and had the same SKU numbers. The tenant testifies that Home Depot informed the tenant that if paint has been left it will alter in colour. When the tenants painted over marks on the walls the paint appeared to be the same but when it dried it dried a different shade. This was not done by the tenants negligently. The tenant disputes the landlord's photos showing scraps on a wall. The tenant testifies that he has no idea where this damage was and the damage was not there when the tenants moved out or the tenant would have taken care of it. The tenant disputes the other nicks and dents are anything more than normal wear and tear.

The tenant agrees that a light fixture did get broken when it was being cleaned. The tenant testifies that he did try to get a replacement however the company needed a purchase order for the originals and the tenant was unable to get this number and forgot to tell the landlord about this company as the tenants were in the process of moving out.

The tenant disputes the landlord's claims for burnt out light bulbs. The tenant testifies that there was a problem with the wiring in the garage and an electrician who came out said the

wires had been crossed and the landlord was advised of this. Some of the light bulbs could not be reached as the ceilings were 20 feet high and the landlord did not advise the tenants that they had to change these bulbs. The recessed bulbs in the master bedroom were struck in the fixtures. The tenant testifies that the tenants advised the landlord that bulbs kept burning out and the landlord told the tenants' to contact the builders and that when the electrician came out. The tenant agrees that a few bulbs were left burnt out.

The tenant disputes the landlords claim for cleaning. The tenants have provided five sworn affidavits from the people who helped the tenants clean the house after the tenants moved out and a receipt for professional cleaning. These affidavits provide details of which areas each person cleaned. The tenant testifies that they did not clean the exhaust fan in the bathroom as it is a fan which is on 24 hours a day and cannot be safely cleaned. The tenant testifies that the stove was cleaned but they may not have removed the burners to clean them underneath. The stove fan was cleaned on the outside and as the tenants did not want to dismantle it to clean the fan. The tenant agrees, that after looking at the landlords photos, that one blind may have been missed. The tenant testifies that they do not know what the dirty marks on the exterior of the home are but state they could have easily been washed off. The tenant agrees that they stained the garage floor in areas which they tried to clean but were unsuccessful. However, some of the other marks were left by the builders from the stored paint cans.

The tenant disputes the landlords claim that they damaged the doorframe. The tenants refer to the landlord's photos of the door frame and state that this is a building issue. The tenants testify that they did not damage the doorframe in any way and it appears to be damaged through poor workmanship. The tenant testifies that the patio in this area was not finished when they moved in; the tenants went on vacation and when they returned the patio was done but there was a missing panel. The tenant notified the landlord that water was seeping into the wood in this area.

The tenant testifies that they were not aware that the bathroom lock was broken. The tenant testifies that the door guard came off and the door stops just twist on and off but were not broken by the tenants.

The tenants testify that the dishwasher was broken by a repairman who came out when the dishwasher broke down three months into their tenancy. The landlord was made aware of it at the time.

The tenants dispute the landlords claim for costs for gas.

The tenant testifies that the baking pans left at the home belonged to the tenants and were not the landlords new set. These old baking pans had been left inside the barbeque to go out in the garbage. The landlord's new pans were still wrapped in plastic and had been left in the garage along with some other building materials from the home.

The tenants testify that they have not given the landlord written permission to keep all or part of the security deposit. The tenants do not waive their right to recover double the security deposit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for damages to the unit, site or property; 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:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance 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

Residential Tenancy Act (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.

The parties agree that the landlord did not do a condition inspection of the house with the tenants at the start and end of the tenancy, However I do except that the house was brand new when the tenancy started. Therefore I have considered each section of the landlords claim for damages in accordance with the above test and find as follows:

Repainting – the landlord has shown that some walls did have mismatched paint on them, The tenant agree that they did paint some walls with the landlords paint left over from the builders. Having considered the photos of the walls I find this paint did not match. While the tenants cannot be held wholly responsible for this as the paint cans were marked with rooms the paint related to; the tenants should have stopped painting as soon as they realized that the paint colour did not match once it had dried. I further find that some of the wall damage is due to reasonable wear and tear and therefore not the tenants responsibility. However; I find some of the other wall damage such as the scrap in the master bedroom is more than normal wear and tear and was not repaired by the tenants at the end of the tenancy. Consequently I must limit the landlord's claim of \$1,784.83 to a lower amount of **\$800.00**.

Broken light fixture- The landlord has testified that the tenants' broke one of a set of lights and a match could not be found. The tenants agree that one light was broken but have testified that they found the supplier and just needed a number to get a matching light. However the tenants did not pass this information on to the landlord and therefore I find the landlord has established a claim to purchase a set of new lights at a cost of \$399.00 plus tax to a sum of **\$446.88**.

Damaged door frame - The landlord must show that this door frame was damaged by the actions or neglect of the tenants. The tenants argue that this is a building fault and they notified the landlord about this problem. The landlord has provided no corroborating

evidence to support his claim that the tenants' actions or neglect caused this problem with the door frame and not as a result of poor workmanship by the builders. Consequently, I must dismiss this section of the landlords claim.

Light bulbs - The landlord agrees he replaced all the light bulbs with more expensive LED bulbs. The tenants argue that not all the bulbs were burnt out and as no inspection was done of the property with the tenants when they moved out I have no corroborating evidence from the landlord to show how many bulbs were burnt out at the end of the tenancy. Consequently, as the tenants agree that some bulbs were burnt out I must limit the landlords claim to **\$20.00**.

Blind pull - The landlord has not provided a receipt showing the actual cost to replace this blind pull and therefore the landlords claim for \$5.00 is dismissed.

Cleaning – The landlord has provided some photos showing some unclean areas of the unit. The landlord seeks to recover \$50.00 an hour for eight hours of cleaning. The tenants have provided sworn affidavits from five people who helped clean the unit and a receipt for professional cleaning. 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 former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required with the exception of the staining to the garage floor. Consequently, I must limit the landlords claim to **\$100.00** to clean the stains caused by the tenants from the garage floor.

Bathroom lock - The tenants state that they have no knowledge that the lock was broken. And the landlord has provided photos of this damage. However, the landlord has not provided a receipt to show the actual cost for a replacement lock and consequently, this section of the landlords claim for \$36.96 is dismissed.

Door stop and guard – From the evidence presented I find the landlord has shown that this door guard has been broken and I am satisfied that this damage occurred during the tenancy. A receipt has been provided for its replacement. I therefore find the landlord has established a claim for the amount of **\$3.98**.

Dishwasher – The landlord claims the tenants are responsible for damage to the dishwasher that was discovered by the landlord after the tenants vacated. The landlord claims that if this damage was caused by the repairman then the tenants did not notify the landlord. There is one e-mail concerning this in which the tenants mention that the technician who did warranty work on the dishwasher bent the bottom flange when he pulled or pushed the dishwasher to do the repair. In this matter the landlord has the burden of proof in accordance to the above test for damages. The landlord has failed to prove that the tenants are responsible for this damage and has failed to show the actual cost for any repairs. Consequently the landlords claim for \$150.00 plus tax is dismissed.

Gas costs – There is no provision under the Act for me to award a landlord costs for doing business as a landlord. Furthermore the landlord has provided no receipts or millage showing how much gas was used. This section of the landlords claim for \$50.00 is dismissed.

Baking pans – The landlord claims that these pans were the new pans for the stove left for the tenants use at the start of the tenancy. The tenants claim these pans belonged to the tenants who had had been placed in the barbeque for disposal. The landlord has no corroborating evidence to show that the pans were the ones that belonged to the landlord. Even if the pans were the new ones the landlord has testified that he did not attempt to clean the pans. From the evidence provided it appears that even if these were the landlords pans, these pans could have been cleaned using a standard type pan cleaner and would not therefore require replacement. Even if the landlord did replace the pans, there is no evidence of the actual costs incurred. This section of the landlords claim for \$100.00 is therefore dismissed.

With regard to the landlords claim to keep the security deposit; I refer the parties to

Sections 23(4), 35(3) of the *Act* which states that a landlord is required to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenants moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord is not entitled to file a claim to keep the security deposit and if the deposit has not been returned to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord a forwarding address in writing the landlord must pay double the security deposit to the tenant plus any accrued interest on the original amount pursuant to s. 38(6)(b) of the *Act*.

In this case the landlord did not do either inspection with the tenants and although an inspection report has been provided in evidence the landlord agrees that this was not done with the tenants at the start or end of the tenancy. Consequently in accordance with s. 38 of the *Act* the tenants are entitled to recover double the security deposit. No interest has been accrued on the security deposit during the term of the tenancy; therefore the tenants will receive the amount of **\$3,000.00**.

I find however, that sections 38(4)(b), 67 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the landlord to keep part of the tenants' security deposit as awarded to compensate the landlord for the established damages.

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 tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenants for the following amount:

Double the security deposit	\$3,000.00
Less damages awarded	(-\$1,370.86)
Filing fee	(-\$50.00)
Total amount due to the tenants	\$1,1579.14

Conclusion

I hereby find in partial favour of the landlords monetary claim. The landlord is entitled to keep the amount of \$1,420.86 from the tenant's security deposit. The reminder of the security deposit which was doubled must be returned to the tenants.

A Monetary Order has been issued to the tenants for the amount of **\$1,579.14**. The order must be served on the landlord and is enforceable through the Provincial Court 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: October 21, 2013

Residential Tenancy Branch

