



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 was convened in response to applications by the landlords and the tenants.

The landlords' application is seeking orders as follows:

1. For a monetary order for damages;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. Return of double the security deposit;
2. For a monetary order for money owed or compensation for loss under the Act;
and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matter

At the outset of the hearing the tenant, JM, was agitated and chose not to participate in the hearing and exited the telephone hearing. The hearing continued in excess of sixty minutes, and the tenant, JM, did not reconnect to participate in the hearing.

Issues to be Decided

Are the landlords entitled to a monetary order for damages to the unit?
 Are the landlords entitled to retain the security deposit in satisfaction of the claim?
 Are the tenants entitled to a monetary order for compensation under the Act?
 Are the tenants entitled the return of double the security deposit?

Background and Evidence

The tenancy began on December 1, 2012. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit of \$450.00 and a pet damage deposit of \$200.00 were paid by the tenants. The tenancy ended on September 30, 2013.

The parties agreed a move-in and move-out condition inspection report were not completed as required by the Act.

Landlords' application

The landlords claim as follows:

a.	Bathroom countertop	\$ 100.00
b.	New Lock	\$ 22.39
c.	Repair to walls and floor	\$ 220.00
d.	New screen and repair screen	\$ 50.00
e.	New door	\$ 57.11
f.	Blinds	\$ 42.54
g.	Cleaning_5 at \$15.00 per hour	\$ 75.00
h.	Filing fee	\$ 50.00
	Total claimed	\$ 617.04

Bathroom countertop

The landlords' agent testified that the tenants caused damage to the countertop in the bathroom, by allowing their dog to chew on it. Filed in evidence is a photograph of the counter showing damage along the bottom edge of the counter.

The tenant testified that they do not know how the damage occurred along the bottom edge of the countertop. The tenant stated the rental unit was flooded in March 2013 and major repairs were required. The tenant stated that the bathroom walls and shower had to be removed and replace and they believe this damage may have caused during this time. The tenant denied that their dog chewed the counter.

New Lock

The landlords' agent testified that the tenant failed to return all the keys at the end of the tenancy and they were required to change the lock.

The tenant testified that they did not receive the key from the landlord at the start of the tenancy. The tenant stated they received the keys from the renters who were moving out of the unit and they returned those keys to the landlord at the end of the tenancy.

Repair to walls and floor

The landlords' agent testified that the tenants caused damage to the walls as there were three holes in the wall which were 4 to 5 inches in size. The agent stated the drywall had to be properly patched, and painted. The agent stated that the tenants had also caused damage to the several panels of the laminated floor which had to be replaced. Filed in evidence are photographs of the walls and floor depicting damage. Filed in evidence is the invoice for the repairs.

The tenant testified that she does not dispute that they caused damage to the walls and floor; the tenant questioned the cost of the paint that is listed in the invoice, as she believed the landlord had the paint already.

The landlord denied having any paint and stated the repair person purchased the paint and they were required to pay the invoice as presented.

New screen and repair screen

The landlords' agent testified that the tenants caused damage to two window screens. The agent stated that there was an agreement with the tenants that they would have one of screens repaired and they took the screen, however, it was not returned.

The tenant testified that she did not damage any of the screens as they were in the same condition as when the tenancy started and they did not inspect the screens at the start of the tenancy. The tenant stated she only agreed to fix the one screen to avoid conflict with the landlord and she had the screen repair and took to the rental unit and gave it to the new renter.

New door

The landlords' agent testified that the spare bedroom door had to be replaced due to the tenants locking their dog in the bedroom and their dog scratching at the door. The agent stated the scratches were severe and the door had to be replaced.

The witness, MC, testified that he had to change the door, as it was severely damaged by scratches that penetrated the door.

The tenant denied that their dog was ever locked in the spare bedroom or that it caused any damage to the door. The tenant stated that she is not sure if the damage was there when the tenancy started or if it was caused when they had to remove and replace the ceiling that was damaged in that room due to the flood that occurred in March 2013.

Blinds

The landlords' agent testified that the tenants caused damage to three of the blinds. Filed in evidence are photographs of the blinds.

The tenant does not deny the blinds were undamaged when the tenancy started. The tenant stated that the blinds were damaged when the mechanism to turn them would get caught in the blinds.

5 hours of cleaning at \$15.00 per hour

The landlords' agent testified that the tenants did not properly clean the unit and they spent 5 hours cleaning. The agent stated they did not take any photographs to support their position.

The tenant testified that she cleaned the rental unit at the end of the tenancy.

Tenants' application

The tenants claim as follows:

a.	Double the security deposit	\$ 1,300.00
b.	Return of half months rent for April and May	\$ 450.00
c.	Over payment of rent for March	\$ 450.00
d.	Filing fee	\$ 50.00
	Total claimed	\$ 2,250.00

Double the security deposit

The tenant testified that they seek double the security deposit as it was not returned to them within 15 days of the landlord receiving their forwarding address, which was provided on October 9, 2013.

The landlords' agent testified that the landlord file their application for dispute resolution within 15 days of receiving the tenant's forwarding address.

Return of half months rent for April and May and over payment of rent for March

The tenant testified that they seek compensation in the amount of \$450.00 for having no working shower for the month of April and May 2013, in the rental unit. The tenant stated that the repairs took far longer than what it should have taken and they seek additional compensate.

The tenant testified that they over paid rent for March as they did not receive the 50% rent reduction that was agreed upon.

The landlord testified that a hot water tank burst in the unit above the tenants and flooded the tenants unit. The landlord stated the tenant did not have proper insurance, however, they agreed that the tenants could reduce their rent by 50% per month until the repairs were completed. The agent stated the tenants have been compensated.

The landlords' agent testified that the tenants did not overpay rent for March. The agent stated the flood occurred in March and the repairs were completed by July 1, 2013. The landlord stated tenants received compensation in each subsequent month.

The landlords' agent testified the tenants were compensated as follows;

Date Paid	Amount Paid	Month compensated
April 1, 2013	50% rent of \$450.00	March 2013
May 1, 2013	50% rent of \$450.00	April 2013
June 1, 2013	50% rent of \$450.00	May 2013
July 1, 2013	50% rent of \$450.00	June 2013

The landlord testified the payments support that the tenants received proper compensation as they received a rent reduction for July 2013, even though the repairs were completed.

The tenant acknowledged that they received a 50% rent reduction in April, May, June and July 2013, and agreed that the repairs were completed by July 1, 2013.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the each party has the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlords' application

Under section 37 of the Act, the tenants are required to return the rental unit to the landlords reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Bathroom countertop

The evidence of the landlord was the damage to the countertop was caused by the tenant's dog, this allegation was denied by the tenant. The evidence of the tenant was that they do not know how the damage occurred, but believed it occurred when the repairs were made to the bathroom as the walls and shower had to be removed and replace.

Each party has provided a different version of event, both version are equally probable. I find without further evidence from the landlord such as photographs that were taken prior to the repair, that it is just a likely that the damage occurred when the repairs were being made. I find the landlord has failed to prove the damage was caused by the tenants.

New Lock

The evidence of the tenant was that they received the keys from the prior renters when they were moving out of the unit and those key were returned to the landlord. I find the absent of any further evidence for the landlord, such as move in condition inspection report which would provide details of the keys that were provided to the tenant, I find landlord has failed to a loss exists. Therefore, I dismiss this portion of their claim.

Repair to walls and floor

The tenant agreed that they caused the damage to the walls and floors as stated by the landlord, but they disagree that they should be responsible to pay for the paint.

In this case, the landlord filed an invoice for the cost of the repairs, I find it was reasonable for the person that was hired to purchase the paint as the walls had several large holes. I find the tenant breached the Act, when they failed to make the repairs and this cost losses to the landlord. Therefore, I find the landlord is entitled to recover the full cost of the repair in the amount of **\$220.00**.

New screen and repair screen

The evidence of the tenant was that the screens were not inspected at the start of the tenancy and denied causing any damage. The evidence of the tenant was that she agreed to have one of the screen repaired and after it was repaired, she returned it to the new renter at the rental unit.

In this case, I find the landlord has failed to prove that the damage to the window screens were caused by the tenants, as there is no evidence of the condition of the screens at the start of the tenancy, such as a move in condition inspection report.

Further, I find the landlord has failed to prove the screen was not returned to the rental unit as alleged by the tenant, as it would have been reasonable to have the new renter attend the hearing to provided evidence that they did not receive the window screen from the tenant. I find the landlords have failed to prove a loss exists. Therefore, I dismiss this portion of their claim.

New door

The evidence of the tenant was that they denied causing any damage to the spare bedroom door. The evidence of the tenant was that the damage was either there at the start of then tenancy or occurred when the ceiling was removed and replaced.

I find without further evidence from the landlord such as a move in condition report and photographs that were taken prior to the repair, that it is just a likely that the damage was there at the start of the tenancy or when the repairs were being made to the spare

bedroom. I find the landlords have failed to prove the damage was caused by the tenants. Therefore, I dismiss this portion of their claim

Blinds

In this case, the tenant did not deny that they caused damage to the blinds when they used the mechanism to turn the blinds. As a result, I find the tenants caused the damage by their actions and neglect, as it is their responsible to use the mechanism correctly. I find the tenants breached the Act, when they failed to repair the blinds at the end of the tenancy and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost to the blinds in the amount of **\$42.54**.

Cleaning

In this case, the evidence of the landlords' agent was that the tenant failed to leave the unit clean at the end of the tenancy and five hours of cleaning was required. The evidence of the tenant was that she left the rental unit clean. I find without further evidence from the landlords that they have failed to prove that the tenants did not leave the rental reasonable clean as required by the Act, as there was no move out condition inspection report or any photographs to support their version. Therefore, I dismiss this portion of their claim.

I find that the landlords have established a total monetary claim of **\$312.54** comprised of the above described amounts and the \$50.00 fee paid for this application.

Tenants' application

Double security deposit

Under section 38(6) of the Act, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both if the landlord fails to comply with section 38(1) of the Act.

Under Section 38(1) of the Act, the landlord must within 15 days of the tenancy ending or the date the landlord receives the tenant forwarding address in writing must do one of the following, repay any security deposit or pet damage deposit or make an application for dispute resolution claiming against the deposit.

In this case, the landlord received the tenants forwarding address on October 9, 2013 and their application for dispute resolution was filed on October 21, 2013, which is within the statutory timeline. I find the tenants' have failed to prove a violation of the Act by the landlord. Therefore, I find the tenants are not entitled to double of the security deposit or pet damage deposits.

Return of half months rent for April and May and an over payment of rent for March

The tenants seek compensation for the loss of use of the shower, however, the tenant were adequately compensated by the landlord as they had already received a rent reduction equal to 50% of the monthly rent for April, and May 2013. I find the tenants have failed to prove a loss exits. Therefore, I dismiss this portion of their claim.

The tenants seek compensation for the agreed upon rent reduction of 50% for the month of March 2013. However, the evidence support that the tenants were compensated by the landlord as they had received a rent reduction of 50% in the month of July 1, 2013, and both parties agreed that the shower had been fixed by this time. I find the tenants have failed to prove a loss exits. Therefore, I dismiss this portion of the claim.

As the tenants were not successful with their application, I find they are not entitled to recover the cost of the filing fee from the landlords.

Conclusion

The tenants' application is dismissed

The landlords are granted a monetary order; I order that the landlords retain from the deposits (\$650.00) the amount of **\$312.54**, in full satisfaction of their claim.

I grant the tenants an order under section 67 for the balance due of their deposits in the amount of **\$337.46**.

Should the landlord failed to comply; this order may be filed in the Provincial Court (Small Claims) 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: February 05, 2014

Residential Tenancy Branch

