



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' 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 tenants' security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. During the hearing the landlords withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

The hearing was originally scheduled for January 23, 2014. At that hearing the matter was adjourned as the landlords had not received their hearing documents from the Residential Tenancy Office when they first filed their application in October, 2013 and therefore the landlords hearing documents were served upon the tenants late. The parties agreed to adjourn the hearing to provide more time for the tenants to review the hearing documents and provide documentary evidence. At the reconvened hearing held today the tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords 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 relevant evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the tenants' security and pet deposit?

Background and Evidence

The parties agree that this tenancy started on August 01, 2009 for a fixed term of one year. At the end of that lease the tenancy continued on a month to month basis. Rent for this unit was \$1,550.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of \$775.00 and a pet deposit of \$650.00 on June 26, 2009.

The landlords testify that at the beginning of the tenancy both parties attended a move in condition inspection of the property and a few things were documented that were deemed to be extreme enough to put on the move in report. At the end of the tenancy the tenants were still moving their belongings out of the unit even through the landlords had given the tenants extra time to move out. The landlords testify that the tenants did not want to take part in the inspection or sign the report so the inspection was completed while the tenants were in the process of moving out. The landlords found that the tenants had not thoroughly cleaned the unit. The carpets were left with dog urine stains in a bedroom. The landlord testifies that this appeared to be a fairly new stain and when the carpets were lifted the floor under the stain was also marked. The landlord testifies that they did not attempt to clean the carpets first as they were advised to replace them by the carpet fitter. The landlords testify that they decided to replace the carpets with laminate flooring as this worked out to be a cheaper option and carpets would have been approximately \$1,000.00 more than the laminate. The landlords testify that the carpets were seven or eight years old.

The landlords seek to recover the labour costs for removing the old carpet and underlay and installing new laminate in all the bedrooms at \$2,100.00 and for the cost of the laminate flooring of \$750.00. The landlords have provided some photographic evidence and the invoice from the carpet company in evidence.

The landlords testify that several of the interior walls were left damaged with scuff marks, deep scratching and gouges. One of the bedrooms also had a mark that looked like it had been caused through some kind of heat source. The walls had to be repaired, primed and repainted and the landlords seek to recover \$800.00 for labour costs for this work and \$217.50 for the paint and primer. The landlord testifies that the unit was last repainted in 2008. The landlords have provided photographic evidence and the invoice for this work.

The landlords testify that the tenants caused some other damage in the unit. This consists of a crack in the entryway tile, broken trim on the second entry way floor around the tile and laminate; a missing bedroom door handle and a missing closet door handle; the grout in the bathroom around the tub and in the en-suite shower was left dirty; two floor vents were damaged; one light fixture that was seven years old was broken and one was missing. The landlords seek to recover \$240.00 for the labour costs to repair this damage and \$73.25 for new light fixtures.

The landlords testify that the tenants caused damage to five blinds in the unit. The landlords agree that a sixth blind in the master bedroom was damaged when the tenants moved into the unit and this blind has not been included in the landlords claim. The landlords testify the damaged blinds were in three bedrooms, the family room and the kitchen. The landlords seek to recover \$160.00 in labour costs to replace the blinds and \$355.20 for the new blinds. The landlords testify that the blinds were new in 2008. The landlords seek to recover the tax paid on the entire repair invoice of \$332.52.

The landlords testify that they will limit their claim to \$4,000.00 which is the amount on their application although the actual costs were much higher.

The landlords request an Order allowing them to keep the security and pet deposits to offset against their claim. The landlords also seek to recover the \$50.00 filing fee from the tenants.

The tenants dispute the landlords' claims for damage to the carpets. The tenants refer to their digital evidence and testify that their evidence shows the poor condition that the carpets were in at the start of the tenancy and due to water damage and mould during the tenancy. The tenants testify that there was staining present on the carpets when they moved into the unit. The tenants testify that the landlords raised large dogs in the home for 25 years prior to the tenants moving in with their two smaller dogs. The tenants refer to the pictures of the staining and testify that this is a large stain and could not be caused by their smaller dogs.

The tenants testify that there was mould growing around the edges of the carpets and this type of staining could not be removed. Due to the water leaks and mould issues the landlords would have had to have replaced the carpets anyways. The tenants testify that they had the carpets professionally cleaned at the end of their tenancy and there was no mention from their carpet cleaner about pet urine stains. The tenants testify that there were marks on the carpet in the master bedroom from tracking, where numerous people including the landlords had walked on the carpets over the years. The tenants testify that there were no visible urine stains on the carpets. As the landlords did not pull up the carpets at the start of the tenancy how could the tenant know whether or not the landlords' dogs had caused this staining that was found under the carpets when the tenants moved out. The tenants testify that when the landlords arrived at the unit while the tenants were moving out, the carpets had been cleaned and were still damp. It had been raining outside, however the landlords did not remove their shoes which were wet and dirty and the landlords proceeded to walk all over the carpets.

The landlords testify that they did raise dogs on the property but their dogs were kept outside in dog runs and only came into the unit on the tiled kitchen floor. The landlords

testify that the staining is a large stain and it must be continuous staining as dogs return to the same area.

The tenants argue that if their dogs had urinated on the carpet it would not be a circle like this if their dogs had returned to the same area. The tenant AH testifies that she was looking after the landlords' grandson. The landlords' daughter came to collect her son and stayed for a chat with the tenant. During this conversation the landlords' daughter spoke about the scratches on the wall and stated that they were caused by the landlords' dogs when they had been locked in that room and the dogs scratched at the wall and door to be let out. The tenants therefore dispute the landlords' claim that their dogs were kept outside all the time or just in the kitchen.

The tenants dispute the landlords claim that they damaged the walls the tenants testify that some scuff marks occurred as a result of furniture being against the wall but no more than normal wear and tear. The only wall that suffered any damage due to the tenants was in the kitchen and the tenants repaired and repainted that wall prior to moving out. The tenants testify that they only hung one picture up during the tenancy and that was hung on a pre-existing nail. The tenants agree that the room used as an office did suffer with a few nicks in the paintwork but again no more than normal wear and tear. The main damage to that room was the damage caused by the landlords own dogs as stated by the landlords daughter. These marks can be seen in the photograph and the tenants testify that they are too high up the wall for them to have been caused by the tenants' dogs.

The landlord argues that the tenants' dogs are not so small and these scratch marks were not caused by the landlords' dogs as they are not documented on the move in condition inspection report. The landlords argue that one bedroom also had chipped paint.

The tenants dispute the landlords claim concerning the other damage claimed by the landlord. The tenants testify that the move in report was not comprehensive. The

tenant's grandmother walked around the unit on the day the tenants moved in and took photographs of some of the damaged and dirty areas in the unit. The tenants have provided digital evidence of these pictures. The tenants testify that their evidence shows a damaged blind and other dirty areas of the unit including the edges of the walls and carpets, the dirty toilet and bathroom, scratches on a door frame and damaged flooring in the bathroom. The tenants state none of this is mentioned on the move in report.

The landlords argue that the scratches on the door frame were too minor to mention on the report. The poor paint work on the walls was as a result of the trim not being put back on, the unclean areas were as a result of the landlords running out of time because the tenants wanted to move in and they didn't have time to clean all these areas. The landlord agrees the bathroom floor was damaged. The landlords argue that when they walked around the unit the tenants did not point out these damaged areas either and they were insignificant to the report.

The tenants testify that at the end of the tenancy the landlords came and just started to do the move out inspection while the tenants were still moving out and without telling the tenants. The tenants testify that the landlord were even shining a torch up the walls and it was an unfair inspection as it was more comprehensive than the move in inspection. The tenant agrees they refused to sign the report on this basis.

The landlords argue that they only walked around the unit and then filled in the report after the tenants had finished moving out. The tenants were then asked if they wanted to go through the report with the landlords when they had finished but they refused.

The tenants dispute the landlords claim that they cracked a tile in the entry way. The tenants testify that this area of floor was uneven and was separating from the front door. The landlord had earlier informed the tenants that the landlords had not leveled the floor properly when they built this extension and that they were aware the floor was lifting. One day the landlord came to pick up her grandson and the landlord stood on this tile. A popping noise could be heard and the tenant then saw that the tile had cracked.

The tenants dispute the landlords claim concerning the trim. The tenant testifies that this trim was not secured properly and was sitting above the floor level so it popped off and broke.

The tenants dispute the landlords claim concerning the door handles. The tenant testifies that this door handle was a locking handle and they tenants were not given the key. The door became locked and the handle had to be removed after the tenants messaged both the landlord and their daughter. The handle was left at the property by the tenants. The tenants testify that the closet handle had to be removed as it was fitted to the wrong side of the closet door. This was also left at the unit by the tenants.

The tenants dispute the landlords claim concerning the light fixture. The tenant testifies that this was a frosted glass fixture which was removed as it made the light too dim. This fixture was also left at the unit by the tenants. The tenants testify that the broken light fixture occurred when one of the glass panels simply dropped out of the fixture and broke on the floor. Neither tenant was close to the fixture at this time.

The tenants dispute the landlords claim concerning the grout. The tenants testify that the house was damp and mouldy and this created mildew in the bathrooms. The tenants testify that the landlords' photographs are misleading as the grout was not black as shown in the landlords' pictures but it was mouldy due to the high moisture levels in the home from a leaking roof and water in the basement level.

The tenants dispute the landlords claim concerning the vents. The tenants testify that the vents were all metal and were not broken by the tenants.

The tenants dispute the landlords' claims concerning five damaged blinds. The tenants testify that the landlords had told the tenants that they had a problem with their own children climbing out of the windows. The damaged blinds were already damaged at the start of the tenancy although only one was documented on the move in inspection form.

The damage is all on the side of the window opener and the blinds were already bent on these sides consistent with someone climbing in and out of the windows.

The landlord argues that the tile was already broken the day the landlord stepped close to it. The landlord testifies that she commented on it being broken and when she stepped near the tile she could hear that it was previously broken. The landlord also argues that the trim was fitted by a professional floor layer with a nail gun.

The tenants argue that all the landlords' repairs were supposed to have been done by professional people however the roof was repaired wrong and continued to leak, the furnace was wired wrong and a shed was repaired and was left with nails sticking out. The tenants states that none of these jobs were professionally completed.

The landlords argue that they did not find any door handles or the light fixture in the property, the grout was caused by dirt and not mildew and any mould in the home was surface mould.

The landlords argue that the other blinds were not damaged when the tenants moved in. The landlords testify that they all went through the report together and only the master bedroom blind was damaged. The landlord agrees that they did not document every little piece of damage in the home at that time.

The tenants agree the landlord can deduct \$28.00 from their security deposit for the door handle. The tenants' dispute the landlords claim to keep the remainder of the security and pet deposit and seek an Order to have this returned to the tenants.

Analysis

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

Therefore with regard to the landlords claim for carpet replacement; I have considered the evidence before me and I am not satisfied that the landlords have shown that the tenants are responsible for pet urine stains on the carpets. The tenants had the carpets cleaned and there are no comments on the carpet cleaners invoice that stains were not removed from the carpets, the landlords have not met the burden of proof that the staining on the back of the carpets was caused by the tenants dogs or the staining through onto the subfloor. I find the tenants' evidence credible concerning their testimony that the landlords' daughter informed them that the landlords' dogs were not always outdoor dogs or that they were confined to the kitchen area. Furthermore I find from both parties photographic evidence that the carpets sustained some damage due to the water leaks and mould issues. The carpets were seven or eight years old and the normal life span of a carpet is documented under the Residential Tenancy Policy

Guidelines concerning the useful life of building elements as 10 years. Consequently it is my decision that the landlords have not met the burden of proof that the tenants were responsible for any damage to the carpets through their actions or neglect in violation of the *Act* or agreement. This section of the landlords claim is therefore dismissed.

With regard to the landlords claim for wall repairs and painting, while I accept that during a tenancy of six years a tenant may cause some defects to the walls through reasonable wear and tear. Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The landlords have testified that the paint work was in a reasonable condition at the start of the tenancy however the tenants photographic evidence disputes this in some areas. I find I can place little merit on the move in condition inspection report as the landlords have not been as thorough filling in that report as they were at the end of the tenancy as depicted by the tenants' photographic evidence. The tenants have shown that there were areas of significant damage and unclean areas not recorded on that report. Furthermore the useful life of interior paint is considered to be four years. As the landlords testified that the unit was last repainted in 2009 then the landlords are responsible to redo the paint work themselves and cannot pass this reasonability over to the tenants when neglect has not been proven. Consequently this section of the landlords claim is also dismissed.

With regard to the landlords claim for other damages; the tenants contradict the landlords' testimony concerning who broke the tile in the entryway. When one party's evidence is contradicted by that of the other party then the burden of proof falls to the person making the claim. In this matter the landlord must show that the tenants were responsible for the broken tile and that it was not broken due to an uneven floor surface when the landlord stepped on it. The landlords would be required to provide corroborating evidence to meet the burden of proof. In this matter there is insufficient corroborating evidence and it is one person's word against that of the other. Therefore

the burden of proof has not been met. This section of the landlords claim is therefore dismissed.

With regard to the landlords claim for the broken trim. As this trim is located in the same area as the broken tile I must also find that if the floor is uneven it would be reasonable to expect the trim to break or become dislodged. As the landlord has insufficient corroborating evidence to meet the burden of proof that the trim was damaged through the tenants actions or neglect then I must also dismiss this section of the landlords claim.

With regard to the landlords claim for missing door handles. The tenants agree that they did remove both the door handle and the closet door handle. For whatever reason these handles were removed the tenants should have replaced them at the end of their tenancy. The tenants agree the landlord may deduct \$28.00 from the security deposit for the door handle. As the landlord has insufficient corroborating evidence to show the actual cost of replacing both handles I find the landlords are entitled to recover **\$31.36** including tax, for the door handle and **\$11.20** including tax, for the closet door handle. These amounts may be deducted from the security deposit pursuant to s. 38(4)(b) of the *Act*.

With regard to the landlords claim for the grout; the tenants dispute the landlords claim and have testified that the grout became discoloured due to the moisture levels and mould in the home. I find from the evidence before me that there was a high level of moisture in the home due to different factors such as the leaking roof and the water in the floor that was being pumped out. There is evidence of mould in the unit and damp or wet carpets around the wall. I find on a balance of probabilities that it is possible that the grout in both these high moisture environments could have become discoloured through the moisture in the home creating mould or mildew. Consequently it is my decision that the landlords have not met the burden of proof in this matter that the grout was discoloured due to the actions or neglect of the tenants and this section of the landlords claim is dismissed.

With regard to the landlords claim that the tenants damaged two floor vents, As I can place little weight on the move in condition inspection report I am unable to determine that these vents were not damaged at the start of the tenancy. The landlord has not documented that vents were damaged on the move out report and there is no photographic evidence indicating two damaged floor vents. Consequently the landlords have failed to meet the burden of proof in this matter and this section of their claim is dismissed.

With regard to the landlords claim for two light fixtures; the tenants agree that they did remove one light fixture as it was frosted glass which cast a dim light. The tenants should have replaced this fixture at the end of the tenancy and failed to do so. With regard to the other light fixture in this matter; having reviewed the photographic evidence it does appear that a section of the glass is broken. Consequently I uphold the landlords claim for two light fixtures. As these light fixtures were seven years old I must deduct an amount for depreciation. Light fixtures have a normal life span of 15years. Therefore, having taken into account the deprecation of these fixtures and the invoice showing the replacement costs of \$73.25; I award the landlord **\$41.02** including tax. The landlords may deduct this amount from the security deposit pursuant to s. 38(4)(b) of the Act.

With regard to the landlords claim for five replacement blinds, the landlords have testified that there were damaged blinds in three bedrooms, the family room and kitchen; however, the landlords have provided only three pictures showing the three bedroom blinds damaged. The tenants dispute that they were responsible for the damage to the blinds and have testified that these blinds were damaged at the start of the tenancy along with the master bedroom blind. Again when one person's evidence contradicts that of the other then the burden of proof falls to the landlords. In this matter I find the landlords have no corroborating evidence to show that the blinds were damaged in the kitchen or family room. I find it likely that if these blinds were damaged at the start of the tenancy that the tenant's grandmother would have taken a picture of the other damaged bedroom blinds as she did the master bedroom. I therefore find on a

balance of probabilities that the blinds were damaged during the tenancy. However, the landlords agree that these three blinds were eight years old and the useful life span of venation blinds is considered to be 10 years. The landlords invoice indicates that only four blinds were replaced which may or may not have included the damaged blind in the master bedroom. I must therefore take the depreciation into account for these blinds and limit the claim to three blinds. I therefore find the landlords are entitled to recover **\$107.52** including tax, for labour costs to fit the new blinds and **\$79.56** including tax, to purchase new blinds. These amounts may be deducted from the security deposit pursuant to s. 38(4)(b) of the *Act*.

As the landlords have only been partially successful with their claim I find the landlords may recover **\$25.00** of the filing fee pursuant to s. 72(1) of the *Act*. The landlords may deduct the total sum of **\$295.66** from the tenants security deposit pursuant to s. 38(4)(b) of the *Act*. The balance of the security and pet deposit of **\$1,129.34** must be returned to the tenants pursuant to s. 38(6)(b) of the *Act*.

The landlord has indicated that there was additional damage to the hottub and additional cleaning costs however the landlord did not provide testimony concerning these issues as the landlords stated they wanted to limit their claim to \$4,000.00.

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. I Order the landlords to retain the sum of **295.66** from the tenants security deposit the balance of the security and pet deposits must be returned to the tenants.

The reminder of the landlords claim is dismissed without leave to reapply.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,129.34**. The Order must be served on the landlords. Should the landlords fail to comply with the Order the Order may be enforced 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: March 20, 2014

Residential Tenancy Branch

