



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of double their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties agreed that the tenants handed one of the landlord's representatives their written notice to end this tenancy on October 31, 2013, the date when the tenants surrendered vacant possession of the rental unit to the landlord. The tenants confirmed that they both received copies of the landlord's dispute resolution hearing package sent to the tenants on November 29, 2013 by registered mail. The landlord confirmed that they received a copy of the tenants' dispute resolution hearing package sent by registered mail in advance of this hearing. I am satisfied that the parties served one another with the above documents and their written evidence packages in accordance with the *Act*.

After explaining the process to be followed in this hearing, during the course of this hearing, I had to remind the female tenant that she was not to interrupt the landlord's representatives when they were giving their sworn testimony. I informed her that if she

continued to interrupt, I would have to disconnect her from this hearing. At this point, the male tenant advised me that the other tenant, his mother, had become upset and had left the room and did not appear to be intending to participate further in this hearing. Although I was willing to let her continue, as long as she did not interrupt the other parties, she did not rejoin the hearing. The male tenant remained present throughout the hearing and participated fully as the representative of both tenants' interests in this matter.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Which of the parties are entitled to the tenants' security deposit? Are either of the parties entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy beginning on November 1, 2012, ended on the scheduled termination date for the fixed term on October 31, 2013. Monthly rent was set at \$1,250.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$625.00 security deposit paid on September 26, 2012.

The parties participated in a joint move-in condition inspection on October 26, 2012. The male tenant confirmed that the tenants received a copy of the joint move-in condition inspection report prepared by the landlord shortly after the joint move-in condition inspection. As neither tenant was available for the scheduled joint move-out condition inspection on October 31, 2013, the female tenant assigned an agent to participate in this joint move-out inspection on her behalf. Although this agent walked through the rental unit with the landlord's representative, the tenants' agent refused to sign the landlord's joint move-out condition inspection report of October 31, 2013.

The landlord's application for a monetary award of \$717.71 included the following:

Item	Amount
Professional Carpet Cleaning	\$140.00
Painting and Painting Materials	577.71
Total of Above Items	\$717.71

The tenants applied for a monetary award of \$1,250.00, an amount equivalent to double the value of their security deposit pursuant to section 38 of the *Act*. Both parties also requested the recovery of their \$50.00 filing fee for their applications.

The landlord entered sworn testimony and written evidence that the walls were badly in need of painting at the end of this tenancy due to heavy smoking that occurred during this tenancy. Before the tenancy, the joint move-in condition inspection report signed by the parties did not reveal any problems with the paint job in the rental unit. Landlord Representative DL (the landlord) testified that the rental premises were painted in September 2012, shortly before this tenancy began. At the end of the tenancy, in what the landlord described as a non-smoking building, the walls were smoke damaged, with the smell of smoke everywhere. She said that some of the walls also needed patching to cover up damage caused during this tenancy. The landlord's resident manager confirmed the landlord's testimony stating that the walls badly needed repainting at the end of this tenancy. The move-out condition inspection report had many references to the smell of cigarette smoke in the rental unit and the need for repainting.

By this point in the hearing, the female tenant had disconnected from the hearing and the male tenant was the only witness to speak to the landlord's claim that painting was necessary to cover the smell of cigarette smoke. He agreed that there had been smoking in the rental unit during this tenancy. He said that the landlord did not advise the tenants at the commencement of this tenancy that smoking was not allowed in this building. The male tenant testified that the rental unit was not properly cleaned by the landlords at the beginning of this tenancy and that it was left in no worse condition than when the tenancy started. He also said that although he signed the Agreement, he did not really live there during this tenancy. Although the tenants entered some written evidence and photographs of the condition of the rental unit at the end of this tenancy, the authors of the letters of support were not present to give sworn testimony at this hearing. I also found the photographic evidence of limited value as the photos were taken for the most part at a distance and gave little sense as to whether painting was or was not required at the end of this tenancy.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the security deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, the landlord had 15 days after November 25, 2013, the date when the landlord received the tenants' forwarding address placed in the landlord's mailbox earlier that day by the tenants to take one of the actions outlined above. Since the landlord applied for authorization to retain all or a portion of the tenants' security deposit on November 29, 2013, I find that the landlord was well within the 15-day time period established under section 38 of the *Act* to take one of the actions identified in that section of the *Act*. As such, I find that there is no basis to the tenant's claim for a return of double the value of the security deposit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Section 27 of the Residential Tenancy Agreement (the Agreement) signed by the parties and entered into written evidence by the landlord established that at the end of the tenancy the "Carpets shall be professionally cleaned... and immediately prior to the tenants vacating the Premises." This provision of the Agreement was also noted by the landlord in the "Cleaning List" provided to the tenants whereby the landlord notified the tenants that the carpets "must be steam cleaned by a reliable cleaner to management's satisfaction." This Cleaning List also noted that a copy of the receipt for cleaning must be submitted during checkout and that the landlord would look after the steam cleaning if necessary and the tenants would be charged the cost of providing this service at the end of the tenancy.

At the hearing, the female tenant testified that she steam cleaned the carpets herself at the end of this tenancy using a "professional steam cleaner."

Based on my reading of section 27 of the Agreement, I find that the tenants did not abide by the commitment they entered into at the beginning of this tenancy to retain professional cleaning of the carpets immediately prior to the end to this tenancy. The move-out condition inspection report entered into written evidence by the landlord showed that the carpets had not been professionally steam cleaned at the end of this

tenancy. The landlord entered into written evidence a copy of a \$141.75 receipt for professional steam cleaning of the carpets in this rental unit at the end of this tenancy. I allow the landlord a monetary award of \$141.75 for professional steam cleaning of the carpets at the end of this tenancy,

Based on the sworn testimony before me and after reviewing the written evidence, particularly a comparison of the joint move-in and move-out condition inspection reports, I find on a balance of probabilities it more likely than not that the rental unit needed to be repainted due to the smoke damage caused during the course of this tenancy. While it would have been helpful to have included a no smoking provision in either the landlord's Agreement or in an Addendum attached to that Agreement, the absence of a no smoking provision does not prevent the landlord from claiming for damage to the existing paint job caused by smoking that exceeded that which could be expected for reasonable wear and tear.

In this regard, I note that the RTB's Rule of Procedure 40 establishes the Useful Life of various components of a tenancy. In the case of an internal paint job, the useful life in a residential tenancy is set at 4 years (or 48 months). In this case, I am satisfied that the premises were last repainted in September 2012. When the rental unit had to be repainted in November 2013, this occurred 14 months into the regular 48 month cycle for repainting. As such, I find that the landlord would only be entitled to recover 70.8% of the repainting costs (i.e., $(48-14 = 34) / 48 = 70.8\%$) incurred in November 2013. The landlord entered into written evidence a copy of a November 7, 2013 invoice for \$172.07 for paint and materials. The landlord also submitted a copy of a November 10, 2013 invoice in the amount of \$420.00 for the labour to paint the walls and ceilings in this rental unit. I allow the landlord a monetary award of \$121.83 for paint and materials (i.e., $\$172.07 \times 70.8\% = \121.83) and \$297.36 for the labour to paint the walls and ceiling in the rental unit after this tenancy ended ($\$420.00 \times 70.8\% = \297.36).

I allow the landlord to retain the above amounts from the tenants' security deposit plus applicable interest to satisfy the monetary award issued in the landlord's favour. No interest is payable over this period.

Having been successful in this application, I find further that the landlord is entitled to recover the \$50.00 filing fee paid for this application from the tenants. As the tenants have been primarily unsuccessful in their application and would have received a decision regarding their security deposit whether or not they had applied for dispute resolution, I find that the tenants bear the cost of their filing fees.

Conclusion

I order that the landlord retain the following amounts from the tenants' security deposit for damage arising out of this tenancy and to recover the landlord's filing fee for the landlord's application:

Item	Amount
Professional Carpet Cleaning	\$141.75
Paint and Painting Materials	121.83
Labour to Paint Walls and Ceilings	297.36
Less Security Deposit	-625.00
Landlord's Filing Fee	50.00
Total Monetary Order	(\$14.06)

A total of \$14.06 remains from the tenants' security deposit after the successful portions of the landlord's claim have been considered. This results in a monetary Order in the tenants' favour in the amount of \$14.06, which I order the landlord to return to the tenants forthwith.

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 24, 2014

Residential Tenancy Branch

