



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding A&S Miller Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF, O

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 tenants' security 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.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant 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 entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on May 01, 2010 for a month to month tenancy. Rent for this unit was \$1,275.00 per month at the start of the tenancy but has since risen to \$1,300.00 per month. The tenants paid a security deposit of \$637.50 on March 31, 2010. Both parties attended a move in condition inspection of the unit; however, the landlord's agent did the move out inspection in the absence of the tenants. The tenancy ended on December 31, 2013 although the tenants vacated the unit on December 07, 2013. The tenants agreed they have not provided a forwarding address to the landlord.

The landlord testified that the tenants were given an opportunity to attend a move out inspection on December 31, 2013. The landlord's agent called the tenants on December 30, 2013 and asked them to attend the following day for an inspection. The landlord testifies that he had previously spoken to the tenants about taking part in an inspection on December 31, 2013; however the tenants failed to attend and indicated to the landlord's agent that they were not going to attend and that the landlord could just keep their security deposit. The landlord's agent therefore conducted the move out inspection and filled in the report in the absence of the tenants on December 31, 2013.

The landlord testifies that during the move out inspection it was documented on the report that there was damage to the following items:

- Two handrails had been torn from the wall. These had to be reinstalled at a cost of \$70.80 for parts and \$53.55 for labour.
- The tenants had left the carpets in a dirty and stained condition. These were cleaned at a cost of \$189.00
- The bathtub had a hole in the bottom. This was patched and repaired at a cost of \$120.00;
- A mirror closet door was damaged and had to be replaced. The new door and parts were \$111.99 and the installation and collection of the door was \$50.00

- The landlord had asked the tenants to put up two curtain rods and hang curtains. The rods had not been installed correctly. These had to be reinstalled and the curtains re-hung. The landlord seeks the cost of \$32.00 to re-hang the curtains;
- The patio door screen was left damaged. This had to be replaced and the landlord seeks to recover costs for the new door and labour of \$40.00;
- The landlord seeks to recover \$10.00 for the landlord's agent to check out the paint job and the damage to the bathtub;
- The unit was not cleaned sufficiently. The unit was cleaned by the landlord's agent's wife who took four hours at \$15.00 per hours. The landlord seeks to recover \$60.00;
- The walls had been patched by the tenants due to all the damage but had not been repainted. The landlord had to have the walls primed and painted at a cost of \$2,275.00. The painters also replaced two door stops, painted trim which was damaged, painted the garage which was dirty and washed all the cover plates. The landlord's invoice also contained a charge for sealing and painting a ceiling due to water damage; however, the landlord has withdrawn this section of the painting work from their claim and adjusted their claim accordingly;
- The landlord seeks labour costs for his agent to go and pick up supplies to make repairs and to replace four light bulbs, three broken counter lights, to remove 40 to 50 nails and picture hangers from the walls and ceiling, to clean out the back drain which was filled with sand, to remove and reinstall the curtain rods, to remove veins from a vertical blind to use in the repair of two other blinds and to replace one vertical blind that was damaged beyond repair. The landlord seeks to recover \$214.20 in labour costs plus \$15.83 for light bulbs, \$34.51 for three counter lights, and \$112.00 for the vertical blind.
- The landlord seeks to recover \$60.00 for 12 appliance manuals removed from the unit by the tenants, which the landlord will have to replace.

The landlord has withdrawn his claim for \$15.00 for the central vac outlet diagnosis; the claim for rekeying the locks of \$178.50; and the replacement of the outside drain cover

for \$20.00. The landlord has also reduced his claim for painting by \$75.00 to take into account the water stains on the ceiling not being part of the claim.

The landlord testified that due to the painting required and other repairs the unit could not be re-rented for January 01, 2014. The landlord testified that due to this the landlord lost rental income for January, 2014. The landlord testified that the work was completed approximately around January 15, 2014 and the landlord therefore seeks to recover a loss of rent from the tenants from January 01 to January 15, 2014 of \$650.00. The landlord testified that in February, 2014 a decision was made to sell the unit rather than keep trying to re-rent it.

The landlord seeks an Order to keep the security deposit to offset against the loss of rent and damages. The landlord also seeks to recover the \$50.00 filing fee from the tenants.

The landlord calls his witness. The witness is the landlord's son and acted as the landlord's agent in completing the move out inspection and doing some of the repairs. The witness testified that there had been problems with the central vac outlets as three outlets were not connecting properly. The witness testified that he does not believe this is the fault of the tenants; however, the hose and the vacuum head were damaged and had to be replaced. The witness is not sure of the cost of those items and no receipt has been provided in the landlord's documentary evidence.

The witness testified that he removed 40 to 50 nails and/or picture hangers from the walls. The witness testified that he had called the tenants on December 30, 2013 to arrange to do the move out inspection with the tenants the following day. The tenant EV flatly refused to attend the inspection and informed the witness that the landlord could just keep their security deposit.

The tenant EV cross examined the witness and asked the witness where their proof is that shows there were 40 to 50 nails or picture hooks in the walls. The witness responded that he does not know where the pictures are of these.

The tenant EV testified that they did want to do an inspection with the landlord but the landlord only gave the tenants one date on December 31, 2013 and the tenants were busy on that date. No other date or time was given to the tenants to attend the move out inspection.

The tenant EV testified that they did not damage the handrails. The handrails had been fixed to the drywall and were not screwed into the studs of the walls. The handrails came off and were replaced by the tenants a number of times. In the end the tenants left them off. The tenant testified that they did cut out some drywall and put some board behind it to replace the handrails by screwing into the board. They then had a conversation with the landlord's son who informed the tenants that he would replace the handrails as they needed to be put on properly.

The tenant EV testified that the tub had a crack in it at the start of the tenancy but this was not noticed when they did the move in condition inspection. The tenant testified that the landlord had asked the tenants to put up the curtain rods but then it appears that this was not done to the landlord's satisfaction. The tenant EV testified that they are not responsible for the central vac system and testified that they did not damage the pipe or vacuum head.

The tenant EV testified that they had cleaned the house thoroughly at the end of the tenancy. They had moved out on December 07, 2013 to give them time to do a proper clean. Other than the carpets the unit was left spotless. The tenants referred to their photographic evidence showing that the unit was clean. The carpets were not cleaned as the landlord wanted to do some painting. The children's scribbles on the walls were also not removed as it took the finish off the walls and the landlord had informed the tenants that he was going to repaint the playroom.

The tenant EV testified that they did patch all the nicks and scratches on the walls and although the landlord's photographic evidence looks like there was a lot of patching on the walls this is misleading as the patches are larger than the holes. Some of the nicks in the walls were also there at the start of the tenancy and when the tenants had the walls patched they decided to fill these nicks as the landlord was going to be painting. The tenant agrees that they should be held responsible for painting in the playroom due to the tenants' children drawing on the walls. The tenant EV testified that she had spoken to the landlord's son about painting the playroom and the landlord's son told the tenant not to worry about it.

The tenant EV testified that all of the nails and picture holders were removed from the walls. The tenant disputed the landlord's claim that the tenants damaged the counter lights. The tenant EV testified that these lights were cheaply made and the covers had fallen off which left the covers cracked. The tenant EV testified that when the yard work was done by a contractor all the sand and gravel washed into the drain which clogged it and it should not be the tenants' responsibility to clear it.

The tenant EV disputed the landlord's claim that they caused damage to three vertical blinds. The tenant testified that one vane in one blind was broken through normal wear and tear and any other damage to the blinds was also caused through normal wear and tear as the blinds were opened and closed. The tenant agrees that they are responsible for the cost of one blind at \$112.00.

The tenants did not dispute the landlord's claims for carpet cleaning of \$189.00; for the mirror closet door of \$115.89; for the patio door screen of \$35.70 plus \$51.00 for labour to replace the screen and mirror closet door; for the light bulbs of \$50.36; or that they may have removed the appliance manuals accidental and are willing to reimburse the landlord \$60.00 to replace these.

The tenant EV agreed at the hearing that the landlord may keep part of the security deposit to cover these costs but seeks to recover the balance of the security deposit of \$83.55.

The tenant EV disputed the landlord's claim for a loss of rental income for January, 2014. The tenant EV testified that although they agreed the landlord would need to paint the unit; as the tenants had vacated the unit on December 07, 2013 the landlord could have asked the tenants' permission to access the unit to do the painting even though the tenants still had possession of the unit until December 31, 2014.

The tenant EV cross examined the landlord and asked the landlord if he knew the railings were ripped off the wall why did the landlord not have them fixed sooner. The landlord responded that he did not know prior to the end of the tenancy that the railings were ripped off the wall. The tenant asked the landlord about an email provided in evidence from the landlord's son dated in July 2012 in which the landlord's son informed the landlord that the railings were off the wall. The landlord responded that the tenants had not directly notified the landlord about the railings.

The landlord declined to cross examine the tenants.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the landlord's claim for damage 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 *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 landlord has provided a copy of the move in and move out condition inspection reports. Although the landlord did not give the tenants at least two opportunities to attend the move out condition inspection I have no reason to doubt the findings documented on this inspection report particularly as the landlord has provided other corroborating evidence such as photographic evidence showing some areas of damage in the unit and the sworn testimony of the landlords witness who not only conducted the move out inspection but also did many of the repairs. The tenants have also agreed that they are responsible for some of the damage. I am therefore satisfied that the landlord has met the burden of proof for the following items:

Carpet cleaning at **\$189.00**

Mirror doors at **\$111.99** plus **\$50.00** labour to collect them and fit them

Patio door screen at **\$40.00** including parts and labour

Light bulbs at **\$15.83**

Replace one vertical blind at **\$112.00**

Replace the appliance manuals at **\$60.00**.

I am also satisfied that the tenants patched the damage to the walls of the unit. The tenants have testified that this damage was no more than normal wear and tear during their tenancy; however, I would consider the amount of patching to exceed normal wear and tear and find the tenants can be held responsible for painting the entire unit, trim and garage. As the unit was last repainted three and half years ago, I will deduct an amount from the landlord's claim for depreciation as the normal life span of interior paint is considered to be four years. Therefore, a landlord is required to repaint the interior of a unit at least every four years. Consequently, it is my decision that the landlord is entitled to recover an amount of **\$500.00** towards repainting the unit.

With regard to the landlord's claim that the tenants caused damage to the bathtub, the tenant testified that this damage was in place at the start of the tenancy and was not noticed during the walk through. However, if the tenants noticed this damage after the walk through was concluded the tenants should have notified the landlord so it could have been included on the inspection report at that time. As I have no evidence to show that this damage was in place at the start of the tenancy I must conclude that it was caused during the tenancy and as such I find the landlord has met the burden of proof in this matter. The landlord is entitled to recover the sum of **\$120.00**.

With regard to the landlord's claim for replacement counter lights; the tenants have testified that the landlord fitted cheap lights and the covers fell off and became damaged. However, the landlord has testified that these lights were damaged by the tenants and needed to be replaced. I have reviewed the evidence and testimony of the parties and am satisfied that the landlord has met the test in this matter that the counter lights were broken through the action or neglect of the tenants and I therefore find in favour of the landlord's claim to recover the sum of **\$34.51**.

With regard to the landlord's claim for refitting the handrails, the tenant testified that these came off due to the fact that they were not fitted correctly and had been screwed into the drywall instead of the stud work. I am satisfied from the evidence before me that the tenants had continuing issues with the handrails and that the landlord had been

notified that they had come off in an email from his son in July 2012. The landlord should have taken steps at that time to determine what the problem was with the handrails and I am not entirely satisfied that the responsibility for these falls to the tenants. This section of the landlord's claim is therefore dismissed.

With regard to the landlord's claim for refitting the curtain rods and re-hanging the curtains; the landlord had asked the tenants to put up the curtain rods during their tenancy. If this work was not done to the landlord's satisfaction the landlord should have first ascertained that the tenants knew how the landlord wanted the rods put up and then ensured that the tenants had the tools and knowledge to do this work to the landlord's satisfaction. If the work was not done correctly the landlord cannot claim against the tenants for doing the landlord a favour in putting the rods up in the first place. Consequently, this section of the landlord's claim is dismissed.

The landlord seeks to recover \$10.00 for his son to look at the paint job and the bathtub repair. However, as this had already been looked at during the move out inspection I am unsure that this work would need to be inspected by the landlord's son again. I therefore dismiss this section of the landlord's claim.

With regard to the landlord's claim for cleaning; the tenants have testified that the unit was left in a clean condition and have provided some photographic evidence showing the unit is reasonably clean. The landlord has provided a few photographs showing some drawers left unclean. Under the *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 landlord has not shown that the tenants failed to meet the "reasonable" standard of cleanliness required and the landlord's claim for \$60.00 for extra cleaning is dismissed.

The landlord seeks to recover an undisclosed amount to remove 40 or 50 nails and/or picture hooks from the walls and ceiling. The landlord's witness testified that he did this work, however the landlord has provided no further corroborating evidence to show that these picture hooks or nails were left in the walls and the tenants have contradicted the landlord's testimony that this was the case. It is my decision that the landlord has insufficient evidence to meet the burden of proof in this matter and this section of the landlord's claim is dismissed.

With regard to the landlord's claim for cleaning out the back drain. The tenant EV testified that this drain was blocked after the contractor did some yard work and sand and gravel washed into the drain. The landlord must meet the burden of proof that the tenants blocked the drain through their actions or neglect and I find it is equally as likely to have been blocked by the yard work completed. Therefore I find the landlord has insufficient evidence to show that the tenants are responsible for blocking the drain and this section of the landlord's claim is dismissed.

With regard to the landlord's claim for labour costs to pick up parts, replace light bulbs and counter lights, to remove picture hooks, to clear the back drain and to repair and replace the vertical blinds of \$214.20. As I have found in partial favour of the landlord's claim for some of these items I must limit the landlord's claim for labour costs to pick up light bulbs and counter lights and to repair and replace the vertical blinds only. I therefore, award the landlord the sum of **\$100.00** for this work.

With regard to the landlord's claim for a loss of rent for the first 15 days in January, 2014; I have considered the evidence before me and find that the landlord was aware that the tenants had vacated the rental unit on December 07, 2013. The tenants argue that the landlord could have mitigated his loss by asking permission of the tenants to go into the unit to paint between December 07 and December 31 when the tenancy legally ended. I have considered this argument and I find the tenant had testified that she was using the time between moving out and the legal end of the tenancy to clean the unit. Therefore it would not have been circumspect of the landlord to have gone to the unit

during that time period to make repairs or do painting as the move out inspection was not going to be done until the tenancy legally ended on December 31, 2013.

Consequently, the landlord was not able to do any work on the property until the tenants had ended the tenancy and the inspection report completed. I therefore find due to the amount of work involved to paint the unit and make minor repairs that the unit could not be advertised for rent in its current condition and therefore the landlord is entitled to recover a loss of rent up to January, 15, 2014 of **\$650.00**.

While I accept that the landlord did not give the tenants at least two opportunities to attend the move out condition inspection as required under s. 35(2) of the *Act*, this only extinguishes the landlord's right to file a claim against the security deposit for damages. It does not extinguish the landlord's right to file a claim to keep the security deposit if part of the claim is for rent. I therefore uphold the landlord's claim to keep the security deposit of **\$650.00** pursuant to s. 38(4)(b) of the *Act*.

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 landlord, pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Damages	\$1,333.33
Loss of rent for January, 2014	\$650.00
Filing fee	\$50.00
Less security deposit	(-\$637.50)
Total amount due to the landlord	\$1,395.83

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,395.83**. The Order must be served on the respondents. Should the respondents 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: May 16, 2014

Residential Tenancy Branch

