



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNSD, FF
 Tenant: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided into evidence the following documents;

- A copy of a tenancy agreement signed by the parties on September 25, 2012 for a 1 year fixed term tenancy beginning on November 1, 2012 for a monthly rent of \$3,625.00 due quarterly with a security deposit of \$3,500.00 paid. The agreement stipulates that the rent includes, among other things, quarterly and final cleaning services. Upon departure it is expected that all trash and recycling as well as person items be removed from premises;
- A copy of a move in Condition Inspection Report completed and signed by the tenant and the landlord's agent on October 31, 2012 recording the agreed upon condition of the rental unit;

- Copies of correspondence between the parties and an third party who has an interest in the potential return of any deposit monies;
- Receipts, invoices and estimates for replacements; repairs; cleaning; carpet cleaning and repairs; flooring; and blinds; and
- Photographs recording the condition of items since the end of the tenancy.

The parties agree that the move out condition inspection was completed on November 4, 2013 and that the tenant returned keys to the unit at that time. The landlord acknowledges that a move out Condition Inspection Report was not completed. The parties dispute whether all keys and/or access devices were returned.

The landlord also confirmed that no report was completed on the condition of any of the furniture or other furnishings at the start of the tenancy. He did submit into evidence a document signed by both parties at the start of the tenancy that the appliances “will be in good working order at commencement of occupancy”.

The parties also agree that the landlord, through his agent, had received the tenant's forwarding address on October 22, 2013. In addition, the parties had previously agreed to have the deposit returned to a third party at the end of the tenancy and that the landlord had the third party's address prior to the commencement of the tenancy.

The landlord explained that upon completion of the move out inspection he had obtained estimates for cleaning and repairs and had determined that the tenant owed an additional \$53.50 over and above the security deposit held. On November 9, 2013 the landlord wrote to the third party advising of this overage.

On November 19, 2013 the landlord wrote another letter to the third party based on the actual costs incurred at that point and determined that he intended to return \$1,216.84 from the deposit to the third party for the tenant.

The landlord further explained that he has not rented the unit out but rather it is intended as a retirement home for he and his wife and that although they do not live in the area of the rental unit full time they have been trying to spend approximately 1 week per month in the unit since the tenancy ended.

In his original documents regarding damage and cleaning required at the end of the tenancy the landlord had identified the following items and expenses: stairwell carpet cleaning; sectional sofa cleaning; office/bedroom blind replacement; hallway carpet repairs; teak flooring cleaning; scratched flooring; bedroom lamp replacement; kitchen cabinet door cleaning (no charge); kitchen oven (no charge); repairs to office/bedroom walls; toilet paper holder replacement; and unreturned thumbnail key tag.

The landlord has included the following **additional** claims in is his Application: replacement of teak flooring; additional cleaning; woodwork repair (repairs to furniture such as dining table; master bedroom chest of drawers; master bedroom exposed wood

bed frame; drywall work in the master bedroom; replacement of master bedroom blind; replacement of kitchen bar stools; replacement of fridge ice maker; additional carpet cleaning for second floor carpets.

The landlord submits that he was unable to attend the move out inspection but that his son attended on his behalf and his agent who had managed the property for the duration of the tenancy also attended. The landlord states that the tenant attended but no representative from the third party attended.

The landlord states that as he understands it his agent did not really participate in the inspection and that it was the tenant who led his son throughout the unit and pointed things out. The landlord stated that as a result some of the items identified were not discovered until after the initial assessments had been completed and the landlord had and his wife had spent additional time in the property.

The following table outlines the landlord's total claim:

Description	Amount
Cleaning - Hardwood, sectional, carpet cleaning	\$808.50
Cleaning - Carpet cleaning bedrooms and upper stairwell	\$260.61
Cleaning - Kitchen cleaning; range hood, oven, fridge walls, cab door	\$165.38
Damage - Office/bedroom blind replacement	\$1,067.75
Damage - Office/bedroom drywall repairs	\$150.00
Damage - Teak flooring "camouflage"	\$8.91
Damage - Teak flooring replacement	\$6,793.62
Damage - Carpet dying	\$120.00
Damage - Toilet roll holder replacement	\$28.00
Damage - Master bedroom blind replacement	\$1,736.00
Damage - Master bedroom drywall repairs	\$150.00
Furniture Damage - Bedside lamp replacements	\$45.84
Furniture Damage - Furniture repairs (table, chest, bed frame)	\$369.60
Furniture Damage - Barstool replacements	\$398.72
Appliance Damage - Ice maker replacement	\$263.88
Access - Replacement access devices	\$50.00
Total	\$12,416.81

The landlord explained that the cleaning in the rental agreement was included, at least in part, so that his agent could check on the condition of the rental unit and that it included monthly "credits" from the rent amount paid that would be used to "pay" for cleaning services.

The landlord provided into evidence a copy of a cleaning statement dated July 29, 2013 showing that the cleaning credit was applied to housecleaning, power washing, carpets, stairs and upholstery; and would include departure cleaning. Another invoice showed the tenant was charged \$507.00 for move out cleaning.

The tenant submitted that he does not disagree with the landlord's claim for the stain on the stairwell carpet or the sectional sofa.

The tenant agrees that the damage to the blind in the office/bedroom occurred during the tenancy and that he would be willing to cover half of the cost of the replacement. The landlord submits that the blind was installed at the start of the tenancy.

The landlord seeks compensation for repairs to the walls in the office/bedroom resulting from attachments being put on the walls contrary to the requirements under the tenancy agreement that anything affixed to the walls required prior approval from the landlord or his agent. He states no such approval was ever provided.

The tenant submits that the his son had used putty to affix some posters to the walls and that any damage was caused not by this but rather because of inferior repairs that had been made to the rental unit prior to the tenancy after a flood.

The landlord submits that despite attempting to use a product to "camouflage" the damage to the flooring they were unsuccessful in disguising the damage to the flooring. In addition, the landlord submits that they found substantially more damage to the flooring after moving some of the furniture immediately after move out.

The landlord submits that he looked in to whether or not the flooring could be repaired and found that repairing was not possible. The landlord has submitted an estimate from a local flooring company that indicates the wood had been discontinued and as such replacement is the only option.

The landlord submits that the tenant broke a toilet paper holder and as such it required replacement. The tenant submits that the holder fell off at the start of the tenancy and sat in a drawer for the duration of the tenancy and that all that was required was to re-attach it to the wall. The landlord submits the holder was damaged and required replacement.

The landlord submits that there was an area of carpet that had been discoloured due to the use of a bleach based product. The tenant disputes the claim. The tenant submits that they never used bleach and that the stain must have been caused by the cleaners. The landlord submits the discolouration could not be corrected so the carpet in this area was dyed.

The landlord submits that after they started using the rental unit for their own purposes they discovered damage in the master bedroom to the walls as well as to the blackout blinds. The landlord seeks compensation for repairs to the walls and replacement of the blackout blinds in the master bedroom.

The landlord also submits that a number of furniture pieces and furnishings were also damaged during the tenancy. Specifically, he submits that a bedside lamp was broken; that the dining room table had heat marks on it; that a chest of drawers and bed frame

were chipped and marked; that rotating barstools no longer worked; and that the ice maker in the fridge was not working.

The landlord submits that the move in Condition Inspection Report confirms that the tenant was provided with 2 apartment access devices and 2 garage access fobs – one for the public parking and one for private garage parking. The tenant submits he returned all access devices that he was provided. The landlord submitted a photograph showing three access devices returned.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As per the testimony of both parties I find the landlord had the tenant's forwarding address by the end of the tenancy and return of possession of the rental unit to the landlord. As the parties had agreed that the keys were returned on November 4, 2014, I find the landlord had until November 19, 2014 to either return the security deposit in full or file an Application for Dispute Resolution seeking to claim against the deposit to be compliant with Section 38(1).

As the landlord has not returned any portion of the security deposit to either the tenant or the tenant's agent or did not file his Application for Dispute Resolution to claim against the deposit until April 17, 2014, I find the landlord failed to comply with Section 38(1) and as such the tenant is entitled to double the amount of the deposit.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In relation to the landlord's claim for cleaning the rental unit I find that because the tenancy agreement specifically identified that rent included quarterly and final cleaning and that the cleaning was completed by the landlord's agents that the tenant cannot be

held responsible for any cleaning that was not up to the landlord's standards or that may have failed to comply with the requirements of Section 37, with two exceptions.

As the tenant has agreed that the reason for additional cleaning for the sectional sofa and the stairs was as a result of damage they had caused I find the landlord is entitled to compensation for cleaning these items. Based on the invoices and quotes submitted I find the landlord is entitled to \$90.00 for cleaning the sectional sofa and for \$65.00 for cleaning the stairs for a total cleaning award of \$155.00.

Based on the testimony of both parties I find the tenant acknowledges that the damage caused to the office/bedroom blind was caused during the tenancy and the tenant is responsible for costs. While the landlord has submitted that the stains could not be removed by cleaning, I find that he has failed to provide any g documentation from service providers confirming that replacement was the only option available.

Therefore I find the landlord is entitled to compensation for this damage. As the tenant was willing during the hearing to cover $\frac{1}{2}$ of the cost of replacement I accept that as reasonable compensation and grant the landlord \$533.88.

I also accept from the testimony of both parties that the tenant or his child affixed items to the walls in the office bedroom, without written permission from the landlord as was required by the tenancy agreement that caused the walls to require repairs at the end of the tenancy.

As the tenant has provided no evidence to substantiate his claim that inferior work had been completed in this room I am not persuaded that there was any workmanship issues were related to this damage. Based on his submitted receipt I grant the landlord \$150.00 for these repairs.

I am satisfied by the landlord's photographic evidence and testimony that the damage to the teak flooring required attention. I am also satisfied that the landlord made attempts to camouflage the damage and that ultimately no suitable repair could be achieved. Therefore, I find the replacement of the flooring was required, at the cost of \$6,793.62 as confirmed by the submitted quote.

As the move in Condition Inspection Report does not record any carpet discolouration and the parties agree that the discolouration was on the carpet at the end of the tenancy, I find the tenant is responsible for the repair in the amount of \$120.00.

I am also not convinced that the toilet paper holder had been unusable when the tenancy began. If it had been broken right from the start of the tenancy the tenant was required to identify this to the landlord. As the parties agree that the tenant did not report this deficiency I find the tenant is responsible for its replacement in the amount of \$28.00.

In relation to the landlord's claim for repairs to the drywall and replacement of blackout blinds in the master bedroom, I find the landlord did not record this damage until well after the tenant had returned possession to the landlord and despite the landlord's testimony that they only use the rental unit rarely, I find it is unreasonable to hold the tenant responsible for damage that *may* have occurred over the 3 or 4 months since the tenancy ended. I dismiss this portion of the landlord's claim.

In relation to the landlord's claim for damage to furniture and furnishings I find that since the landlord did not record or provide evidence of the condition of any furniture or furnishings prior to the start of the tenancy he cannot substantiate that the damage occurred during the tenancy. I dismiss this portion of the landlord's claim.

In relation to the appliance damage claimed because the ice maker is no longer working I accept that the landlord had agreed in the tenancy agreement that he would provide appliances in working order. In addition, I note that the Condition Inspection Report for the move in indicates that the refrigerator was in "excellent" condition.

As such, I find the tenants agreed that the refrigerator was in excellent condition and it was incumbent upon him, despite his statement that he didn't use the ice maker, to maintain and ensure the refrigerator was returned to the landlord in excellent working order. I grant the landlord \$263.88 as claimed.

Finally, based on the landlord's photographic evidence and the recording in the move in Condition Inspection Report, I find the tenant failed to return all access devices at the end of the tenancy that had been provided to him at the start of the tenancy. I also accept the landlord suffered a loss as a result and I grant the landlord \$50.00.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$8,094.38** comprised of \$90.00 sectional cleaning; \$65.00 stair cleaning; \$533.88 blind replacement; \$150.00 office/bedroom drywall repairs; \$6,793.62 floor replacement; \$120.00 carpet dyeing; \$28.00 toilet paper replacement; \$263.88 ice maker replacement; and \$50.00 for access device replacement.

I order the landlord may deduct the amount awarded to the tenant above of \$7,000.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,094.38**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As both parties were, at least, mostly successful in their Applications I find that they are entitled to recover their filing from the other party. However, because both of their filing

fees were for \$100.00 I find to award the filing fees to each of them is moot. I dismiss this portion of both parties' Applications.

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 05, 2014

Residential Tenancy Branch

