



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the tenants' security deposit. The hearing was conducted by conference call. The landlord and the tenants called in and participated in the hearing. The applicants and the respondents exchanged documentary evidence and submitted copies of their documents to the Residential Tenancy Branch prior to the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain the tenants' security deposit?

Background and Evidence

The rental unit is an upstairs suite in a residence. The tenancy began on July 1, 2013. The monthly rent was \$1,525.00, payable on the first of each month. The tenants paid a security deposit of \$762.50 on May 22, 2013. On November 15, 2014 the tenants gave the landlord notice that they intended to move out on December 15, 2014. The tenants changed their plans and told the landlord they would move on December 28th. The landlord said that the tenants did not move out until January 2nd.

The landlord testified that the tenants damaged the rental property and failed to clean up properly before they moved out. The landlord claimed the following amounts:

- | | |
|---------------------------------------|----------|
| • Cost to replace four broken blinds: | \$160.78 |
| • Replace broken appliance bulbs: | \$3.38 |
| • Replace broken lower window: | \$120.40 |
| • Clean and seal laminate floor: | \$13.98 |
| • Replace broken upper window: | \$150.00 |

• Cost to replace broken fridge parts:	\$106.35
• Repair part of yard damaged by large swimming pool:	\$135.00
• Trips to haul away garbage and recyclables:	\$60.00
 Subtotal: Parts and repairs:	 \$749.89
 Labour 24 hours @ \$20.00/hr	 \$480.00
 Total:	 \$1,229.89

The landlord submitted photos of what he said was damage caused by the tenants and pictures documenting their failure to properly clean the unit when the tenancy ended. He provided pictures of garbage and debris that was left by the tenants and that he had to remove from the property.

The tenants denied the landlord's claims. They said that the rental unit was properly cleaned and in good order when they left. The tenants noted that there had been no move-in condition inspection report and no move-out inspection. The tenants said that there was pre-existing damage when they moved in at the beginning of the tenancy. The tenant said that the blinds were damaged when they moved in. The tenants testified that they bought curtains and used them instead of the damaged blinds. With respect to the refrigerator, the tenant said it was broken and held together with clear tape; the tenants said that they had to replace the tape at some point and used duct tape instead of the clear tape that had been used originally.

The tenants did acknowledge responsibility for one of the broken windows, but the tenants said the other window was broken and patched with silicone when the tenancy started.

The tenants said that the swimming pool was shared with the other occupants of the rental property and submitted that it was not their responsibility. The tenants said that some of the garbage that the landlord complained had been left behind was the property of the tenants in the other unit. They said that they did return and take items to the dump, contrary to the landlord's testimony. The tenants submitted testimonial letters and comments from friends and relatives who stated that the rental unit was not properly cleaned when the tenancy began and that it had existing damage and belongings left behind by former tenants.

The tenants requested the return of their security deposit and said that they were seeking double the deposit, although the tenants did not file their own application for dispute resolution.

The landlord responded to the tenants' submissions. He said there was a walk-through of the rental unit at the start of the tenancy, but no condition inspection form was completed. He said that the tenants were pleased with the house when they moved in and it was in excellent condition. The landlord said that there was no opportunity to conduct a move-out inspection because the tenants moved out leaving the place in a mess and never came back.

The landlord said that the tenant operated a daycare out of the rental unit without permission and she performed work as an esthetician out of the rental unit. He said that the tenant put a large swimming pool in the backyard to use for her daycare operation. The pool had an electrical pump and the landlord said the tenant interfered with the electrical wiring to hook it up. The landlord made other allegations about the tenants' conduct that were unrelated to any of the issues raised by his claims.

Analysis

The tenants have correctly noted that there was no move-in or move-out inspection report. The landlord said that there was no move-out inspection because the tenant left without providing any opportunity for the landlord to conduct one. With respect to some of the landlord's claims, the tenants have said that the claims reflect pre-existing problems. The tenant mentioned the blinds, the broken fridge and one of the windows as items that fall into this category. The landlord bears the burden of proving his claims on a balance of probabilities and the absence of a move-in report makes this task more problematic when the landlord's evidence of damage is countered by the tenants' testimony that the problems predated the tenancy. I find that the landlord has failed to prove, on a balance of probabilities, that the tenants damaged the blinds, that they broke the refrigerator or that they broke the upper window and these claims are denied.

The tenants did acknowledge that they were responsible for one of the broken windows; I allow the landlord's claim for the cost of the window replacement in the amount of \$120.40.

I find that the tenants placed a large swimming pool in the yard. This was done without approval from the landlord and I accept the landlord's testimony that the lawn was damaged and he had to buy materials and provide labour to repair the damage. I allow the landlord's claim for the yard repairs in the amount of \$135.00.

Based on the landlord's testimony and the photographic evidence supplied, I find that the tenants did not properly clean the rental unit at the end of the tenancy and I find that they left a quantity of debris, cast-offs and abandoned goods at the rental property that the landlord had to dispose of. I find as well, based on the photographs and the landlord's testimony, that the rental unit needed cleaning to bring it to an acceptable condition. I do not accept the tenant's evidence that the rental unit was dirty or unclean when the tenants moved in. The tenants made no complaint about the unit at the time of move-in and they were required to leave the unit acceptably clean when they left. I find that the rental unit was in need of significant cleaning and the tenants themselves acknowledge in their written materials that they left garbage and recycling behind. The tenants said that they paid for garbage removal after vacating, but did not supply any evidence to support this assertion.

The landlord claimed \$60.00 for hauling away garbage and recyclables. He said in his submission that his claim for labour in the amount of \$480.00 included:

... replacing parts, cleaning in house, cleaning all cupboards, repairing wall and painting walls in Kitchen and dining room, plumbing taking apart kitchen sink pipes to unclog pipes, repair closet doors, washing and painting all baseboards cause they are stained and dirt stuck to them from when mopping the floor sloshing dirty water up against baseboards, removing and cleaning left garbage and recycle items outside under stairs.

I allow the landlord's claim in the amount of \$60.00 for hauling away garbage to the garbage depot. With respect to the labour claim, many of the items mentioned as included in the labour amount relate to claims that have been denied as unproven. I have found, however, that the landlord is entitled to some compensation for cleaning and I award the landlord the sum of \$200.00 for his labour to clean the rental unit.

Conclusion

The total amount awarded to the landlord as set out above, is the sum of \$515.40. the landlord is entitled to recover the \$50.00 filing fee for his application, for a total award of \$565.40. I order that the landlord retain the sum of \$565.40 from the security deposit of \$762.50 that he holds.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of his monetary claim. Because the claim has been allowed in an amount that is less than the full amount of the security deposit, it is appropriate that I order the return of the balance of the tenants' security deposit; I so order and I grant the tenants a monetary order in the amount of \$197.10. This order may be registered in the Small Claims Court 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: May 11, 2015

Residential Tenancy Branch

