



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNSD, MNDC, MND, FF
Tenants: MNSD, FF

Introduction

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

The hearing was conducted via teleconference and was attended by the landlord and both tenants. Both parties had arranged for witnesses to be present, however neither the landlord's witness nor the tenants' witness were called to provide testimony.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for cleaning and damage of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants 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 tenants are 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 35, 36, 38, 67, and 72 of the Act.

Background and Evidence

The parties agree the tenancy began as a 1 year fixed term tenancy on July 1, 2012 that converted to a month to month tenancy on July 1, 2013 for a monthly rent of \$1,800.00 due on the 1st of each month with a security deposit of \$900.00 paid. The parties agree the tenancy ended on September 30, 2014

The parties agree the tenants provided their forwarding address to the landlord on October 3, 2014 by placing a written document in the landlord's mailbox. The landlord responded to the tenants on October 4, 2014 with a copy of the handwritten notes taken at the inspection and a copy of the Condition Inspection Report completed at the start of the tenancy.

The tenants submit the Condition Inspection Report they received at that time did not record the condition of the rental unit at the end of the tenancy. The landlord confirmed the recording of the move out condition in the Report was completed at a later date. The tenants submit that as a result, the landlord has failed to comply with the requirements under Section 35(3) (Condition Inspection: end of tenancy).

I note that both tenants had signed the handwritten notes recording the condition of the rental unit at the end of the tenancy stating that they disagreed with the recording of the condition in the notes.

The landlord seeks compensation for cleaning of the rental unit and damage to the rental unit. In support of her claim the landlord has submitted the following relevant documents: a copy of 3 pages of undated handwritten notes signed by the tenants as disagreeing on September 30, 2014; a copy of an unsigned (by either party) Condition Inspection Report recording the condition of the rental unit at the start and end of the tenancy; several photographs; and assorted receipts and invoices. The tenants also provided some photographs.

The landlord seeks the following compensation:

Description	Amount
Cleaning	\$668.00
Repair supplies	\$100.05
Labour for repairs to walls	\$200.00
Tile repair in kitchen	\$400.00
Hardwood repair	\$480.00
Laminate flooring repair	\$57.36
Yard clean-up (3 hours)	\$60.00
Total	\$1,965.41

The landlord had provided the tenants with a document entitled "Information for Vacating Tenants" that lists specific costs for any work the landlord might be required to do if the tenants fail to clean or repair damage to the rental unit.

In regard to cleaning the landlord submits that she did not charge for cleaning as per the document however because she hired someone to clean the unit. During the hearing I asked the landlord to go through some of the potential charges based on the rooms that required cleaning according to the Condition Inspection Report.

The tenants submit that they had cleaned the rental unit and that the landlord's standards were too high and unrealistic. The tenants submit they should not be held responsible for the landlord's high expectations.

The landlord seeks compensation for labour to complete repairs to walls and “repair products” which include replacement of floor registers that were bent and broken; a new range hood filter; as well as other assorted supplies for wall repair and painting. The tenants submit that some of the repairs to the walls were required because of work the landlord had failed complete during the tenancy.

The landlord seeks compensation for repairs to three different floor areas including areas of tile; laminate; and hardwood. In regard to the tile flooring area the landlord seeks the replacement of several tiles. However, neither the handwritten notes nor the Condition Inspection Report indicate there is any problem with tiles. The landlord submits that the tiles were not discovered until after the inspection had been completed.

The landlord seeks repairs to the laminate and hardwood flooring as a result of scratches and markings in these two flooring. The tenants submit that they used protected surfaces as requested by the landlord so the damage must be simply wear and tear.

Finally, the landlord seeks compensation for the completion of yard work over 3 hours at \$20.00 per hour. There is no mention of any problems with the condition of the yard noted in the handwritten notes. The Condition Inspection Report shows that the landlord has checked off the yard, lawn, garden and shrubs were satisfactory at move out.

Analysis

Section 35(3) of the *Act* states the landlord must complete a condition inspection report in accordance with the Regulations. Section 36(2) states that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit, for damage to residential property is extinguished if the landlord, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the Regulations.

Section 18(1) of the Residential Tenancy Regulations says the landlord must give the tenant a copy of the signed condition inspection report of an inspection made under section 35 of the *Act*, promptly and in any event within 15 days after the later of the date the condition inspection is completed, and the date the landlord receives the tenant's forwarding address in writing.

Section 19 of the Regulations requires that a condition inspection report must be in writing; in type no smaller than 8 point, and written so as to be easily read and understood by a reasonable person.

Section 20 (1) of the Regulations sets out that a condition inspection report completed under Section 35 of the *Act* must contain the following information: the correct legal names of the landlord and the tenants; the address of the rental unit being inspected;

the date on which the tenant is entitled to possession of the rental unit; the address for service of the landlord; the date of the condition inspection; a statement of the state of repair and general condition of each room in the rental unit; a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement; any other items which the landlord and tenant agree should be included; a statement identifying any damage or items in need of maintenance or repair; and appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;

Section 20(2) stipulates that in addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the *Act* must contain the following items in a manner that makes them clearly distinguishable from other information in the report: a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible; if agreed upon by the landlord and tenant:

- (i) The amount to be deducted from the tenant's security deposit or pet damage deposit,
- (ii) The tenant's signature indicating agreement with the deduction, and
- (iii) The date on which the tenant signed.

Despite the tenants' assertion that the landlord failed to complete a Condition Inspection Report in accordance with the Regulations I find that the documents submitted that include the Condition Inspection Report and the handwritten notes, together, contain the required information set out in Sections 20(1) and 20(2) of the Regulations. As such, I am satisfied the landlord has not extinguished her right to claim against the deposit for damage to the rental unit.

However, I note that the comments and notes that the landlord added to the Condition Inspection Report between the time she provided it to the tenants and the time she submitted into evidence for this hearing cannot be considered a reflection of the condition of the rental unit at the time the tenants gave possession of the unit back to the landlord.

As such, for the purposes of the landlord's Application to claim for damage I have considered, primarily, the handwritten notes as the record of the condition upon inspection; the photographic evidence submitted by both parties; the testimony provided by both parties during the hearing and lastly, if at all, the comments in the Condition Inspection Report.

Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find, in relation to the landlord's claim for cleaning the landlord's evidence, specifically her photographic evidence provides sufficient evidence to establish that cleaning was required, with the exception of the yard clean up. Based on the landlord's explanation of the charges in her "Information for Vacating Tenants" document I am satisfied that the landlords' claim for cleaning represents an amount that is less than an amount had she charged according to the document.

In regard to the landlord's claim for yard cleaning, I find that the handwritten notes provide no indication as to the condition of the yard. However, I do note that the landlord did check off on the Condition Inspection Report that the yard, lawn, garden and shrubs were satisfactory. As such, despite the landlord's 1 photograph of the yard clean up I find she has failed to establish that tenants failed to leave the yard reasonably clean. I dismiss this portion of the landlord's claim.

Based on a balance of probabilities I find the landlord's evidence provides sufficient proof that the walls required repair and painting. However in regard to the landlord's claim for replacement floor register covers I find the landlord has provided no photographic evidence of any such damage and the tenants dispute that there was any damage to the registers.

In addition, I find the landlord is responsible for the replacement of any filters at the end of a tenancy, pursuant to Residential Tenancy Branch Policy Guideline 1 which states that the tenant is responsible only for cleaning a filter at the end of a tenancy. While the landlord may have established the vent needed cleaning she has not provided sufficient evidence that it required replacement.

For the above noted reasons, I dismiss the landlord's claim for compensation for replacement register covers (\$9.58) and vent filter (\$13.29). I find the landlord has established the value of repair products and labour to repair walls at \$277.18.

Regarding the landlord's claim for compensation for repairs to the laminate and hardwood flooring I find the landlord has established that the floors have been damaged during the tenancy. I am not persuaded by the tenants' position that the damage is just regular wear and tear. Based on a balance of probabilities, I find the damage demonstrated through the landlord's photographic evidence establishes the damage resulted from more than wear and tear.

I accept the landlord has established the value of the cost to repair the damage to the hardwood and laminate flooring at \$537.36 subject to discount based on the age of the flooring. As per the landlord's undisputed testimony that the flooring was 4 years old and the Residential Tenancy Policy Guideline #40 that stipulates the useful life of hardwood flooring to be 20 years I find the landlord's claim must be discounted by 20% to \$429.89.

Finally, in regard to the landlord's claim for compensation for replacement tile flooring I note the landlord has not indicated any such damage in either the handwritten notes or

the Condition Inspection Report despite the Report being completed sometime after the end of the tenancy. I, therefore, find the landlord has failed to establish any damage to the tile flooring resulted from the tenancy. I dismiss this portion of the landlord's claim.

Section 38(1) of the *Act* requires the landlord to, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address in writing, either return a security deposit held or file an Application for Dispute Resolution seeking to claim against the deposit. Section 38(6) states that if the landlord fails to comply with Section 38(1) the landlord must pay the tenant double the amount of the deposit.

As I have determined above that the landlord has not extinguished her right to claim against the deposit for damage to the rental unit and the landlord submitted her Application for Dispute Resolution on October 17, 2014 or 14 days after receiving the tenant's forwarding address on October 3, 2014 I find the landlord has complied with the requires of Section 38(1) and the tenants are not entitled to double the amount of the security deposit held by the landlord.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,425.07** comprised of \$668.00 cleaning; \$277.18 repair supplies and labour; \$429.89 hardwood and laminate flooring repairs and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$900.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$525.07**.

This order must be served on the tenants. If the tenants fail 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.

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 22, 2015

