



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MND, MNSD, FF

For the tenants – MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied 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 security deposit; and to recover the filing fee from the tenants for the cost of this application. The tenants applied for a Monetary Order to recover the security deposit and to recover the filing fee from the landlord for the cost of this application.

The male tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other 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 although the tenants' evidence was limited. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described 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 permitted to keep all or part of the security deposit?

- Are the tenants entitled to a Monetary Order to recover the security deposit?

Background and Evidence

The parties attending the hearing agreed that this tenancy started on March 01, 2011 for a two year fixed term. The tenancy was renewed for a further two year term on January 27, 2013. This second term was due to end on February 28, 2015. Rent for this unit was \$1,598.00 per month due on the 1st of each month. The tenants paid a security deposit of \$799.00 on February 14, 2011. The parties also agreed that they attended the condition inspections at the beginning and end of the tenancy and a copy of the report has been provided in documentary evidence by the landlord. The tenants provided their forwarding address on the move out report.

The landlord testified that the tenants did not leave the rental unit in a reasonably clean condition at the end of the tenancy. The unit required additional cleaning particularly the bathroom and deck. The landlord engaged the services of a cleaning company to do this work as new tenants were moving into the unit the next day. The landlord has provided some photographic evidence showing that the tub required cleaning and the surface of the balcony was not clean. The landlord has also provided a copy of the cleaner's invoice for \$126.00 and seeks to recover this from the tenants. The landlord testified that the tenants signed to agree that they would pay for the balcony to be cleaned.

The landlord testified that she had to ask someone from the Strata Council to come to the unit with the landlord to complete the condition inspection with the landlord. This person charged the landlord \$100.00 for her time and the landlord testified that the landlord and tenant agreed to split this fee and pay \$50.00 each.

The landlord testified that the garburator was in good working order at the start of the tenancy. The landlord had an open house on September 20, 2014 and found the

garburator was not working. The tenant had explained that he had turned the breaker off to the garburator and that he would just need to turn it back on. When the breaker was turned back on it was not working. The tenant signed to agree to pay for either the repair or replacement costs for the garburator.

The landlord testified that the tenant was late to do the inspection and when the landlord arrived they found many deficiencies in the unit. There were boxes everywhere, the unit was not cleaned and there were cleaning products under the sink and food left in the fridge and freezer. The landlord extended the time for the tenants to fully vacate and clean the unit until 6.00.p.m. When the landlord returned at that time, the landlord and the member of the Strata Council had to help the tenant remove his belongings. The landlord testified that this put her back as she had the new tenants coming to do their move in inspection at 7.00 p.m.

The landlord testified that when the new tenant looked at the unit he was upset with the condition of the unit and would not accept it was it was. He said he would have to stay in a hotel and put his belongings in storage. The landlord testified that she had to take the next day off work to organise getting the unit into a condition to satisfy the new tenant. This involved having the unit cleaned and the garburator replaced. The landlord testified that the garburator was four years old when the tenants moved in. The garburator would therefore be eight years old. The landlord seeks to recover \$420.43 for the new garburator. The landlord also seeks to recover lost wages of \$160.55 because she had to organise last minute repairs and cleaning at the unit so the new tenant could take possession of the unit on October 31, 2014. The landlord has provided a letter from her workplace detailing that she had to cancel; her shift at work on October 31, 2014.

The landlord seeks an Order to keep the balance of the security deposit for the repairs and cleaning of \$756.98 including the filing fee of \$50.00. The parties agreed that the landlord had returned the amount of \$42.00 to the tenant on November 07, 2014.

The tenant disputed the landlord's claim for cleaning. The tenant testified that the rental unit was not left in an unclean condition. The tenants had moved out a day earlier to give the landlord time to do any extra things to the unit for the new tenants despite having paid rent up to and including October 31, 2014. The tenant testified that the landlord had been to the unit on October 28, 2014 to do a pre inspection and must have taken the photographs at that time as the unit did not look like the pictures on October 30, 2014. The tenant agreed that the landlord did help the tenants move the last few belongings out of the unit. The tenant agreed that he would pay half of the fee to have a third person at the inspection. The tenant does not dispute the landlord's claim for \$50.00 for this.

The tenant disputed that the garburator was broken by the tenants. The tenant testified that they did not want to use the garburator so they turned off the breaker to it. When the breaker was turned back on the garburator did not work. The tenant agreed that he did sign something to agree to pay for the repair or replacement but not for the entire cost of a new garburator.

The tenant disputed the landlord's claim for time off work and loss of earnings. The tenant testified that it is a landlord's responsibility to attend the move in and move out inspections for tenants vacating and entering the unit. If the landlord finds some additional cleaning due to normal wear and tear then the landlord must expect that after a tenancy of four years and take the time to bring the unit to a standard she would like for new tenants.

The tenant agreed the landlord can keep 50.00 for the inspection and \$63.00 for some additional cleaning from the security deposit. The landlord has only returned \$42.00 so the tenants seek to recover the balance of the security deposit.

The tenants seek to recover their filing fee of \$50.00.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for cleaning of \$126.00; I find the move out report clearly indicates some areas of the unit are unclean particularly the bathroom and balcony. The report also indicates that the garburator is not functional and was in a good condition at the start of the tenancy. The tenant has signed the move out section of the report to indicate that he agrees that the report fairly represents the condition of the rental unit upon move out. Furthermore, I find the tenant has signed a separate document to agree to the cleaning of the balcony. It is therefore my decision that the landlord has established that the unit was not left in a reasonably clean condition pursuant to s. 32 of the *Act* and the landlord had to pay cleaners to clean areas of the unit. The landlord is therefore entitled to recover the cleaning costs incurred of **\$126.00**.

I find the garburator was in good working order at the start of the tenancy and did not work at the end of the tenancy. The tenant also signed this document to agree to pay for the repair or replacement costs for the garburator; however, no costs were agreed upon. The garburator was at least eight years old by the end of the tenancy. I must therefore deduct an amount from the replacement costs for depreciation. I refer the parties to the useful life guide under #40 of the Residential Tenancy Policy Guidelines. While a garburator is not mentioned in this table, all items have a useful life. If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer. Parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation from the manufacturer for the particular item claimed. The landlord has provided no evidence to show the useful life of the garburator; I have therefore considered other electrical devices and although there is nothing mentioned with similar characteristics I have determined that the useful life of a garburator through normal use would be 10 years. As this garburator was eight years old I must make an 80 percent deduction for depreciation. It is therefore my decision that the landlord is entitled to recover the amount of **\$84.00**.

With regard to the landlord's claim to recover \$50.00 from the tenant for the shared cost of a third party to do the inspection with the landlord; the tenant does not dispute the landlord's claim to recover **\$50.00**.

With regard to the landlord's claim for the loss of earnings for one day; if a landlord rents a unit and has to take time off work to deal with the inspection reports and any additional cleaning or repairs for the unit then this must be considered to be the cost of doing business as a landlord. I further find if the landlord allows new tenants to take possession of the rental unit before the legal end of the outgoing tenants' tenancy and the landlord has to rush to get the unit prepared for the incoming tenants, then the landlord cannot hold the outgoing tenants responsible if the landlord finds herself short of time and has to take time off work. As such I find the landlord is not entitled to recover a loss of earning from the tenant to rectify any issues in the unit.

With regard to the landlord's claim to keep the balance of the security deposit of \$756.98; I find the landlord is entitled to retain the amount of \$260.00 as indicated below. The landlord has already returned the amount of \$42.00. I therefore find the tenant is entitled to a Monetary Order to recover the balance as follows:

Total amount of security deposit	\$799.00
Cleaning costs	(-\$126.00)
garburator	(-\$84.00)
Inspection	(-\$50.00)
Amount of security deposit returned	(-\$42.00)
Total amount due to the tenants	\$497.00

As both parties claims have some merit I find each party must bear the cost of filing their own application.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to keep **\$260.00** from the tenants' security deposit. As the landlord continues to hold this in trust for the tenants then I order the landlord to deduct this amount from the security deposit pursuant to s. 38(4)(b) of the *Act*.

For the reasons set out above, I grant the tenants a Monetary Order pursuant to Section 38(6)(b) of the *Act* in the amount of **\$497.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: June 04, 2015

Residential Tenancy Branch

