



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

In the first application the landlord seeks to recover damages for repair to the premises and for cleaning costs.

In the second application the tenants seek to recover their security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “Act”).

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that either side is entitled to any of the relief requested?

Background and Evidence

The rental unit is a “three bedroom plus den” portion of a duplex. The tenancy started in October 2013 for a term ending September 30, 2014. The tenants vacated in September 2014. The monthly rent was \$2500.00, due on the first of each month. The landlord received and holds a \$1250.00 security deposit.

The landlord did not prepare and provide to the tenants a move-in condition report as required by s. 23 of the *Act*.

It appears that the parties got along well for most of the tenancy.

There was a problem with the garburator early on. The tenants agreed to pay for that repair but the landlord was able to have it done at no cost. The landlord now claims \$150.00 for the repair.

There was a problem later with a leak under the dishwasher. In July 2014, the tenants reported it to the landlord who arranged for a plumber to attend and inspect it. Near the end of the tenancy the tenants again informed the landlord that it appeared that the dishwasher was again leaking. They indicated that the floors appeared to be buckling. The parties all thought that a plumber had attended to the dishwasher repair but they were wrong.

The tenants have agreed to pay for the dishwasher repair if it was their fault. The landlord says it was. He thinks that pieces of porcelain, the likely cause of the garburator failure, had somehow caused the dishwasher failure. He says that the plumber ultimately called to repair the unit after the tenants vacated had found pieces of porcelain in the dishwasher drain.

The landlord testifies that the laminate flooring in the unit will have to be replaced due to water damage from the leaking dishwasher. He suggests that \$2500.00 will be the cost.

The landlord testifies that the tenants left a number of patched holes in the walls of the rental unit. He says that tape applied by the tenants at the windows peeled off paint as well. He notes that a washroom door frame has been scratched where the tenants hung over-the-door hangers on the door. He was required sand and paint them and claims \$400.00 for that work and the wall repairs.

The landlord testifies that the premises required cleaning and the deck needed to be pressure washed. He claims \$300.00 for that work.

The landlord claims that the tenants allowed six trees to die in the yard and he claims \$600.00 for the cost of replanting.

The landlord says the tenants screwed a baby gate into the oak bannister at the top of the stairs and left the screw holes when they moved out. He feels entitled to a new bannister. It has not yet been repaired or replaced. He estimates the cost to be \$400.00

The landlord also raises complaints about the dishwasher, weatherstripping and repair of a cabinet where the tenants had their TV but he makes no claims regarding them.

The tenant Mr. T. says he understood that the dishwasher had been repaired by the landlord's plumber.

He says that the floor in the rental unit was observed to be buckling when the tenants moved in.

He says that there were hooks in the ceiling at move-in, though he installed an additional one and will pay for the repair of the hole it created. He says that tenants had a quote of \$250.00 for wall repair. He says he told the landlord to take \$250.00 out of the security deposit for that purpose.

Mr. T. says that gardening was not part of his duty as a tenant. He notes that the landlord lives in the other half of the duplex.

He acknowledges screwing a baby gate into the bannister at the top of the stairs but objects to the \$400.00 repair suggested by the landlord.

The tenant Ms. M. testifies that they did notify the landlord of dishwasher problems and did not use the machine when asked not to do so. After the landlord had called for the plumber, she came home and saw that the bottom of the dishwasher had been removed, so she thought it had been fixed. The dishwasher seemed fine after that but then it leaked again and she stopped using it.

She says there were marks on the walls when she moved in, though she and Mr. T. made a few holes. She says the landlord did a walk through at the end of the tenancy but did not give the tenants an opportunity to repair the rental unit.

She says the tenants did not use the balcony because it was dirty.

She says that the tenants had their three month old child in the home and kept it clean. They hired a cleaner who came in every two weeks for five hours to clean.

She says she was under no duty to attend to any gardening.

She thought the tenants had permission to install the baby gate to the bannister.

Analysis

Broken Dishwasher / Floor Repair

It is apparent that the tenants reported the dishwasher problem to the landlord as soon as it revealed itself. All were under the impression that it had been fixed. It had not been fixed because the landlord's plumber never attended. I consider the landlord's claim that these tenants put porcelain in the garburator and thereby damaged the dishwasher, to be speculation. No qualified opinion was submitted to provide that claim with substance. Whatever the cause of the leak, had the plumber attended it would likely have been attended to. The plumber's non-attendance was not the tenants' fault.

I find the tenants have not been shown to be responsible for the initial dishwasher leak or the possible continued leakage that may have damaged the floor.

For this reason I must dismiss the landlord's claim regarding dishwasher repair and floor replacement.

In any event, damages that I might have granted for the floor replacement would have been minimal without any quotes or estimates before me to show what a realistic cost might be.

Wall Repairs

I allow this item in the amount of \$250.00. The tenants have admitted responsibility for that amount. The landlord has not presented either a move-in or move-out condition report (reports he is obliged by law to complete) to show what damage existed at the start or the end of the tenancy. He has not justified a higher award.

Cleaning and Pressure Washing.

I disallow this item of the claim. Again, without the condition reports the landlord has put himself at a distinct disadvantage. He has not shown that the tenants failed to leave the premises "reasonably clean," the standard of cleanliness imposed by the *Act*.

Gardening

I disallow this item of the claim. The landlord has not produced a tenancy agreement showing that the tenants were obliged to undertake or attend to any gardening tasks. In any event it is not apparent that the tenants were obliged to water trees and shrubs as

part of any duty whether under a tenancy agreement or otherwise. The landlord lived next door. There was ample opportunity to clarify any such responsibility.

Garburator Repair

I disallow this item of the claim. The matter was resolved between the parties back when the repair was done. The landlord cannot now go back on that arrangement.

Oak Bannister

I find that the tenants are responsible for screw hole damage to the bannister post at the top of the stairs. Whether or not they had permission to install the gate, they are responsible for repair of any resulting damage.

The landlord's evidence about the cost of repair is very limited. The repair has not been done. He has not tendered any estimate or quote from a qualified tradesman about the cost of repair or replacement and merely offer up his own opinion about the cost of replacement. That is not sufficient.

In all the circumstances I assess the damage to the bannister at \$100.00.

The Security Deposit

Section 38 of the *Act* provides that once a tenancy has ended and once the landlord has been given the tenants' forwarding address in writing, the landlord must, within 15 days, either repay the deposit or make application to keep it. If the landlord fails to comply he must account to his tenants for double the deposit.

In this case the tenants' forwarding address was provided on October 5, 2015. The fifteen day period runs from then. The landlord's application was made on October 14th, well within the 15 period.

The tenants argue that they should be entitled to recover the doubling because the landlord failed to conduct inspections and prepare reports at the start and end of the tenancy. They rely on s. 24(2) of the *Act*, which provides:

- (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
 - (a) does not comply with section 23 (3) [*2 opportunities for inspection*],

- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

That provision does not apply to these circumstances. The landlord claims not only “damage” but also for cleaning. The *Act* treats cleaning and repair of damage as separate things. Once the landlord has made a claim for cleaning he is not obliged to repay the deposit money until his claim is heard, whether he has lost his right to claim against the deposit money for damage or not. Nor is there any provision requiring that he return part of the deposit money, should the claim for cleaning be less than the amount of the deposit money he holds.

Conclusion

The landlord is entitled to a monetary award of \$350.00. He was late in providing evidence to the tenants and so I decline to grant him recover of his filing fee.

The tenants’ application for a doubling of the deposit is dismissed.

I authorize the landlord to recover the \$350.00 award from the \$1250.00 deposit he holds. The tenants will have a monetary award against the landlord for the remainder of \$900.00.

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 01, 2015

Residential Tenancy Branch

