



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenant had initially appeared with her son. The tenant stated that her son would be a witness. Accordingly, the tenant's son was excluded from the proceedings until called to testify. During the hearing, the tenant did not call her son to testify.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation in the amounts claimed?
2. Are the landlords authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy commenced March 15, 2012 and the tenant paid a security deposit of \$700.00. The tenant was required to pay rent of \$1,400.00 on the 15th day of every month. The parties signed a move-in inspection report at the start of the tenancy.

The tenant gave notice to end the tenancy on August 4, 2014 to be effective September 30, 2014. The landlords arranged with the tenant to do the move-out inspection at 10:00 a.m. on September 30, 2014. A few days prior to August 30, 2014 the tenant requested that the move-out inspection be held at noon on September 30, 2014 to which the landlords agreed.

The landlords showed up at the residential property at approximately noon on September 30, 2014 and, according to the landlords, the tenant indicated she would not be participating in the move-out inspection. The tenant stated that she had started the move-out inspection with the landlord but she became upset shortly thereafter as the landlord was extremely detailed and spent five minutes inspecting weather stripping on the front door. The tenant pointed out that the move-in inspection took 2 to 3 hours to complete and the move-out inspection went on until 4:00 p.m.

It was undisputed that the landlord continued with the move-out inspection without the tenant and the landlord showed the inspection report to the tenant after he was done. The landlord claimed that he offered to do review the areas of deficiency with the tenant but she refused. The tenant signed the report on the third page indicating she did not agree with the report and she made the following comments on the report: "House & carpets were not clean when moved in. Some requests are not reasonable."

Below, I have summarized the landlords' reasons for seeking compensation totalling \$1,656.66 from the tenant and the tenant's responses.

Countertop replacement – \$1,209.60

The landlords submitted that at the end of the tenancy the countertop was gouged in one spot by the "L shape" of the countertops and cut several times with a knife by the stove. The countertops were new in 2008 and there was no pre-existing damage at the start of the tenancy. The landlord obtained a quote in the amount of \$1,209.60 to replace all of the kitchen countertops. The landlord has not yet ordered new countertops as he may install better countertops in the future and the house is currently tenanted.

The tenant testified that she and her sons always used cutting boards and the landlord's photographs are extremely magnified. Further, there was pre-existing damage to the countertops as noted on the move-in condition report. The tenant pointed out that the countertops are seven years old and will have some wear and tear. Finally, the tenant was of the position that since the countertops are still in place and being used by the current tenants, replacement is unnecessary.

In response, the landlord pointed out that the damage noted on the move-in inspection report was a missing piece of countertop that is still missing, and not the gouge for which they seek to hold the tenant responsible.

New deadbolts – \$111.96

The landlord submitted that the tenant returned only one of the three keys she had been provided and in fairness to the new tenants the landlord installed four new deadbolts as the tenant had insisted upon new locks when she moved in.

The tenant submitted that she returned two keys to the landlords and that the locks could have been re-keyed for much less expense. The tenant was of the position that installing new locks for the new tenants is a cost of doing business for a landlord.

Batteries for garage door remote control – \$11.20

The landlords submitted that the batteries in the garage door remotes were dead at the end of the tenancy and needed replacement.

The tenant acknowledged she had been provided new batteries at the start of her tenancy and that she did use the garage door opener in the winter months. The tenant acknowledged that the batteries may have been dead at the end of her tenancy.

Bi-fold door track and slider guide – \$9.50 + \$3.35

The landlords submitted that the bi-fold door track of the entry closet was damaged by somebody during the tenancy by reefing on it very hard. The bent track caused the door to not work properly and had to be replaced. The slider guide was also missing.

The tenant denied that that she or her sons damaged the bi-fold door track and claims that it started falling apart during the tenancy. The tenant acknowledged that she did not report the issue to the landlords during the tenancy because it was always left open. The tenant acknowledged that the slider guide had popped out when the track started to fall apart.

In response, the landlords pointed out that the track is metal and it would require a great amount of force to bend the track. As such, the landlords submit this is not a case of wear and tear. The landlords suspect the tenant's son caused the damage as he has anger issues as demonstrated when he punched a hole in another door that the tenant had replaced during the tenancy.

Light bulbs – \$26.08

The landlord purchased light bulbs to replace the burnt out bulbs at the end of the tenancy.

The tenant claimed that she left two boxes of light bulbs at the rental unit at the end of the tenancy as seen in her photographs. Further, the chandelier light bulbs burnt out every few months because the glass around the bulbs caused them to overheat quickly. The tenant stated that she stopped using the chandelier as a result and acknowledged that there were a few burnt out light bulbs in the chandelier at the end of the tenancy.

The landlord questioned when the tenant's photographs were taken because there were no boxes of light bulbs left at the property by the tenant. The tenant stated the photographs were taken by her friend and neighbour while the landlords were conducting the move-out inspection. The landlords did not recall the neighbour being at the property taking photographs during the move-out inspection.

Registered mail and filing fee – \$10.50 + \$50.00

The landlords claimed to recover the amount paid to serving the tenant with their Application. As the cost to prepare for or participate in a dispute resolution proceeding are not recoverable under the Act, except for the filing fee, I dismissed the claim for registered mail costs without giving it further consideration. The landlords' request for recovery of the filing fee is at my discretion and will be considered in the analysis portion of this decision.

Cleaning services – \$220.00

The landlords were of the position that the rental unit was not left reasonably clean. The landlords acknowledged that the tenant cleaned walls, shelving and cupboards and other surfaces but some items were not sufficiently clean. In particular, the doors and windows were dirty and mouldy. The fridge seal was also mouldy. The venetian blinds needed cleaning and the chandelier was greasy with cobwebs. The fridge and stove were pulled out to clean behind the appliances and the oven was run on the self-clean cycle and then manually cleaned of any particles that remained. The female landlord and her sister were compensated \$20.00 per hour for 11 hours for their time spent to bring the unit to a reasonably clean condition.

The tenant was of the position she left the rental unit very clean and submitted that she had hired a girl to clean so that she would receive a refund of her security deposit. The tenant submitted that the blinds were not cleaned when she moved in but that the blinds were vacuumed at the end of the tenancy. The metal blinds were not cleaned and were cheap. The tenant was of the position that the landlords' expectations exceed the tenant's obligations. The tenant claimed the landlord told her not to worry about cleaning the windows as they were not done when she moved in. The tenant stated that she ran the self-clean cycle of the oven. The tenant denied there was mould in the fridge door seal and claims that anything left in the seal were crumbs. The tenant submitted that she cleaned behind the fridge but did not pull the stove out. Rather, she removed the drawer under the oven and vacuumed underneath.

The landlord responded by stating the rental unit was clean when the tenancy commenced as described by the move-in inspection report. The landlord acknowledged that he may have told the tenant that the window did not need to be cleaned but he was referring to the glass, not the window sills and tracks that were left very dirty by the tenant. Further, anything with mould needs to be cleaned to bring it to a reasonably clean condition.

Both parties pointed to their respect photographs of the rental unit in support of their position.

Aside from photographs, I was provided a copy of the tenancy agreement; the move-in and move-out condition inspection report; copies of receipts and a quote to support the amounts claimed; and written submissions of both parties.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. It is also important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Awards for damages are intended to be restorative. Accordingly, where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

Based upon everything before me, I provide the following findings and reasons with respect to the landlords' claims against the tenant.

Condition inspection reports

Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the regulations is the best evidence as to the condition of a rental unit in a dispute resolution proceeding.

The tenant signed the move-in inspection report indicating that she agreed with the condition as described by the landlord. I was not provided any evidence to suggest it was not prepared in accordance with the regulations. Furthermore, the tenant had stated that the landlord spent hours conducting the move-in inspection which leads me to conclude it was done thoroughly and completely. Therefore, I have accepted that the move-in inspection report accurately reflects the condition of the rental unit at that time and is the best evidence of the unit at the start of the tenancy.

The Act provides that if the landlord offers the tenant two opportunities to participate in a move-out inspection and a tenant fails to participate on either occasion, the tenant's right to return of the security deposit is extinguished.

I am satisfied the landlords met their obligation to offer the tenant the opportunity to participate in the move-out inspection. The landlords had submitted that the tenant refused to participate in the move-out inspection. However, I heard from the tenant that she was with the landlord when he commenced the inspection and when he took an excessive amount of time she went about with other tasks and was still at the rental unit. I note in the landlord's submissions that the landlords arrived at the property at noon and were still there as of 4:30 p.m. Therefore, I am inclined to accept the tenant's

position that the landlord took an inordinate amount of time to inspect the rental unit at the end of the tenancy.

Also of significance, is that the tenant also signed the move-out inspection report, indicated she did not agree with it and made some comments on it.

Considering the above, I find I am satisfied that the tenant did, to some degree at least, participate in the move-out inspection and even though it was less than full participation or that expected by the landlords I do not find the tenant's right to the security deposit was extinguished.

In light of the above, I have considered the move-out inspection report as one form of evidence as to the condition of the rental unit at the end of the tenancy but since the tenant indicated she did not agree with it, I have also considered other evidence such as the parties' verbal testimony and photographs, in making my determination as to the condition of the rental unit at the end of the tenancy..

Countertop replacement

The Act requires that a tenant repair damage that they, or persons they permit on the property, cause by way of their actions or neglect. The Act also provides that reasonable wear and tear is not damage.

The landlords' photographs of the countertop were taken very close up and show a number of shallow knife cut marks in a section of countertop and a gouge at the edge of the countertop. The landlord did not provide photographs of the countertops taken from a distance. The tenant's photographs were taken from further away and the knife marks and the gouge are not visible in her photographs. Therefore, I accept that the knife marks and the gouge are visible at very close range.

Given the move-in inspection report does not indicate any damage from knife marks or a gouge I accept that these occurred during the tenancy. The pre-existing damage to which the tenant referred is identified as a missing "small piece of edging arborite" on the move-in inspection report and I accept the landlords' explanation that the comment on the move-in inspection report referred to a different area of the countertop.

Although I am satisfied the knife marks and the gouge occurred during the tenancy, I find the landlords' request that the tenant be held responsible for the replacement cost of all of the kitchen countertops to be completely unreasonable. I make this finding considering:

1. The countertops are seven years old and some visible wear and tear is to be expected at that age.
2. The countertops had some pre-existing damage.
3. The countertops have not been replaced and are in use by the current tenants meaning the countertops are still serviceable.

In light of the above, I find it appropriate to award the landlords a nominal award of \$100.00 to recognize the amount of damage the tenant, or persons she permitted on the property, caused to the countertops.

New deadbolts

The Act requires that a tenant return all of the keys or means of access to the rental unit to the landlord at the end of the tenancy.

The parties were in dispute as to whether the tenant returned one or two of the three keys she had been provided at the beginning of the tenancy. Whether one or two keys were returned is not overly relevant as it is clear that the tenant failed to return all of the keys she had been provided and that is a violation of the Act.

The landlord seeks to recover the cost to replace all of the deadbolts from the tenant. The issue for me to determine is whether the landlords' claim is \$111.96 is the result of the tenant's violation of the Act. I am unsatisfied that the claim reflects the landlords' loss attributable to her violation as the more keys could be cut at much less of an expense or the tumblers rekeyed. The fact that the landlords changed the locks at the start of the subject tenancy at the request of the tenant is of no consequence since the Act places that obligation on the landlord. Accordingly, I find the landlord's decision to change the locks for the new tenants as opposed to having more keys cut or the tumblers re-keyed was the landlords' decision and I find the cost associated to that decision shall be borne by the landlords. Therefore, I dismiss this portion of the landlords' claim.

Batteries for garage remote controls

It is undisputed that the tenant was provided new batteries at the start of the tenancy and the landlords' claims that the batteries were dead in the remote controls at the end of the tenancy was essentially undisputed. Residential Tenancy Policy Guideline 1 provides for some of the responsibilities of landlords and tenants. It does not specifically address batteries for a remote control; however, it does provide for the replacement of light bulbs and fuses during a tenancy and I have applied the same logic

to replacement of batteries for a remote control. Based upon the policy guideline, the landlord is to provide functional batteries at the start of the tenancy and the tenant is to replace the batteries as needed during the tenancy. Since the landlords did provide the tenant with new batteries at the start of the tenancy, I hold the tenant responsible for the replacement of the batteries and I grant the landlords' request to recover \$11.20 from the tenant.

Bi-fold door track and slider guide

The move-in inspection report indicates the closet was in good condition and the move-out inspection report indicates the closet door track and slider was damaged and missing. I find the landlords' assessment at the end of the tenancy to be consistent with the photographs provided as evidence.

The tenant asserted that the closet door was not working properly during the tenancy and attributed it to a lot of wear and tear, most likely from the previous tenants. I reject the tenant's position as the photographs indicate that quite some force would be required to bend the metal track and I find it likely that if that damage was pre-existing it would have been noted on the move-in inspection report given the landlord's thoroughness in completing such reports. Therefore, I find that this damage occurred during the tenancy and I hold the tenant responsible for the repair cost.

I find the landlords' claim to recover \$9.50 plus \$3.35 from the tenant to be very reasonable especially considering the landlord did not charge for any labour and I award the landlord the sum of \$12.85 as claimed.

Light bulbs

As described previously, a tenant is responsible for replacing light bulbs that burn out during the tenancy. The move-out inspection report indicates that light bulbs were burnt out or missing in the kitchen/dining room, living room, bathroom and at a front exterior light fixture. The tenant's comments at the end of the move-out inspection do not appear to dispute the landlord's assessment regarding the light bulbs and the tenant acknowledged during the hearing that there were burnt out or missing light bulbs at the end of the tenancy. Therefore, I accept that the tenant failed to replace the burnt out light bulbs.

The tenant submitted that she left light bulbs on the countertop at the end of the tenancy but the landlords disputed this. I did not see any boxes of light bulbs in any of the photographs provided for my review. Even if there were such a photograph it would not,

in itself, satisfy me that the light bulbs were left there to be installed at the property. Therefore, I hold the tenant responsible for the replacement of the light bulbs and I grant the landlords' request to recover \$26.08 from the tenant for new light bulbs.

Cleaning service

The Act requires that a tenant leave the rental unit "reasonably clean" at the end of the tenancy. The tenant asserted that the rental unit was not clean at the start of the tenancy. While I do not accept that position given the move-in condition inspection report does not reflect that, it is important to note that the cleanliness of a rental unit at the start of the tenancy should be addressed at the start of the tenancy as it is not an exemption to the tenant's obligations to leave the unit reasonably clean at the end of the tenancy. Therefore, the relevant issue to determine is whether the tenant left the unit reasonably clean at the end of the tenancy.

The tenant provided several photographs that depict a clean unit from a distance. Whereas, the landlords took close up photographs of areas that required additional cleaning. Those areas included window sills and tracks, a door sill, the oven door, the seal of the fridge door, and the wall of a closet. Upon review of these photographs, I accept that these particular items were not left sufficiently clean. The landlords did not, however, provide photographs to support their position that other items required additional cleaning such as the chandelier or behind the fridge and stove.

In light of the above, I find the landlord has established an entitlement to recover some cleaning costs from the tenant but I find landlords' claim to recover 11 hours of cleaning is not supported by the photographs presented to me. Thus, I find it likely that the claim includes time to bring the rental unit to a standard higher than reasonably clean. Accordingly, I find it appropriate to limit the landlord's award to one-half or \$110.00.

Filing fee, security deposit and Monetary Order

As the landlords were partially successful in this Application I award the landlords recovery of one-half of the filing fee, or \$25.00.

Since the landlords continue to hold the tenant's security deposit, I authorize the landlords to make the following deductions from the security deposit based upon my findings above.

Damage to countertops	\$ 100.00
Batteries for garage remote controls	11.20
Bi-fold closet door damage	12.85
Light bulb replacement	26.08
Cleaning	110.00
Filing fee	<u>25.00</u>
Total deduction	\$ 285.13

I order the landlords to return the balance of the security deposit in the amount of \$414.87 to the tenant without delay.

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposits and Set-Off*, I provide the tenant with a Monetary Order to ensure the landlords refund the balance of the security deposit.

Conclusion

The landlords have been awarded and authorized to deduct \$285.13 from the tenant's security deposit in satisfaction of their claims against the tenant. The landlords have been ordered to return the balance of the security deposit to the tenant without delay. The tenant has been provided a Monetary Order in the amount of \$414.87 to ensure payment is made.

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 25, 2015

Residential Tenancy Branch

