



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 was convened by way of conference call in response to the landlord's application 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 tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The 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 provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit and property?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started originally on November 01, 2012. On November 30, 2013 a new six month lease was entered into. Rent for this unit was \$2,100.00 per month due on the first of each month. The tenant paid a security deposit of \$1,100.00 on November 01, 2012. The parties attended an inspection of the unit at the start and end of the tenancy and a copy of the reports have been provided in evidence. The tenant provided a forwarding address in writing on May 27, 2014. The tenancy ended on May 31, 2014.

The landlord testified that the original move in inspection report had been misplaced; however, the landlord completed a copy of the report as the unit was nearly new at the start of the tenancy and had only one other short term tenant residing there previously. The landlord testified that there were very no damages to the unit at the start of this tenant's tenancy. The unit was rented fully furnished and the landlord compiled an inventory of belongings contained within the unit; this has not been provided in evidence by the landlord. Throughout the landlord's testimony the landlord referred to the large collection of photographic evidence which was provided digitally showing the damaged areas referred to in the landlords claim.

The landlord testified that the carpets and the mattresses were left soiled and stained. Previously to these tenants moving in there had been one man living in the unit alone for a few months. He only used one bed and did not leave it stained. The staining on the carpets was still fresh and wet in areas. The carpets had juice stains and urine stains. The carpets also appeared to have been coated with carpet cleaning powder which had caused some bleaching stains to the carpets and sofa. The mattresses were also stained with urine and vomit. The landlord hired a professional carpet cleaner to attempt to clean the carpets and mattresses. The landlord referred to the cleaner's invoice in which he has written that he cannot guarantee that he will be able to remove the urine spots or urine odour and the carpet should be replaced. It is also written that there was urine in every room/area of the house, urine on the sofa and area rug, urine on the

mattresses, ammonia staining and spots, spills that are unknown, chemical burns from a spot cleaner, vomit and blood on mattresses. The landlord seeks to recover the costs incurred to clean the carpet and mattresses of \$546.00.

The landlord testified that as the carpet and upholstery cleaning was not successful the landlord had to replace the carpets and both mattresses due to the staining. The carpets and mattresses were two years old at the end of the tenancy. The landlord seeks to recover \$2,696.21 for carpets and has provided a copy of the invoice in evidence. The landlord seeks to recover \$900.00 for the mattresses but as these were purchased second hand no receipt was provided by the seller.

The landlord testified that the unit was fully equipped including towels, a bathroom set, crockery, glasses, mugs and utensils. At the end of the tenancy the landlord found broken wine glasses, one plate from the set was missing, there were missing towels, a missing bathroom set, three coffee mugs missing, cutlery set was missing, barbecue tools were missing and the vacuum was broken. The landlord has had to replace these broken or missing items for the new tenant and seeks to recover the replacement costs of \$481.67. Copies of the receipts have been provided in evidence.

The landlord testified that the unit had some mirrored furniture in it. The hutch was left with broken glass, the drawers did not work and the side table also had broken sections. These both had to be replaced at a cost of \$1,550.00 for the hutch and \$650.00 for the side table. These items were two years old at the end of the tenancy. A copy of the receipt has been provided in evidence for the hutch and a letter from a witness confirming the side table was purchased for \$650.00.

The landlord testified that there was a mirrored side table in the bedroom. The glass on this table was broken in many places. This table was two years old at the end of the tenancy. The landlord seeks to recover the replacement cost of \$720.21 but does not have a receipt for this purchase.

The landlord testified that she had to clean the unit herself with one cleaning lady to minimise the cost. The landlord lost three days of work while she did the cleaning and purchased replacement items for the home. The landlord testified she earns \$200.00 a day as a dental nurse and seeks to recover \$600.00 for lost earnings and \$66.75 for her gas in shopping around for replacement items. The landlord also seeks to recover \$200.00 owed to the cleaner which has not all been paid at this time. No proof of earnings or lost wages has been provided. No cleaning invoice has been provided.

The landlord testified that she had to replace two duvets as one was left with a rip and one had an iron burn mark. The duvets were two years old at the end of the tenancy. The landlord seeks to recover \$362.88 and has provided a receipt for this amount in evidence.

The landlord testified that the tenant caused damage to the hinges of a door and the shower door. The landlord seeks to recover the amount of \$257.52 for new hinges, new shower door fittings, cleaning products and replacement lightbulbs. The landlord has provided a receipt for these items in evidence.

The landlord testified that the 65" plasma TV was not working and the cords for the TV were missing at the end of the tenancy. The TV was two years old at the end of the tenancy. The tenant had told the landlord he removed one cord which he had purchased at the start of the tenancy; however, the landlord testified that the tenant had been reimbursed for that purchase and therefore the cord should have stayed in the unit. The landlord was able to purchase a used TV at a cost of \$2,000.00 and seeks to recover this from the tenant. The landlord has not provided a receipt for this purchase.

The landlord testified that the tenant took the landlord's sound system and then denied that there was one in the unit. When the parties did the move out inspection the landlord asked a police officer to attend. During that inspection they found part of the sound system in the second bedroom but the rest of it was missing. The tenant also removed a picture from the wall and set it down by the window. This caused part of the picture to

suffer from sun damage. An ornamental vase was also broken. The landlord seeks to recover \$536.00 for these missing and damaged items. The landlord has not provided any receipts but has taken a photograph of the price tag on a vase and provided that in evidence.

The landlord testified that due to the condition the unit was left in the landlords incoming tenant could not take possession of the unit on June 01, 2014. The landlord had to do a lot of the work during the first two weeks of June to make the unit suitable for rent. The new tenant was able to move into the unit around June 15, 2014. The landlord seeks to recover a loss of rent for the first two weeks in June to an amount of \$1,250.00.

The landlord seeks to recover other costs incurred for copying evidence of \$7.49 and \$150.00 for the filing fee for this hearing and a previous filing fee paid for a hearing held in 2014.

The landlord seeks an Order to be permitted to keep all the security deposit in partial satisfaction of her claim.

The tenant disputed the landlord's claim in its entirety with the exception of one broken vase. The tenant testified that the landlord did not do a move in condition inspection report when the tenants moved in. The carpets and mattresses were already stained. The tenant notified the landlord and was told she knew about it.

The tenant testified that none of the items the landlord has said were broken or missing were in the unit. The tenants had asked the landlord to remove her belongings as the tenants used plastic plates and cups.

The tenant testified that the vacuum was still working when he moved out as he had used it to vacuum the carpets. The tenant disputed that landlord's claim for loss of earnings and cannot understand why the landlord had to take three days off work as the tenant had cleaned the unit thoroughly prior to leaving. The tenant disputed the

landlord's claim that they damaged the duvets. The tenant testified that they did not use the duvets as they had dog hair and stains on them at the start of the tenancy.

The tenant testified that they did not stain the carpets and were very vigilant with their children. The tenant's children did not urinate on the carpets or the mattresses. The tenant testified that the children slept in a crib not on the second bed. The tenant testified that the furniture was all left in good condition. The picture was removed by the landlord as it frightened the tenants' child. The TV was fine when they left and they did not remove the cords.

The tenant testified that the unit did not have a sound system as the tenant had asked the landlord to remove it. The tenant disputed that the side table in the bedroom was broken and testified that the unit was left in the same condition as it was when they moved in.

The landlord testified that her photographic evidence shows that the plates and wine glasses were in the cabinets and the tenant had replaced three broken glasses with three unmatched glasses. The landlord testified that at the previous hearing the tenant agreed he had taken the TV cord.

The landlord declined to cross examine the tenant.

The tenant asked the landlord if the previous tenant had two dogs. The landlord testified that no dogs lived in the unit. The tenant asked the landlord that when they did the inspection did the landlord say everything was fine. The landlord testified that she did not say this. The police officer was with her and the landlord took pictures of the unit at that inspection to show the condition of the unit and belongings.

The landlord testified that the tenant was asked to do the cleaning numerous times. The tenant had said he had hired a carpet cleaning machine from Safeway's but did not

provide the landlord with the receipt. The landlord later checked at the Safeway store and was told the tenant had not hired a machine.

Analysis

With regard to the landlord's claim for damages; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The tenant has testified that the landlord did not do a move in condition inspection report at the start of the tenancy. The landlord testified that she had done one and the tenant had signed it; however, the original copy was misplaced and the landlord completed a new one. The inspection report has not been signed by the tenant. When parties provide conflicting testimony then the burden of proof lies with the person making the claim and that person would need to provide corroborating evidence to

support their claim. In this matter I find both parties testimony to be equally probable and therefore I must find that the landlord has not met the burden of proof that she completed a move in condition inspection report.

Taking this into consideration I have turned my mind to the testimony of the parties and the other documentary and digital evidence provided by the landlord. I find the tenants testimony contained some inconsistencies in light of the documentary evidence provided. The tenant stated that the landlord had removed all items from the kitchen yet the landlord's photograph evidence clearly shows the landlord's belongings in the kitchen. I also find it unlikely that the tenants would have solely used plastic plates and cups for the duration of their tenancy particularly in line with the photographic evidence showing dirty plates and glasses left in the kitchen. The landlord testified that the previous tenant only lived in the unit for a few months and the unit was brand new prior to that and fully furnished. I do not accept the tenant's testimony concerning the condition of the carpets at the start of their tenancy as the carpet cleaners report is explicit as to the condition of all areas of the carpets and mattress at the end of the tenancy. I find it highly improbable that the tenants would have rented this unit with urine stained carpets and urine, blood and vomit stained mattresses particularly with small children. I further find the tenant's testimony that he cleaned the unit prior to the end of the tenancy and cleaned the carpets is highly improbable as the landlord's photographic evidence clearly shows the unit was not cleaned, garbage was not removed and the floors were strewn with belongings and miscellaneous items. I find therefore that the tenant's testimony lacks credibility.

It is my decision that the landlord has met the burden of proof that the tenant caused staining to the carpets and mattresses. The landlord is therefore entitled to recover the cost to attempt to have them cleaned to an amount of **\$546.00**. As this cleaning was not satisfactory, I also find in favor of the landlord's claim for replacement costs of the carpets; however, as the carpets were two years old at the end of the tenancy I must make a deduction for depreciation of the carpets over their life span. I refer the parties to the Residential Tenancy Policy Guidelines #40 which provided a table for the useful life

of building elements. This table indicates that the useful life of carpets is 10 years. I have therefore deducted 20 percent from the landlord's claim for depreciation. The landlord is entitled to recover the amount of **\$2,156.97**.

The mattresses were also two years old at the end of the tenancy and I must deduct a percentage for depreciation of the mattresses. Furniture is described as having a useful life of 10 years I have therefore deducted 20 percent from the landlord's claim. The landlord has not provided an invoice or receipt for the purchase of the mattresses and I must also deduct an amount as the actual cost has not been verified. I therefore find the landlord is entitled to recover a nominal amount for the mattresses of **\$500.00**.

It is my decision that the landlord has met the burden of proof that some of her belongings were broken or missing. While the landlord must accept that in a tenancy of 18 months some kitchen items may become broken through normal use and wear and tear, I am not therefore prepared to award the landlord for broken wine glasses or plates or coffee mugs. I do however find the landlord is entitled to recover the costs for missing towels, a missing bathroom set, a missing cutlery set, the missing barbeque set and the broken vacuum. I find therefore the landlord is entitled to recover the amount of **\$434.74**.

With regard to the landlord's claim to replace the mirrored furniture I am satisfied from the evidence before me that the furniture was left broken and damaged by the tenant. The landlord has provided sufficient evidence to show the cost to replace the hutch of \$1,550.00; however, as this was two years old I have deducted 20 percent for depreciation. The landlord is entitled to recover **\$1,240.00**. The side table was \$650.00 and again a deduction of 20 percent has been made. The landlord is entitled to recover the amount of **\$520.00**. The bedside table was \$720.21 as shown in the landlord's photographic evidence. An amount of 20 percent has been deducted for depreciation. The landlord is entitled to recover the amount of **\$576.17**.

With regard to the damage to the duvets, I am satisfied that these duvets were damaged by the tenants. The tenant testified that he did not use the landlord's duvets yet they are clearly shown in place on the beds in the landlord's photographic evidence. I find the landlord is entitled to recover the cost of replacement of the duvets. However, as they were also two years old I have deducted an amount of 20 percent for depreciation. The landlord is entitled to recover the amount of **\$290.30**.

With regard to the landlord's claim for minor damage to cupboard door hinges and the shower door plus the cost of bulbs; I am satisfied on a balance of probability that this damage was caused by the tenants during their tenancy and that the tenants did not replace blown bulbs as they are required to do. I therefore find the landlord is entitled to recover the amount of **\$257.52**.

With regard to the landlord's claim for \$2,000.00 to replace the TV; the landlord has insufficient evidence to show that she attempted to mitigate the loss by having the TV set inspected and /or repaired before purchasing a different one. The landlord has insufficient evidence to show the actual cost of the new TV set. I find therefore the landlord has not met the burden of proof in this matter and her claim for \$2,000.00 is dismissed.

With regard to the landlord's claim for the missing parts of the sound system, the damage to the painting and the vase; The landlord has provided some photographic evidence showing part of the sound system in the unit on the day the parties did the move out inspection. I therefore find I can place little weight on the tenant's testimony that the landlord had removed the sound system at the start of the tenancy. I further find a painting has suffered some damage and an ornamental vase was broken as agreed by the tenant. However, I have insufficient evidence from the landlord to show the replacement cost for the sound system in whole or part or for the painting. I therefore award the landlord a nominal amount for these items of **\$200.00**. I find the landlord is entitled to recover the amount of **\$39.00** for the cost of the vase.

With regard to the landlord's claim for lost wages; I am satisfied that the tenant failed to leave the rental unit in a reasonably clean condition as required under s. 32 of the *Act*. However, the landlord has insufficient evidence to show how many days she lost from work or what her daily wage is. I therefore find the landlord is entitled to a nominal amount for lost time for cleaning and sourcing repair items of **\$300.00**. The landlord has provide a gas receipt; and while I accept that the landlord would have had to travel to purchase items that required replacement I have insufficient evidence of how many miles the landlord traveled to incur a cost of \$66.75. I have therefore limited the landlords claim for gas to **\$40.00**.

With regard to the landlord's claim for an additional \$200.00 for the services of a cleaner; the landlord has insufficient evidence to show that she engaged the services of a cleaner to assist the landlord in cleaning the unit. I find therefore that the landlord has not met the burden of proof in this matter and the landlord's claim is dismissed.

The landlord has claimed \$7.49 for the cost to print evidence for the hearing. There is no provision under the *Act* for a cost of this nature to be awarded to a party. This section is therefore dismissed.

With regard to the landlord's claim for a loss of rent; I am satisfied that the unit was not left in a manner that would enable the landlord to re-rent it to new tenants. The condition of the carpets alone along with the mattresses and other cleaning would require time on the landlord's part to prepare the unit for new tenants along with the sourcing and purchase of the damaged and missing items. The landlord has claimed a loss of rent for two weeks in June, 2014 of \$1,250.00 however my calculations make a loss of rent for 15 days to be \$1,050.00. I therefore limit the landlord's claim to this **\$1,050.00**.

The landlord seeks to a \$50.00 filing fee from a previous application which was dismissed with leave to reapply. The landlord is not entitled to recover a filing fee from a previous application at this hearing. Therefore, the landlord's claim for \$50.00 is

dismissed. The landlord is entitled to recover the filing fee of **\$100.00** for this application pursuant to s. 72(1) of the *Act*.

I Order the landlord to retain the tenant's security deposit of **\$1,100.00** pursuant to s. 38(4) (b) of the *Act*. This amount has been offset against the landlord's monetary award.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$7,150.70**. 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: July 08, 2015

Residential Tenancy Branch

