



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The hearing was originally scheduled to be heard on June 23, 2015, and was adjourned to July 14, 2015 for an exchange of evidence, including a list of witnesses that the landlords intended to call. The parties attended on both dates, and the tenant was accompanied by legal counsel. The landlords also called one witness. The parties and the witness gave affirmed testimony and the parties, or counsel, were given the opportunity question each other and the witness respecting the evidence and testimony provided. The tenant provided additional evidence to the Residential Tenancy Branch which was not received by the landlords, and that evidence is not considered in this Decision. All other evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue and late fees?
- Should the landlords be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

The first landlord testified that this month-to-month tenancy began on September 30, 2013 and ended at the end of January, 2015, however some of the tenant's belongings remained on the rental property until February 3, 2015. The landlords received the tenant's forwarding address in writing via registered mail on February 17, 2015.

Rent in the amount of \$1,250.00 was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$625.00 as well as a pet damage deposit in the amount of \$175.00, both of which are still held in trust by the landlord. A copy of the tenancy agreement has been provided.

The landlord also testified that a move-in condition inspection report had been completed by the parties on October 2, 2013. The parties completed the report together and it was attached to the tenancy agreement. The tenant wrote her name on both documents and signed the tenancy agreement, agreeing that the report fairly represented the condition of the rental unit.

The move-out condition inspection was completed on February 2, 2015. The parties started to complete the form in the master bedroom, and the landlord pointed out 2 items requiring attention that the tenant disagreed about. Then the tenant refused to continue to participate and left the rental unit. The landlord continued with the inspection report in the absence of the tenant.

The landlords have provided a copy of the move-in/out condition inspection report as well as a Monetary Order Worksheet setting out the claim amounts. The landlords claim \$60.00 for cleaning the rental unit at the end of the tenancy. The tenant insisted that the landlords hire a professional cleaner at the beginning of the tenancy promising to leave it in the same condition at the end of the tenancy, however finger prints, spilled pop or juice, crayon markings on the walls and other cleaning remained to be done. The rental unit was left totally unclean and the landlords have provided some receipts as well as photographs of the rental unit at the commencement of the tenancy. The photographs were taken at the end of May, 2013, 4 months prior to the commencement of this tenancy. Also provided are photographs taken after the tenant moved out, which show dates taken in early February, 2015.

During the tenancy the tenant had asked if she could paint the bedrooms saying that she had done it before and would do a good job, however only gave the walls one coat. The landlords claim \$600.00 for putty, drywall and paint and have provided a written

estimate of the other landlord's time to complete the work and receipts for paint and supplies. The landlord testified that the landlords have mitigated the claim by doing the work themselves.

The landlords also claim \$140.00 for repair to the wall in the living room, including the landlords' time, as well as \$98.25 for the cost of replacing or repairing plugs and switches. The tenant's husband had changed them without wiring them correctly because the tenant wanted them to all be white, and the breaker kept tripping. The landlord's husband looked at them and had to call an electrician, however the only claim against the tenant is \$98.25, including labor, and a receipts have been provided.

The landlords further claim \$180.00 for cleaning up beer cans, cigarette butts and other debris in a fire pit in the back yard. The tenant put the fire pit there, and it's still there. The landlords cleaned it up rather than removing it because removing it would cause the back yard to look worse. Also claimed is \$20.00 for hauling away garbage from the rental unit.

The rental unit is missing blinds throughout, or they are damaged and the landlords claim \$150.00 for their replacement. No receipt has been provided.

The Monetary Order Worksheet also sets out a claim for \$125.00 for 5 late payments of rent, which the landlords claim against the tenant.

The landlords also claim \$60.00 to replace the locks on the rental unit, as well as an estimated \$100.00 for a broken handle on the garage door.

The landlords also claim loss of rental revenue due to the facts that the tenant moved out late, and left the rental unit in such a bad condition there was no chance of re-renting the rental unit. The claim is for 1 month's rent, or \$1,250.00, because that's how long it took to get it to that point. Hiring tradespersons to complete the work would have taken longer. The landlord's spouse works 4 days on and has 4 days off, and worked on the property on all of the days off. The landlords have now listed the home for sale having decided that they don't want to go through renting again.

The landlords have also provided digital evidentiary photographs of the rental unit at the end of the tenancy and the landlord testified that the drywall, trim and cabinets in the kitchen show clear scratch marks from the tenant's animals.

The second landlord testified that the tenant left Coca Cola stains on the floors, had painted over light switches and plugs, blinds in the 2 bedrooms were painted from not being masked off, or missing, the laminate floor had paint left on it by the tenant, crown moldings had not been covered properly before painting, left paint on floors and the

ceiling, crayon marks on the walls and sills, and holes in walls. Further, the landlord had to fill about 8 good-sized holes in the yard and the compost bin is full of dog feces.

The light switches were replaced in the master bedroom a month before the end of the tenancy and the landlord had to replace them again at the end of the tenancy. The move-in condition inspection report shows that the landlords were going to replace them, and they did twice.

The landlords had agreed to allow the tenant to paint the 2 upstairs bedrooms and rent was reduced for the cost of paint, but the tenant didn't finish the job.

The landlord further testified that during the move-out condition inspection he walked into the room while the tenant and his wife were having a conversation and his wife was not aggressive. The tenant said that she's done this before and always wins and that she would be serving papers, and she left within what seemed to be 5 minutes after the inspection started. The landlord didn't have a chance to say anything.

The landlord spent a lot of time repairing the rental unit and has provided a document setting out the dates and hours and description of work done during those date, which total 117 hours.

The rental unit was advertised on Craigslist, but the advertisement was removed. The landlord's father has moved in, the house is listed for sale, not for rent, and was not posted for rent at all after February 3, 2015.

The landlords' witness testified that he visited the rental unit about once per month prior to this tenancy; it was the landlords' primary residence prior. On February 12 and 13, 2015 the witness attended the rental unit and the tenant had moved out, leaving beer bottles and cigarette butts all over the yard including in flower beds. The witness looked inside the rental unit and saw marks and a hole in a wall, blinds were missing, and molding from the bay window at the front of the house was gone.

The witness was at the rental unit with the landlords during the next 3 or 4 weeks, and the landlords were trying to fix it up as fast as they could. The witness was also present when an electrician attended who tried to find a glitch in a 3-way plug that had been wired incorrectly. The electrician was able to correct it.

The witness helped do the yard work, removing garbage, butts, and cans and cleaned up the floors while the landlord was doing drywall work. The blinds from the sliding patio door were left on a rack in the garage, and were bent from being there for awhile.

The witness never saw nor ever met the tenant.

The tenant testified that she was 6 months pregnant when she moved into the rental unit, and it was disgusting. Baseboards were very damaged, blinds in both bedrooms were bent, and cupboards were stained. The landlords told the tenant that she could disassemble the cupboards, which took weeks.

The move-in condition inspection report was filled out by the landlord but was not signed by the tenant. It should have contained a lot more information because the condition of the rental unit was poor.

The tenant also testified that the landlord told the tenant she could paint any room that she wanted and to make herself at home. The paint bubbled, but it was in pretty rough shape prior. However, on January 26, 2015 the landlord suggested hiring painters and told the tenant not to finish, so the tenant stopped.

The tenant attended for the move-out condition inspection on February 2, 2015 with the landlord, and the parties went upstairs. The landlord asked where they should start and the tenant suggested the master bedroom. The landlord looked at the walls and said, "Look at the quality of the paint," and started raising her voice. The tenant felt intimidated and didn't want confrontation so she left.

The tenant disagrees with the move-out condition inspection report and testified that she cleaned the rental unit for hours from top to bottom, but left lint in the dryer. Also, the tenant put up a baby gate for the tenant's dog and punctured a hole in the wall. The photographs provided by the tenant are a true likeness of the condition of the rental unit, and the stain at the front door has always been there. Any damage is normal wear and tear, and the tenant is not required to leave the rental unit to the landlords' standards. The tenant didn't get permission in writing to paint, but the landlords reimbursed the costs. The painting was not completed because the landlords told the tenant to stop.

The tenant has also sworn an Affidavit, a copy of which has been provided, and testified that the facts contained in it are true.

Closing Submissions of Tenant's Counsel:

Time-lines are important: the move-out condition inspection commences on February 2, 2015; the tenant sent a forwarding address in writing to the landlords on February 10, 2015 and is deemed received 5 days later, or February 15, 2015, not February 17, 2015 as claimed by the landlords, even though proof exists. The landlords filed the

application for dispute resolution on March 2, 2015 and sent a copy to the tenant on March 3, 2015 and it is deemed to have been received on March 8, 2015, although the actual date of receipt was March 15, 2015.

Section 24(2) of the *Residential Tenancy Act* extinguishes the landlords' right to claim against the deposits because the landlords didn't give a copy of it to the tenant in accordance with the regulations which state that it must be given within 15 days of the date of the inspection or the date the landlord receives the tenant's forwarding address in writing. The landlords were not entitled to hold onto the inspection report and then provide it with the application for dispute resolution and notice of this hearing, and the deemed receipt provisions apply.

Closing Submissions of the landlords:

The landlords have provided substantial evidence. The photographs are dated and show exactly the way the rental unit looked at the end of the tenancy. The parties did a walk-through together at the beginning of the tenancy and the tenant wrote her name on it and the tenancy agreement, they were done together, and the tenant agreed.

The tenant's testimony of being intimidated during the move-out condition inspection is not accurate or supported.

Analysis

Firstly, with respect to the landlords' claim for loss of rental revenue, the tenant didn't completely move all belongings out of the rental unit by the end of January, 2015, and having given notice to vacate, the tenant had an obligation to be totally moved out by then. I also consider the evidence of the landlords and I am satisfied that the landlords could not have rented the unit at all in February, 2015. I find that the landlords have established a claim for \$1,250.00.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

Also, any monetary award must not put the landlords in a better financial position than they would be in had no damage or loss existed; in other words, to replace an item that

was old or had outlived its value, ordering replacement of it would put the landlords in a better financial position than they were at the commencement of the tenancy. Also, a tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of a tenancy.

The *Residential Tenancy Act* and regulations go into great detail of how the move-in and move-out condition inspection reports are to take place, and specify that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. The tenant testified that the condition of the rental unit at the beginning of the tenancy was poor, disgusting, baseboards were very damaged, blinds in both bedrooms were bent, cupboards were stained, and there should have been a lot more comments on the condition inspection report. However, the tenant did not dispute that she was present during the inspection, and had there been items that required the attention of the landlords, the tenant ought to have ensured that they were reflected in that report. I accept the testimony of the landlord that the tenant wrote her name on the condition inspection report and on the tenancy agreement, the documents were attached to each other, and the tenant signed the tenancy agreement and agreed with the report. It is not sufficient for a tenant to participate in a move-in condition inspection, fail to sign it, and then claim that it was inaccurate at the end of the tenancy.

I also accept the testimony that the tenant left the rental unit without completing the move-out condition inspection report; that is not disputed by either party. The parties both attended and therefore, I find that the parties agreed to that date to complete it and the landlords have complied with the *Act* with respect to providing opportunities to the tenant to conduct the move-out condition inspection report.

The *Act* states that if a tenant fails to participate, the right of the tenant to the return of a security deposit or a pet damage deposit or both is extinguished, and I so find. The *Act* also states that if a landlord fails to give the tenant a copy of the inspection report within 15 days, the landlord's right to claim against the deposits for damage to the residential property is extinguished. The report was completed on February 2, 2015 and the landlords sent a copy of it to the tenant with the application for dispute resolution which was served by registered mail on March 3, 2015, certainly beyond 15 days. Therefore, I find that the landlords' right to claim against the deposits for damage to the residential property is extinguished. However, the landlords' right to make a claim for damages is not extinguished nor is the landlord's right to claim against the security deposit for loss of rental revenue. A landlord may only claim against a pet damage deposit for damages to the rental property caused by a pet, however, having found that the landlords' right to make a claim against the deposits for damage to the residential property is extinguished, I also find that the landlords didn't have legal right to keep the pet damage

deposit, however, having found that the tenant's right to the return of it is extinguished, and since the tenant breached the *Act* or the regulations first, the tenant's right was extinguished prior to the landlords' right. Further, the tenant has made no claim for the return of them, and the doubling provisions of the *Act* do not apply because the tenant's right had been extinguished first.

With respect to the landlords' claim for damages, I am satisfied that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. I have reviewed the evidentiary material including receipts and photographs, and the photographs exhibited to the tenant's Affidavit. The tenant deposes that the exhibited photographs are "of the subject property upon move out," but there is no mention of the date they were taken. The landlord's photographs are dated and the landlords have provided evidence of having hired someone to clean near the beginning of the tenancy. I find that the landlords have established a claim in the amount of \$60.00 for cleaning the rental unit, as well as \$98.25 for light switches, and I find that the \$20.00 claim for hauling away garbage left by the tenant is reasonable, including the landlords' time.

Although there is no evidence before me of when the rental unit was painted prior to the beginning of the tenancy, it is clear from the photographs and condition inspection reports that it certainly needed to be re-painted at the end of the tenancy as a result of the tenant's poor attempt to paint. The landlords claim \$600.00 for putty, drywall, paint and the landlords' time to complete the work. I find that the claim has been made out, which I find also includes repair to the wall in the living room, and the landlords will have an order for \$600.00.

With respect to cleaning up beer cans and other debris in the fire pit and yard repair, I find the landlords' claim of \$180.00 to be reasonable considering the video evidence.

I am not satisfied that the landlords have established that the cost for a broken handle on the garage door will be \$100.00 for its replacement or repair. The landlords' \$60.00 claim to replace the locks is not supported by a receipt or proof of the cost, and therefore I am not satisfied that the landlords have satisfied element 3 in the test for damages. Similarly, I have no evidence to support the cost of blinds.

With respect to the landlords' claim for fees for late rent during the tenancy, I have reviewed the tenancy agreement and find that the parties did not agree to that at the commencement of the tenancy. The regulations allow a landlord to charge such a fee, not to exceed \$25.00 per payment if a clause to that effect is contained in the tenancy agreement, and the application is dismissed.

In summary, I find that the landlords have established a claim for monetary compensation from the tenant for loss of rental revenue of \$1,250.00, \$60.00 for cleaning the rental unit, \$98.25 for light switches, \$20.00 for hauling garbage to the dump, \$600.00 for painting and repairing wall damage, and \$180.00 for cleaning up the fire pit and yard, for a total of \$2,208.25. Since the landlords have been partially successful with the application the landlords are also entitled to recovery of the \$50.00 filing fee.

I order the landlords to keep the \$625.00 security deposit as well as the \$175.00 pet damage deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlords as against the tenant for the difference in the amount of \$1,458.25.

Conclusion

For the reasons set out above, I hereby order the landlords to keep the \$625.00 security deposit as well as the \$175.00 pet damage deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* for the difference in the amount of \$1,458.25.

This order is final and binding and may be enforced.

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 29, 2015

Residential Tenancy Branch

