



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords – MND, MNSD, MNDC, FF

For the tenant – MNSD, MNDC, O, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlords to keep all or part of the tenant's security and pet 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 applied for a Monetary Order to recover double the security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; other issues; and to recover the filing fee from the landlords for the cost of this application.

The tenant and the male 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. 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

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the security and pet deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order to recover double the security or pet deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on August 01, 2012 for an initial term of one year. Two further one year terms were entered into on August 01, 2013 and August 01, 2014. The tenancy ended on March 31, 2015 and new tenants took over the lease from April 01, 2015. Rent for this unit was \$1,390.00 at the end of the tenancy. The tenant paid a security deposit of \$687.50 on July 16, 2012 and a pet deposit of \$687.50 on August 01, 2012. Both parties attended the move in and the move out condition inspections of the unit and the tenant provided a forwarding address in writing on the inspection report on March 29, 2015.

The landlords' application

The landlord attending testified that the tenant caused some damage to the laminate flooring in the unit. The tenant had a dog and the addendum to the tenancy agreement does allow the tenant to keep the dog and while the landlord had expressed some concerns, the tenant had stated that the dog's nails are regularly groomed and that damage to the floor will not be an issue. This was documented in the addendum. The landlord found some deep scratches in the floor which has gone across five boards. The landlord agreed there was some other scratches on the floor in other areas prior to the

tenant moving in but these are fairly light whereas the tenant's dog has caused deep scratching.

The landlord testified that the tenant was unhappy that the landlords were going to the expense of replacing the five damaged boards and suggested the landlord went to Home Depot first to get a product to repair the scratches themselves. The landlord did purchase some filler and a stain pen; the landlord then attempted to mitigate the loss by filling and staining over the scratches. This was not successful and the landlord was able to obtain spare boards from the Strata Council and obtained a quote to have the five damaged boards replaced. The landlord seeks to recover the costs incurred for the filler and stain pen of \$13.43 and three hours of the landlord's labour in attempting to remedy the damage of \$90.00. The landlords also seek the amount of \$315.00 for the costs to replace the five boards as shown on the quote provided in documentary evidence.

The landlord testified that when the new tenants moved into the property they sent the landlord a photograph and email concerning some scratches on the back of the front door. These scratches had been missed in the tenant's move out condition inspection and on the new tenants move in condition inspection; the landlord testified that it appears the scratches are also caused by a dog and only this tenant has been allowed to have a dog in the unit. The landlord obtained a quote from a company who will have to remove the door, sand the scratches then return to apply stain and refit the door. This quote came in at \$525.00 and the landlords seek to recover this amount from the tenant.

The landlord testified that when they inspected the unit they checked the window sills and blinds and found they had not been cleaned. The landlord ran his finger down the sills and it came away black. The tenant said her cleaners must have missed that area; however, the landlords found the unit had not been left in the same condition it was in at the start of the tenancy and while it was reasonably clean there were still areas that required additional cleaning. The landlord testified that he did not check on top of the

cupboards or the pipes and drains during the inspection. Just before the new tenants moved in the landlords returned to the unit and found mildew in the bathroom, dirty windowsills and blinds, the freezer and oven were not cleaned sufficiently and the drains in the kitchen sink were dirty.

The landlord testified that his wife spent five hours cleaning the unit again and the landlords seek to recover four hours at a cost of \$30.00 per hours to an amount of \$120.00 plus a further \$18.00 for cleaning supplies. If the tenant's cleaning company had cleaned the unit they did not do a very good job as the landlord also found dog hairs on the floor. Even after all the additional cleaning was done by the landlord's wife the new tenants still found mildew in the ensuite bathroom and asked for that to be cleaned again along with the freezer.

The landlords seeks to recover costs incurred to send registered mail to the tenant to an amount of \$24.34 and costs incurred to develop photographic evidence of \$2.55. The landlords also seek an Order to keep part of the security and pet deposit to offset against their costs and to recover the filing fee of \$50.00.

The tenant disputed the landlords' claims. The tenant testified that when she moved into the unit they did a through move in inspection and there were many scratches already on the flooring. These are documented on the move in report. The landlords did not do any of those repairs during the tenant's tenancy. When the tenant moved out she did acknowledge that there were three deep scratches on the floor and the landlord decided it covered five boards as they went widthwise across the floor. The tenant testified she contacted the landlord and told them there was a solution to repair deep scratches without having to replace the boards. The landlords must also take into account normal wear and tear over the course of the tenancy. The tenant agreed she signed off on the inspection report but there was no mention that the boards would have to be replaced as the landlord only documented that they may need to be replaced. The tenant does not dispute that there were some deep scratches on the floor but not across five boards and the cost to replace the boards is extreme.

The tenant disputed the landlords' claim for the costs to purchase the wood filler and stain pen and for the landlord's labour and testified that she could have gone back into the unit and done this repair herself.

The tenant testified that during the move out inspection they looked at all areas of the unit. If these scratches had been on the door at that time the tenant or landlords would have seen them if they are so bad and the landlords would have documented them on the move out report. The tenant disputed that these scratches were caused during her tenancy. The landlords inspected everything and were satisfied with the unit before the tenant handed the keys back.

The tenant testified that she had a professional cleaning company do the deep clean in the unit at the end of the tenancy. The tenant referred to her documentary evidence showing how clean the unit was. During the move out inspection the male landlord said the unit looked clean with the exception of the windowsills. The landlord did not make any mention of any areas that required cleaning and did not document anything about cleaning on the inspection report. The tenant referred to her documentary evidence showing the cleaning list. This shows how well the unit had been cleaned. The tenant also referred to two letters from witnesses stating how clean the unit was.

The tenant testified that the landlords went into the unit after the tenant had vacated and then looked at areas such as on top of kitchen cabinets which had never been inspected at the start or end of the tenancy. The landlords also inspected drains which they had not done at the start of the tenancy. The tenant testified that the landlords did not give the tenant the opportunity to come back to the unit and do any additional cleaning and the landlords should have done this if they were not satisfied with the level of cleaning done by the tenant's cleaners.

The tenant asked the landlord if the unit was so dirty that required five more hours of cleaning why was it not documented on the move out report. The landlord responded

that they did not look at the drains, under the sinks or on top of the cupboards. The tenant was sent a detailed email after the inspection on March 31, 2015 documenting all the extra work done by the landlords. The unit was left reasonably clean in areas you could easily see but other areas were not clean.

The tenant asked the landlord why the landlords are trying to charge the tenant for things not documented on the move out inspection report. The landlord responded that the unit was not left in the same condition it was given to the tenant and the extra things could not be seen at the time of the inspection. The landlords may not have checked on top of the kitchen cupboards at the start of the tenancy. The tenant asked the landlord if he decided that scratches on the door were caused by a dog as this was not identified together during the inspection. If the tenant's dog had caused this damage the tenant would have agreed to it. The landlord responded that the new tenants do not have a dog only this tenant has had a dog in the unit. The scratches were on the left hand side and were all dog scratches.

The tenant testified that the unit was left reasonably clean as required. The landlord did not inspect on top of cupboards or pipes and drains at the start of the tenancy. At the end of the tenancy the landlords fine tooth combed the unit after the tenant had signed off on the inspection report.

The tenant's application

The tenant testified that the landlord has not returned all or part of the security or pet deposit within 15 days of receiving the tenant's forwarding address in writing. The tenant testified that even if the landlords had made a claim to keep part of the deposits the landlords should have returned the balance to the tenant and failed to do so. The tenant therefore seeks to recover double the security and pet deposit to an amount of \$2,750.00.

The tenant testified that she lost a day from work dealing with filing her application and gathering and sending evidence. The tenant seeks to recover 7.5 hours lost earnings at \$40.00 an hour to a total amount of \$300.00 and \$25.00 for traveling.

The tenant also seeks to recover her \$50.00 filing fee.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords' application to recover the cost for the damage to five floor boards; the tenant does not dispute that the deep scratches were caused during her tenancy. The tenant argued that the floor had other scratches which the landlord did not deal with but now wants to charge the tenant for the cost to replace the boards which were damaged during her tenancy. The tenant also argued that the cost to replace the boards is extreme. In matters of damage or loss claims I apply a test to determine if the claimant has met the burden of proof in the 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.

With this test in mind I have considered both arguments and find the other scratches on the floor are of a more minor light scratches while the tenant's dog scratched the floor deeply in the area of the five boards. While light scratches on a laminate floor could be considered normal wear and tear these scratches are deeper in nature and go beyond normal wear and tear. Consequently, I am satisfied that the landlords have established a claim to recover the cost to replace these damaged boards and has provided evidence of the actual costs to do the work. I therefore award the landlords the amount of **\$315.00**.

I further find the landlord did attempt to mitigate the loss by taking direction from the tenant and trying to remedy the damage by filling and staining the deep scratches. If the tenant felt this would have remedied the problem prior to the end of her tenancy the tenant could have attempted to repair these scratches herself prior to vacating the rental unit as required under s. 32(3) which says:

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I therefore find the landlord is also entitled to recover costs incurred to attempt to repair the scratches; for the materials used and for the landlord's labour to an amount of **\$103.43**.

With regard to the landlords' claim for the scratches on the back of the front door; the landlords have provided photographic evidence showing the scratches on the door. While I accept these scratches were not documented on the move out inspection report it does not mean that they were not caused by the tenant's dog it simply means that they were not noticed during the inspection. I find on consideration of the photographic

evidence that these scratches appear to have been caused by a dog. I therefore find on a balance of probabilities that these scratches were caused during the tenancy and as such I find the landlord is entitled to recover costs to repair the door of **\$525.00**.

With regard to the landlords' claim for additional cleaning; the tenant did not dispute that one window sill was found to still be dirty during the move out inspection. If the rental unit was not left reasonably clean by the tenant and it required another five hours of cleaning by the landlord's wife this should have been sufficient to have been noticed and documented on the move out inspection report. The landlord must not inspect areas that were not inspected at the start of the tenancy such as the top of cupboards and drains as there is no way to determine that these areas were clean at the start of the tenancy.

Under the *Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore, the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required and the landlords' claim for additional cleaning is therefore dismissed.

With regard to the landlords' claim to recover registered mail costs and the costs to process photographs; there is no provision under the *Act* for costs of this nature to be awarded to a party to send an applicant's documents by registered mail or to process evidence. This section of the landlords' claim is therefore dismissed.

I order the landlords to retain the amount of **\$943.43** from the tenant's security and pet deposit.

With regard to the tenant's claim to recover double the security and pet deposit; I refer the parties to s. 38(1) of the *Act* which says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's

forwarding address in writing to either return the security and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security or pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Based on the above and the evidence presented I find that this tenancy ended on March 31, 2015 and the landlord received the tenant's forwarding address in writing on March 29, 2015. As a result, the landlord had 15 days from the end of the tenancy, until April 15, 2015, to return the tenant's security and pet deposit or file an application to keep them. There is no provision under the *Act* that states a landlord must apply for an amount from either of the deposits and return the balance within 15 days. I find the landlords did file their application to keep all or part of the security and pet deposit on April 01, 2015. Therefore, the tenant is not entitled to recover double the security and pet deposit.

However, as the landlords' application to keep the security and pet deposit has only been partially successful I find the tenant is entitled to a Monetary Order to recover the balance of the security deposit of \$431.57.

With regard to the tenant's claim to recover lost earnings and travel costs; there is no provision under the *Act* for costs of this nature to be awarded to a party for time off work to file an application or any associated costs in time or travel to process and send documents for Dispute Resolution. This section of the tenant's claim is therefore dismissed.

As both parties applications have been partially successful I find the parties must each bear the cost of filing their own applications.

Conclusion

For the reasons set out above, I Order the landlords to retain the amount of **\$943.43** from the tenant's security and pet deposit pursuant to s. 38(4)(b) of the *Act*.

For the reasons set out above, I grant the tenant a Monetary Order pursuant to Section 38(6)(b) of the *Act* in the amount of **\$431.57**. This Order must be served on the landlords and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the landlords fail 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: September 10, 2015

Residential Tenancy Branch

