



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit or property; unpaid rent; 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 hearing was held over two dates and an interim decision was issued on August 25, 2015. The interim decision should be read in conjunction with this decision. As recorded in the interim decision, I ordered the landlords to provide certain documentation during the period of adjournment. The landlords provided the required documentation to me and the tenants. However, the landlords also provided additional photographs during the period of adjournment that I had not requested or authorized. The Rules of Procedure prohibit a party from providing evidence after the hearing has commenced unless the evidence is ordered or authorized by the Arbitrator. Therefore, those additional photographs were not accepted or considered in making this decision.

As indicated in the interim decision, I had reserved my decision to permit the landlords to amend their application again. During the reconvened hearing the tenant stated she wished to deal with all of the landlords' claims at once. As such, I permitted the amendment and this decision deals with both unpaid rent and damage and cleaning costs that were submitted by the landlords.

It should be noted that the available hearing time ran out on the second day of hearing before both parties had a final opportunity to be heard. Both parties were asked whether they would like the opportunity to continue the proceeding by way of an adjournment. Both parties requested that I make my decision based on what I had heard and been presented up to that point.

Issue(s) to be Decided

1. Have the landlords established an entitlement to recovery of the amounts claimed against the tenants, as amended?
2. Disposition of the security deposit.

Background and Evidence

The one year fixed term tenancy commenced on December 1, 2013 and continued on a month-to-month basis after the fixed term expired. The tenants were required to pay rent of \$2,650.00 on the 1st day of every month.

I also heard that the tenants had purchased a king size bed from the landlords and were required to make 12 monthly payments of \$125.00 for the bed starting December 1, 2013. The landlord submitted that the final bed payment of \$125.00 was not made; however, my jurisdiction is limited to tenancy agreements and I do not have jurisdiction to resolve disputes revolving around the purchase of a chattel. Therefore, I have not considered that portion of the landlords' claim further.

The parties were in agreement that the landlords collected a security deposit in the total sum of \$2,625.00. The landlords explained that a greater deposit was taken because the rental unit was partly furnished. The tenant was of the view the landlords did not have space for their excess furnishings and they were left in the rental unit by the landlords; however, the tenant stated they did not want or need the landlord's furnishings. The parties provided consistent testimony that there was no pet damage paid. The parties also provided consistent submissions that some of the security deposit held by the landlords was reduced when the tenants reduced their monthly rent payment by \$300.00 for the four months of November 2014 through February 2015.

It was undisputed that the landlords did not prepare move-in or move-out condition inspection reports.

It was undisputed that the landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent on March 9, 2015. However, I was provided inconsistent submissions as to the date the landlord's regained possession of the rental unit. The landlords testified at the first hearing that the tenants remained in possession of the rental unit until April 19, 2015 and that the landlords regained possession of the rental unit with the assistance of a locksmith. When I pointed out that the landlords provided a receipt for a locksmith

dated March 19, 2015 the landlords testified that locksmith must have entered the wrong date on the receipt since the locksmith attended the property on April 19, 2015.

The tenant testified that the last day the tenants were at the rental unit was March 18, 2015 and that on March 19, 2015 the landlords, or agents for the landlords, showed up at their new residence and demanded the garage remote stating that their tenancy ended at 1:00 p.m. that day. The tenant also explained that the locking system to the house was by code and that they did not use keys.

The landlords denied attending the tenants' new residence but did acknowledge that they were incorrect in their earlier submissions that the tenants were in possession of the rental unit until April 19, 2015 claiming it was difficult to recall specific dates so many months later.

Unpaid rent

I heard a considerable amount of testimony from the parties with respect to the end of the tenancy. It was apparent to me that the tenancy relationship was fairly successful until such time the landlords commenced efforts to sell the property. I have considered the parties' submissions fully but with a view to brevity I have summarized their positions below.

It was undisputed that the rent was paid in full up to and including the month of October 2014. For the months of November 2014 through February 2015 the tenants paid rent of \$2,350.00 for these months due in large part to a personal tragedy for the tenants which affected the tenants' income. The parties provided consistent submissions that the rent shortfall for these months was taken from the security deposit.

For the month of March 2015 it was undisputed that the tenants paid only \$1,000.00 to the landlords. The landlords seek to recover the rent shortfall of \$1,650.00 for the month of March 2015. The tenant was in agreement that rent of \$1,650.00 is owed for March 2015.

The landlords also seek to recover rent of \$2,650.00 for the month of April 2015; however, the tenant was not in agreement with this claim.

It was undisputed that the landlords had requested the tenants give the landlords two months of notice to end the tenancy; however, the tenants found the request was onerous on them since it was difficult to find accommodation for the size of their family that would also accept their two dogs and if they found such a place they needed to

secure it right away. The tenants pointed out that it was the landlords needed to give them two months of notice, not the other way around. The landlords explained that they had requested two months of notice from the tenants since the landlords had to give them two months of notice if they sold the property so they viewed this request of the tenants as a mutual courtesy.

I heard that at the end of February 2015 there were multiple viewings of the property by prospective buyers and that an offer to purchase the property received in early March 2015. The Contract of Purchase and Sale provided as evidence shows that the offer was made on March 1, 2015 and set to expire at 12:00 p.m. on March 2, 2015. The offer was accepted and it required that vacant possession be provided on April 30, 2015. On March 3, 2015 the tenant texted a message to the landlord to say that they found a place to move to and would be ending the tenancy at the end of March 2015. The landlords responded to that message by indicating they were not agreeable to this and reiterated that they wanted two months' notice from the tenants to be effective at the end of April 2015.

The tenant stated that she was receiving conflicting information from the landlord's agents with one of them telling her the house was sold upon receiving the offer and the other one saying the house was not yet sold until the conditions came off.

Considering the landlords had accepted the offer on March 2, 2015, with conditions removed March 6, 2015 and were required to provide vacant possession of the rental unit to the purchasers on April 30, 2015 I asked the landlords how they intended to meet this obligation since it was too late to give the tenants a 2 Month Notice to End Tenancy with an effective date of April 30, 2015. The landlords' response was that they could have re-negotiated the possession date with the purchasers.

The landlords submitted that damage caused by the tenants was repaired in April 2015 and that "other" repairs and improvements to the property were made to the property that the purchaser wanted. I noted that the Contract of Purchase and Sale provided to me as evidence did not include conditions pertaining to making repairs and improvements. The landlords stated that the roof required replacement and that other improvements were made; however, the landlords were very evasive as to the nature of these other improvements. The tenant suggested that the other improvements related to installation of a basement suite as inspections that took place while they she residing in the property focused on accomplishing that.

Damage and cleaning

The landlords submitted that on March 19, 2015 the landlord had a contractor inspect the property and determine the repairs and cleaning that were required. As evidence, the landlords had provided an "Estimate" dated March 19, 2015 in the total amount of \$8,000.00. I noted that the estimate does not include a component for tax or a GST registration number for the contractor. The landlords testified that the repairs described in the "estimate" were accomplished; however, the landlords had not provided an invoice or proof of payment for my review. The landlords were asked how the contractor was paid to which they initially replied the contractor was paid approximately \$16,000.00 for the repairs and the other improvements. The landlords submitted that they paid the contractor \$8,000.00 in cash and the purchaser paid the remainder to the contractor. The landlords were asked whether they were related to the contractor to which they replied they were not. I ordered the landlords to provide me with a copy of the invoice, proof of payment, and the Contract of Purchase and Sale of Property.

During the period of adjournment I was provided documentation from the landlords as I had ordered. Included was a bank statement indicating a cash withdrawal of \$8,000.00 on June 1, 2015 and an invoice from the contractor. The invoice is dated May 28, 2015 although it also indicates payment of \$8,000.00 was made on June 2, 2015, meaning the invoice was created after payment was made. The description of the services provided was "for all work done based on negotiated price of \$8,000.00 plus tax, balance of work will be paid by [name of purchaser]."

The tenant questioned the veracity of the "estimate" and invoice prepared by the contractor as the tenant submitted that she determined that the father of the landlord's agent owed the contracting company after she telephoned the company and spoke with the agent's father. The landlord's agent denied that his father was the owner but did acknowledge that his father was an employee of the company. The tenant submitted that his father held a senior officer position as seen on the company website. The landlord's agent did not deny this allegation but responded by stating that the website does not reveal that information.

The landlord's agents explained that using the agent's father's company actually resulted in achieving a better price for the work done.

Since the invoice was not explicit as to the nature of the work performed the estimate was relied upon in reviewing the landlord's claims for damage against the tenants. Below, I have summarized the parties' respective positions with respect to allegations of damage by the tenants.

Description	Amount	Landlord's reasons	Tenant's responses
Broken windows	\$600.00	There were three broken windows at the end of the tenancy.	One window was cracked at start of tenancy. The tenant was unaware of two other broken windows. The windows are still broken and have not been repaired.
Carpet replacement on stairs	\$500.00	The tenants and their dogs "fully destroyed" the carpeting on the stairs which had been recently installed.	The tenants did not destroy the carpeting and the landlords' photographs do not depict damage. The tenants' dogs were always contained. The top edge never had a transition piece installed.
Laminate floor repairs	\$200.00	The floors were scratched. The landlords did not include a photograph in their evidence.	The floors were not scratched.
Clean up cigarette butts	\$200.00	Tenant's boarder smoked and put cigarette butts on roof, porch and in garden.	When landlord brought cigarette butts to tenant's attention the tenant cleaned the butts off the roof and installed a lock on the window so that it could not happen again. The tenant continued to monitor and clean up butts around the property after the landlord brought it to her attention.
Oil stains in garage	\$500.00	The male tenant worked on cars in garage and left oil stains on the garage floor.	The male tenant worked on cars occasionally but there were pre-existing oil stains in the garage when the tenancy started.
Landscape	\$800.00	The tenants cut	The tenants did not cut any

repairs		bushes and they died. There were tire marks on the grass. The grass died due to moss and the tenants' failure to water and mow the grass.	bushes. They did not drive on the grass. They mowed the grass that was accessible; however, the owners had many possessions stored in the yard where they could not mow.
New office doors	\$300.00	The glass portion of the doors was broken and the doors were scratched on the bottom portion of the door.	The glass was broken and the doors required replacement or repair at the beginning of the tenancy.
Interior/exterior cleanup	\$1,000.00	3 – 4 days were spent cleaning up the interior and exterior of the property including abandoned property. The landlord tried to have the tenants come pick up their abandoned property but they did not. Cigarette butts were also found on the property.	The tenants had not finished removing the last load of their property from the basement/garage and intended to do so on March 19, 2015 but then the landlord's agent showed up at their new residence on March 19, 2015 and demanded return of the garage remote. The tenant acknowledged she did not want to return the property and deal with the landlord given the animosity between the parties. The tenant had cleaned up the cigarette butts on the property.
Garbage removal	\$300.00	To remove and dump tenant's abandoned property.	See above. Also, the landlord had a large amount of possessions at the property, in the house and in the yard. The tenant was of the position the majority of

			this cost relates to disposal of the landlord's property.
Broken door mouldings	\$100.00	Closet doors in the lower floor had been removed.	The closet doors had been removed before the tenancy started and the landlord never re-installed them.
Repair walls/holes/paint	\$3,500.00	There was a hole in the wall where a cable was inserted. There was nail polish on the wall. Wallpaper was torn off.	The cable was coming through the wall at the start of the tenancy. The only holes created by the tenants were from some picture hanging. There was old and peeling wallpaper likely installed when the house was constructed several years prior.

The tenant also pointed to the landlords' text messages that were included in evidence. The only issue the landlords complain about during the tenancy was the presence of cigarette butts. The landlords had not raised any other issue with the tenants about damage or the condition of the rental unit despite frequent visits to the property.

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 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.

Considering everything presented to me, I provide the following findings and reasons with respect to all of the amounts claimed against the tenants.

Unpaid rent and security deposit

The Act provides that if a tenant overpays a security deposit the tenant is entitled to recover the overpayment by deducting the overpayment from rent otherwise payable to the landlord. The Act prohibits landlords from collecting a security deposit in excess of one-half of the monthly rent. The Act does not permit a landlord to collect additional deposits because the unit is furnished. The Act does permit the landlord to collect a pet damage deposit at the start of the tenancy or when the landlord agrees the tenant may have a pet; however, both parties testified that a pet damage deposit was not paid in this case. Accordingly, I find that the landlords were prohibited from collecting a security deposit in excess of \$1,325.00.

Since the tenants had paid a security deposit in the total sum of \$2,625.00 the tenants were entitled to deduct the \$1,300.00 overpayment from rent otherwise payable. I find the tenants recovered \$1,200.00 of the overpayment when they withheld \$300.00 from rent for the months of November 2014 through February 2015. As such, I find the security deposit that remains in trust is \$1,425.00.

The parties were in agreement the tenants still owe \$1,650.00 in rent for March 2015 and I award the landlords that amount. I authorize the landlords to retain the security deposit of \$1,425.00 in partial satisfaction of this award, leaving a balance of \$225.00 for March 2015.

With respect to unpaid rent and/or loss of rent for April 2015 I deny the landlord's request to recover this amount from the tenants as I am unsatisfied the landlords actually suffered a loss due to the tenants' actions or that the landlords' attempted to mitigate their losses. I make this finding based upon several considerations including:

1. The landlords did not present any evidence to establish that they attempted to minimize the loss of rent for April 2015 such as advertising the unit for rent.
2. The landlords had submitted to me that the possession date for the sale of the property was open to negotiation with the purchaser.
3. The landlords or the new purchasers benefited from having the unit to make significant repairs and improvements to the property after the tenants vacated and in April 2015.
4. The landlords were putting undue pressure on the tenants to give two months' notice when it is the landlords that would have had to give the tenants two

months' notice and compensation equivalent to one-month's rent so as to provide the purchasers vacant possession of the house.

Damage and cleaning

The Act requires that a tenant leave a rental unit reasonably clean and the tenant is responsible for repairing damage caused by the tenant or persons permitted on the property by the tenant. Accordingly, a tenant is not responsible for repairing pre-existing damage. Further, the Act specifically provides that reasonable wear and tear is not damage. An example of normal wear and tear would be small holes in a wall from hanging pictures.

Awards for damages are also 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. For example: interior wall paint has an average useful life of 4 years; thus, a landlord would be expected to absorb the cost of repainting if the last time the rental unit was painted was 4 or more years ago.

Condition inspection reports are required to be completed at the beginning and end of every tenancy. One of the main purposes of these reports is to establish the condition of the rental unit so as to avoid disputes between the parties. Under the Act, the burden to prepare the reports rests with the landlord. In this case, the landlords failed to fulfill their condition inspection report obligations and not surprisingly the parties are in dispute as to the condition of the rental unit at the beginning and end of the tenancy.

The landlords submitted that the tenants were responsible for causing a significant amount of the damage to the rental unit. The tenant denied responsibility and pointed to most of the items claimed by the landlords to be pre-existing damage or deterioration due to aging. The landlords bear the burden to prove the damage was caused by the tenants and in the absence of a move-in inspection report or other evidence to demonstrate the condition of the rental unit at the start of the tenancy, I find the disputed verbal testimony insufficient to meet the landlord's burden.

I have also given very little weight to the "estimate" and the invoice provided as evidence by the landlords as I found the landlords' changing, vague and evasive submissions concerning their relationship to the contractor and the "other" improvements made to the property significantly negative impact on their credibility. Thus, I have found the photographs to be the best evidence as to the condition of the rental unit at the end of the tenancy and have given the photographs the most

evidentiary weight. Nevertheless, the photographs do not aid in determining whether the damage was pre-existing.

I found the landlords' photographic evidence did not sufficiently support many of the landlords' claims. For instance, I noted:

1. The landlords described the carpeting on the stairs to be "completely destroyed"; yet, what I see in the photograph of the stairway is reasonable looking carpeting with the top edge devoid a transition piece as submitted by the tenant. Thus, I find the photograph does not support the landlords' assertion the carpeting was completely destroyed and required replacement.
2. There is a photograph of wallpaper with a section that is peeling from the bottom but given the pattern and colours of the wallpaper I am uncertain as to whether this is old wallpaper, as submitted by the tenant. Since it is peeling from the bottom I find it questionable as to whether the wallpaper was attached to the wall sufficiently. The only other wall damage I see is a relatively small hole where the cablevision cord comes in to the house which the tenant said was pre-existing. Given these two photographs, I find the landlords' submissions that there was \$3,500.00 in wall damage not sufficiently supported.
3. There are no photographs of the yard despite the landlords claims the tenants are responsible for cutting bushes and killing the grass.

Upon review of the text messages provided as evidence from the landlords, I note that the only issue the landlords raise with the tenants is the presence of cigarette butts. The landlords make no mention of any other damage to the rental unit. I find it likely that if the rental unit was as damaged as the landlords claim it was that they would have raised some of these issues with the tenants during the tenancy.

Considering all of the above, I dismiss the landlords' claims to recover costs related to damage; however, I continue to consider the landlords' with respect to cleaning and removal of the tenant's abandoned property as I found the photographs supported these claims, at least in part.

With respect to cleaning, the landlord is claiming \$1,000.00 but it includes clean-up of the exterior of the property; yet, I do not see any photographs that show what the exterior clean up involved. Further, the tenant submitted that garbage and landlord's possessions were stored on the exterior of the house. Accordingly, I find the landlords failed to establish an entitlement to recover \$1,000.00 for cleaning. Since the landlords did not give me sufficient information to determine how many hours were spent doing which tasks with respect to cleaning, I find it appropriate to award the landlords a

nominal award in recognition that the tenants are responsible for some cleaning. Based on the photographs I see the flooring required mopping, the fridge required cleaning, and a bathroom required cleaning. Therefore, I provide a nominal award of \$100.00 for cleaning of these items.

With respect to removal of the tenants' abandoned property, I accept the landlords incurred a loss to do so since the tenants would not return to pick them up. However, having heard the landlords had possessions on the property as well and the estimate did not specify the items removed for a cost of \$300.00 I find the tenant's submission that this claim likely includes removal of some of the landlord's possession to be reasonably likely. Therefore, I award the landlords a nominal award of \$100.00 for removal of the tenants' possessions.

In light of all of the above, I find the landlords have established an entitlement to recover the following amounts from the tenants:

Unpaid Rent: March 2015	\$1,650.00
Less: balance of security deposit	<u>(1,425.00)</u>
Rent owing	\$ 225.00
Cleaning (nominal award)	100.00
Garbage removal (nominal award)	<u>100.00</u>
Total	\$ 425.00

The balance of the landlords' claims against the tenants is dismissed.

Since the landlords claim has very limited success, I do not award the landlords recovery of the filing fee.

Provided to the landlords with this decision is a Monetary Order in the amount of \$425.00 to serve upon the tenants. The Monetary Order may be enforced in Provincial Court (Small Claims) as an order of the court if necessary.

Conclusion

The landlords have been authorized to retain the balance of the security deposit held in trust and have been provided a Monetary Order for the balance owed in the amount of \$425.00 to serve and enforce upon the tenants.

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: December 4, 2015

Residential Tenancy Branch

