Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF – Landlords' application
MNSD OLC FF – Tenants` application

Introduction

This hearing convened by teleconference on October 27, 2015 for 55 minutes and was attended by both Landlords and both Tenants. An interim Decision was issued October 28, 2015 and should be read in conjunction with this Decision.

The hearing reconvened by teleconference on December 30, 2015 for 71 minutes during which both Landlords and both Tenants were in attendance and each provided affirmed testimony. Therefore, for the remainder of this decision, terms or references to the Landlords or Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

On November 6, 2015 the Landlords' resubmission of evidence was received at the Residential Tenancy Branch (RTB) in accordance with the orders issued in my October 28, 2015 Interim Decision. The Landlords affirmed that their resubmission of evidence included copies of the same documents that were served upon the Tenants. The Tenants acknowledged receipt of those documents. As such, I accepted these documents and all documents and photographs previously received on file from both parties as evidence for these proceedings. Although all documentary evidence has been reviewed and considered, it may not be mentioned in this Decision.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Landlords proven entitlement to Monetary Compensation?
2. If so, should the Landlords be allowed to keep the Tenants' security and pet deposits?
3. Have the Tenants proven entitlement to the return of double their security and pet deposits?

Background and Evidence

The Tenants occupied the rental property beginning sometime in October 2014. They entered into a written fixed term tenancy agreement with the previous owners which

began on November 1, 2014 and was scheduled to end on October 31, 2015. The tenancy agreement indicated that rent was to be paid in the amount of $2,300.00 on or before the first of each month. However, there was a typing error on the agreement as the Tenants were required to pay $2,350.00 per month for rent. On October 21, 2015 the Tenants paid $1,150.00 as the security deposit plus $500.00 as the pet deposit.

The Tenants attended a move-in inspection with the previous owners' property manager on October 26, 2014. The Tenant(s) signed the move in condition inspection report on October 26, 2014 agreeing to the condition of the property at that time.

The applicant Landlords purchased the property transferring title into their name as of April 1, 2015. The rental unit was described as being a single detached 3 level home with 5 bedrooms and 4 bathrooms. The house was built in 2006 and at the time it was purchased by these Landlords in April 2015, it came with original items that were installed in 2006 including but not limited to the following: appliances, flooring, and bathroom fixtures. The painting had appeared to have been updated at some point during the previous nine years.

The Landlords entered into a mutual agreement with the Tenants to end the tenancy effective April 30, 2015. The Tenants vacated the unit on April 30, 2015 and served the Landlords with their forwarding address in writing on May 4, 2015. The Landlords refused to return the Tenants' deposits at that time and filed an application for Dispute Resolution on May 15, 2015.

The Landlords advised the Tenants they would attend the rental unit on April 30, 2015 between 3 p.m. and 10 p.m. to conduct the move out inspection and receive the keys. The Landlords attended sometime around 6 p.m. and walked through the unit with the Tenant(s) telling the Tenants that everything appeared to be fine. The Landlords did not complete a move out condition inspection report form in the presence of the Tenants on April 30, 2015.

The Landlords submitted a completed move out inspection report form which they stated was completed on May 1, 2015, in absence of the Tenants and without notice to the Tenants. The Tenants stated that the Landlords did not provide the Tenants with a copy of the move out inspection report until they served the Tenants with their evidence for this Dispute Resolution sometime in June or July 2015. The Landlords did not dispute that submission.

The Landlords filed an amended application for Dispute Resolution seeking $7,053.39 as monetary compensation for damages to the unit, site or property as follows:

1. $850.00 to repair the kitchen ceiling damage which was caused by water overflowing from the ensuite bathtub in mid-April 2015. The amount claimed was as per the quote they submitted into evidence. These repairs have not yet been completed as the Landlords stated they are not able to pay for the repairs at this time.

2. $33.33 The Landlords sought to recover the cost to develop their photographic evidence ($13.65 + $19.68).
3. $80.00 Cleaning costs incurred when a cleaning person was hired by the Landlords to attend the unit on April 30, 2015. The Landlords confirmed that the cleaning person was hired by their choice and at no time did they inform the Tenants that they would be seeking to recover the cost for those cleaning services.
4. $5,571.88 Replacement cost of the carpet for the stairs and the entire upper level of the house. The Landlords argued that the Tenants left the carpet and underlay stained with pet urine and that the master bedroom carpet had been damaged from the flood; as supported by their photographic evidence. Their photos of the carpet were taken on May 4, 2015.
5. $300.00 for the cost to hire a contractor to remove the closet doors and the existing carpet and underlay. The Landlords asserted that they were unable to perform that work themselves due to the male Landlord's recent surgery.
6. $63.00 measuring fee to determine the amount of carpet required. That fee had to be paid to the first company which the Landlords' requested a quote from as the Landlords chose to get the carpet from a less expensive suppler.
7. $155.18 to replace to fridge bins/drawers and one freezer drawer. The Landlords confirmed that the fridge appeared to be originally installed in 2006 when the house was first built.

On approximately April 13, 2015 a flood occurred where water dripped down from the upper level master bedroom ensuite bathroom and into the ceiling lights in the kitchen ceiling below. The Tenants' seven year old daughter had been taking a bath at that time and the Landlords asserted that she had poured or splashed water over the tub which caused water to pour into the kitchen ceiling below. The water in the lights caused the electrical breaker to pop and burnt out the lightbulb(s). Water also encroached into the carpet and underlay in the master bedroom.

The Tenants had called the Landlords when the flood occurred and the Landlord attended the rental unit approximately ten minutes later. The Landlords submitted that the Tenants had already placed towels down to wipe up the majority of the water and it appeared that the flow of water had stopped so the Landlords took no further action to remediate the water damage at that time other than to ensure the light fixture(s) was disconnected and light bulbs were removed.

The Landlords submitted that they attended the rental unit the next day with a contractor who determined that the water damage had to have been the result of the Tenants' daughter splashing or pouring water out of the tub with one of her toys as there was no indication of broken pipes. The Landlords stated that they chose to let the kitchen ceiling area; bathroom; and ensuite carpet and underlay dry on their own.

The female Landlord submitted that she had extensive experience with managing properties and that she knew what would be involved if they brought in a remediation company. She said she did not want to expose the Tenants to loud fans or humidifiers

to dry out the water soaked areas during their last two weeks of the tenancy. So they decided to simply let everything air dry naturally.

The Tenants disputed all of the items claimed by the Landlords. They submitted the following evidence and arguments to each item claimed.

The Tenants questioned why the Landlords were basing their claim for the kitchen ceiling repair based on an estimate and not the actual cost of the repair. The Landlords stated that they have not been able to afford to have the repairs completed and they have not been able to coordinate a date and time when they could be absent from the home for the repairs to be completed.

The Tenants acknowledged that their daughter may have filled one of her bath toys with water and may have splashed it out of the tub; however, they were of the opinion that the location of the damage on the kitchen ceiling lined up with the upper shower and not the tub. They argued that they had not used that shower during their tenancy, except when they were cleaning at move out. They were of the opinion that the ceiling damage was more consistent with a pipe leaking and not their daughter pouring water out of the tub because bathrooms are designed to accommodate minor water spillage.

The Tenants simply disputed the Landlords' claim for the cost to develop their photographic evidence. No other testimony was provided in response to this item being claimed.

The Tenants pointed to several text messages submitted in their evidence as proof that the Landlord made the choice to bring in a cleaning person even though the Tenant stated that it was not necessary as they were cleaning. The Tenants asserted that at no time did the Landlords indicate they would be charging the Tenants for cleaning costs. Rather, the Landlord stated in her text "I'll get he to deep clean the kitchen cabinets so you guys can not have to worry about them!" [Reproduced as written]

The Tenants argued that the Landlords had been inside the rental unit many times before the end of their tenancy and at no time did they advise the Tenants about concerns with the carpets. There was no mention of carpet stains during the move out walk through as none were present during that time. The Tenants argued that there was no mentioned of pet or carpet stains on the carpet until they were brought up by the carpet cleaner after the carpets were cleaned and both the Landlords and Tenants were surprised by his comments.

The Tenants submitted evidence that they had arranged to have the carpets cleaned prior to returning possession of the rental unit back to the Landlords. However, the Landlords requested that the carpets not be cleaned until after the Landlords regained possession. At the Landlords' request, the Tenants rescheduled the carpets to be cleaned on May 4, 2015, four days after they moved out. They argued that there was never any mention of urine or pet stains on the carpet until after the carpets were cleaned. The Landlord instructed the carpet cleaners to collect payment from the

Tenants for the carpet cleaning and as the Tenants were not present during the cleaning the Landlord sent the carpet cleaner to the Tenants new residence down the street. The Tenants immediately paid him for the carpet cleaning in the amount of $367.50.

The Tenants asserted that the carpets were over nine years old and were in the house during the time the previous owners, their four children, and several dogs resided in the unit. The Tenants argued that the stains shown on the underside of the carpets were not visible on the other side when then carpets were installed. They argued that the stains could have been caused prior to the Tenants occupying the house.

The Tenants submitted reference letters to confirm that their dog was well trained and never urinated indoors. They asserted that their dog was kept in the laundry room or in his kennel at all times they were not home and he was never upstairs. Therefore, their dog could not have caused the stains to the carpet.

The Tenants asserted that their evidence supports that they did not damage the carpets; therefore, they are not responsible for the $300.00 to remove the carpet and underlay or the $63.00 measuring fee.

The Tenants submitted that the fridge and freezer bins or drawers had been removed or damaged prior to the start of their tenancy. Their move in inspection did not include listing each part of the fridge or missing part. They had found one drawer that had been repaired with silicone back and placed in a cabinet above the stove that was left by the previous owners. There were no other drawers in the fridge when they first started their tenancy; therefore, they should not be held responsible to pay to replace them.

The Tenants testified that the former owners' property manager conducted a walk through of the house in January a few months prior to the Landlords taking ownership of the property. They were told that there were no issues with the condition of the property at that time and they were told the same thing by the Landlords during their walk through on April 30, 2015. When they tried to get information for this dispute the property manager told them that she would not get involved.

The Tenants argued that the new Landlords never once asked them to be present during the completion of a written move out inspection report. Had they done so and listed the above items the Tenants said they would have signed the report disagreeing with what was written.

The Landlords pointed to the move in inspection report they had acquired from the former property manager and argued that there was no mention of damage to the carpets at move in. They summarized that there had to be a significant amount of water that had fallen down through the kitchen ceiling lights in order to trip the breaker and pop the light. They removed the light fixtures and chose to let the damaged areas air dry.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Landlords' Application
Section 32(3) of the *Act* stipulates that 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.

Section 37(2) of the *Act* provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Regarding the claim for $850.00 to repair the kitchen ceiling I accept the undisputed evidence that the damage occurred during the time the Tenants' daughter was taking a bath. I favored the Landlords' evidence that the damage was the direct result of water being poured or splashed over the tub by the Tenants' daughter rather than the Tenants' evidence where they alleged it was probably from a shower which they never used.

I favoured the Landlords' evidence because it was forthright, credible, and reasonable based on the events as described by both parties during the hearing. The Tenants did not have the damage repaired as required by section 32 of the *Act.* Therefore, I find the Tenants are responsible for the cost to repair the damage caused to the ceiling.

Notwithstanding the Tenants' argument that the repairs have not been completed and the claim was based on a quote and not actual costs; I accept the Landlords'

submission that they have not been able to afford to enact the repairs so they based their claim on the an estimate.

Upon review of the estimate and in consideration of the scope of work required to repair the ceiling I find the quote of $850.00 reasonable. Accordingly, I grant the Landlords' application for ceiling repairs in the amount of **$850.00,** pursuant to section 67 of the *Act.*

In regards to the claim for development of the Landlords' photographs, I find that the Landlords made a personal choice to incur those costs which cannot be assumed by the Tenants. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Costs incurred due to a choice on the production of a specific type of evidence are not a breach of the Act. Therefore, I dismiss the Landlords' claim for photograph developing costs, without leave to reapply, as they are costs which are not denominated, or named, by the *Residential Tenancy Act.*

The undisputed evidence was the Landlords made a personal choice to bring in a cleaner to clean the kitchen when the Tenant was at the rental unit cleaning herself. The Tenant declined the assistance of the Landlords' cleaner yet the Landlord proceeded to bring the cleaner into the rental unit. At no time did the Landlords inform the Tenants they would be charging them for the cost of the cleaner and at no time did the Tenants agree to pay for a cleaner. Therefore, I find the Landlords provided insufficient evidence to prove their claim for cleaning costs and the claim is dismissed, without leave to reapply.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40.*

In response to the claims for carpet measurement, carpet removal, and carpet replacement, I considered that the carpet had been original from 2006. That means the carpet was nine years old and almost to the end of its life expectancy of ten years; as provided by *Policy Guideline 40.*

In addition, I considered that the Landlords made no mention of stains in the carpets during the tenancy or during the walk through inspection which was conducted on April 30, 2015.

I find the Landlords' insistence that the carpets were not to be cleaned until after the Tenants vacated the property and the Landlords had had full possession of the rental unit for four days to be presumptuously suspicious considering that there was never any

mention of stains until after the carpets were cleaned. Furthermore, I note that the Tenants were not present at the rental unit when the carpets were cleaned.

Upon review of the photographic evidence I note that the large stains are displayed from the underside of the carpets. There were however some photographs showing small circles with dots which are difficult to confirm as being a stain or to determine the type of stain. Given that the Landlords had had possession of the rental unit for four days before the carpet cleaner attended the rental unit and in consideration that there was never any mention of stains prior to that date, I find the Tenants cannot be held responsible for the carpet stains visible from the top side of the carpet as those stains could easily have been the result of events that took place after the Tenants had vacated the unit. Furthermore, the stains shown from underneath the carpet could have easily been there for years prior to the start of this tenancy.

It should be noted that these Landlords purchased the property four weeks prior to the end of this tenancy. The Landlords would have negotiated a purchase price based on the existing condition of the rental unit and its carpet. That being said, the Landlords did not submit documentary evidence to prove the condition of the property at the time they purchased it, such as a home inspection report.

There was undisputed testimony that the former property manager had conducted an inspection of the rental unit in January 2015 and made notes, prior to the sale of the property. During that January inspection the Tenants were told everything looked okay.

With respect to the Landlords' submissions that they could not sleep in the master bedroom due to odours from the carpet, I considered that the Landlords made a personal choice not to bring in a remediation company to dry out the master bedroom carpet, underlay, bathroom, or kitchen ceiling after the flood. Rather, they chose to let everything air dry or dry out "naturally". By her own submission, the Landlord had knowledge of water remediation processes which require air blowers and dehumidifiers to properly dry out areas such as carpet or underlay. Therefore, it is reasonable to conclude the Landlord ought to have known that carpet, underlay, and the underlying wood would not dry naturally as the carpet traps moisture below in the underlay and in the wood and that moisture can create an environment for mold to grow. The aforementioned could have contributed to or been the cause of the Landlords' inability to breathe while sleeping in the master bedroom.

Based on the totality of the above, I find the Landlords submitted insufficient evidence to prove the Tenants were responsible to pay the cost to replace the carpet on the stairs and the entire upper level of the home. Accordingly, the claims for removal of the carpet, carpet measuring, and carpet replacements are dismissed in their entirety, without leave to reapply.

In response to the claim of $155.18 to replace the fridge bins or drawers there was insufficient evidence before me that would prove the fridge had bins and or drawers at the start of the tenancy. Furthermore, there was no evidence to prove the bins or

drawers were present at the time the Landlords purchased the property. The move in condition inspection report form that was completed by the former property manager simply indicates that the refrigerator was “dirty, need cleaning, scratched, rubs and marks” and all lines were coded “F” for being in fair condition. The aforementioned was written on lines marked for crisper/shelves; freezer; and door/exterior; however, there was nothing to specify if there were crispers or drawers or how many.

In consideration of the Tenants’ undisputed evidence that there was one broken fridge crisper or drawer that had been repaired with silicone by the previous owner and placed in a cupboard, and in absence of evidence to the contrary, I accept the Tenants’ submission that there were no other drawers or crispers provided at the start of the tenancy. Accordingly, I find the Landlords submitted insufficient evidence to prove the Tenants were responsible for the cost to replace fridge bins or drawers and the claim is dismissed, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have only partially succeeded with their application; therefore, I award partial recovery of the filing fee in the amount of **$50.00**, pursuant to section 72(1) of the *Act.*

Tenants’ Application

Section 35of the *Act* stipulates as follows:

> **35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
>
> (a) on or after the day the tenant ceases to occupy the rental unit, or
>
> (b) on another mutually agreed day.
>
> (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
>
> (3) The landlord must complete a condition inspection report in accordance with the regulations.
>
> (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
>
> (5) The landlord may make the inspection and complete and sign the report without the tenant if

> (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
>
> (b) the tenant has abandoned the rental unit.

Section 18(1)(b) of the *Regulations* stated that the landlord must give the tenant a copy of the signed condition inspection report of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of (i) the date the condition inspection is completed, and(ii) the date the landlord receives the tenant's forwarding address in writing.

In this case the undisputed evidence was that the Landlords and Tenants conducted a walk through inspection together on April 30, 2015 sometime around 6:00 p.m. I accept the Tenants' undisputed submissions that they were told everything looked okay upon completion of the April 30th walk through.

Based on the above, I conclude that the Landlords breached section 35 of the *Act,* as they did not complete the condition inspection report in writing, in the presence of the Tenants. In addition the Landlords did not offer the Tenants the opportunity to sign the report and the Tenants were not served a copy of the move out condition report until sometime in June or July 2015 which is more than 15 days as stipulated in section 18(1)(b) of the Regulations.

Furthermore, I do not accept the Landlords' submission that the move out condition report was completed on May 1, 2015. The move out condition report the Landlords submitted into evidence indicated that there were stains on the carpets in various rooms and on the stairs. However, by their own submissions the stains on the carpets were not visible until after the carpets had been cleaned on May 4, 2015. Therefore, the report listing stains on the carpets could not have been created until at least May 4, 2015.

Section 36(2) of the *Act* stipulates that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

> (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
> (b) having complied with section 35 (2), does not participate on either occasion, or
> (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the above listed breaches, I find the Landlords extinguished their entitlement to claim damages against the deposits, pursuant to section 36(2) of the *Act*. Thus, the Landlords were required to return the security and pet deposits to the Tenants within 15 days of the tenancy end date or the date they received the Tenants' forwarding address in writing, pursuant to section 38(1)of the *Act.*

In this case the Landlords received the Tenants' forwarding address in writing on May 4, 2015. Therefore, the Landlords were required to return the $1,150.00 security deposit, the $500.00 pet deposit, plus a Nil amount of interest to the Tenants no later than May 19. 2015. The Landlords failed to return any portion of the deposits and made application against the deposits in breach of section 36(2) of the *Act.*

Policy Guideline 17 stipulates the manner in which the return or retention of a security deposit will be determined through arbitration as follows:

> *3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*
>
> - *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act*

Section 38(5) of the *Act* provides that the right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I conclude that the Landlords are required to return to the Tenants, double their security and pet deposits in the amount of **$3,300.00** (2 x $1,150.00 + 2 x 500.00 + $0.00 interest).

The Tenants have succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to section 72(1) of the Act.

Monetary Order – These applications meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

Landlords' award ($850.00 + $50.00)	$ 900.00
LESS: Tenants' award ($3,300.00 + $50.00)	-3,350.00
Offset amount due to the Tenants	**($2,450.00)**

The Landlords are hereby ordered to pay the $2,450.00 offset amount due to the Tenants forthwith.

Conclusion

The Landlords were only partially successful with their application and were awarded $900.00. The Tenants were successful with their application and were awarded the return of double their security and pet deposits plus their filing fee in the amount of $3,350.00. The two awards were offset each other leaving a balance owed to the Tenants of $2,450.00.

The Tenants have been issued a Monetary Order for **$2,450.00**. In the event the Landlords do not comply with my Order to pay the offset amount to the Tenants forthwith, the Tenants must serve the enclosed monetary order upon the Landlords. In the event that the Landlords do not comply with the Monetary Order it may be filed with Small Claims Court and enforced as an Order of that Court.

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 31, 2015

Residential Tenancy Branch