Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with cross applications. The landlord applied for compensation for damage to the rental unit and authorization to retain part of the security and pet damage deposits. The tenants applied for return of part of the security and pet damage deposits. 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.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation as claimed?
2. Disposition of the security and pet damage deposits.

Background and Evidence

The tenancy commenced September 1, 2014 and ended August 31, 2015. The tenants paid a security deposit of $1,100.00 and a pet damage deposit of $1,100.00.

The parties participated in a move-in inspection together. The landlord prepared a move-in report but a copy was not given to the tenants. A move-out inspection was conducted by the landlord and one of the co-tenants, SM. A move-out inspection report was prepared and photographs were taken. Accompanying the move-out inspection report was a hand-written document prepared by the landlord and signed by the tenant on September 1, 2015 (“the document”). The document indicates the tenant agreed to the following:

- Steam clean carpet (north room)
- Replace stove glass top (kitchen)
- Repair flooring (living room/dining room) for all pop up area
- Repair broken blinds (north room, balcony door)

- Repair closet door (north room)
- Repair damage carpet (north room)

The document further states “tenant agreed to deduct from the damage deposit & pet damaged deposit”.

The document also indicates the tenant agreed to pay the cost to replace the missing keys which were identified as:

- The post box
- Common area
- Broken FOB

The tenant submitted that when she signed the above described document she was in a rush and that she did not want to sign it without co-tenant SF being present. The landlord’s agent responded by stating the tenant was not forced to sign the document.

The tenant also pointed out that the document was altered after she signed it. The tenant testified that when she signed the document there words “Broken FOB” did not appear on the document. The landlord’s agent, who was not present at the move-out inspection, initially testified that the FOB had been lost and that the claim was to replace it. When the tenants pointed out that they had replaced the missing FOB during their tenancy and that all FOBs were returned to the landlord, as seen on the move-out inspection report, the landlord’s agent changed his submission to say that the FOB was broken because it would not open the garage door. The tenant responded by stating that during the move-out inspection the landlord did not test the FOBs while she was present. The landlord’s agent did not refute the tenant’s testimony.

The document does not indicate any specific amount the landlord seeks to deduct from the tenants’ deposits. The landlord proceeded to file a claim against the deposits on September 15, 2015 seeking $2,029.38 in compensation. It was agreed that the landlord has refunded $170.62 of the deposits to the tenants.

Below I have summarized the landlord’s claims against the tenants and the tenants’ responses.

Description	Amount	Landlord's reason	Tenant's response
FOB replacement	$75.00	FOB would not open the garage door. After replacing the batteries and consulting the strata about the non-working FOB the FOB was disposed of and replaced with a new one. The landlord's agent did not dispute the tenant's submission that the FOBs were not tested on the garage door during the move-out inspection.	The tenant claims she rarely used the garage door. The FOB was not tested by the landlord while the tenant was present for the move-out inspection. This item was added after tenant signed the document on September 1, 2015. The tenant has a copy of the document to substantiate her position.
Common area key	10.00	Key was not returned	Tenants agree to this charge
Post box key	3.00	Key was not returned.	Tenants agree to this charge
Glass cooktop	721.28 claimed. Amended to $644.00 during the hearing.	The glass top was very scratched and damaged beyond reasonable wear and tear. The stove top was not returned in the same or similar condition as when tenancy started. A previous tenant who had a longer tenancy did not return the stove top in a damaged condition demonstrating the tenants were negligent in how they used the stove top. The stove	The glass stove top shows signs of wear and tear as the tenants cooked quite a bit. The stove top remains functional and to replace the stove top is excessive. The unit was re-rented with the same stove top demonstrating that it is still functional. It is unreasonable to compare the tenants' use of the stove to that of a previous tenant who may not have cooked as often. The tenants submitted that the

		top is from the original construction to the building or approximately four years old. The landlord's agent was uncertain as to whether the unit had been occupied prior to the landlord purchasing the unit four years ago. The landlord paid $75.00 for an inspection and quote. The quote to replace the stove top with a new one is $569.00. The stove top has not yet been replaced.	building was constructed in 2009 according to public records.
Blinds	319.20	The slats in three blinds were bent and/or frayed. The landlord obtained a quote to replace the blinds but they have not yet been replaced. The damaged blinds are original to the construction of the building.	The tenants were of the position that the bent/frayed slats were the result of wear and tear.
Touch up painting	96.95	2 gallons of paint (wall and trim paint) were purchased to touch up the walls and trim but there is left over paint. The walls were painted approximately four years ago.	The tenants acknowledged that some areas on the walls required touch up but the tenants denied any damage to the trim. Nor did the tenants see any trim paint.

Cleaning	100.00	Additional cleaning required	Tenants agreed to this charge
Carpet cleaning	103.95	Carpets required cleaning	Tenants agreed to this charge
Laminate flooring	600.00	The flooring was damaged by moisture, most likely from dog urine or feces left on the floor as observed by the landlord during a visit to the rental unit. The landlord pointed out that the damage was noted in various places in the rental unit suggesting the dog had accidents a number of times. The landlord obtained an estimate to remove and replace the floor at a cost of $2,083.53. The flooring has not yet been replaced and the landlord has limited the claim against the tenants to approximately one-third, or $600.00.	The tenants submitted that the damage is minimal and difficult to see. The unit was re-rented to new tenants with the same flooring demonstrating that the flooring is still useable. The tenants also submitted that the dog feces the landlord saw was not typical as the dog was taken outside often. However, the dog was prone to have an accident if scared or if the tenants had to work late. Any accidents were cleaned up promptly. The tenants did not understand how the landlord determined the loss is $600.00.

As evidence the landlord provided photographs in a printed format and on a compact disc. The landlord also provided documentation including copies of: the tenancy agreement; the condition inspection report; the document dated September 1, 2015; and receipts and estimates to support the amounts claimed.

In filing the tenant's application, the tenants seek to recover $1,640.48 of their deposits. The tenants explained that this amount is calculated by adding together the landlord's claims for the replacement stove top, new blinds, and the floor damage as they do not agree with the landlord's claims for these items.

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.

Section 37 of the Act requires that a tenant leave a rental unit reasonably clean at the end of the tenancy and return all keys or means of access to the landlord. The landlord sought compensation and the tenants agreed to compensate the landlord for certain items during the hearing. In recognition of the tenant's agreement at the hearing, I award the landlord compensation for these items, as follows: common key and post box key replacement of $10.00 and $3.00 respectively; and, cleaning and carpet cleaning costs of $100.00 and $103.95 respectively.

The remainder of the landlord's claims were in dispute. Upon consideration of the evidence before me, I provide the following findings and reasons.

FOB replacement

The move-out inspection report indicates that the tenants returned two FOBs to the landlord at the end of the tenancy. However, the landlord has a receipt to demonstrate that a FOB was purchased by the landlord on September 1, 2015. The landlord's agent provided changing testimony during the hearing as to the reason a new FOB was purchased including a submission that one of the FOBs returned by the tenants would not open the garage door. The tenants submitted that the garage door was not tested while the tenant was present for the move-out inspection and I accept this submission since this position was not refuted. As a result I find I am uncertain as to when the FOB stopped opening the garage door. Even if I were to find that the FOB stopped opening the garage door during the tenancy it does not mean the tenants damaged the FOB

since electronic and/or mechanical devises or subject to failure even if the devise is used appropriately and reasonably. I find the landlord's evidence is insufficient to satisfy me that the tenants willfully or negligently damaged the FOB as opposed to an electronic or mechanical malfunction. Therefore, I find the landlord has not met the burden of proof and I dismiss this portion of the landlord's claim.

Glass cooktop

I heard a considerable amount of testimony from the parties as to whether the scratches to the stove top constitute wear and tear or damage; and, whether the tenants are responsible for replacement of the stove top. However, I note that the tenant agreed, in writing, to "replace stove glass top" during the move-out inspection. I find the tenant's agreement at that time to be binding as I find the tenant did not establish that she signed that agreement under duress. Since the parties did not agree on an amount that would represent fair compensation for replacement for the stove top, and did not specify what would be purchased to "replace" the stove top, I find that it is before me to determine whether the landlord's claim for of $644.00 for an inspection and the cost of a new stove top is reasonable.

Awards for damages are intended to be restorative. Where an item is damaged and cannot be repaired and must be replaced, it is appropriate to reduce the replacement cost by the depreciation of the original item to recognize that most components of a rental unit have a limited useful life. In order to estimate depreciation I have referred to Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements.*

Policy guideline 40 provides that a stove has an average useful life of 15 years. Considering the stove top was original to the construction of the building and I accept the tenants' submission that the building was constructed in 2009 according to public records, I find the stove top to be six years old at the end of the tenancy. Therefore, I limit the landlord's award for replacement of the stove top to $341.39 calculated as $569.00 x 9/15 years.

I make no award for the landlord to recover the cost of the inspection as this was not agreed to by the tenant in the document and I find the above award fairly compensates the landlord considering the landlord has continued to benefit from the on-going use of the scratched stovetop.

Blinds

Upon review of the photographs of the blinds, I accept that several slats in the blinds were bent. Although the tenant argued that this was wear and tear, I note that the tenant agreed to "repair broken blinds" on the move-out inspection report, and I uphold

the tenant's agreement to take responsibility for repairing the blinds. Since the tenant did not agree to compensate the landlord a specific amount for repairing the blinds during the move out inspection or to replace the blinds, I must consider whether the landlord's claim for $319.20 against the tenants to have the blinds replaced is reasonable.

It may be more economical to replace the blinds rather than have the blinds disassembled, replace the bent slats and then re-assembled. Accordingly, I have considered that replacing the blinds is a reasonable alternative to paying to repair the blinds.

According to Policy Guideline 40, blinds have an average useful life of 10 years. Considering the blinds are approximately six years old, I find it reasonable to award the landlord $127.68 calculated as $319.20 x 4/10 years.

Paint

The landlord's photographs show a few areas where the walls require some minor patches and touch ups and a photograph of alleged mould on some trim. The landlord seeks to recover the cost of two gallons of paint as compensation. The tenant did not agree to pay for wall or trim damage on the document dated September 1, 2015.

In considering the landlord's claim it is important to note that landlords are responsible for regular and routine maintenance of a rental unit under section 32 of the Act and as provided in Residential Tenancy Policy Guideline 1 landlords are expected to repaint at reasonable intervals as part of this obligation. Further, Policy Guideline 40 provides that interior paint has an average useful life of four years. Since the landlord's agent testified that the unit was painted approximately four years ago I find the landlord's purchase of paint was to be expected as a cost of doing business as a landlord and I do not hold the tenants responsible for compensating the landlord for the purchase of paint.

Laminate flooring

The landlord's photographs show several areas where the join between floor boards has lifted. I note that the tenant agreed to "repair flooring" in the living and dining rooms where the areas had lifted on the September 1, 2015 document. As I have found previously, I find the tenant bound by this agreement. However, as I also found previously in this decision, the parties did not agree on an amount of compensation and it is before me to determine whether the landlord's claim for compensation is reasonable.

Policy Guideline 40 provides for the useful life of various types of flooring, such as carpet, tile, and hardwood. Laminate flooring is not specifically identified in the policy guideline. Carpet and tile are given an average useful life of 10 years and hardwood is given an average useful life of 25 years. Laminate flooring is not nearly as durable as hardwood and cannot be refinished like hardwood. Accordingly, I find it more appropriate to consider laminate flooring as having an average useful life the same as carpeting or tile floor which is 10 years.

The landlord's estimate to replace the flooring was $2,083.53. Considering the flooring was likely six years old, when I factor in depreciation I find the depreciable value of the flooring is $833.41 calculated as $2,083.53 x 4/10 years. Since the landlord limited the claim to $600.00 I find the claim to be within reason and I award the landlord $600.00 as requested.

Given the landlord was partially successful in this application I award the landlord a portion of the filing fee in the amount of $40.00

In light of all of the above, I award the landlord the following amounts, to be deducted from the security and pet damage deposits:

Common key replacement	$ 10.00
Post box key replacement	3.00
Cleaning	100.00
Carpet cleaning	103.95
Stove top replacement	341.49
Blind repairs	127.68
Laminate floor damage	600.00
Filing fee	40.00
Total authorized deductions	$1,326.12

After refunding $170.62 of the deposits to the tenants already, the landlord is currently holding $2,029.38 in deposits. I authorize the landlord to deduct $1,326.12 from this sum and as provided in Policy Guideline 17, I order the landlord to return the balance of the deposits in the sum of $703.26 to the tenants without delay.

The tenants are provided a Monetary Order for the remaining balance of the deposits of $703.26 to serve and enforce upon the landlord if necessary.

Having addressed the tenants' right to return of the security deposit and pet damage deposit under the landlord's application, it was unnecessary for the tenants to have filed an application and it is dismissed as being moot in the circumstances.

Conclusion

The landlord has been authorized to deduct $1,326.12 from the tenants'' security deposit and pet damage deposit. The landlord has been ordered to return the balance of the deposits held by the landlord in the amount of $703.26 without further delay. The tenants have been provided a Monetary Order in the amount of $703.26 to serve and enforce if necessary.

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: March 30, 2016

Residential Tenancy Branch