



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with the landlord's application for a Monetary Order for damage to the unit; an Order of Possession; and, authorization to retain the security deposit and pet damage 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.

From the details of dispute it was apparent the landlords were seeking compensation for cleaning costs but the landlords had indicated the dispute code related to damage. I amended the application to include the dispute code that pertains to cleaning. In completing the application, the landlords also indicated the dispute code applicable where a landlord seeks an Order of Possession; however, the details of dispute indicate the tenants had already moved out which I confirmed to be the case during the hearing. I determined this dispute code was unnecessary and I amended the application. Accordingly, this decision deals with the landlord's monetary claims for damage and cleaning; and, authorization to retain the deposits.

At the outset of the hearing, the landlord withdrew the claims for replacement of two toilets and a sink as these items did not require replacement after cleaning. The landlords' monetary claim was amended accordingly.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation claimed against the tenant, as amended?
2. Are the landlords authorized to retain the security deposit and pet damage deposit?

Background and Evidence

The one year fixed term tenancy commenced June 1, 2013 and continued on a month to month basis after the expiration of the fixed term until August 31, 2015. The landlords collected a security deposit of \$600.00 and a pet damage deposit of \$600.00.

On May 24, 2013 the landlord prepared a type-written document in an attempt to document the condition of the rental unit and the document was signed by one of the co-landlords and the two co-tenants. I noted that the document does not meet the requirements for condition inspection reports as provided in the Residential Tenancy Regulations in many aspects but in particular it is silent with respect to the condition of many areas of the rental unit. The document was subsequently emailed to the tenants.

On August 31, 2015 the parties participated in a move-out inspection together. The landlord took notes of the condition of the rental unit although the tenant was not given a copy of the notes. Rather, the landlord prepared a type-written document within the following week and emailed it to the tenant. I noted that this document did not meet the requirements for a condition inspection report as provided under the Residential Tenancy Regulations.

Although the tenant was in agreement with some of the amounts the landlords seek to deduct from the deposits, the tenant was not in agreement with other amounts. Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

<u>Description</u>	<u>Amount claimed</u>	<u>Landlords' reasons</u>	<u>Tenant's responses</u>
Cleaning in various rooms.	\$50.00 \$13.50 \$50.00	The landlord performed the following cleaning: 2 hours in kitchen/dining; ½ hour in upstairs bathroom; 1 hour in downstairs bathroom. Landlords charging \$25.00 per hour	Tenant was agreeable to compensating the landlord for the time spent cleaning.
Replace stove burner pans	\$63.80	The burner pans were beyond cleaning and more economical to replace.	Tenant was agreeable to this charge.

Upstairs bathroom sink not draining properly	\$90.00	The landlord made no submissions with respect to this claim during the hearing and I did not consider this claim further.	
Bedroom closet door cracked and bent	\$190.00	The landlords initially claimed for the cost to replace and install a new closet door but during the hearing the landlord testified that the matter was resolved by purchasing a new track for the closet door. The landlord was unable to say how much the track cost but seeks compensation of one hour of his time at \$45.00 per hour. The landlord explained that \$45.00 per hour is the amount he makes at his employment but is also of the belief it represents the market rate for this type of work.	The tenant not agreeable to this claim. The tenant submitted that many of the closet doors in the rental unit did not close properly and that the other side of this closet door did not work properly throughout her tenancy.
Downstairs bathroom vanity	\$315.90	The tenant reattached two drawers to the vanity with screws that were too long. The same type of drawer fronts are no longer available so the landlord will have to replace all of the drawer and cabinet door fronts before the property is sold. This	The tenant admitted that she used screws that were too long when she reattached the drawer fronts. The tenant submitted that the drawer fronts kept falling off and the screws previously installed were inadequate. The tenant is agreeable to

		claim includes \$225.90 to purchase new fronts and two hours of labour at \$45.00 per hour. The landlord testified that the vanity is approximately 8 – 10 years old.	compensating the landlord something for the damage she caused but is of the position the landlord's claim is excessive considering the vanity continues to be in use.
Repainting downstairs bathroom	\$431.14	The landlord is of the position the tenants did not open the bathroom window and that excessive moisture caused mould to form. The landlord had purchased paint for the bathroom and the tenant was supposed to repaint the bathroom but she did not. So, the landlord seeks recovery of the cost of the paint and his labour to repaint the bathroom. Although the tenant cleaned the mould from the walls and ceiling, to stop the mould from coming back the surfaces need to be repainted. The landlord testified that the bathroom was last painted before he purchased the property in September 2009. The landlord acknowledged that he took the photographs submitted as evidence	The tenant is not agreeable to this claim. The tenant submitted that there is no fan in the bathroom and that she always opened the window and the door of the bathroom while showering. The tenant does not know what else could have been done to prevent the formation of mould. The tenant did clean the mould off the surfaces and the landlord's pictures were taken during her tenancy, before the cleaning took place. The tenant had agreed to paint the bathroom but the landlord supplied her with paint that was a few shades lighter than the existing paint which would require multiple coats to cover the walls and she was of the position this was beyond her responsibility so she did not paint the bathroom. The tenant

		during the last month of tenancy during a showing of the rental unit.	also submitted that many walls in the rental unit were showing the signs of wear and tear at the start of the tenancy.
Shower rod	\$70.00	The landlord submitted that the shower rod was approximately three years old but became rusty due to the excessive moisture in the bathroom. The landlord acknowledged that the rust was gone after the tenant cleaned it but is of the belief the rust will return.	The tenant was not agreeable to this claim. The tenant acknowledged that the shower rod became rusty due to excessive moisture but that the rust was cleaned off by the time the tenancy ended. As already stated, she did what she could to avoid excessive moisture in the bathroom by opening the window and door while showering.
Chipped bathtub	\$135.00	At the end of the tenancy there were chips inside the bathtub. The landlord seeks to recover the cost of enamel paint and two hours of labour although he acknowledged the work has not yet been done.	The tenant submitted that the chipped area where a section is moulded inside the tub. This area appeared to have been previously chipped and patched and when she was cleaning the tub the paint patches came off.
Yard maintenance	\$180.00	The tenant permitted the yard to become overgrown. Although the tenant had notified him that she was unable to start the weed whacker in early August, when he attended to the problem in late August	The tenant acknowledged that the yard became somewhat overgrown but is of the position the landlord's claim is excessive. The tenant pointed out that when she went to the property at 5:00 on August 31 the

		he found the weed whacker was operational. The landlord claims to have spent four hours to clear the overgrowth and seeks \$45.00 per hour.	weed whacking had already been done yet the landlord was unable to meet her at the pre-scheduled 1:00 move-out inspection so she questioned when the landlord spend four hours weed whacking. The tenant was of the position that two hours is more reasonable.
Rehab of lawn	\$158.37	The landlord installed new sod at the beginning of the tenancy and the tenants failed to maintain it requiring rehab.	The tenant was agreeable to this charge.
Broken sprinkler	\$28.00	The landlord provided a sprinkler at the start of the tenancy for the tenants to use. The sprinkler was a few years old and at the end of the tenancy it was broken.	The tenant submitted that the sprinkler broke but due to no negligence by the tenants. The tenants put the sprinkler away in the winter and used it to water the lawn in the summer. The sprinkler appeared nowhere new to her.

Evidence provided by the landlord included: the tenancy agreement; the type-written documents prepared by the landlords in an effort to document the condition of the rental unit at the start of the tenancy and after the tenancy ended; photographs; receipts, estimates and print-outs from a home-improvement store to show the anticipated cost to replace certain items.

Analysis

The landlords sought compensation and the tenant 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:

- a. Cleaning – 3.5 hours claimed at \$25.00 / hour = \$87.50
- b. Replacement of stove burner pans – as per receipt =: \$63.80
- c. Rehab of lawn – as per estimate = \$158.37

The remainder of the landlords' claims were in dispute or partially in dispute. Upon consideration of the evidence before me, I provide the following findings and reasons as to those claims.

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 and in this case the landlords bear the burden of proof. 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 and undamaged at the end of the tenancy. Section 32 of the Act provides for a landlords' and a tenants' obligations to repair and maintain a rental property. Sections 32 and 27 of the Act specify that reasonable wear and tear is not damage.

Closet door

Since the landlords repaired the function of the closet door with a new track I disregarded the landlords' claims to recover the cost of a new door and two hours of labour. However, the landlord did not provide evidence to demonstrate the cost of the track and I have not considered awarding the landlords the cost of the track. Finally, the landlord sought to obtain compensation equivalent to one hour of labour to install the new track which I have considered below.

I note that on the type-written document of May 24, 2013 two closet doors are noted as being problematic in that the door is loose on the track or comes off the track. It would appear to substantiate the tenant's position that the closet doors in the unit were problematic and I find it likely that the closet doors in the rental unit are likely in need of maintenance due to wear and tear or aging and not due to abuse by the tenants. I find the landlord has not demonstrated to my satisfaction that the tenant is responsible damaging the closet track in the bedroom and I dismiss this portion of the landlord's claims.

Bathroom vanity

The tenant acknowledged that the bathroom vanity drawers were damaged by the tenant installing screws that were too long. At issue is the amount of compensation sought by the landlords.

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

Policy Guideline 40 provides that bathroom cabinets have an average useful life of 25 years. I accept that the vanity to be approximately 10 years old based upon the landlord's testimony and photograph of the vanity. Therefore, I find it appropriate to award the landlord \$189.54 calculated as $\$315.90 \times 15/25$ years.

Paint bathroom

The parties were in dispute as to whether the tenants were negligent in venting the bathroom of excess moisture. Although the mould was cleaned off, the landlord submitted that mould remediation required repainting of the bathroom. However, the unit was last painted six years prior, in 2009, according to the landlord. Landlords are expected to repaint at regular intervals due to wear and tear and as part of their obligation to maintain a property. Policy Guideline 40 provides that interior painting has an average useful life of four years. Accordingly, I find the tenant's submission that several walls in the rental unit were showing signs of wear and tear and that it was unreasonable for the landlord to expect her to repaint the bathroom to be more reasonable. Therefore, I find the bathroom painting is a cost to be borne by the landlords and I dismiss this portion of the landlords' claim.

Shower rod

The tenant submitted that it had been cleaned at the end of the tenancy and was not rusty when the unit was returned to the landlord. The landlord submitted that the shower rod requires replacement because rust will return if it is not. The landlords' photographs showed a rusty shower rod but the photographs were admittedly taken before it was cleaned and the landlord did not provide a photograph of the rod after it was cleaned. Considering the landlords have not yet replaced the shower rod and did the landlord provide a more recent photograph of the shower rod to show that the rust reappeared, I find print-out from a home improvement store for a new rod does not satisfy me that the shower rod requires replacement due to the tenant's action or neglect. Therefore, I dismiss this portion of the landlord's claim.

Chipped bathtub

Based upon the landlord's photograph of the bathtub it appears that the bathtub is of an older style and I find the tenant provided a reasonable explanation for the appearance of chips in the bathtub. Accordingly, I accept that chips were likely pre-existing and had been covered up and the patches came off over time, use and cleaning efforts. Therefore, I find this issue is likely an ongoing maintenance issue for the landlords and I do not hold the tenant responsible for compensating the landlords for reapplying enamel paint to the tub.

Yard maintenance

The addendum to the tenancy agreement provides that the tenants were responsible for maintaining the yard with specific mention of cutting and watering the lawn. There is no specific mention of weed whacking or weeding; however, where a tenant occupies a single family dwelling tenants are generally expected to cut the grass and perform a reasonable amount of weeding as part of the tenant's obligation to maintain a rental property under section 32 of the Act and as provided under Residential Tenancy Policy Guideline¹. Accordingly, I find the tenant was expected to trim the edge of the lawn and make reasonable efforts to remove weeds that may have grown at the edge of the fence.

The landlord provided one photograph depicting two or three large weeds at the edge of the fence. The landlord submitted that he spent four hours dealing with the overgrown yard but the tenant questioned the likeliness of the landlord's submission. Based on the one piece of evidence the landlord provided to me I find the tenant's submission that the overgrown weeds would warrant two hours of labour to me more reasonable. Therefore, I grant the landlords compensation for two hours of labour.

I limit the hourly rate to \$25.00 per hour as the award should be based on the market rate for the job and not the landlord's salary or wages. I find it more reasonable to expect that a person may be hired to pull or trim weeds at a rate of \$25.00 per hour than \$45.00 per hour. Accordingly, I award the landlords \$50.00 for two hours of yard maintenance.

Broken sprinkler

It was undisputed that the sprinkler provided by the landlords for use at the property was broken. The photograph of the sprinkler depicts a sprinkler that appears to be made from a combination of metal and plastic. The parties also provided consistent testimony that the sprinkler was of an unknown age but most likely a few years old. Sprinklers have a limited useful life and I find it reasonable to expect to replace an above ground sprinkler that has plastic components every few years. As such, I find it likely the sprinkler had little or no remaining value. Therefore, I deny the landlords' request to recover the cost of a new sprinkler from the tenant.

With respect to recovery of the filing fee, I make no award to the landlords. I found the tenant readily took responsibility for items she or the co-tenant damaged and was agreeable to reasonable claims by the landlords. Therefore, it is my impression that had the landlords sought compensation from the tenant that was more in line with the landlords' entitlement under the Act that this application would have been unnecessary.

In light of all of the above, I award the landlords the following amounts:

Cleaning	\$ 87.50
Stove burner pan replacement	63.80
Lawn rehab	158.37
Yard maintenance	50.00
Bathroom vanity damage	<u>189.54</u>
Total award to landlords	\$549.21

Pursuant to section 72 of the Act, I authorize the landlords to deduct \$549.21 from the security deposit. Since the landlords are still holding both the security deposit and pet damage deposit in the sum of \$1,200.00, I order the landlords to return the balance of the deposits in the sum of \$650.79 to the tenant without further delay as provided in Residential Tenancy Policy Guideline 17: *Security Deposits and Set-Off*. The tenant is provided a Monetary Order in the amount of \$650.79 to ensure the landlords return the balance of the deposits.

Conclusion

The landlords have been authorized to deduct \$549.21 from the security deposit. The landlords have been ordered to return the balance of the security deposit and pet damage deposit to the tenant in the sum of \$650.79 without further delay. The tenant has been provided a Monetary Order in the amount of \$650.079 to ensure payment is made.

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 31, 2016

Residential Tenancy Branch