



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1426 in order to enable the tenants to connect with this teleconference hearing scheduled for 1330. The landlord EY (the landlord) attended the hearing on behalf of both landlords and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue – Service

The landlord testified that the landlords served the tenants with the dispute resolution package by registered mail on 17 September 2015. The landlords provided me with a registered mailing receipts and tracking information for these mailings. The tracking information indicates that the mailings were refused by the recipient.

The landlord testified that the tenants reside at the address used for service. The landlord testified that she discovered that the tenants reside at that address from a neighbour. The landlord testified that this address is one street over from the rental

unit. The landlord testified that she has observed the tenants' highly identifiable car in that driveway over the last five months.

The landlord testified that the landlords served their evidence package to the tenants by registered mail on 9 November 2015. The landlords provided me with a registered mailing receipts and tracking information for these mailings. The tracking information indicates that the mailings were unclaimed and returned to sender.

Residential Tenancy Policy Guideline, "12. Service Provisions" (Guideline 12) sets out that service cannot be avoided by failing to retrieve the mailing:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

In accordance with sections 88, 89(1) and 90 of the Act and Guideline 12, the tenants were deemed served with the dispute resolution package on 22 September 2015 and the evidence package on 14 November 2015, the fifth day after their mailing.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for damage and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

This tenancy began 1 September 2014 and ended on or about 30 August 2015. Monthly rent in the amount of \$1,550.00 was due on the first. The landlords continue to hold a security deposit in the amount of \$775.00, which was collected at the beginning of this tenancy.

The tenancy agreement included one page of additional terms. Clause 4 of the addendum sets out that any painting or repairs must be approved and completed

professionally. Clause 5 of the addendum sets out that the tenants must respect all strata rules. Clause 8 of the addendum sets out that the tenants must water and maintain the backyard. The landlord testified that the yard was for the exclusive use of the tenants.

I was provided with a copy of the condition inspection report that was completed at the beginning and end of tenancy. The move in portion is unremarkable. The move out portion notes all the deficits of which the landlords complain.

On 1 August 2015 the tenants delivered their notice to end tenancy by email. The notice set out that the tenants would be vacating by the end of the month. The landlord testified that the landlords advertised the rental unit immediately. The landlord testified that a prospective tenant was taken to the rental unit on 15 August 2015 for a showing. On that day the landlord discovered the state of the rental unit. The landlord testified that the rental unit was not rentable and it was very embarrassing to bring the prospective tenant there. The landlord testified that the most readily visible damage were to the carpet and the backyard. The landlord testified that she changed the advertisement to list the unit as available 15 September 2015 to allow for time to repair the damage.

The landlord testified that when she saw how bad the rental unit was, she attempted to encourage the tenants to attempt to clean the carpeting in an email dated 15 August 2015. The landlord testified that the tenants emailed on 15 August 2015 to give permission to the landlords to retain the security deposit.

The landlords provided a photograph of the carpets prior to the tenancy. The carpets had very light staining in some areas. The landlords provided photographs of the carpets at the end of tenancy. The photographs show that the carpets were heavily stained. In some areas it is quite apparent where the tenants' furnishings were located as the area that was covered by the furnishing is the same as at the beginning of the tenancy and the exposed area is drastically different.

The landlord testified that the carpeting on the upper floor and the stairs was stained and had an odor. The landlord testified that she contacted a cleaner to determine if the carpets could be cleaned. The landlord testified that the cleaner probed the carpet and determined that the stains were pet urine stains. The contractor provided an estimate for cleaning in the amount of \$3,598.14 as a deep cleaning of the subsurface was required. The landlord testified that because of the high cost of cleaning, it made more sense to replace the carpets. The total cost to replace the carpets was \$3,702.73.

The landlord testified that prior to the beginning of this tenancy the carpets were in very good shape. The landlord testified that there were some small slight stains but otherwise the carpets were immaculate.

The landlord testified that the landlords had no knowledge of the tenants' pets until the move out process began. The landlord testified that the tenants had two large dogs and a cat. The landlord testified that this number of pets is in contravention of the strata bylaws. The landlord provided me with a copy of the strata bylaws, which limit pets to one large dog or two small dogs or two cats. The landlord testified that she believes that the dogs damaged the backyard. The landlord testified that there was a grassy lawn in the yard prior to the tenants' occupancy. The landlords provided an email from their former tenants confirming that those tenants had the backyard resodded in April 2014. The yard at the end of tenancy was only dirt. The landlords provided photographs to confirm this testimony. The landlord testified that to remedy the yard, the entire area had to be reseeded. The landlords provided me with a receipt for the cost of the garden supplies in the amount of \$133.22.

The landlord testified that the tenants were not given permission to paint the rental unit. The landlord testified that there was paint on the trims, ceiling and baseboards. The landlord testified that painters' tape was still on the walls. The landlord testified that as the tenants had repainted with dark colours, the paint was challenging to cover up. The landlords provided photographs to confirm this testimony. The landlords provided me with receipts for paint supplies in the amount of \$94.26 and \$120.69.

The landlords provided a photograph of a door with a hole punched in it.

The landlord testified that the tenants damaged some screens to the windows and doors in the rental unit. The landlords provided photographs of the damage. The landlord testified that she had the screens repaired at a cost of \$50.40 and \$16.80.

The landlord testified that the stair spindles were broken. The landlords provided photographs showing the missing and damaged spindles. The landlord testified that the spindles cost \$29.49 to replace. I was provided with a receipt that includes the spindles.

The landlord testified that there had only been a very light clean of the rental unit completed by the tenants. The landlord testified that there was visible dirt and grime. The landlords provided photographs that showed the same.

The landlord testified that she attempted on multiple occasions to schedule a condition move out inspection. The tenants informed the landlords by text message that the tenants would not be attending.

The landlord testified that the tenants left furnishings on the residential property. The landlords provided photographs that showed the same. The landlord testified that she received a complaint from the strata about a large quantity of debris that the tenants left in the boulevard outside the rental unit when they vacated. The debris included furnishings. The landlords provided me with a copy of the email dated 3 September 2015 detailing the strata's complaints. I was provided with a receipt for removing the extra garbage in the amount of \$26.25. I was provided with a receipt for removing the furnishings in the amount of \$85.00.

The landlords provided a statement of their labour. The labour includes painting, yard repairs, hole repair, and spindle repair. The landlords valued their time at an hourly rate of \$15.00. The landlords documented the following time:

Item	Amount
Spindle Repair (6 hours)	\$90.00
Garden and Yard Repair (6 hours)	90.00
Painting Walls (14 hours)	210.00
Painting Trim and Ceiling (8 hours)	120.00
Strip Paint off Light Fixture (2 hours)	30.00
Cleaning (5 hours)	75.00
Total	\$615.00

The landlords provided a statement of the landlord's father's labour. The father is an experienced tradesperson. The landlords valued the father's time at an hourly rate of \$25.00. The father's labour includes painting walls and repairing a hole in a door. The landlords documented the following time:

Item	Amount
Painting Walls (14 hours)	\$350.00
Repair Door (1 hour)	25.00
Total	\$375.00

The landlords' evidence was well presented and well organized. I thank the landlord for her effort creating this coherent package.

The landlords claim for \$6,000.00. The landlords detail the following specific losses:

Item	Amount
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Labour	\$990.00
Carpet Damage	3,702.73
Spindle Replacement	29.49
Screen Repair Dining Room	50.40
Screen Repair Bedroom	16.80
Backyard Repair	133.22
Trim and Ceiling Paint	94.26
Wall Paint	120.68
Garbage Removal Fee	26.25
Garbage and Furniture Removal	85.00
Rental Loss	775.00
Total Monetary Order Sought	\$6,023.83

Analysis

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains. Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The condition in which the tenants left the rental unit was woefully short of the standards required of them. On the basis of the evidence provided by the landlords and, importantly, the absence of evidence from the tenants, I find that the tenants caused all of the damage to the rental unit that the landlords allege.

Cleaning: *Residential Tenancy Policy Guideline*, “1. Landlord & Tenant – Responsibility for Residential Premises” (Guideline 1) states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ...

By failing to remove all of the tenants’ debris and clean the rental unit at the end of tenancy to the standards required by subsection 37(2) of the Act, the tenants caused the landlords loss. The landlords spent five hours of their time cleaning the rental unit. The landlords value their time at \$15.00 hourly. The landlords spent \$111.25 on outside assistance with hauling the debris away. I accept that the landlords’ experienced a direct loss of at least \$186.25 as result of the cleaning and garbage removal. The landlords are entitled to recover this amount.

Spindle Damage: By failing to repair the damage that the tenants (or their pets) caused to the spindles as required by subsections 32(3) and 37(2) of the Act, the tenants caused the landlords loss. The landlords spent six hours of their time repairing the spindles. The landlords value their time at \$15.00 hourly. The landlords spent \$29.49 on materials to make the repairs. I accept the landlords experienced a direct loss of at least \$119.49 as a result of the spindle damage. The landlords are entitled to recover this amount.

Paint: The tenants painted the walls to the rental unit without authorization as required by the tenancy agreement. Guideline 1 sets out:

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant...

Pursuant to subsections 32(3) and 37(2) of the Act, and Guideline 1 the tenants are responsible for the entire cost of restoring the rental unit paint. The landlords spent 24 hours of their time remediating the alteration. The landlords value their time at \$15.00 hourly. The landlord’s father spent 14 hours repainting. The landlords value the landlord’s father’s time at \$25.00 hourly. The landlords spent \$214.94 on materials to repaint. I accept the landlords experienced a direct loss of at least \$924.94 as a result of the unauthorized painting. The landlords are entitled to recover this amount.

Carpet Damage: The tenants left the carpets in terrible condition. Guideline 1 sets out the responsibility for carpet cleaning:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

Pursuant to subsections 32(3) and 37(2) of the Act, and Guideline 1 the tenants are responsible for cleaning the carpets. As a result of the severity of the carpet staining the amount for carpet cleaning (\$3,598.14) was only slightly less than to replace the carpets. The landlords seek the cost of replacing the carpets in the amount of \$3,702.73. Although I understand that it's the pragmatic choice to replace the carpets, the direct loss caused by the tenants is the amount to clean the carpets, that is, \$3,598.14. I find that the landlords are entitled to this amount.

Yard Damage: The tenancy agreement establishes that the tenants were required to tend to the yard. The yard was dirt by the end of the tenancy. Pursuant to Guideline 1:

2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate....
4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

The landlords did not give permission to the tenants to change the yard to dirt. The tenants were responsible for routine yard maintenance. Pursuant to subsections 32(3) and 37(2) of the Act, the tenancy agreement and Guideline 1 the tenants are responsible for the costs associated with restoring the yard. The landlords spent six hours of their time restoring the yard. The landlords value their time at \$15.00 hourly. The landlords spent \$133.22 on materials to restore the yard. I accept the landlords experienced a direct loss of at least \$223.22 as a result of the damage to the yard. The landlords are entitled to recover this amount.

Door Damage: By failing to repair the damage that the tenants caused to the door as required by subsections 32(3) and 37(2) of the Act, the tenants caused the landlords loss. The landlord's father spent one hour repairing the hole in the door. The landlords value the landlord's father's time at \$25.00 hourly. I accept the landlords experienced a direct loss of at least \$25.49 as a result of the door damage. The landlords are entitled to recover this amount.

Screen Damage: By failing to repair the damage that the tenants caused to the screen as required by subsections 32(3) and 37(2) of the Act, the tenants caused the landlords loss. The landlords spent \$67.20 to repair the screens. I accept the landlords experienced a direct loss of at least \$67.20 as a result of the damaged screens. The landlords are entitled to recover this amount.

Rental Loss: Pursuant to subsection 45(1) of the Act, the tenants delivered their notice to end tenancy late. Further, the tenants' multiple breaches of the Act and tenancy agreement in relation to the condition of the rental unit meant that the rental unit was not in condition to be rented immediately after the tenancy ended. By breaching the Act, the tenants caused the landlords a rent loss. The landlords were diligent in securing a new tenancy and minimized their loss to a half month's rent. I find that the landlords are entitled to recover the half month's rent loss from the tenants.

Security Deposit: The landlords applied to keep the tenants' security deposit. I allow the landlords to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

Filing Fee: As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$5,244.24 under the following terms:

Item	Amount
Cleaning & Garbage Removal	\$186.25
Spindles	119.49
Paint	924.94
Carpet Damage	3,598.14
Backyard Repair	223.22
Door Damage	25.00
Screen Repair	67.20
Rent Loss	775.00
Less Security Deposit	-775.00
Recover Filing Fee	100.00
Total Monetary Order	\$5,244.24

The landlords are provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: April 11, 2016

Residential Tenancy Branch