



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties filed Applications for Dispute Resolution and attended the hearing. Both agreed they received each other's Application by registered mail. I find the documents were legally served according to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7 and 67 for damages;
- b) To retain the security and pet damage deposits to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies for

- (d) double the rent pursuant to section 51 of the Act as the landlord served a section 49 Notice and did not use the unit for the reason stated for ending the tenancy;
- (e) the return of their security deposit;
- (f) to recover their filing fee.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

Has the tenant proved on the balance of probabilities that they are entitled to twice the monthly rent pursuant to section 51 of the Act, to the return of their security deposit and filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed the tenancy commenced October 1, 2013, that monthly rent was \$1600 and a security deposit of \$800 and a pet damage deposit of \$800 was paid. It is undisputed that the tenants vacated on March 1, 2016 pursuant to a section 49 Notice to End Tenancy for landlord's use of the property. The

landlord explained that his parents intended to move in but could not because of the disappointing condition. They are presently living in their summer trailer in the central area of BC.

The premises were a house built about 1980 with much of the original panels and woodwork. A condition inspection report was done at move-in and signed by both parties but the tenants say they did not do a move-out report where the landlord noted damaged. The move-out report was signed by the male tenant on March 5, 2016 and he says he mistakenly signed for the \$1600 deduction from the deposits. The female tenant said she was cleaning carpets on March 1, 2016 when the landlord came to do the move-out. They walked through the home together but she said he did not write down any damages and they just talked about maybe a door costing \$40 etc. but did not name a specific amount that he would claim. She said she never got an itemized list from the landlord until the Application was served. The landlord said they agreed to do the report later as she was in a rush to go to her job. The female landlord said that they gave the tenant several opportunities after March 1, 2016 to do the final inspection and after serving a Final Opportunity to do the move-out report, the male tenant attended on March 5, 2016 but refused to walk through the home. The male tenant said it was a construction zone when he entered and he could not see how he could complete a legitimate inspection when so many persons had been in the home and so much construction was going on. He was angry and just signed the report and left.

The landlord claims as follows:

1. \$159.60 : Demo/remove panel walls, original to home and damaged:
2. \$2400: to install drywall to replace them and \$400 to paint. Estimates provided.
3. \$150: door to downstairs bathroom: Doors dated from 1980 original
4. \$592.80: to replace copper sheets around wood stove; 1980 original: the tenant denied her son damaged it with bee bee pellets. She said he loaded the gun indoors and shot it outdoors. The landlord said it was dinged and the tenant said it must have been like that at move-in. Home Depot estimate of new one.
5. \$150 and \$150 to replace downstairs closet door and upstairs bathroom door (1980s): tenant agrees to this. Estimates provided.
6. \$125: to replace front door screen door (1980s) and install; tenant said they did not use the front door but only the back. Many items were not installed properly. This had incorrect screws, never closed properly and the wind caught it if opened. Estimate provided.
7. \$76.93: for kitchen drain (p trap) and installation. Tenant said they did not plug it with grease. Cost of trap provided - \$29.63.
8. \$50: damage to kitchen cabinet under sink, it was dirty and stained. The tenant said the kitchen taps leaked and the male tenant replaced them but likely they

did some damage to the cupboard. The landlord was out of town and did not do maintenance on the property.

9. \$69.50: Pantry bi-fold doors damaged (5-8 yrs. old). Store cost invoice of \$57.
10. Some items with unspecified amounts to repair to "illustrate extent of damage".- Not considered in award.
11. \$10: downstairs toilet seat (new 2008)
12. \$82+\$82: upstairs and downstairs closet doors damaged. New in 2012.

Damages caused by pets:

13. \$150 + 150: Upstairs north and south bedroom doors damaged by dog
14. \$70: upstairs attic/crawl space insulation and vapor barrier had urine and feces in it. Tenant said this was not inspected at move-in and may have pre-existed as other pets lived in the home before and also the landlord did a lot of his own work and it was not done well. Estimate provided.
15. \$50: downstairs bedroom door frame scratched by dog.
16. \$25: laundry window sill scratched by cat. The tenant said her cat did not climb on window sills but the scratches may have been done by keys or other objects on it. She said they left keys on it for awhile before getting a holder.
17. \$12.50: dog feces to be picked up in front and backyard. The tenant denies this charge and said she picked up constantly but the landlord had a dog when he came over to do the inspections and neighbours had dogs that used the backyard too.
18. \$120: to shampoo staircase carpet. The tenant agreed she had not done it at the end of the tenancy but had in the fall. Estimate provided.
19. \$75: garbage disposal
20. \$25 & \$25 for emptying outdoor fire pit and inside wood stove of nails, ash and wood.
21. \$12.50: clean behind appliances in laundry room. The landlord said they sat out 6 inches and could be cleaned. The tenant said he had to repair behind the dryer two months prior and cleaned it then.
22. \$150: Wood is pine tongue and groove and was dirty and badly stained in living, dining, laundry rooms and hallway. The tenant said she wiped and dusted them but the wood holds staining, possibly from years of living and the wood stove that was used for heat. The landlord said there was black goo like grease, not just dust.
23. \$12.50: to clean the black grime off the front door.

The landlord supplied many photographs to support their claim. They said the handyman's charge was \$50 an hour for labour and this is supported by some of the invoices/estimates. Estimates for doors were \$150 a door, about \$350 a day.

On the move-in report, the fireplace and oven are noted as needing cleaning and the living room carpet and master bedroom carpet as stained, scratches are noted in walls, trim and ceilings of the stairwell and hall, wood filler in one door and a damaged upstairs bathroom door.

On the tenant's application, they claim for double their security deposit because the landlord did not return it within 15 days of the later of them vacating and providing their forwarding address in writing as required by section 38 of the Act. The male tenant states he 'made a mistake' and signed the deposits as a deductible when he signed the move-out report on March 5, 2015. He said he was angry because the landlord had arranged to do the move-out report later with the female tenant and it was already a construction zone when he went to do the report. The female tenant said the landlord did not write anything down on the move-out report. In a written statement in evidence, she says the landlord would not sign off on the March 1, 2016 move-out report but they discussed the damages she would assume responsibility for, the ease of repairs and the cost to replace some wood panelling on the downstairs bedroom and the closet door downstairs. She said he agreed to send her a copy in a few days with the dollar amounts he intended to withhold for the above noted items plus a door that needed washing. She served a demand letter for the return of their deposits and the female landlord asked for a second inspection on March 5, 2016 before they started renovations. When the male tenant went over, the house was in disarray and he signed the move out report and he was upset at the situation and left. The lists various items they bought and installed during the tenancy but does not make a claim for them.

In addition the tenants claim double their monthly rent of \$1600 for the landlord did not have a close family member occupy the home as stated in the section 49 Notice they were served. They provided an advertisement of the home on craigslist showing it advertised to rent as of April 1, 2016 for \$2600 a month in rent. She said she noticed a new advertisement on March 13, 2016 of a house for rent which was suspiciously like their home and confirmed on March 21, 2016 that it was the same home advertised for rent at \$2600 when the photograph and location was advertised. They had been paying \$1600 a month. They said they had investigated further and the landlord's mother had said on social media that she had been looking for a long time for acreage in the interior and now she is living in the interior. They say this illustrates that their home which is in the northern coastal area is not where she intended to move. The landlord said his parents were shocked when they saw the house, saw too many repairs had to be done, and they needed a place to live immediately as they had sold their own house. They chose to live in a trailer in the interior where they are living now. The tenant said the parents knew what the condition of the house was as they were there in the fall and

took pictures. They said the section 49 Notice was a ruse to enable the landlord to evict them and rent at a higher price.

The tenants provided copies of the advertisements on craigslist. They said a letter written by the landlord's mother was just a sham. I did not have this letter in evidence and the landlord requested time to fax it. He was granted until Friday, June 24th to fax it to me. It was received by me on Friday and duly considered in my decision. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. The Residential Policy Guideline #40 assigns a useful life to elements in rental housing which is designed to account for reasonable wear and tear. This will be taken in account in any award for damages.

In the hearing, the tenant took responsibility for some items but their obligation for replacement cost must be calculated in accordance with the Guideline. Two doors were estimated as \$150 each. I find the doors matched and dated from the original house in 1980 and the wood panelling was of the same age so they were approximately 36 years old at move-out. I find the Guideline assigns a useful life of 20 years to wood doors and panelling. Therefore, I find, although the wood panelling and doors may have been

nice, they were beyond the end of their useful life so the landlord is not entitled to compensation for their replacement. I find the landlord not entitled to compensation for items 1, 2, 3, 5, 6, 8 (wood cabinet under sink) and 13.

I find the upstairs and downstairs closet doors new in 2012 were damaged at move out with no damage noted at move-in. I find the landlord entitled to recover 80% of the cost of their replacement for the 16 years of useful life remaining for a total of \$131.20.

In respect to replacement of copper sheets around the stove, I find there were no damage/dents noted at move-in and it was noted as dented at move-out. Metal items like this copper trim are noted as having a useful life of 20 years in the Guideline. Therefore, I find the landlord not entitled to be compensated for its replacement as it was beyond the end of its useful life which began in 1980.

I find there was no problem noted at move-in with the sink p trap and there is none at move out. I find the landlord's evidence credible that repairs had to be done to the p trap but plumbing fixtures again are assigned a useful life of 20 years in the Guidelines and I find the landlord not entitled to be compensated for its replacement.

I find the pantry doors were estimated to be 5-8 years old as some renovation was done in 2008. I find the landlord entitled to 60% of their replacement cost for the 12 years of useful life remaining for a total of \$41.70. I find the landlord entitled to 60% of the cost of the toilet seat or \$6 for the 12 years of useful life remaining.

I find insufficient evidence that these tenants or their pets damaged the insulation and vapor barriers. As the tenant said, this is not inspected at move-in and other animals lived in the home from time to time. I dismiss this portion of their claim for insulation and vapor barrier. I find the door frames and window sills were beyond the end of their useful life of 20 years so I find the landlord not entitled to compensation for their replacement. I also note that scratches were noted at move-in on walls and trim in stairway and hall.

I find the landlord's evidence credible that the wood panelling was dirty and badly stained in living room, dining, laundry and hallway. I find the move out report and their photographs supported their statements. Although the tenant said she cleaned it and some dirt may be due to the wood stove smoke, I find there were significant stains as pictured which show more staining than general darkening of wood smoke, I find them entitled to recover costs of cleaning those areas and the black grime of the front door for a cost of \$150 + \$12.50. I find also the tenant admitted she did not shampoo the stairs just before leaving so I find the landlord entitled to this cleaning cost of \$120. I find also

that there was dirt left behind the laundry appliances and the photograph illustrates that they can be easily moved for cleaning. I find the landlord entitled to cleaning cost of \$12.50.

I find insufficient evidence to support that the cleaning of the wood stove and fire pit was necessitated by the tenant's actions. I find the move in report notes the fireplace will be cleaned but the tenant said neither the chimney nor it was done. I find the outdoor fire pit inspection is not included at move in or out. Therefore, I find insufficient evidence to support the landlord's claim. I find the landlord not entitled to recover costs of cleaning these items. I dismiss this portion of his claim. I find also that garbage is not noted on the move-out report and when asked at the hearing, the landlord was vague about what had to be removed. The tenants said there were some items left by previous tenants. I find insufficient evidence to support this claim for compensation for garbage removal and I dismiss it.

In respect to the claim for removal of dog or cat feces, I find insufficient evidence that the feces was from by the tenant's animals. As the tenant said, the landlord came with his dog, neighbours' dogs came around, and she cleaned up before she left but does not know how animals used the back or front yard after she was gone.

I find much of the damage and cleaning was caused by the tenant's cat or dog. Therefore the pet damage deposit would apply to it.

Although I find many of the items are beyond their useful life, I find the weight of the evidence is that the tenant violated the Act and their tenancy agreement by allowing children or pets to damage these items. They were significantly damaged by the tenants, for example, the woodwork and doors that had big holes in them. I find their replacement cost amounted to thousands of dollars although the landlord is not entitled to be reimbursed for this as I find it is reasonable wear and tear over the years according to the Residential Policy Guideline. However, I find the landlord entitled to recover some compensation for his work in coordinating the significant repairs, his cost of repairs and his labour. I find him entitled to the nominal sum of \$500 for all this work which I find on the weight of the evidence was caused by the tenants' negligence.

Regarding the tenant's claim, I find they are entitled to have the security and pet damage deposits credited to any claims. I find they are not entitled to have the deposits doubled pursuant to section 38 of the Act for the landlord made their application on March 15, 2016 within the time limit of 15 days of them vacating the premises. I accept the male tenant's answer that he signed off on the deductions mistakenly but I find this did mislead the landlord; fortunately the landlord filed his Application in time to avoid the

doubling provision in section 38 of the Act. Any allowed claims of the landlord will be deducted from the deposits as calculated below.

In respect to the tenant's claim of double the rent pursuant to section 51 of the Act, I find their sworn testimony credible and well supported by the evidence they submitted. Section 51(2) states that in addition to a free month's rent pursuant to a section 49 Notice to End Tenancy, if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49, within a reasonable period after the effective date of the notice or the rental unit is not used for that stated purpose for at least 6 months beginning with a reasonable period after the effective date of the Notice, the landlord must pay the tenant the equivalent of double the monthly rent.

I find the tenants vacated on March 1, 2016 pursuant to a section 49 Notice to End Tenancy for landlord's use of the property for occupancy by them or a close family member. I find the weight of the evidence is that they put the home up for rent again before the end of March. Although the landlord testified it was for his parents to move in, I do not find it credible that they could not wait less than a month until some repairs were done. In any case, I find the landlord advertised it for rent within a few weeks of ending the tenancy so this does not support his credibility that his parents were intending to move in. I considered the late evidence of the letter from his parents as requested. They reiterated that they sold their house in another municipality and thought this home would be a practical solution. However, they said the landlord found the house so dirty and damaged that it was obvious it would take longer and they had to make other arrangements. I find they are living in the interior which is a very different location and distant from the coastal area of his rental house.

I find section 51 of the Act does not excuse the landlord's obligation to use the house for the reason stated on the section 49 Notice. The question of intention and bad faith usually arises when the tenants are challenging the motive for the section 49 Notice and attempting to cancel it. I find the motive is irrelevant in this case as I find as fact the landlord did not accomplish his stated purpose for ending the tenancy which was for occupancy by himself or a close family member. Instead he advertised it for rent within a few weeks for \$1000 more per month in rent. I find the tenants entitled to double the monthly rental pursuant to section 51 of the Act.

Conclusion:

I find the parties entitled to a monetary awards as calculated below and the landlord to retain a portion of the deposits to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application. I dismiss the remainder of the

claims of the landlord for the reasons stated above. I find the tenant entitled to recover filing fees also.

Calculation of Monetary Award:

Tenants' security and pet deposits	1600.00
Tenants' double compensation s.51	3200.00
Filing fee to tenant	100.00
Less allowance to landlord for closet doors	-131.20
Less allowance for pantry doors and toilet seat	-47.70
Cleaning wood walls and door	-162.50
Shampoo stairs & behind appliance	-132.50
Allowance for labour/oversight of repairs	-500.00
Filing fee to landlord	-100.00
Total Balance to Tenant	3826.10

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: June 23, 2016

Residential Tenancy Branch