



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant MM (the "tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Tenant AM did not attend the hearing. The tenant confirmed receipt of the landlord's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the application.

Preliminary Issue – Tenants' Evidence

The tenant testified that she sent a 20 page evidence package to the landlord via email on an undisclosed date. The landlord confirmed receipt of the email package however the landlord testified that she was unable to view the attachments in the email.

Section 88 of the *Act* establishes that when a respondent serves an applicant evidence it must be served in the approved method. Email is not a prescribed method of service under section 88 of the *Act*.

For this reason, I have not relied on the tenants' 20 page evidence package to form any part of my decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the testimony of the parties, the tenancy began on September 1, 2012 on a fixed term. Rent in the amount of \$1,950.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$900.00 and pet deposit in the amount of \$500.00 at the start of the tenancy. The tenants vacated the rental unit on March 31, 2016.

Although neither party provided a copy, the parties agreed that a written condition inspection report was completed at the start of the tenancy. In relation to the condition inspection report at the end of tenancy, the parties agreed that on April 2, 2016, the landlord and tenant AM walked through the rental unit. The parties' further agreed that tenant AM refused to sign the condition inspection report or agree to waive his right to the return of the damage deposit. The tenant testified that she did not give the forwarding address to the landlord but understood that tenant AM did at some point. The tenant could not provide a date or method the forwarding address was given. The landlord testified that she received the correct forwarding address from tenant AM via email around mid-April 2016.

The landlord testified that she is seeking \$5,487.49 in damages.

Hardwood

The landlord testified that the tenants' dog significantly damaged the eight year old hardwood floors. The landlord obtained two quotes to repair the damage and hired the less expensive of the two. The landlord testified that due to the extent of damage, it was not possible to just replace the damaged planks as this would result in varying colours within the floor. The floor was sanded, filled with wood filler and re-finished. The landlord provided a written statement from the floor refinisher and a receipt in the amount of \$4,036.00. Based on the floor refinisher's estimation that the useful life span of the hardwood was 30 years, the landlord seeks to recover 73% of the refinishing cost for a total amount of \$2,946.28. The landlord submitted pictures of the hardwood floor.

The tenant acknowledged that the pets damaged the hardwood floor but testified the whole floor did not need refinishing. The tenant had two quotes conducted, one in the amount of \$600.00 and the other in the amount of \$1,000.00. These quotes were to repair the damaged planks, not to refinish the entire hardwood floor.

Carpet

The landlord testified that the tenants' cat damaged the small bedroom carpet in the doorway area. The landlord again obtained two quotes and hired the least expensive. The landlord had the small bedroom re-carpeted and seeks to recover this cost from the tenants. The landlord submitted a receipt in the amount of \$601.21. The landlord also submitted photographs of the carpet.

The tenant contended that although the cat damaged a small section of carpet in the bedroom doorway, the carpet in its entirety did not require replacement. The tenant testified that the rental unit contained extra rolls of this same carpet which could have been used in repairing the damaged area.

French door repair

The landlord testified that the french doors in the master bedroom and the french doors in the dining room area sustained pet scratches that required putty, sanding, refilling and painting. The landlord's husband conducted the repair work. The landlord testified that it took her husband 12 hours to conduct this repair at the rate of \$30.00 per hour for a total cost of \$360.00. The landlord also seeks to recover the cost of materials in the amount of \$50.00 for a total of repair cost \$410.00. The landlord submitted photographs of both sets of french doors. The landlord did not submit receipts for the materials.

The tenant explained that the photographs submitted by the landlord were taken during the tenancy and do not accurately reflect the condition of the french doors upon vacancy. The tenant testified that prior to vacating the rental unit they filled the scratches on the french doors in preparation for paint.

Stairwell banister

The landlord explained that the stairwell banister was chewed and the drywall damaged. The landlord paid the flooring company \$100.00 to router the exterior edges of the banister. The landlord testified it took her husband two and a half hours at \$30.00 per hour to repair the banister for a total of \$75.00 in labour costs. The landlord indicated this repair job required \$25.00 in materials. In total the landlord seeks \$200.00 for the stairwell banister repair work. The landlord submitted photographs of the damaged stairwell banister.

The tenant explained that the condition of the stairwell banister was a result of wear and tear over the three year tenancy. The tenant testified that the pets did not damage this; the damage was a result of using the banister over the years. Again, the tenant testified that the photographs submitted by the landlord do not depict the condition of the banister upon vacancy. The tenants had filled the damage prior to vacating.

Front door casing/molding

The landlord testified that the door and door casing contained scratches from the tenants' pets. The landlord submits that the tenants attempted to fill the scratches on the door casing however the landlord's husband had to remove the filler and replace with wood filler. Her husband then sanded, primed and painted both the door casing and door. This task took nine hours at \$30.00 per hour for a total of \$270.00 in labour costs. The landlord also seeks to recover the \$30.00 in materials used to perform these repairs. In total the landlord seeks \$300.00 in repair costs for the door casing and molding. The landlord submitted photos of the door, casing and molding.

The tenant testified that these scratches were filled prior to vacancy.

Door insulation replacement

The landlord testified that the insulation surrounding all four exterior doors were damaged and required replacement. The landlord submitted a receipt from home depot that indicates the insulation cost a total of \$44.88. The landlord seeks to recover four and a half hours of her husband's time at the hourly rate of \$30.00 for a total of \$135.00. In total the landlord seeks to recover \$179.88 in labour and materials for the door insulation. The landlord submitted photographs of the door insulation.

The tenant acknowledged that they did not repair the door insulation and left this task for the landlord to complete.

Interior cleaning

The landlord testified she spent eight hours cleaning at a rate of \$30.00 per hour and seeks to recover \$240.00. The landlord indicated squashed insects were left on ceilings and walls, the bathroom window sill was not cleaned and dog hair was left throughout the rental unit. The landlord provided photographs of the above mentioned issues.

The tenant testified they she cleaned the rental unit; however she acknowledged that she missed the bathroom window sill and some squashed insects on the ceilings.

Siding repair

The landlord indicated that without her prior knowledge or permission the tenants cut a hole in the exterior siding of the house to install a hot tub. The landlord estimates this repair will cost \$150.00. The landlord acknowledged this repair has not been made to date.

The tenant agreed that her husband, the other tenant did cut a hole in the exterior without the landlord's permission; however the hole was patched prior to vacating the rental unit.

Yard cleanup

The landlord testified that yard debris in the form of pine needles were left in the yard. Additionally, the tenants left gravel where their hot tub once stood. The landlord spent three hours at \$30.00 per hour removing debris, transporting debris to the dump and replacing the gravel with top soil. In total the landlord seeks \$90.00 in yard cleanup costs. The landlord submitted photographs of the yard.

The tenant explained that the debris was a result of a few days of fallen leaves from surrounding trees. The tenant acknowledged they did not remove the gravel but contended that the landlord did not ask for this to be removed.

Deck glass panel cleaning

The landlord alleged that the deck glass panels were not cleaned and contained algae. The landlord spent two hours cleaning at \$30.00 per hour and therefore seeks \$60.00 for deck panel cleaning. The landlord submitted photographs of the deck panel.

The tenant described the film on the glass deck panels as tree pollen, not algae. The tenant testified that the glass panels were cleaned a few days prior to vacating the rental unit. The tenant explained that they vacated in spring, a time of year in which tree pollen is excessive. It is the tenant's position that the tree pollen accumulated following the days she cleaned it.

Exterior stair power wash

The landlord spent two hours power washing the front stairs that contained dirt and dog hair. The landlord seeks compensation at \$30.00 per hour for a total of \$60.00.

The tenant did provide a reply in relation to the exterior stairs.

Exterior handrail and wood railing top repair

The landlord indicated that the exterior handrail and wood railing top were damaged by the tenants' pets and seeks compensation. The landlord estimates these repairs will

cost \$270.00. The landlord acknowledged this repair work has not been conducted to date.

The tenant contended this damage was a result of wear and tear, not the pets.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenants.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Section 37 of the *Act*, establishes that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline # 1 “Landlord & Tenant – Responsibility for Residential Premises,” defines reasonable wear and tear as the natural deterioration that occurs due to aging and other natural forces, where the tenants have used the premises in a reasonable fashion.

Hardwood

Based on the tenant’s admission and the photographs before me, I find the tenants’ pets damaged the hardwood floor beyond reasonable wear and tear. I further find that the landlord mitigated her loss by hiring the less expensive of the two contractors to complete the job. Although the tenants contend that the floor planks could have been replaced rather than replaced and refinished, thereby reducing the cost, I find the tenants failed to substantiate this with documentary evidence. On the other hand, the landlord has provided a statement from a flooring specialist that indicates refinishing was necessary. For these reasons, I find the landlord is entitled to compensation for the damaged hardwood.

Residential Tenancy Policy Guideline # 40 speaks to the “Useful Life of Building Elements,” and provides that the useful life of hardwood floor is 20 years. The landlord

testified that the subject hardwood floor was approximately eight years old at the time of refinishing. I find the landlord is entitled to recover the depreciated value of 60 percent of the total cost of \$4,036.00. Therefore I find the landlord is entitled to compensation in the depreciated amount of \$2,421.60 for the refinishing of the hardwood floor.

Carpet

As per the tenant's admission, I find the tenants' pet damaged the bedroom carpet in the doorway area. I find the tenant's argument that the carpet could have been patched rather than replaced was not supplemented with documentary evidence. I find the landlord mitigated her loss by hiring the lesser of the two quotes she received. Therefore, I find the landlord is entitled to compensation for carpet replacement.

Residential Tenancy Policy Guideline # 40 defines the useful life of carpet as 10 years. In the absence of either party providing the age of the carpet, I find it probable that the carpet was eight years, congruent with the hardwood. Based on this, I find the landlord is entitled to recover the depreciated value of 20 percent of the total cost of \$601.21. The landlord is entitled to compensation in the depreciated amount of \$120.24 for the carpet replacement.

French door repair

The tenant did not dispute that her pets damaged both sets of french doors; rather she contended that the scratches were filled prior to vacancy. Based on the testimony of the parties I am satisfied that the tenants' pet damaged the french doors and the tenants tried to negate their responsibility by filling the scratches. However I find that the landlord would have had to conduct further repair work to restore the doors to their original state. For this reason I find the landlord is entitled to some compensation.

A professional invoice verifying the cost of labour was not provided because the landlord had her husband conduct the repair work. Further the landlord did not provide a receipt for the material claimed. Accordingly, I find the landlord is entitled to a nominal award of \$125.00.

Stairwell banister

The parties provided conflicting testimony in relation to the damaged stairwell banister. The landlord testified it was pet damage whereas the tenant testified it was a result of normal wear and tear. Upon review of the submitted photographs, I find it more probable the damage was a result of wear and tear. The photographs do not depict deep scratch marks indicative of pet damage. Instead the photographs show chipped paint which to me, is more consistent with regular use. For these reasons, I dismiss this portion of the landlord's claim.

Front door casing/molding

The tenant did not dispute that the pets scratched the door and door casings; again she contended that these areas were filled. I find the tenants attempted to lessen the damage created by their pets; however some work was left behind for the landlord to complete. A professional invoice for labour and a receipt for materials were not provided by the landlord. Based on the finding that the tenants pet damaged the front door casing and moulding, I find the landlord is entitled to a nominal award of \$95.00.

Door insulation replacement

As the tenant did not deny this damage, I find the landlord is entitled to compensation. Specifically, I find the landlord is entitled to recover the cost of material as indicated on the submitted receipt of \$44.88 and a nominal award of \$45.00 for labour for a total of \$89.88.

Interior cleaning

I find the tenants breached the *Act*, when they failed to clean the rental unit in its entirety. The photographs support that the tenants left some portions of the rental unit dirty and the tenant does not dispute this. The landlord did not submit a professional receipt from a hired cleaner as she conducted the cleaning herself. In the absence of corroborating evidence verifying the typical rate of a cleaner, I grant the landlord a nominal award in the amount of \$85.00.

Siding, exterior handrail and wood railing top repair

Although the landlord seeks to recover the estimated repair costs of the siding, exterior handrail and wood railing top, I find these portions of the landlord's claim premature as the work has not been conducted to date. Therefore, I dismiss these portions of the landlord's claim.

Yard cleanup

As per the Residential Tenancy Policy Guideline # 1 "Landlord & Tenant – Responsibility for Residential Premises," 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. I find the tenants failed to return the hot tub area to its original condition and the landlord incurred a loss by having to transport the gravel to the dump and replace it with soil. In the absence of receipts I find the landlord is entitled to nominal award of \$50.00.

Deck glass panel cleaning

The parties provided conflicting testimony on what substance covered the deck panels. The landlord argued it was algae that required significant cleaning whereas the tenant contended it was pollen that had been cleaned but likely became covered again due to the spring season.

Upon review of the submitted photographs, and in the absence of documentary evidence from the landlord substantiating algae, I find it more probable the panels were covered in pollen. The pictures show large mature trees surrounding the deck, and the time of vacancy was indeed spring. I find the landlord failed to prove that the tenant did not clean the panels prior to vacancy and therefore dismiss this portion of the landlord's claim.

Exterior stair power wash

Upon review of the submitted photographs and in consideration of the outside elements, I find the tenants left the exterior stairs reasonably clean. As per the Residential Tenancy Policy Guideline # 1 "Landlord & Tenant – Responsibility for Residential Premises," tenants are not responsible for cleaning to bring the premises to higher standard than that set out in the Residential Tenancy Act. For this reason, I dismiss this portion of the landlord's claim.

Total Damages

I find the landlord has established a total monetary claim of \$2,986.72, comprised of the above described amounts.

Filing Fee

As the landlord was partially successful in this application, I find that the landlord is entitled to recover \$50.00 of the \$100.00 filing fee for a total award of \$3,036.72

Security Deposit

In accordance with the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security and pet deposit in the total amount of \$1,400.00 in partial satisfaction of the monetary award and I grant an order for the **balance due \$1,636.72**.

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$1,636.72** against the tenant.

The landlord's application for a monetary order for the siding, exterior handrail and wood railing repair are dismissed with leave to reapply.

The landlord's application for a monetary order for the stairwell banister repair, deck glass panel cleaning and exterior stair power washing is dismissed without leave to reapply.

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: September 23, 2016

Residential Tenancy Branch