



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNSD FF

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for compensation for loss or damage 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:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Is the landlord entitled to a monetary award for compensation for loss or damage?

Is the landlord entitled to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a return of all or a portion of the security deposit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background & Evidence

The rental unit is a fully furnished 2 bedroom basement suite. The tenancy began on November 1, 2015 and ended on April 30, 2016. The monthly rent was \$1400.00 and the tenant paid a security deposit of \$700.00 at the start of the tenancy. The landlord returned \$180.00 of this security deposit on May 15, 2016. A condition inspection report was completed upon move-in and on the move-out date of April 30, 2016. A forwarding address was provided by the tenant on the move-out inspection report.

The landlords are claiming that although a condition inspection report was completed on the move-out date of April 30, 2016, they only deducted the cost of paint and missing cutlery which she estimated at \$50.00. The landlords argue that upon performing a thorough cleaning, later on the move-out date, they discovered further damage including a crack in the base of the fridge, two deep scratches on the kitchen cabinets, a broken chopping board, burnt oven mitts and missing cutlery. The landlords argue the suite was also left very dirty. The landlords submitted a condition inspection report completed with the new tenant on May 1, 2016 in support of their argument that the damages existed prior to the new tenants moving in. The landlord submitted a monetary order worksheet detailing the amounts claimed, pictures in support of the alleged damage, invoices in support of loss suffered for repair/cleaning work performed and estimates in support of loss for repair work required and replacement of damaged/missing items.

The tenant is claiming she is entitled to the return of the balance of the security deposit less the \$50.00 agreed to by the parties upon the move-out condition inspection. The tenant is disputing the damage alleged by the landlord to have been found after the move-out inspection was completed. The tenant argues that this damage was either pre-existing, normal wear & tear or caused by the new tenants. The tenant also argues that the landlord did not mitigate its losses as part of the claim included an estimate for items ordered online which included delivery costs and the also that the bulk of the landlord's evidence in support of loss are based on quotes. The tenant also argues the \$40.00 per hour cleaning charge is excessive. The tenant argues that pursuant to section 21 of the *Residential Tenancy Regulation*, the condition inspection report is evidence of the condition of the suite on the date of inspection.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Pursuant to section 21 of the Regulation, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential

property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, I accept the landlord's testimony, picture evidence and condition inspection completed with the new tenants on May 1, 2016 as evidence contrary to the state of repair of the rental unit as reported on the move-out condition report completed with the tenant on April 30, 2016. Further, although the landlords argued they discovered further damage after completing the report, I note that the move-out report completed with the tenant on April 30, 2016 does make reference to the bulk of the damage being claimed by the landlord. Under the refrigerator column, the report includes a comment of a "cracked". Under the cabinets and doors column it notes 2 scratches on cabinets. The comment section on the last page of the report includes: a missing plate, paint purchase, a broken chopping board, missing cutlery, burnt oven gloves and the aforementioned scratches on the cabinet. I accept all of the damage claimed by the landlord as per the monetary order worksheet was caused by the tenant. I reject the tenant's argument that this damage was normal wear and tear.

I accept the receipt submitted by the landlord for the refrigerator liner epoxy as evidence of the amount of loss required to repair the crack in the fridge. The landlord is awarded **\$196.91**.

I accept the receipt submitted by the landlord for the replacement of the oven mitt, chopping board and missing plate as evidence of the amount of loss required to replace these damaged/missing items. The landlord's claim for the delivery charges on these items is dismissed as the landlord provided insufficient evidence of steps taken to minimize the loss by purchasing the items in-store. The landlord is awarded **\$23.49** (cost of items plus tax).

In support of their claim for loss due to having to paint over the patched walls, the landlords submitted a quote for an entire gallon of paint. The landlords did not provide a receipt for this purchase or any evidence to suggest that they purchased a new gallon versus utilizing existing paint. I find an award of **\$15.00** is reasonable to compensate the landlord for this loss.

I accept the receipt submitted by the landlord for the replacement of the missing cutlery as evidence of the amount of loss required to replace these items. The portion of the shipping costs on these items is dismissed. The landlord is awarded **\$26.84** (cost of items plus tax).

I accept the estimate submitted by the landlord for the repair of the cabinet scratches as evidence of the value of loss suffered by the landlord. The landlord is awarded **\$236.25**.

The landlord is claiming 2 hours of cleaning based on a quote of \$40.00 per hour. The landlords testified they did the cleaning themselves as there was not sufficient time to hire professional cleaners. I accept the landlords claim that the rental unit was not left reasonably clean as evidenced by the move-out inspection report. I find an award of \$20.00 per hour for 2 hours to be reasonable to compensate the landlord for this loss. The landlord is awarded **\$40.00**.

As the landlord was for the most part successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application from the tenant.

The landlord continues to hold a security deposit in the amount of \$520.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Total entitlement for Landlord: \$118.49 (\$638.49 - \$520.00)

As the tenant was not successful in her application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$118.49. Should the tenant 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 18, 2016

Residential Tenancy Branch