Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF – Tenants' application
MND MNR MNSD FF – Landlords' application

Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by the Tenants and the Landlords.

The Tenants filed their application on September 1, 2016. The Tenants sought a $3,565.48 Monetary Order for: money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; the return of double their security deposit; and to recover the cost of their filing fee.

The Landlords filed their application on October 4, 2016. The Landlords sought a $5,254.93 Monetary Order for: damage to the unit site or property; unpaid rent or utilities; to keep all or part of the security and/or pet deposit; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by both Landlords and both Tenants. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The majority of the submissions were presented by the male Landlord and male Tenant. Therefore, for the remainder of this decision, terms or references to the Landlords and/or Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

The Tenants affirmed they served the Landlords with copies of the same documents and digital evidence that they served the Residential Tenancy Branch (RTB). The Landlords acknowledged receipt of the documents and a C.D. The Landlords testified they received a call from the Tenants December 6, 2016 asking if they could view the electronic information contained on the C.D. at which time the Landlords told the Tenants they could not view the contents.

The Tenant stated he attempted to personally deliver a second copy of the digital evidence they loaded onto a USB stick. When the Landlords did not answer the door the Tenant stated he posted it to the Landlords' door on December 7, 2016. The Landlord denied receiving the USB drive.

The digital evidence C.D. that had been served to the RTB by the Tenants was placed in an envelope and holes were punched into the envelope for placement on the file. Unfortunately sections of the C.D. were damaged by the hole punch which prevented me from seeing the contents of the digital evidence. I advised the Tenants that I would consider their relevant documentary and oral evidence. Upon completion of the hearing I informed the parties that I would be making my decision absent of the Tenants' digital evidence as Landlords had not viewed that evidence and there were no witnesses to prove the USB had been posted to the Landlords' door.

The Landlord affirmed they served the Tenants with copies of the same documents and photographs they served the RTB. The Tenants acknowledged receipt of those documents and photographs. No issues regarding service or receipt were raised. As such, I accepted the Landlords' submission as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Tenants proven entitlement to compensation for natural gas and hydro utilities?
2. Are the Tenants entitled to the return of double their security deposit?
3. Have the Landlords proven entitlement to compensation for damages to the rental unit?
4. Are the Landlords entitled to compensation for unpaid municipal utilities?

Background and Evidence

Undisputed submissions
The Tenants occupied the rental unit on July 15, 2011 based on a one year fixed term tenancy agreement. That initial agreement required the Tenants to pay rent of $1,800.00 on the fifteenth of each month. On July 15, 2011 the Tenants paid $900.00 as the security deposit.

The Tenants continued to occupy the property entering into subsequent fixed term tenancy agreements. The last agreement commenced on August 1, 2014 and was scheduled to end on July 31, 2016, as per the copy submitted into evidence. As of August 1, 2014 rent was payable on the first of each month in the amount of $1,975.00

plus 70% of the utilities. On August 1, 2014 the Tenants paid $987.50 as the security deposit.

No move-in or move-out condition inspection report forms were completed by the Landlords. The rental unit was described as being the upper two levels of a three level single detached house. The house was built in 2003 and was six months old when the Landlords purchased it in March 2004. The Landlords occupied the upper two levels from 2004 until the Tenants moved in on July 15, 2011. The basement was comprised of a self-contained suite which was initially rented to different tenants. The Landlords began occupying the basement suite in September 2013.

The parties mutually agreed the tenancy would end on July 22, 2016 and negotiated partial rent payments for July 2016. The Tenants returned possession and the rental unit keys to the Landlords on July 22, 2016. The Tenants provided the Landlords with their forwarding address in writing on July 21, 2016.

The Tenants were required to have the natural gas and hydro bills in their name. The parties mutually agreed the Tenants would pay 100% of the natural gas and hydro bills and the Landlords would pay 100% of the municipal bills and they would meet periodically to reconcile the bills to have the Tenants paid 70% of all of the bills. The parties indicated the amounts were relatively even so they did not worry about reconciling the bills on a regular basis. The parties mutually agreed the Tenants would be responsible for 70% of all utilities.

Tenants' application

The Tenants sought $3,565.48 which was comprised of: double their security deposit $1,975.00 (2 x $987.50) + $865.54 for 30% of natural gas utilities + and $724.94 for 30% of the hydro utilities.

In support of their application the Tenants submitted documentary evidence which included, in part, copies of their tenancy agreements; natural gas invoices, and hydro invoices.

The Landlords disputed some of the utilities claimed by the Tenants and stated they had reconciled the utility bills from 2014 and 2015 prior to this application. The Landlords were not able to provide an exact date on when they last reconciled the utilities and later stated they reconciled them on July 21, 2014 when they signed the last lease.

The Tenants disputed the Landlords' submission and noted that the Landlords were seeking payment for municipal bills dating back to 2015. The Tenants submitted that they would create a new spreadsheet to track the utilities after each time they reconciled the bills with the Landlords. The Tenants stated they submitted a copy of the most recent spreadsheet in their evidence which supports their testimony that the utilities had not been reconciled from September 2014 to July 2016.

Landlords' application

As per the application, the Landlords sought $5,254.93 which was comprised of: $500.00 to repair the veneer edge banding on the kitchen cabinets; $546.00 to replace cracked ceramic tiles; $420.00 to repair toe base kicks on the bottom of the kitchen cabinets; $367.50 for carpet cleaning; $2,100.00 to repair and repaint walls on the main floor and master bedroom; plus $1,887.77 which was 100% of the municipal utility bills ($304.18 + $353.11 + $362.83 + $368.62+ $499.03).

The Landlords submitted that the rental unit had sustained damage to the kitchen cabinet veneer trim and toe kick boards. They initially stated the damage was caused only to the lower cabinets, which they asserted was the result of the Tenants' children banging toes up against the cabinets. The Landlords stated the toe kick was repaired July 29, 2016 as per the invoice. The veneer edges had not been repaired based on the quote; rather, the Landlord fixed the veneer binding pieces by gluing them back on. They argued it was only a temporary fix pending the outcome of their application.

The Landlords asserted the Tenants dropped items and chairs on the ceramic tiles causing several tiles to break in the kitchen and dining room area. Upon further clarification the Landlords stated there were 6 to 10 broken tiles. Their claim was based on an estimate and the tiles had not yet been replaced.

The Landlords argued the Tenants failed to have the carpets steam cleaned at the end of the tenancy. The Landlords stated the carpets were cleaned on August 4, 2016, as per their invoice. The invoice submitted into evidence for the carpet cleaning indicated the bedrooms, hall, and stairs were cleaned on 16-07-26 and the living room and dining room carpets were cleaned on 16-08-06.

The Landlords testified sections of the rental unit had been painted just prior to the Tenants moving in. The Landlords were not able to submit testimony as to which areas were painted or the dates they were previously painted. The Landlords submitted photographs of the walls which had drywall mud on them. The Landlord testified that he applied some of the mud shown in those photographs and some was applied by his painter. The painting invoice was dated July 25, 2016 and included filling, sanding, and painting of "All main floor & master bedroom".

The Landlords stated they did not re-rent the upper levels. Rather, the Landlords moved into the areas which these Tenants had previously occupied.

The Tenants accepted responsibility for 70% of the municipal utilities and disputed all remaining items claimed by the Landlords. The Tenants testified their digital evidence included a video they took on July 1, 2016 which displayed the condition of the rental unit at the end of the tenancy.

The Tenants argued the veneer falling off of the edges of the cabinets was due to a defect and not caused by misuse. They submitted that 50% of the edge pieces started to peel off the cabinets; a problem they informed the Landlord about on October 19,

2014. As the pieces continued to peel the Tenants taped them in place as a temporary fix as the Landlord did not take action to repair them during their tenancy. The Tenants stated their video showed all but one veneer piece in place. They stated the Landlord had to have removed the pieces prior to taking his photographs.

The Tenants argued the ceramic tiles were broken prior to their tenancy. They stated they pointed it out to the Landlords at the beginning of their tenancy and that they were told not to worry about it as the Landlords were aware of the cracked tiles.

The Tenants submitted the toe kick was damaged due to a dishwasher leak. They stated they informed the Landlord about the leak when they first noticed it. They also argued that had the dishwasher leak been significant or ongoing for a longer period of time water would have leaked down into the basement where the Landlords would have seen it as they lived directly below. The Tenants argued that was not the case as they informed the Landlord as soon as they noticed it. They noted the Landlord had all the toe kicks replaced; however, there was only evidence of one spot that was water damaged located beside the dishwasher.

The Tenants argued they had discussed with the Landlord what work and cleaning was required by them for the end of their tenancy. The Tenant read the Landlord's March 9, 2016 text message into evidence which included, in part, as follows:

> *As far as carpets… no need to clean… repairs need to be done to walls therefore no need to clean.*
>
> [Reproduced as written]

The Tenants asserted that based on the Landlord's instructions in the aforementioned text message they were not required to clean the carpets and should not have to pay for carpet cleaning which took place after the Landlord conducted renovations.

The Tenants acknowledged that several areas of the house had been painted just prior to the start of their tenancy. They asserted there was only minor damage caused to the walls when they pulled out their picture nails and from normal wear and tear resulting from their minor children playing in the house. They noted that the unit had not been painted during their five year tenancy so they should not be held responsible to repair and paint all of the walls.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the *Act;* Regulations; Policy Guidelines; relevant oral, documentary and photographic submissions; and on a balance of probabilities; I find pursuant to section 62(2) of the *Act* as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states that without limiting the general authority in section 62(3) [*director's authority*], 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 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

Tenants' application

The undisputed evidence was the parties reconciled the utilities at random intervals to proportion the Tenants' 70% of the natural gas and hydro utilities against 70% of the municipal utility bill. Notwithstanding the Landlords' submissions they had reconciled the utilities up to the end of 2015; in consideration that the Landlords claimed against 2015 municipal bills I favored the Tenants' submissions that they started a new spreadsheet after each time they reconciled the bills. Accordingly, I grant the Tenants' application as claimed for 3% of the utilities which was comprised of: $865.54 natural gas plus $724.94 hydro, for a total amount of **$1,590.48**, pursuant to section 67 of the *Act.*

A landlord and tenant together must inspect the condition of the rental unit and complete a condition inspection report form, in accordance with the Regulations, at move-in and move-out respectively, pursuant to sections 23 and 35 of the *Act*.

Section 14 of the Regulation provides that the condition inspection must be completed when the rental unit is empty of the tenant's possessions, unless the parties agree on another time.

If the landlord does not complete condition inspection report forms, in compliance with sections 23 and 35 of the *Act,* the right of the landlord to claim damages **against** the security and/or pet deposit is extinguished, pursuant to sections 24 and 36 of the *Act.*

Extinguishment does not prevent a landlord from filing a claim to seek monetary compensation for damages. Rather, the extinguishment clause means the landlord

cannot retain the deposits to offset or apply against the cost to repair damages. If a landlord extinguishes their right to claim against the security and/or pet deposit the landlord is required to return the deposits to the tenant in accordance with section 38(1) of the *Act.*

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

This tenancy ended July 22, 2016 and the Landlords received the Tenants' forwarding address in writing on July 21, 2016 and the Landlords did not file their application for dispute resolution until October 4, 2016.

The Landlords did not complete condition inspection report forms at move-in; therefore, the Landlords extinguished their right to claim against the $987.50 security deposit, pursuant to section 23 of the *Act.* As such the Landlords were required to return the security deposit to the Tenants no later than August 6, 2016, pursuant to section 38(1) of the *Act.*

Based on the above, I find the Landlords are now subject to section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the $987.50 deposit since August 1, 2014. Accordingly, I grant the Tenants' application for double their security deposit in the amount of **$1,975.00** (2 x $987.50), pursuant to section 67 of the *Act.*

The Tenants were successful with their application; therefore, I award recovery of their filing fee in the amount of **$100.00,** pursuant to section 72(1) of the *Act.*

As per the above, the Tenants have been awarded monetary compensation in the amount of **$3,665.48** ($1,590.48 + $1,975.00 + $100.00).

Landlords' application

Section 21 of the Regulations provides that In dispute resolution proceedings, 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.

Section 37(2) of the Act provides 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.

In regards to the Landlords' claim of $500.00 to repair the veneer edging of the cabinets I find the Landlords submitted insufficient evidence to prove the edges were damaged solely by the Tenants' misuse. I accept the evidence submitted by the Tenants which indicated the veneers were peeling off in October, an issue they reported as a design defect. In addition, the Landlords provided contradictory testimony regarding this claim, first stating the veneer pieces were only peeling off of the bottom cupboards due to the Tenants' children banging toys against them and then later changing their submission to agree with the Tenants that there was an upper veneer(s) piece that was also peeling off. Furthermore, the Landlords have not had the repairs completed in accordance with the quote; rather, they repaired the veneers themselves by gluing them back in place which confirms the issue is cosmetic. As such, I dismiss the $500.00 claim, without leave to reapply.

Regarding the claim for damaged ceramic tile, I find the Landlords provided contradictory testimony as they failed to acknowledge that there were damaged or cracked tiles in the unit prior to the start of the tenancy. It was not until the Tenants disputed the claim that the Landlords came forward and acknowledged there had been pre-existing damage. Accordingly, in absence of a properly completed condition inspection report form, and in the presence of the Tenants' disputed evidence, I find the Landlords submitted insufficient evidence to prove any of those tiles were damaged during the tenancy. Accordingly, the claim of $546.00 for ceramic tile replacement is dismissed, without leave to reapply.

In support of replacing the cabinet toe kicks in the entire kitchen the Landlords submitted one photograph displaying water damage to a small area on the toe kick beside the dishwasher. There was sufficient evidence to prove the Tenants informed the Landlords the dishwasher had begun to leak; however, there was insufficient evidence to prove the Tenants knew or ought to have known the dishwasher had been leaking prior to when they informed the Landlords of the required repairs. As such, in absence of a completed condition inspection report form or proof of other damage to the toe kicks, I find there was insufficient evidence to prove the Tenants breached the *Act* or caused the damaged to the toe kick pieces. As such, the Landlords' request for $420.00 is dismissed, without leave to reapply.

Policy Guideline 1 provides that generally a tenant is responsible for carpet cleaning at the end of their tenancy. However, in this case the undisputed evidence was the Landlords informed the Tenants on March 9, 2016 that there was no need for the Tenants to clean the carpets. I conclude the aforementioned text message released the Tenants of their responsibility to steam clean the carpets. Therefore, I find the Landlords failed to mitigate any future loss for carpet cleaning costs, as required pursuant to section 7 of the *Act*. Accordingly, I dismissed the request for $367.50 without leave to reapply.

Regarding the claim of $2,100.00 for repairs and painting of the walls and trim, Policy Guideline 1 provides that normal wear and tear or reasonable wear and tear means the reasonable use of the rental unit by the tenant and the ordinary operation of natural forces. An example of normal wear and tear would be gradual deterioration of the paint finish on a wall that would occur from reasonable washing or a minor deterioration of the finish on wood flooring caused by normal walking or cleaning.

From their own submissions the Tenants confirmed they left the rental unit with some damages to the walls and trim. A scratch, dent, or chip caused by something being dragged across a wall, or banged into or along a window ledge or frame is not considered normal wear and tear; as those actions are not the intended or reasonable use of the items. After consideration of the photographic evidence before me and the Landlords' submissions that the damage to the trim and walls was extensive; I do not accept the Tenants' submissions that the damage to the walls and trim were normal wear and tear for a family with children. Rather, I find there was sufficient evidence to prove the Tenants left the rental unit walls and trim damaged, in breach of section 37 of the *Act.*

Notwithstanding the Tenants' assertion that the unit had not been painted during their five year tenancy; I conclude the evidence supports the paint had not deteriorated through normal washing or normal use. Rather, as stated above, I found the evidence was sufficient to prove the walls and trim were damaged due to misuse, leaving chips and gouges in the surfaces which required them to be repaired and then painted to cover up the repairs.

Although Policy Guideline 40 provides that interior paint has a normal useful life of 4 years; that policy is not intended to say interior walls must be replaced or repainted every four years. Rather, it is a guideline to determine the depreciated value of paint in and of itself in specific circumstances. I do not find Policy Guideline 40 is relevant to the matters currently before me. I make this finding in part because when interior walls are well maintained and care is taken not to bang or gouge them, interior paint may last upwards of 15 years.

Based on the totality of the evidence before me, I find there was sufficient evidence to prove the Landlords' claim for repair and painting of trim and walls in the rental unit and I grant the claim in the amount of **$2,100.00**, pursuant to section 67 of the *Act.*

The undisputed evidence was the Landlords were to pay only 30% of the municipal utility bills and 70% was to be paid by the Tenants. As such I grant the application against the Tenants' portion of the municipal utilities, in the amount of **$1,321.44** (70% of $304.18 + $353.11 + $362.83 + $368.62 + $499.03), pursuant to section 67 of the *Act.*

The Landlords were partially successful with their application; therefore, I award recovery of their filing fee in the amount of **$100.00,** pursuant to section 72(1) of the *Act.*

As per the above, the Landlords have been awarded monetary compensation in the amount of **$3,521.44** ($2,100.00 + $1,321.44 + $100.00).

Monetary Order –These applications meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

Tenants' award	$3,665.48
LESS: Landlords' award	- 3,521.44
Offset amount due to the Tenants	**$ 144.04**

The Landlords are hereby ordered to pay the Tenants the offset amount of **$144.04** forthwith.

In the event the Landlords do not comply with the above Order, the Tenants have been issued a Monetary Order for **$144.04.** This Order must be served upon the Landlords and may be enforced through Small Claims Court.

Conclusion

The Tenants were successful with their application and were granted $3,665.48 which was offset against the $3,521.44 awarded to the Landlords. The Landlords were ordered to pay the Tenants the $144.04 offset amount forthwith.

This decision is final, legally binding, and 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: December 22, 2016

Residential Tenancy Branch