Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MND, MNR, MNSD, MNDC, FF

Introduction and Preliminary Matter

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on September 13, 2016 wherein the Landlord requested an Order of Possession based on a 2 Month Notice to End Tenancy for Landlord's Use, a Monetary Order for unpaid rent, damage to the rental unit and for money owed, authority to retain the Tenant's security deposit and recovery of the filing fee.

The parties confirmed that the Tenant had vacated the rental unit such that an Order of Possession was not required.

The hearing occurred by teleconference over two days, November 3, 2016 and December 21, 2016. Both parties called into the hearings and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for damage to the rental unit or compensation for loss under the *Residential Tenancy Agreement,* the Regulation or the tenancy agreement?

2. Should the Landlord be entitled to retain the Tenant's security deposit?

3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified as follows. The tenancy began May 1, 2015. Monthly rent was payable in the amount of $1,900.00 and the Tenant paid a security deposit in the amount of $1,000.00. The Landlord claimed that the Tenant only paid $300.00 of this amount having received the balance from sub-letters.

The Landlord testified that the Tenant signed a three month fixed term tenancy agreement on April of 2016 which was set to end of July 2016.

The Landlord stated that the Tenant misled her and told her that K.N., her agent, did not sign the tenancy agreement. The Landlord stated that she discovered that K.N. did in fact sign the contract.

The Landlord confirmed that she did not do a move in condition inspection report in April of 2016. She stated that her son did a move out inspection with the *previous* tenants on April 29, 2015 and that the condition of the rental unit at the end of the previous tenancy should be considered as satisfactory evidence of the condition of the rental at the start of the subject tenancy.

The Landlord confirmed that she completed the move out condition inspection report in August of 2016. A copy of that document was introduced in evidence. Notably, and although the Landlord stated she did not complete a move in condition inspection, the move out report also included notations as to the condition of the rental unit at the start of the tenancy. The Landlord confirmed that in fact she completed the move in portion of the report when she completed the move *out* condition inspection report in August of 2016.

In the within hearing the Landlord sought the following:

Replacement of gas stove knobs	$67.20
Replacement of refrigerator tray	$87.36
Repair of high energy blinds	$350.00
Amount to clean the patio	$134.40
Amount to repair and paint entrance door	$392.00
Carpet cleaning during tenancy (1/2 of $328.13)	*$164.07*
Carpet cleaning at the end of the tenancy	*$200.00*
Estimated cost of replacement of carpets	$773.36

Estimated cost to repair of living room blinds	$129.16
Replacement of broken screen	$31.26
General repairs to walls	$150.00
Garburator repair	$100.00
Replacement of keys	$139.16
TOTAL	$2,717.97

The Landlord claimed the Tenant broke the gas stove knobs requiring their replacement.

The Landlord testified that she had the carpets cleaned during the tenancy in the amount of $328.13. She stated that the previous renter (with whom the Tenant initially occupied the rental unit) paid one half of this cost such that the Landlord requested compensation for the balance.

The Landlord also testified that she paid $200.00 to have the carpets cleaned at the end of the tenancy. She stated that she was advised to replace the carpets due to their condition and was provided an estimate in the amount of $773.3 for such a replacement.

The Landlord also testified that the Tenant painted the entry way door which was contrary to the strata bylaws such that the front door required painting.

The Landlord testified that the garburator required repair as the Tenant damaged it when she put glass in it.

The Landlord testified that the above items were purchased at the following times:

- the carpets were six years old at the start of the tenancy;
- the blinds were four years old;
- the gas stove was six years old; and,
- the refrigerator was six years.

In reply to the Landlord's claims, the Tenant testified that the knobs on the gas stove were not broken. She stated that they came off the stove for cleaning purposes and that at all times they worked for her.

The Tenant testified that she broke the tray in the refrigerator but claimed this was simply wear and tear.

In response to the Landlord's claim regarding the blinds the Tenant claimed that the blinds were broken at the start of her tenancy in May of 2015.

The Tenant stated that the patio was the same as when she moved in and she stated that she did not think it was heavily stained, but that in any case she cleaned it when she moved out.

The Tenant stated that she did not paint the door during the tenancy and she claimed that it was in the same colour as when she moved in. In support she provided text message from the Landlord wherein the Landlord admits that the door was painted by the *previous* renters. Introduced at page 7 of the Tenant's evidence was a copy of a text message wherein the Landlord writes:

> "Ok, [J.] remembers door being painted before you moved in!! Gee Whizz"

The Tenant testified that the carpets were very dirty when she moved in in 2015. She stated that the Landlord agreed to clean the carpets when she "re-signed" in 2016 and that at no time did the Landlord request that she pay a portion of this cost. The Tenant also claimed that the Landlord deducted the full $328.00 from the previous renter's, A.P., damage deposit and that a portion of this was to pay the cost to clean the carpet. On page 8 of the Tenant's material she provided an email from A.P. confirming that $320.00 was withheld by the Landlord from A.P.'s security deposit for the cost of cleaning the carpets.

The Tenant also submitted digital evidence which included photos of the carpet and which showed the heavy staining on the carpet at the time she moved into the rental unit.

The Tenant conceded that she broke a window screen when she was cleaning and as such was agreeable to paying the Landlord the cost of $31.26 for the cost of the screen.

The Tenant stated that she was not willing to take responsibility for the alleged wall damage as she did not have an unreasonable number of photos, did not make more holes in the walls, and did not damage them. She also submitted a letter from her movers confirming they also did not damage the walls.

The Tenant stated that the garburator worked "perfectly fine" when she left and as such she was not willing to compensate the Landlord in this regard.

The Tenant further stated that she was not agreeable to paying for the keys as she stated that she returned her keys to the Landlord.

The Tenant completed her submissions by stating that the Landlord applied for dispute resolution in July, yet the tenancy did not end until August 31, 2016. She questioned the validity of the Landlord's claims when the tenancy had not yet ended.

The Tenant also noted that she was on the original lease.

The Tenant also stated that before all of this came out, the Landlord told her that she was an "excellent tenant" and that she would give her a good reference. In support the Tenant provided an email from the Landlord dated July 2, 2016 wherein the Landlord writes:

> "I am willing to give you a good reference as you have gone your utmost during your term of lease".

In reply, the Landlord stated that the rental unit is a high end condo and she would not have been able to rent the unit for $1,900.00 if, at the start of the tenancy, it was in the condition the Tenant alleges. She stated that it was in "immaculate condition" at the start of the tenancy.

The Landlord also stated that she had a representative, G.N., who was able to dispute everything the Tenant said but he was not available to call into the hearing as he was in Mexico.

The Landlord further stated that she returned $1,300.00 to A.P. as his portion of the security deposit, and retained $300.00 which was the Tenant's portion of the security deposit. She confirmed that "in retrospect" she should not have returned these sums considering the damage but felt she had no choice as A.P. and the Tenant were fighting and A.P. was sending her threatening emails.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the Act provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined section 37 of the *Act* as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove their claim.

Based on the evidence before me, the testimony of the parties and on a balance of probabilities, I find as follows.

The Landlord claimed the stove knobs required replacement. The Tenant disputed this claim and testified that they were not damaged; rather they were removable for cleaning. The photo submitted by the Landlord shows the knobs as missing. As the knobs are necessary for starting and regulating the temperature of the gas elements, presumably they were present during the tenancy and somehow went missing at the end of the tenancy. I find it likely that during cleaning of the stove these knobs went missing and I therefore award the Landlord compensation in the amount of **$67.20** for the cost to replace these knobs.

The Tenant admitted that she broke the refrigerator tray but claimed this was “normal wear and tear”.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets. Accordingly, I find the Tenant is responsible for paying the cost to replace the broken refrigerator tray and I award the Landlord the **$87.36** claimed.

The Landlord claimed $350.00 to repair what she described as “high energy blinds” in the rental unit. The Tenant alleges the blinds were broken at the beginning of the tenancy. Without a move in condition inspection report confirming the condition of the rental unit at the start of the tenancy I find the Landlord has failed to prove the Tenant damaged the blinds.

The Landlord submits that the move out condition report prepared at the end of the *previous* tenancy should be used as conclusive evidence of the condition of the rental unit at the start of the subsequent tenancy. I disagree. While this report may provide evidence of the condition of the rental at the end of that tenancy, it is not conclusive evidence of the condition of the rental at the start of the subject tenancy. Much can occur between the end of one tenancy and the beginning of another. It is for this reason the *Act* and Regulations put such emphasis on the importance of conducting both incoming and outgoing condition inspection reports.

The Landlord claims compensation for the cost to clean the patio. The Tenant testified that she cleaned the patio when she moved out, but also claims the patio was in the same condition as when she moved in. I am unable, based on the evidence before me, to find that the Tenant failed to clean the patio. Accordingly, I dismiss the Landlord’s claim for related compensation.

I find, based on the text message introduced in evidence by the Tenant that the Tenant did not paint the entrance door; consequently, I dismiss the Landlord’s claim for related compensation.

Based on the evidence before me, it appears as though the Landlord was already compensated, by way of retaining a previous tenant’ security deposit, for the cost of cleaning the carpets during the tenancy. Further, I accept the Tenant’s evidence that the Landlord agreed to attend to this cleaning during the tenancy due to the heavy staining of the carpets. For these reasons, I dismiss the Landlord’s claim for compensation for the cost to clean the carpets during the tenancy.

A tenant is required to clean the carpets at the end of a tenancy of more than one year. I am satisfied, based on the evidence before me, that the Tenant failed to attend to this

and I therefore award the Landlord the **$200.00** claimed for the estimated cost to clean the carpets at the end of the tenancy.

The Landlord testified that the carpets were in such poor condition at the end of the tenancy that they required replacement. She also testified that the carpets were six years old at the start of the tenancy. As the tenancy ended the next year, the carpets were seven years old at the end of the tenancy.

Residential Tenancy Policy Guideline 40—Useful Life of Building Elements provides that,

> "if the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement."

Policy Guideline 40 further provides that carpets have a useful life of 10 years. Accordingly, the carpets were nearing the end of their useful life at the end of this tenancy. Further, to award her the full cost of replacing the carpets with new carpets would result in a windfall to her. As the carpets had three years left of their useful lie, according to the above, the most the Landlord is entitled to is $232.01, which is 30% of the full amount claimed.

The parties agreed the Landlord paid to clean the carpets during the tenancy. This suggests to me that she was aware the carpets were in poor condition. As the Landlord failed to perform a move in condition inspection report with this Tenant, it is difficult to ascertain what amount of damage was caused by this Tenant or the previous tenants and therefore I award her the nominal sum of $100.00 for the estimated cost to replace the carpets.

The Tenant alleges the blinds were damaged at the start of her tenancy. Again, without a move in condition inspection report, or other evidence of the condition of the rental unit at the start of the tenancy, such as photos, I am unable to prefer the evidence of either party. For the same reasons that I dismissed the Landlord's claim for the cost to repair the "high energy blinds", I dismiss her claim for the estimated cost of repairing the living room blinds.

The Tenant admitted she broke a window screen when she was cleaning the rental unit, accordingly I award the Landlord the **$31.26** claimed.

The Landlord also claimed the sum of $150.00 for “general repair to walls”. The estimate for repairs and painting submitted in evidence by the Landlord indicated the cost to repair and paint the rental unit (excluding the closets and front door) was $2,300.00. The estimate indicates this includes repairing wall damage and removing nails and repairing nail holes in the wall. How the Landlord came to the figure of $150.00 is unclear to me.

Residential Tenancy Policy Guideline 1--Landlord & Tenant – Responsibility for Residential Premises provides the following guidance with respect to nail holes:

> Nail Holes:
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> 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
> 2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
> 3. The tenant is responsible for all deliberate or negligent damage to the walls.

I was not provided any evidence as to whether the Landlord provided “reasonable instructions” as provided for above, or whether there were an *excessive* number of nail holes. The Landlord submitted in evidence a photo of damaged wall corner. The Tenant denies damaging this corner and submitted a letter from her movers confirming they also did not cause such damage; she did not, however, suggest this damage pre-existed her tenancy. Accordingly, I find it likely that the wall was damaged at during the tenancy and I award the Landlord the nominal sum of **$50.00** for the cost to repair this damage.

The Landlord also sought compensation for the cost to repair the garburator as she claims glass was found inside it. The move out condition inspection report specifically notes glass was found inside the garburator. The Tenant testified it “worked perfectly fine at the end of the tenancy”. I find it more likely the garburator worked during the tenancy and was later damaged as presumably the Tenant would have informed the Landlord it did not work if that was the case at the start of the tenancy. Accordingly, I award the Landlord the **$100.00** claimed.

The Landlord claimed $139.16 for the cost to replace keys to the rental unit. The Tenant testified that she returned the keys to the Landlord. The move out condition inspection report confirms that the Tenant returned the same number of keys and remote controls

as provided at the start of the tenancy. Accordingly, the Landlord's claim for compensation in this regard is dismissed.

In sum, I award the Landlord **$535.82** in compensation for the following:

Replacement of gas stove knobs	$67.20
Replacement of refrigerator tray	$87.36
Carpet cleaning at the end of the tenancy	$200.00
Replacement of broken screen	$31.26
Cost to repair damage to wall corner	$50.00
Garburator repair	$100.00
TOTAL	$535.82

The Landlord seeks authority to retain the Tenant's $300.00 security deposit towards the amounts awarded.

Section 38 of the *Residential Tenancy Act* provides as follows:

> **Return of security deposit and pet damage deposit**
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> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
>
> (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
>
> (a) the director has previously ordered the tenant to pay to the landlord, and
>
> (b) at the end of the tenancy remains unpaid.
>
> (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

> (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
>
> (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
>
> (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
>
> (6) If a landlord does not comply with subsection (1), the landlord
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> (a) may not make a claim against the security deposit or any pet damage deposit, and
>
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

By failing to perform an incoming condition inspection reports in accordance with the *Act*, the Landlord extinguished her right to claim against the security deposit for damages, pursuant to section 24(2) of the *Act*. Accordingly, the Landlord had only one option pursuant to section 38(1), and that was to return the $300.00 to the Tenant.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **$600.00**, comprised of double the security deposit (2 x $300.00).

As the Landlord has only been partially successful, I deny her request to recover the filing fee.

The amounts awarded to each party are to be offset against the other such that the Landlord is to pay the Tenant the difference of **$64.18** ($600.00 - $535.82).

Conclusion

The Landlord has been partially successful with her claims and is awarded the sum of $535.82. As the Landlord failed to conduct a move in condition inspection report, she extinguished her right to claim against the security deposit for damage. Accordingly, the Tenant is entitled to $600.00 representing double the security deposit she paid.

The amounts are offset against the other such that the Tenant is given a formal Monetary Order in the amount of **$64.18.** The Tenant must serve the Monetary Order on the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the 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: January 19, 2017

Residential Tenancy Branch