



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?
Is either party entitled to the security deposit?

Background and Evidence

The tenancy began on May 15, 2013. Rent in the amount of \$2,400.00 was payable on the first of each month. A security deposit of \$1,200.00 was paid by the tenant. The tenancy ended on May 31, 2016.

Landlord's application

The landlord claims as follows:

| | | |
|----|------------------------------------------------------------------------------|--------------------|
| a. | BG Custom builders | \$ 2,931.35 |
| b. | Carpets | \$ 1,432.69 |
| c. | Smoke Damage bathroom | \$ 160.04 |
| d. | Replace light bulbs, electrical covers, thermostat and replace puck lighting | \$ 102.84 |
| e. | Refrigerator drawer Curtain, keys | \$ 231.89 |
| f. | Maid service | \$ 263.00 |
| g. | Transfer station fee – dump fee | \$ 56.00 |
| h. | Paint (northshore & rona) | \$ 84.31 |
| i. | Compensation for landlord's labour | \$ 2,960.00 |
| j. | Loss of revenue for June | \$ 1,000.00 |
| k. | Filing fee | \$ 100.00 |
| | Total claimed | \$ 9,322.12 |

BG Custom builders

The landlord testified that they had to hire a contractor to oversee and make repairs to the rental unit that was damaged by the tenant. The landlord stated that the repairs consist of the following: Replace and repair two broken doors, have the wood floors refinished, replace broken tiles, replace the smoke detector and remove a toilet which was infested with ants. The landlord seeks to recover the amount of \$2,931.35. Filed in evidence is an invoice for the above repairs.

The landlord testified that there was a hole in the main bathroom door. The landlord stated that the hole was not there when the tenancy started. The landlord stated that they were unable to repair the door and the door had to be replaced. Filed in evidence is a photograph of the door which supports the landlord's position.

The landlord testified that the second door that was broken was a beautiful stain glass door. The landlord stated that the glass had two cracks which were repaired; however, one main panel was broken and had to be replaced. Filed in evidence is a photograph which supports the landlord's claim.

The landlord testified that there were cracked and smashed tiles in the main bathroom floor. The landlord testified that they had to replace the broken tiles.

The landlord testified that the tenant was given permission to have two small dogs; however, they had two large dogs. The landlord stated the dogs caused scratches to the hardwood floors that were installed in 2006. The landlord stated that the hardwood floor was also stained by what appeared to be oil which seeped into the wood. The landlord stated that the wood smelled horrible. The landlord stated that because of the scratches, stains and smells the hardwood floors needed to be refinished and sealed.

The landlord testified that the smoke detector outside the master bedroom was removed and missing. The landlord stated that this was likely done due to the tenant smoking in the bathroom.

The landlord testified that they found a large ant's nest under the toilet, which the toilet had to be removed. The landlord stated the ants nest must have had a continuous food source from the tenant to be so large and the tenant must have been aware of the nest.

The tenant testified that they did not use the main bathroom as it was used by their two sons.

The tenant testified that they did not pack their belongings in the room where the stain glass door was located and does not know the condition it was left in.

The tenant testified that the landlord also had a dog prior to them moving into the rental premises and their dog had scratched the floor by the front door which they should not be blamed for those scratches. The tenant stated that their dogs might have scratched the flooring with their nails.

The tenant testified that they did not remove the smoke detector; however, it is possible that their late husband did.

The tenant testified that they did not know there was an ant's nest underneath the toilet.

Carpet

The landlord testified that the tenant had the carpets cleaned; however, they were heavily stained and the odour was horrible. The landlord stated that even the receipt provided by the tenant from the carpet cleaners, which they write the following,

“-Pet stains in living room/odour –heavy soling – stair, bedroom, hall. No guarantee ... stain removed”

[Reproduced as written]

The landlord testified that they rented an ozonator to try and remove the smell of urine; however, that was not successful. The landlord seeks to recover the rental cost in the amount of \$55.13.

The landlord testified that the tenant's dogs urinated on the carpets and the urine was so bad that it went through the carpet, underlay and into the subfloor. The landlord stated the carpet was new in 2008. The landlord stated as a result of the damage the carpet had to remove and the subfloor had to be painted with a special sealer. The landlord seeks to recover the cost of the sealer in the amount of \$28.31 and the cost of the carpet in the amount of \$1,349.25 for the total amount of \$1,432.69.

The landlord testified that also seek compensation for their time and labour as set out in in the labour costs.

The tenant testified that the carpets were not cleaned when they moved in. The tenant stated that the landlord had their own dog. The tenant does not deny their dogs have a couple of accidents.

The landlord responded that they did have a dog; however, the dog never had any accidents on the carpet.

Smoke damage – master bathroom

The landlord testified that there was to be no smoking in the premises. The landlord stated that someone had been smoking in the master bathroom and the smell of cigarette smoke was overwhelming.

The landlord testified that they rented an ozonator as it was supposed to help remove the smell; however, it only worked for a short period and smell of cigarettes would come back. The landlord testified that their partner painted the bathroom; however, the

nicotine on the walls bled through the paint and as a result they had to purchase a special sealer to cover the nicotine and then reapply the paint. The landlord seeks to recover their cost for the paint and ozonator in the amount of \$104.93.

The landlord testified that they had to spend a considerable amount of time to remove, clean and reinstall the bathroom fan as it was covered in nicotine and tar. The landlord stated that they further seek compensation for their labour for painting and cleaning the smoke damage bathroom as set out in the landlord's labour cost.

The tenant testified that they have no sense of smell. The tenant stated that their late husband did smoke and it was possible that they were smoking in the bathroom.

Repair light and missing electrical plates and thermostat

The landlord testified that the puck lighting was damaged as the tenant used the wrong wattage bulbs and the fixture clearly indicates the maximum wattage.

The landlord testified that there were missing electrical plates, one missing thermostat and various light bulbs were burnt out. The landlord stated that they had to purchase and install the plates and bulbs. The landlord seeks to recover materials in the amount of \$102.84.

The landlord testified that they seek to recover the hours for the above work as listed in their labour spreadsheet.

The tenant testified that they had not notice the wrong bulbs were used in the puck lighting, causing damage to the fixture.

The tenant testified that their son had done some painting and took off the wall plates and thermostat.

Maid services

The landlord testified that they hired a maid service to help clean the rental unit as it was left extremely dirty, which included the appliances. The landlord stated that they seek to recover the amount they paid for cleaning services in the amount of \$263.84. Filed in evidence are transaction receipts.

The tenant testified that they hired their own cleaner and denies the rental unit was left unreasonable clean.

Transfer station fee – dump fee

The landlord testified that the tenant left furniture and garbage inside and outside that required to be taken to the transfer station and disposed of. The landlord seeks to recover the cost of disposal in the amount of \$56.00. Filed in evidence are photographs of items left behind. Filed in evidence is a receipt.

The tenant testified that the boxer gloves in the photographs are theirs. The tenant stated that they were items left behind when they took possession of the property and they should not be responsible for the full cost.

Paint

The landlord testified that they had to purchase paint to paint the main bathroom as there was a stain in the wall above the light fixture and the new door had to be painted. The landlord stated the front door was also scratched by the tenant's dog which they had to paint. The landlord seeks to recover the cost of paint in the amount of \$84.31. Filed in evidence are two receipts.

The landlord stated that they further seek compensation for their labour for painting as set out in the landlord's labour cost.

The tenant testified that they did not go into the main bathroom. The tenant stated that the front door was scratched when they moved in.

Labour costs for cleaning and repair

The landlord testified that the tenant left the rental unit dirty. The walls around the light fixtures were dirty, all the fixtures and appliances needed a deep clean, behind the toilets were filthy, the kitchen cabinet baseboard need to be removed and cleaned and the seals in the refrigerator were covered in food.

The landlord stated that they seek compensation for their labour as set out in the landlord's labour cost.

The tenant testified that they had a professional cleaner clean the rental unit and deny it was left dirty.

Loss of revenue

The landlord testified that due to the condition the tenant left the rental unit, they had to delay the tenancy of the new renter by ten day as they were to move into the premises on June 15, 2016; however, that was delay until June 25, 2016. The landlord seeks compensation for loss of revenue in the amount of \$1,000.00. Filed in evidence is a letter from the new renter to support the landlord's position.

The tenant did not provide a response.

The tenant's application

The tenant claims as follows:

| | | |
|----|---------------------------------|-------------------|
| a. | Return of security deposit | \$1,200.00 |
| b. | Half of carpet cleaning invoice | \$ 153.09 |
| c. | Filing fee | \$ 100.00 |
| | Total claimed | \$1,453.09 |

The tenant indicated that the landlord was given their forwarding address on or about May 25, 2016. The tenant stated the landlord did not return their security deposit within 15 days.

The tenant testified that the landlord original agreed to pay half the carpet cleaning invoice.

The landlord acknowledged that they received the tenant's forwarding address as indicated by the tenant. The landlord stated that they did tell the tenant that they would pay half of the carpet invoice; however, they were expecting the carpets to be clean and not damaged with animal urine.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or 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 each party has the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant 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.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord(s) reasonably clean and undamaged, except for reasonable 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.

Section 38(1) of the Act states, within 15 days after the later of (a) the date the tenancy ends, and (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: (c) repay, (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act states if a landlord does not comply with subsection (1), the landlord (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.

Landlord's application

BG Custom builders

I accept the evidence of the landlord that the main bathroom door was broken by the tenant. I find it unlikely and unreasonable that the tenant did not use or go into the bathroom the entire tenancy. I find the tenant breached the Act when they failed to repair the bathroom door and this caused losses to the landlord.

I accept the evidence of the landlord that there were cracked and broken tiles in main bathroom floor. I find it unlikely and unreasonable that the tenant did not use or go into the bathroom the entire tenancy. I find the tenant breached the Act when they failed to repair the cracked tiles and this caused losses to the landlord.

I accept the evidence of the landlord that the stain glass door was broken by the tenant. The evidence of the tenant was that they did not know the condition of the door at the end of the tenancy. I find the tenant breached the Act when they failed to repair the stain glass door and this caused losses to the landlord.

I accept the evidence of the landlord that the smoke detector was removed. The evidence of the tenant was that it was possibly removed by their late husband. I find the tenant breached the Act, when they failed to replace the smoke detector and this caused losses to the landlord.

The landlord seeks to recover the cost to refinish the wood floor due to damages. The evidence of the tenant was that there were scratches in the wood floor when the tenancy commenced. The tenant stated that their dogs might have scratched the flooring. I am not satisfied that the tenant is responsible for the cost of refinishing the floors. The landlord provided no evidence of the condition of the wood floors at the start of the tenancy, such as a move-in condition inspection or photographs for me determine if the damage was caused by the tenant. I find the landlord has failed to provide sufficient evidence to support this portion of their claim. Therefore, I dismiss this portion of their claim.

In this case, an ants nest was discovered underneath the toilet, while I do not accept the tenant was not aware of an ant problem, I find pest control is the responsibility of the landlord. Therefore, I decline toward the landlord the 2.5 hours it took to remove the toilet.

Therefore based on the above, I grant the landlord the amount of **\$1,238.22**. (This amount was calculated based on the receipt submitted as evidence \$2,931.35 less the flooring of \$1,450.00, labour of \$162.50 and GST on these items).

Carpet

I accept the landlord version that the tenant caused damage to the carpet by animal urine. This is support by the receipt of the tenant's which indicate the carpet was heavy soiled with pets stains. I find the tenant breached the Act when they failed to repair the damage to the carpet at the end of the tenancy.

The carpet was approximately eight years at the time of their replacement. Under the Residential Policy Guideline #40, if the tenant damaged an item, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement.

As, I have determined that the carpet had a useful life span of ten years, and the carpet was eight years old, the landlord is entitled to the depreciated value of 20 percent. The evidence of the landlord was that the cost replacement of the carpet was \$1,349.25. Therefore, I find the landlord is entitled to compensation for the cost of replacing the carpet in the depreciated amount of **\$269.85**.

In this case, the landlord rented an ozonator to remove the smell of urine from the premises; however, that was not successful. I find the landlord is entitled to recover the cost of the rental in the amount of **\$55.13**.

Smoke damage – master bathroom

The tenancy agreement supports there was no smoking allowed in the rental premises. The tenant does not deny that their late husband was smoking in the master bathroom and does not have a sense a smell. I find the tenant breached the Act by allowing smoking in the rental unit. I find the tenant is responsible for the cost to restore the bathroom to its original condition.

I accept that the master bathroom required to be painted to cover the smell and seal in the nicotine and tar that was not removable from the walls. I find the landlord is entitled to recover the cost of the sealer and paint in the total amount of **\$104.93**.

The landlord rented an ozonator in the attempt to remove the smell of cigarette smoke; however, that was not successful. I find the landlord is entitled to recover the cost of the rental in the amount of **\$55.13**.

Repair light and missing electrical plates and thermostat

The evidence of the landlord was that there were missing electrical plates and one thermostat. The evidence of the landlord was that the wrong wattage bulbs were used in the puck lighting causing damage. The tenant does not deny that electric plates were removed or that they used the wrong wattage of light bulbs. I find the tenant breached the Act, when they failed to replace the items they removed or damaged. Therefore, I

find the landlord is entitled to recover the amount for materials in the amount of **\$102.84.**

Refrigerator draw, Curtain, keys

Neither party provided any testimony on these matters at the hearing as the onus is on the landlord to prove their claim; I find the landlord has failed to meet the burden of proof. Therefore, I dismiss this portion of their claim.

Paint

As I have found the tenant is responsible for the damaged door which had to be replaced, I find the tenant is responsible for the painting of the door. Therefore, I find the landlord is entitled to recover the cost of the paint in the amount of **\$30.22.**

However, I am not satisfied that the tenant is responsible for the stain on the wall in the bathroom or the scratches to the front door. The landlord provided no move-in condition inspection report or photographic evidence of the wall or the door for my review or consideration. Therefore, I dismiss this portion of the claim.

Maid services

In this case both parties have provided a different version of event to the cleanliness of the rental premises. I find the landlord has not met the burden of proof. The landlord provided no documentary evidence of the items said to be cleaned by the maid service. Further, the transactions receipts provide no details, such as address of where the service was provided or the details of work completed. Therefore, I dismiss this portion of the claim due to insufficient evidence.

Transfer station fee – dump fee

In this case both parties have provided a different version of items left behind by the tenant. The evidence of the tenant was that not all the items were theirs, as some were there at the start of the tenancy. As a move-in condition inspection report was not completed, I find I cannot determine if all the items belonged to the tenant. Therefore, I find it reasonable for the parties to equally share the transfer station fee. Therefore, I grant the landlord the amount of **\$28.00.**

Landlord's labour

I have review the timesheets provided by both BM and KM., I find the hourly rate of \$40.00 to be unreasonably high; therefore all hours awarded with be at the rate of \$20.00 per hour.

In this case, BH is claiming the total amount 22 hours, which is for removing and cleaning the master bedroom fan damage by cigarette smoke, picking up and returning the ozonator on two occasions, painting the master bathroom for smoke damage, replacing the electrical plates and meeting the carpet installer and painting the subfloor.

As I have found the tenant breached the Act, when they failed to repair these items, I find the landlord is entitled to recover their labour. However, I am not satisfied the tenant is responsible for cost relating to realigning the garage door as this simply could be reasonable wear and tear under normal use. Therefore, I find it appropriate to grant the landlord the amount of 20 hours at the rate of \$20.00 for a total amount of **\$400.00**.

In this case, KH is claiming the total amount 52 hours, which is for cleaning, removal of and disposal of belonging, painting, consulting with contractors and other items.

In support of cleaning the landlord provided 10 photographs, which show cigarette butts outside, dog feces in the garden, fingerprints on two light plates and a very small portion of tile that appears dirty. I find the photographs do not support that the entire rental unit was left dirty or the hours of worked claimed. I find based on the photographs that it would take no more than three hours to clean these items. Therefore, I find it appropriate to grant the landlord for cleaning the amount of **\$60.00**.

As I was not satisfied that the tenant was responsible for all items left behind which had to be removed, I find it appropriate that the landlord be entitled to labour at .5 hours for the total amount of **\$10.00**.

I am satisfied that KH is entitled to recover their labour for painting the master bathroom, painting the main bathroom door and painting the wall behind the TV in the living room for a total amount of eight hours for the total amount of **\$160.00**.

I am satisfied that KH is entitled to recover their time for purchasing items, such as light bulbs and electrical plates that were missing and to meet with the carpet sales people, I find three hours to be reasonable in the total amount of **\$60.00**.

I do not find the landlord is entitled to compensation for identify damage as that is their duty as a landlord. They are responsible to conducted inspections, such as the move-in

and move-out condition inspection which identifies the stated of the condition of the premises at the start and end of the tenancy.

I have considered all items in the timesheet and any items not referred to in this decision are dismissed due to insufficient evidence.

Loss of revenue

The evidence of the landlord was that the new renters could not move in June 15, 2016, on due to the condition of the rental unit. As I found the tenant was responsible for the damage carpet, the damage doors and smoke damage bathroom, I find that these items had to removed or fixed prior to the next tenancy commencing. I find the tenant is responsible for loss of revenue for ten days.

In this case the landlord is seeking \$1,000.00; however, I do not know how they arrived at the amount claimed. I find based on the rent payable by the tenant that the daily rent is \$80.00. Therefore, I grant the landlord ten days of loss revenue at the daily rate of \$80.00 for the total amount of **\$800.00**.

I find that the landlord has established a total monetary claim of **\$3,474.32** comprised of the above described amounts and the \$100.00 fee paid for this application.

Tenant's application

In this case, both parties agreed that the landlord had the tenant's forwarding address on or about May 25, 2016. The landlord had 15 days after the forwarding address was given or the end of the tenancy, which was May 31, 2016, which ever was the later to either return the security deposit or make a claim against the deposit.

I find the landlord had until June 15, 2016, to return of security deposit or make an application claiming against the deposit. The landlord did not return the deposit and filed claiming against the security deposit on November 21, 2016, which is outside the statutory time limited set-out in the Act.

I find the landlord breached section 38 of the Act. Therefore, I find the landlord must pay the tenant double the security deposit pursuant to section 38(6) of the Act. The legislation does not provide any flexibility on this issue.

Therefore, I find the tenant is entitled to a monetary order for the return of double the security deposit in the amount of **\$2,400.00**.

I find that the tenant has established a total monetary claim of **\$2,500.00** comprised of the above described amount and the \$100.00 fee paid for this application.

As I have granted both parties a monetary award, I find it appropriate to offset the amounts. As the tenant was granted a monetary award of **\$2,500.00** that amount will be reduced from the landlord's monetary award of **\$3,374.32** leaving a balance due by the tenant of **\$874.32**

I grant the landlord a formal order under section 67 for the balance due of **\$874.32**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

Both parties were granted a monetary award. Their respective awards were offset leaving a balance owed by the tenant. The landlord was granted a formal monetary order for the balance due.

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 11, 2017

Residential Tenancy Branch