



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlords applied for a monetary order for damage to the unit, site or property, to retain the tenants' security deposit and pet damage deposit, and to recover the cost of the filing fee.

Landlord B.K. and the tenants attended the start of the teleconference hearing and gave affirmed testimony on August 30, 2016. The parties were given the opportunity to ask questions about the hearing process. After 68 minutes, the hearing was adjourned to allow additional time to hear further evidence from the parties. An Interim Decision dated August 31, 2016 was issued which should be read in conjunction with this decision.

On March 7, 2017, the parties reconvened and after an additional 71 minutes, the hearing concluded. On March 7, 2017, both landlords and tenant G.N. attended the reconvened portion of the hearing. A summary of the testimony and documentary evidence presented is provided below and includes only that which is relevant to the matters before me.

Neither party raised any concerns regarding the service of documentary evidence.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on June 1, 2009 and reverted to a month to month tenancy after May 31, 2010. The parties agreed that the tenants vacated the rental unit on January 1, 2016.

Monthly rent in the amount of \$1,850.00 was due on the first day of each month. The tenants paid a \$900.00 security deposit and a \$1,800.00 pet damage deposit at the start of the tenancy, which the landlords continue to hold.

The landlords' monetary claim as submitted in the Application was for \$2,700.00 although the monetary order worksheet submitted by the landlords indicates \$4,250.00. Due to an adding error, the actual total of the items listed by the landlords on their monetary order worksheet total \$4,255.93 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Carpet replacement	\$2,016.00
2. Blinds cleaning	\$395.28
3. Bathroom mirror reframing	\$344.65
4. Kitchen cabinet repair	\$750.00
5. Door repair and trim replacement	\$200.00
6. Cleaning	\$300.00
7. Garburator	\$250.00
TOTAL	\$4,255.93

I find that due to the landlords failing to properly amend their Application from \$2,700.00 to \$4,255.93 as required by Rule 4 of the Residential Tenancy Branch Rules of Procedure that the landlords' monetary claim will be limited to a maximum possible amount of \$2,700.00 as originally claimed.

Settlement Agreement

During the hearing, the parties agreed on a settlement agreement regarding one of the items being claimed by the landlord. As a result, the corresponding item number will not be included in the analysis section of this decision as all matters which form part of the settlement agreement were voluntarily agreed upon by the parties, pursuant to section 63 of the *Act*, and the parties were made aware that their mutual agreement forms a

final and binding agreement between the parties as mutually resolved matters related to this tenancy.

Settlement Agreement Item Number	Agreed upon compensation to landlords by tenants
Item 5 – Door repair and trim replacement	\$150.00
TOTAL	\$150.00

Evidence Regarding Remaining Items

Firstly, there was no written incoming condition inspection report submitted that complied with sections 23(4) and 23(5) of the *Act*. The landlord referred to an “additional note” listed on the tenancy agreement regarding stains on the carpet as the condition inspection report which I advised the parties did not comply with the *Act* or regulation.

Although an outgoing condition inspection report was submitted by the landlords, the tenants indicated that a move-out inspection was scheduled for January 3, 2016 at 11:00 a.m. and that when they met the landlord the landlord did not want to proceed with the inspection and as a result it was not completed at that time. The landlord stated that later that day, he returned and completed the inspection without the tenants. The validity of the outgoing condition inspection will be addressed later in this decision.

Item 1

Regarding item 1, the landlords have claimed \$2,016.00 for the cost of carpet replacement which was dismissed in full during the hearing as the male landlord confirmed that the age of the carpets at the end of the tenancy was 10 years old. The landlord was advised that according to Residential Tenancy Branch Policy Guideline 40 – Useful Life of Building Elements (the “Policy Guideline 40”), carpets have a 10 year useful life and as a result, the landlords’ claim would be reduced by 100% due to depreciation of 10% per year for a total of 100% depreciation. Therefore, I find that item 1 does not need to be considered further.

Item 2

Regarding item 2, the landlords have claimed \$395.28 for the cost of blind cleaning. The landlords submitted a quote from a blind cleaning company in the amount of \$395.28 in support of this portion of the claim and the blinds are indicated as having food and drink spots and bent slats on them. The tenants affirmed that they cleaned the blinds but did

not submit documentary evidence such as photos in support that they cleaned the blinds. The landlords referred to photographic evidence which the male landlord indicated showed dirty blinds at the end of the tenancy.

Item 3

Regarding item 3, the landlords have claimed \$344.65 for the cost to reframe the bathroom mirror. The landlords confirmed that the mirror was not broken but that the frame was damaged beyond normal wear and tear. The tenants stated that the paint was fading but that the frame of the mirror was nothing more than normal wear and tear on the mirror frame which was eleven years old. The landlords referred to a small photo submitted in evidence that showed the lower portion of the mirror frame but not the upper portion of the mirror frame to compare the lower portion of the frame to. The male landlord testified that the large mirror would not fit in the vehicle and that the landlord paid \$180.00 for two smaller mirrors instead; however no receipts or invoices were submitted in support of this portion of the landlords' claim.

Item 4

Regarding item 4, the landlords have claimed \$750.00 for a kitchen cabinet repair. The landlords submitted an estimate which indicates \$750.00 dated January 8, 2016 from a cabinet company and listed the work involved and that the amount was "10 X 75 \$ 750". The landlords referred to a small blurry photo. The tenants stated that prior flooding had occurred in the rental unit in 2014 at no fault of their own.

Item 6

Regarding item 6, the landlords have claimed \$300.00 for 10 hours at \$30.00 per hour for the time the landlords spent to clean the rental unit after the tenants vacated. The tenants would only agree to not cleaning under the fridge and stove but could not agree on the time involved to clean under the fridge and stove. The landlords referred to the one photo showing what the landlords claim showed dirty blinds. In addition, the landlords referred to photos showing dust inside of the gas fireplace unit.

Item 7

Regarding item 7, the landlords have claimed \$250.00 for the cost of replacing the rental unit garburator. The landlords stated that while no receipts were submitted a printout from the internet was submitted showing a garburator in the amount of \$238.00. The male landlord testified that the total cost with taxes included was actually \$180.00.

The landlords testified that there were loose pieces inside the garburator which sounded “noisy”. The tenants deny that they damaged the garburator and that it made noise throughout the tenancy and that perhaps during the renovation to the rental unit, some pieces accidentally were dropped in the garburator by workers. The landlords stated that the garburator was the second one and not the original garburator when they purchased the condo in 2005.

Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

Firstly, regarding the outgoing condition inspection report, I find the landlords failed to comply with section 35 of the *Act* which states:

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) **on another mutually agreed day.**

(2) **The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.**

(3) **The landlord must complete a condition inspection report in accordance with the regulations.**

(4) **Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.**

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) **the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or**

(b) **the tenant has abandoned the rental unit.**

[My emphasis added]

I find that once the January 3, 2016 outgoing condition inspection was scheduled at 11:00 a.m. the landlords and tenants had to have completed the inspection as both parties were present and no other time was scheduled between the parties. Therefore, I find the landlord made the outgoing condition inspection invalid when he made the decision not to complete the condition inspection report with the tenant and instead returned later that day and completed the outgoing inspection without the tenants present. Further, I find that sections 35(a) and 35(b) of the *Act* did not apply based on the evidence before me. Therefore, I afford no weight to the outgoing condition inspection as the landlords failed to comply with section 35(1)(b) of the *Act*.

Item 1 – As described above, as there is no dispute that the rental unit carpets were ten years old by the end of the tenancy and pursuant to Policy Guideline 40 which indicates that the useful life of carpets is ten years, I dismiss this portion of the landlords' claim without leave to reapply as I find the rental unit carpets have reached their useful life and would be 100% depreciated as a result.

Item 2 – After carefully considering the evidence before me, I find the photographic evidence supports that the rental unit blinds were dirty at the end of the tenancy and that the tenants breached section 37(2)(a) of the *Act* as a result. Section 37(2) of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

(a) **leave the rental unit reasonably clean**, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[Reproduced as written]

Given the above and having considered the quote provided in evidence, I find the landlords have met the burden of proof and are entitled to **\$395.28** as claimed for this portion of their monetary claim.

Item 3 - Although the landlords have claimed \$344.65 for the cost to reframe the bathroom mirror, after carefully considering the evidence before me, I am not satisfied that the landlords have met the burden of proof for this portion of their claim. Firstly, by

not including a picture of the top of the frame, the landlords failed to provide something for me to compare the portion of the frame that they are alleging was damaged beyond normal wear and tear. In addition, I find that the amount claimed is inconsistent with the amount the landlords confirmed paying for two mirrors to replace the one mirror. Given the above, I dismiss this portion of the landlords' claim due to insufficient evidence, without leave to reapply.

Item 4 – After considering the small blurry photo submitted by the landlords, I find the landlords have provided insufficient evidence to support this portion of their monetary claim. As a result, this portion of the landlords' monetary claim is dismissed without leave to reapply.

Item 5 – As described above, the parties confirmed during the hearing that the tenants would pay the landlords **\$150.00** for this portion of the landlords' claim. Furthermore, the parties agreed that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this portion of the landlords' monetary claim.

Item 6 – Although the landlords have claimed \$300.00 for 10 hours of cleaning at \$30.00 per hour for the time the landlords state they spent to clean the rental unit after the tenants vacated and considering the photo evidence submitted, I find the photo evidence does not support the 10 hours of cleaning as claimed. I have taken into account that the tenants confirmed they did not clean under the stove and fridge and therefore, I find that a reasonable amount of time to clean under a stove and fridge would be two hours. As a result of the above, I find the landlords are entitled to two hours of cleaning at \$30.00 per hour for a total of **\$60.00** for this portion of their claim. The remainder of this portion of the landlords' claim is dismissed due to insufficient evidence without leave to reapply.

Item 7 – After carefully considering the evidence before me, I am not satisfied that there is sufficient evidence to support that the tenants damaged the garburator during the tenancy. Therefore, this portion of the landlords' claim is dismissed without leave to reapply.

As the landlords' application was partially successful, I grant the landlords the recovery of half of the cost of the filing fee for a total of **\$50.00**.

I find that the landlords have established a total monetary claim in the amount of **\$655.28** comprised of \$395.28 for item 2, \$150.00 for item 5, \$60.00 for item 6, plus \$50.00 of the cost of the filing fee.

As the landlords have claimed against the tenants' security deposit of \$900.00 and pet damage deposit of \$1,700.00 which has accrued no interest to date and pursuant to section 72 of the *Act*, I authorize the landlords to retain **\$655.28** of the tenants' security deposit in full satisfaction of the landlords' monetary claim. I also order that the landlords immediately return the \$244.72 remaining of the tenants' security deposit, plus the full \$1,800.00 pet damage deposit, for a total amount of \$2,044.72 in combined deposits. Should the landlords fail to return the tenants' combined deposits of \$2,044.72 as ordered, the tenants are granted a monetary order under section 67 for the balance owing by landlords to the tenants in the amount of **\$2,044.72**.

Conclusion

The landlords' application is partially successful.

The landlord has established a total monetary claim in the amount of \$655.28. The landlords have been authorized to retain \$655.28 of the tenants' security deposit in full satisfaction of the landlords' monetary claim. The landlords have also been ordered to immediately return \$244.72 remaining of the tenants' security deposit, plus the tenants' full \$1,800.00 pet damage deposit, for a total amount of \$2,044.72 in combined deposits. Should the landlords fail to return the tenants' combined deposits of \$2,044.72 as ordered, the tenants are granted a monetary order under section 67 for the balance owing by landlords to the tenants in the amount of \$2,044.72. If the tenants require enforcement of the monetary order, the monetary order must first be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: April 5, 2017

Residential Tenancy Branch