



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 convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation in the amount of \$15,000.00 for damage to the rental unit, authority to retain the Tenant's security deposit and to recover the filing fee.

The hearing was conducted by teleconference on March 9, 2017 and April 11, 2017. Both parties called into the hearing 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?
2. What should happen with 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 15, 2008. At the time the tenancy began monthly rent was payable in the amount of \$1,250.00. The Tenant paid a security deposit in the amount of \$625.00 at the start of the tenancy. A copy of the tenancy agreement was also provided in evidence and which confirmed this information.

The Landlord testified that the rental unit was in a home with an upstairs suite (the subject rental unit) and a basement suite. He testified that the home was built in the 1970's but had been substantially renovated in 2005 as 50% of the home had been previously destroyed in a fire. He stated that when they purchased the home they reframed, reinsulated, and rebuilt the home in approximately 2005.

The Landlord confirmed that the rental unit was rented out between 2005 and 2008 when the subject tenancy began such that the effective age of the finishing was three years old at the start of the tenancy.

The Landlord confirmed that he failed to perform a move in condition inspection report. The Landlord was cautioned that he required evidence of the condition of the rental unit at the time the tenancy began.

The tenancy ended September 1, 2016. The Landlord applied for dispute resolution on September 9, 2016.

The Landlord confirmed that he did a move out condition inspection on his own as the Tenant refused to participate. He stated that he gave the Tenant two opportunities to attend as well as written notice of the final opportunity for the inspection.

The Landlord clarified that the \$15,000.00 claimed on the application was an estimated cost. Introduced in evidence was a copy of the Monetary Orders Worksheet which clarified that the Landlord sought the sum of \$9,470.53 for the following:

#1	Carpet replacement	\$4,405.49
#2	Painting of areas of rental unit which were damaged, including baseboards and door casings	\$2,572.50
#3	Garage drywall repair	\$202.13
#4	Replacement of bathroom window glass	\$86.91
#5	Cleaning by M.M.	\$420.00
#6	Cleaning by L.P.	\$750.00
#7	Carpet removal and cleaning by J.K. and L.K.	\$462.00

#8	Cost of parts to repair refrigerator	\$125.32
#9	Replacement cost of doors below kitchen sink	\$280.00
#10	Material and supplies	\$166.18
	TOTAL	\$9,470.53

The Landlord confirmed that at the time the tenancy began the carpets were approximately three years old, such that at the time the tenancy ended the carpets were approximately 11 years old. The Landlord claimed the replacement cost of the carpets of \$4,405.59. He also sought \$462.00 as the cost to remove the carpet and clean.

The Landlord sought the sum of \$2,572.50 as compensation for the amount to paint the rental unit. He testified that the amounts noted on the monetary orders worksheet was a quote, and that they were not able to hire a third party to do the painting as they were 4-8 weeks backed up. He confirmed that he and his son and some other friends painted the rental unit and estimated that it took approximately four days to complete. The Landlord failed to provide receipts for the materials to paint.

The Landlord testified that he did not paint the rental unit during the tenancy. He stated that approximately three years ago the Tenant painted the rental unit. He confirmed that the Tenant asked for permission to paint and the Landlord agreed she could, provided that he was involved in the colour choice and painting. He stated that she then proceeded to paint the rental unit without any further discussions.

The Landlord also testified that a window in the main bathroom was broken and he was able to remove the window and have the glass replaced. He stated that the glass was intact when the tenancy began. The Landlords sought the sum of \$86.91 for replacing the glass. In evidence was a photo of the window (#103).

The Landlord further testified that rental unit was not cleaned and as such he sought compensation for the cost of cleaning the rental unit. He stated that to his knowledge the Tenant had someone come in and vacuum the rental unit, the carpets were not professionally steam cleaned.

He confirmed that he hired two third party cleaners who charged \$50.00 per hour per person for a total of \$420.00.

He further stated that the cleaners were not able to return and finish the required cleaning and as such the Landlord, his wife, his son J.I., and his son's friends J.U. cleaned the rental unit. The Landlord stated that he paid L.P. \$750.00 for her time

cleaning the rental unit. The Landlord also sought the sum of \$275.00 which he claimed to have paid to his son J.K. for removal of the carpet, as well as \$187.00 which he claims to have paid to his wife, L.K. for cleaning.

The Landlord stated that the rental unit is 1,460 square feet upstairs and 150 square feet downstairs including a basement entry and stairwell and a 420 square foot double garage.

The Landlord also claimed the sum of \$125.32 for the cost to replace two trays in the door of the refrigerator; he stated that he did not seek compensation for the cost of labour related to this repair. He confirmed that the refrigerator was 11 years old at the time the tenancy ended.

The Landlord also sought compensation in the amount of \$280.00 for the cost to replace two doors below the kitchen sink as he claimed the particle board swelled and separated. An invoice dated October 6, 2016 was provided in evidence confirmed this amount. The Landlord stated that he also replaced the hinges although he did not invoice for that cost.

The Landlord further sought the sum of \$138.11 for cleanings supplies, wainscoting, trim and corner pieces on column.

The Landlord submitted photos of the dining room and the hallway which showed that the Tenant had painted the walls, but did not paint to the ceiling and in some cases appears to have accidentally painted on the textured ceilings; other photos show damage to the drywall.

The Landlord also sought compensation for the cost to repair the wall in the garage as he claimed the Tenant had hit the wall with her car and the wall was damaged three feet by four feet. He also claimed there were two other areas where the car door had damaged the wall. The Landlord testified that they covered the areas with paneling as it was very difficult to cover up the spackling.

In response to the Landlord's claims, the Tenant testified as follows.

In response to the Landlord's claims the Tenant submitted that the claims were exaggerated and in all cases a result of the Landlord renovating the property for sale. She stated that in terms of the carpet, she did not have them professionally cleaned as she was informed the Landlord was renovating and he intended to remove the carpets and replace them with laminate. The Tenant stated that in eight and a half years she

lived there she had the carpets professionally cleaned four times. She stated that he did not tell her to professionally clean the carpets as he knew he was ripping them out.

In response to the Landlord's claim for the cost to paint, the Tenant stated that she had permission from the Landlord's wife to paint the rental unit. She also stated that it was an improvement. She stated that she painted three walls in the dining area and her children's bedroom. She also stated that in the eight and a half years she was in the rental unit the Landlord did not paint.

In response to the Landlord's claim for the cost to repair the walls in the garage, she stated that before she even vacated the rental unit and while she was moving out, the Landlord began renovating the property such that she was not afforded an opportunity to deal with required repairs. She admitted that she bumped into the wall with her car and it left an impression on the wall but claimed she told the Landlord that she would fix it. She said that the Landlord simply came in and fixed it. She stated that she moved out September 1, 2016 and the Landlord came in and fixed it during the month of August.

In response to the Landlord's claim for the cost to replace the glass in the bathroom the Tenant claimed it occurred on May 9, 2016 when there was an earthquake. She stated that she did not notice the break until later and realized that it must have been the shaking of the foundation during the earthquake. She claimed that her aunt's foundation cracked.

In response to the Landlord's claim for \$1,357.00 in cleaning costs the Tenant stated that the rental unit was in good condition. She stated that she has family members and friends and other witnesses who can say the rental unit was clean although she "didn't want to bring them into this". She stated that she was not able to obtain movers and was "under a time limit". She also said she, a third party whom she paid, and her parents cleaned the rental unit. She felt the Landlord's requests were unreasonable noting that "he took pictures behind the stove".

In terms of the Landlord's request regarding broken refrigerator parts the Tenant stated that they were broken when she moved in. She further stated that she duct taped them together as the Landlord would only repair/replace if she paid for it and she did not have the funds.

In response to the Landlord's claims regarding the doors under the kitchen sink the Tenant stated this was normal wear and tear and the swelling was because the material used to make the doors was "pressboard".

The Tenant also stated that the Landlord's claim that the rental unit was renovated two years prior to her tenancy beginning was false as she says she spoke to the municipality in which the rental unit is located and determined it was four years prior.

In response to the Landlord's claim for wainscoting and trim and other supplies, the Tenant stated that the drywall should have been repaired in the garage rather than covered in wainscoting. She stated that she offered to do this and they simply refused her offer to make these repairs.

The Tenant stated that had the Landlord done a move in condition inspection report, she would have been able to note the condition of the rental unit when she moved in.

She also stated that the Landlord was happy with the condition of the rental unit when she moved out as he first offered her return of her last months' rent. She said she was very surprised when he then made a claim for \$15,000.00 as she believes this is an excessive amount.

In reply the Landlord stated that the amount claimed was to prepare the property for re-renting, as the amount he spent to ready the property for sale was considerably greater.

The Landlord also confirmed that they started cleaning and painting the exterior prior to the tenancy ending. He confirmed that the amounts claimed for cleaning do not relate to the exterior.

The Landlord stated that they spent a month renovating the property and approximately three weeks into October they had an accepted offer to purchase.

After 60 minutes of hearing, the Landlord disconnected from the line. He previously confirmed that his son would be able to continue in his place in the event this occurred as he had a problematic telephone connection.

When the Landlord disconnected the Landlord's son, J.K., testified. He stated that there was a "full renovation", save and except for the linoleum in the kitchen. He confirmed that the carpets were ripped out and the walls were repainted.

J.K. also stated that the amount claimed for cleaning, namely \$1,357.00 was for cleaning the rental unit after the Tenant left the rental, not after this renovation.

In reply to the Tenant's testimony regarding the garage walls, J.K. stated that the Tenant was given a few weeks to repair the walls and when she failed to do so J.K. attended to this repair. He stated that the Tenant continued to say "if you are going to renovate and sell why should I deal with this?"

J.K. stated that the damage to the garage was the "severe damage" leading to the eviction. The parties confirmed that a previous hearing occurred in which the 1 Month Notice to End Tenancy for Cause was addressed.

In response to J.K.'s testimony, the Tenant stated that when she was asked to fix the damage in the garage she asked the Landlord if they intended to sell, at which time they confirmed that was their intention. The Tenant stated that she had a 10 year relationship with these people, they had originally offered to give her a free month's rent and then they filed this claim seeking \$15,000.00.

The Tenant stated that the Landlord also had to replace a wall because of an ant infestation. She said that in all, the Landlord's claim is "bogus" and simply his attempt to have her pay for the renovation to ready the property for sale.

The Tenant confirmed that she paid \$625.00 as a security deposit and she was seeking return of double as well as any interest.

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 in section 37 of the *Act* as follows:

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.

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.

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 long term tenancies, such as the one before me, it is necessary to consider whether a Landlord's claim for repairs is necessitated by the Tenant's actions or negligence, or merely the result of deferred maintenance. As I informed the parties during the hearing, guidance is provided in the *Residential Tenancy Policy Guideline 40—Useful Life of Building Elements*. While the parties disagreed as to when the rental unit was renovated prior to the tenancy beginning (the Landlord claimed three years prior and the Tenant stated it was four years) there is no dispute that the renovation occurred at least eleven years prior to the end of the tenancy.

I must also consider whether the expenses incurred by the Landlord were for repairing and preparing the rental unit for subsequent rental or for sale, as a Tenant should not be liable for the increased cost to improve a property for the real estate market.

After careful consideration of the evidence and testimony of the parties and on a balance of probabilities, I find as follows.

Policy Guideline 40 provides that carpets have a useful building life of ten years. There was no dispute that the carpets had not been replaced during the tenancy. Further, the evidence confirmed that the carpets were removed and replaced at the end of the tenancy such that steam cleaning was not required. In all the circumstances, I find that the carpets had reached their useful life by the end of the tenancy and the cost of their replacement is therefore not recoverable.

While the photos of the rental unit indicate painting was required, and the Tenant's painting skills may be less than desired, I find that the rental unit would have required painting in any event of the Tenant's actions. The parties agreed the Landlord did not paint the rental unit during the eight and a half year tenancy. *Policy Guideline 40* provides that interior paint has a four year useful life. Accordingly, I find that this expense is not recoverable.

The Tenant conceded she had damaged the garage wall. She testified that she wished to make this repair prior to the end of the tenancy and the Landlord "beat her to it". The Landlord's son testified that despite repeated promises the Tenant failed to repair the walls. 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. I am unable to reconcile the conflict in the parties' testimony; however it is the case that a Tenant should be afforded the opportunity to make repairs prior to the end of the tenancy. I therefore dismiss the Landlord's claim for repairs to the garage walls.

In total the Landlord sought compensation for \$1,357.00 for cleaning of the rental unit. Although the photos indicate cleaning was required, I find the amount claimed by the Landlord to be excessive. Further, I find it likely that some of the cleaning was necessitated by the renovation of the rental unit in preparation for sale. Accordingly, I award the Landlord a nominal sum of **\$500.00** for cleaning.

The Tenant claimed the bathroom window was damaged as a result of an earthquake. She failed to provide any evidence to support this claim. Accordingly, I find it more likely it was damaged due to the actions or neglect of the Tenant and I therefore award the Landlord recovery of the **\$86.91** claimed.

The Tenant claimed the refrigerator was broken and the Landlord refused to fix it unless she paid for it. Based on this testimony, I find it more likely that the shelves were broken during the tenancy and I therefore award the Landlord the **\$125.32** claimed.

Policy Guideline 40 provides that kitchen cabinets have a 25 year life span. As such, I find it more likely that the cabinet drawers below the kitchen sink were damaged due to the Tenant's failure to address any accumulation of water. I therefore award the Landlord the **\$280.00** claimed.

As the "materials and supplies" relate to claims which have been disallowed, I dismiss the Landlord's claim for \$166.18 in reimbursement.

In total I award the Landlord the sum of **\$992.23** for the following:

Replacement of bathroom window glass	\$86.91
Cleaning of the rental unit (nominal sum)	\$500.00
Cost of parts to repair refrigerator	\$125.32
Replacement cost of doors below kitchen sink	\$280.00
TOTAL	\$992.23

The Landlord sought to retain the Tenant's security deposit against any amounts awarded. The Tenant sought return of double the deposit pursuant to section 38 of the *Residential Tenancy Act*.

The Tenant paid a security deposit of \$650.00 at the start of the tenancy. According to the interest rate calculator on the residential tenancy branch website, the deposit has accrued \$6.71 in interest such that the Landlord holds **\$656.71**.

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

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), 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, 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

(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.

I accept the Tenants evidence that she did not agree to the Landlord retaining any portion of her security deposit.

By failing to perform an incoming condition inspection report in accordance with the Act, the Landlord extinguished his right to claim against the security deposit for damages, pursuant to section 24(2) of the Act.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$1,306.71**, comprised of double the security deposit plus interest ($2 \times \$650 = \$1,300.00 + \$6.71$ in interest).

As the Landlord has only been marginally successful in his claim, and will be required to pay a sum to the Tenant as a result of this Decision, I dismiss his claim for recovery of the \$100.00 filing fee.

Conclusion

The Landlord is awarded the sum of **\$952.23**. This amount is to be offset against the **\$1,306.71** awarded to the Tenant for return of double her security deposit plus interest such that the Tenant is given a formal Monetary Order in the amount of **\$354.48**. The Tenant must serve a copy of this 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: May 9, 2017

Residential Tenancy Branch