Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for compensation under the Residential Tenancy Act (the "Act") and the tenancy agreement, for damage and cleaning of the rental unit, for an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions about the process. Both parties provided 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 to me. The Tenants were assisted by an Advocate at the hearing, although the Tenants made most of their own submissions.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. Below I have made a finding on additional evidence provided late by the Landlord. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue

The Landlord submitted some additional photographic evidence to the Branch and the Tenants on April 28, 2017, which was 11 days prior to the hearing. The Landlord testified that the evidence related to the condition of the rental unit when it was advertised for rent. Under the rules of procedure section 3.14, evidence must be provided not less than 14 days prior to the hearing. The Tenants objected to the evidence being submitted. I found that the evidence was late and in any event not relevant, as the parties had performed a condition inspection report at the outset of the tenancy. Therefore, I did not allow the late evidence submission of the Landlord.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Is the Landlord entitled to a portion or all of the security deposit and pet damage deposit paid?

Background and Evidence

This tenancy began on May 1, 2015, and was for an initial fixed term of one year, and then it continued on a month to month basis until it ended on October 5, 2016, following a Notice to End Tenancy issued to the Tenants by the Landlord. The monthly rent was $1,550.00 at the outset of the tenancy and the Tenants paid a security deposit of $775.00 and a pet damage deposit of $775.00 on May 1, 2015.

At the outset of the tenancy the Landlord performed a condition inspection report with the female Tenant, and the parties signed the condition inspection report. At the end of the tenancy the Landlord performed an outgoing condition inspection report; however, the male Tenant did not agree with the report and did not sign it.

The Tenants vacated the property on October 5, 2016. In his application the Landlord has claimed he incurred or will incur substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenants.

There are several of the Landlord's claims that the Tenants are agreeing to which are set out below. The hearing dealt mainly with the claims that are in dispute between the parties.

The Tenants agree they are responsible for the following claims made by the Landlord:

ITEM	AMOUNT AGREED TO
5 days pro-rated rent Oct. 2016	$250.00
Dome light fixture	$19.03
Kitchen faucet	$189.28
One trip to the dump	$38.00
Total agreed to by Tenants	**$496.31**

The items that are in dispute in the Landlord's Application are set out below. Unless otherwise noted, the Landlord has supplied photographs and receipts for these items.

The Landlord claims $25.74 for damages to two covers for the heat registers. The Landlord testified that one of these was duct taped to the floor and the other was stained.

The Tenants testified that they duct taped the heat register covers to the floor so their toddler would not lift them up. They testified that the residue from the tape was on the covers.

The Landlord testified he made two trips to the dump with debris and furniture left behind by the Tenants. The Landlord claims $21.00 for the second trip to the dump, as the Tenants have agreed to pay for one trip, as described above. The Landlord testified that one of the trips had a damaged recliner chair that the Tenants left behind, as well as bicycles, soccer balls, plastic buckets and other items left behind by the Tenants.

The Tenants replied that the Landlord had left them the recliner chair and that they did not take it because it was not theirs. They submitted that the Landlord had stored many items at the rental unit such as old lawn chairs, car parts and tires, a glass cabinet and that it was likely he removed these items to the dump as well.

The Landlord claims $35.20 for the replacement of the deadbolt lock for the patio door. The Landlord testified that the key was not returned by the Tenants. There were also missing slide guides for bi-fold closet doors which the Landlord has claimed for here.

The Tenants testified during the hearing that they did not recall having a key for this door. However, I note in their written submissions that they acknowledge misplacing the key.

The Landlord claims for the parts to repair a broken shower door in the amount of $68.74.

The Tenants agreed that the broken shower door part needed to be replaced. However, the Tenants took issue with the amount claimed by the Landlord for this repair. They submit that it was just a tiny piece of plastic that was broken and they tried to repair this with plastic welder, but it did not work. They submit that the amount for the replacement part charged by the Landlord was extravagant and that it was chrome, not plastic.

In reply to this, he Landlord explained that the part was just plastic and not chromed; it was just referred to as that on the invoice.

The Landlord claims $640.00 for chips and gouges to the hardwood floor, as well as a damaged transition piece. The Landlord claims that 15 boards plus one transition piece need to be redone as these were damaged by the Tenants and possibly one of their pets scratched the floor. The Landlord testified that the hardwood floor was completely redone, as well as the rest of the rental unit being renovated, in 2013. The Landlord testified it was cheaper to replace these boards that to refinish the floor.

The Tenants testified that their couch did chip the floor, or cause “lag marks”, but only four boards were affected from the four legs of the couch. They deny their dog damaged the floor as this pet was either outside or in the garage most of the time. They claim the transition piece was improperly installed as it had movement in it every time they stepped on it. They say that this was just normal wear and tear. They submit in writing they were will to agree to four boards being replaced at a cost of $160.00.

The Landlord testified that both master bedroom closet door mirrors had to be replaced as these were cracked. The Landlord claims $405.44 for these. The Landlord further claims $752.64 for Roman blinds that he alleges the Tenants damaged. A significant amount of the hearing dealt with the Landlord's claims for these items, and the Tenants position on these.

The Tenants testified that both closet door mirrors were cracked when they moved in. The Tenants further testified that the Roman blinds never functioned properly. They testified that the wooden rods that were supposed to be in the Roman blinds were found in a closet in the bedroom. The Landlord did not reply how the blinds would have functioned without the wooden rods.

The Tenants submitted in evidence a letter from a third party dated April 13, 2017, who writes that he helped the Tenants move in and noticed, "… it was a nice house with a lot of issues, ex., the mirror in the master bedroom was cracked, curtains didn't retract, downstairs carpet was in bad shape…" [Reproduced as written.]

I note the Tenants also provided a letter from a babysitter who wrote that she took care of their children while they cleaned the rental unit.

In evidence was a copy of the condition inspection report. The incoming report does not indicate the mirrors in the closet doors in the master bedroom were cracked, although the outgoing portion of the report does.
The parties agree that the Tenants moved into the rental unit on May 1, 2015. Their testimony was that the female Tenant accompanied the Landlord around the rental unit when the move in condition inspection report was performed on April 30, 2015.

The female Tenant testified she did not see that the mirrors were cracked because she was carrying their baby around while the Landlord was writing on the report. She testified she did not write on the report, she only signed it. The Tenants testified that a few days after the incoming report was performed they received a copy from the Landlord by email. The Tenants allege they spoke with the Landlord about the cracked mirrors at that time, but did not get him to adjust the incoming condition inspection report because they were not concerned about having documents at the start of the tenancy.

The Landlord vehemently denied the Tenants had spoken to him about the mirrors being cracked at the start of the tenancy after they received the incoming report. He immediately reminded the Tenants they were under oath, and testified that none of what they were saying about reporting the mirrors to him at the start of the tenancy was true. He testified that if there were so many things wrong in the rental unit they should have emailed or texted him back and let him know at the time when they received the condition inspection report.

The male Tenant testified that he was so upset with the Landlord's allegation that they had cracked the mirrors during the tenancy that he refused to sign the outgoing condition inspection report. He testified he left out of frustration because of what the Landlord was accusing him of.

The Landlord claimed the Tenants left the rental unit very dirty. He claims $1,200.00 for cleaning the rental unit. He testified and submitted that he paid someone to shampoo the carpets, wash the walls, showers, tub, toilets and all appliances. He testified that both showers and the soaker tub appeared as though they had never been cleaned during the tenancy. The Landlord claimed a drain in the main bathroom was so clogged with hair that it would not work. The Landlord testified that he discovered cat feces on top of the main floor bathroom cabinet and behind a toilet in one bathroom. He submitted photos of many of these items.

The Tenants claimed they spent five days cleaning in the rental unit at the end of the tenancy. They took issue with the invoice provided by the Landlord for this cleaning and alleged that the person doing the cleaning for the Landlord was actually the new renter that moved into the rental unit. The Landlord did not address this particular issue.
They claim that the Landlord charging $1,200.00 for the cleaning was extremely excessive.

The Tenants also took issue with the photographs submitted in evidence by the Landlord. At one point in the hearing they alleged the Landlord may have staged the photographs as he was in the rental unit before they arrived to participate in the outgoing condition inspection report. They allege it was unethical for the Landlord to be in the rental unit before they were to do the condition inspection report.

The Landlord replied that he took the photographs shortly after the Tenants moved out of the rental unit. He testified he did not "…make this stuff up…"

The Landlord alleged that the over the range microwave had been badly damaged by the Tenants and claimed $391.99 for a replacement. He provided a picture in evidence of a small burn mark inside the microwave oven. He also testified that the exhaust filter of the microwave was so clogged with grease that it was no longer useable. He alleged it no longer functioned due to this.

The Tenants testified that there was a rack in the microwave oven at one time, but they removed it because there was no room to fit things in it. They agreed there was a small singe mark inside the microwave but they testified it still worked when they moved out.

Lastly, the Landlord claims $221.76 for a cracked toilet. He alleges the Tenants cracked the toilet in the basement bathroom.

The Tenants testified that the Landlord was charging an excessive amount to replace the toilet. They allege that he replaced a base toilet with a low flush model.

The Advocate for the Tenants made final submissions on their behalf. The Advocate submitted that many of the claims of the Landlord were excessive. She submitted that the Tenants were honest which was proven by the fact they were agreeing to somethings in the Landlords claims. She submitted they would not be agreeing to some things if they were not honest and forthcoming. The Advocate further submitted that some of the Landlord's claims were for items that fall under the category of normal wear and tear. The Advocate also submitted that the Landlord did not have any pictures of certain things, like the appliances, to back up all of his claims.

The Landlord submitted that the pictures in his evidence show all the problems that he found in the rental unit. He explained he was not a liar and did not make stuff up. He submitted the Tenants should have been more thorough cleaning and repairing the rental unit before they left.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities, which means it is more likely than not that the facts occurred as claimed.

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

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.

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

Under section 37 of the Act, when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear, and 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.

Section 7 of the Act states:

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

In this instance I find the Tenants did not clean the entire rental unit to a reasonably clean state, nor did they make all the necessary repairs, and therefore they are in breach of section 37 of the Act, and this has caused losses to the Landlord which are compensable under section 7. I find that the Landlord has mitigated his losses in most of these claims, except for those described below. I further find that the Landlord has proven the losses as I allow below. I will first deal with the damages and then the cleaning that the Landlord has claimed.

I allow the Landlord's claim for **$25.74** for damages to two covers for the heat registers. I do not find that duct taping heat register covers to the floor is reasonable wear and tear. The Tenants should have cleaned, repaired or replaced these at the end of the tenancy.

I do not allow the claim of $21.00 for the second trip to the dump. I find the Landlord had insufficient evidence to show both trips were necessary due to the Tenants' leaving behind debris. I find it just as likely the Landlord had to dump some of his own debris. Therefore, I dismiss this claim as I find the Landlord has failed to prove his losses here.

I allow the claim of **$35.20** for the replacement of the deadbolt lock for the patio door. I accept the evidence of the Landlord that the Tenants had keys for this door but failed to return them and this is a breach of section 37 of the Act. I found the written evidence and testimony of the Tenants on this item to be contradictory, and therefore, I accept the evidence of the Landlord that they had keys and did not return them.

I also allow the claims for the parts to repair a broken shower door in the amount of **$68.74**. I find that that the Tenants were under a duty to repair this under section 37, but failed to do so. They testified they had tried to repair this, but they did not find a replacement part themselves as they should have when their repairs were not effective, nor did they provide a quote showing this to be an unreasonable amount. I find the Landlord has proven the loss here with his receipt.

As for the claims of damage to the hardwood floor, I find the Tenants did damage the floor with their couch and that they damaged the transition piece. I did not find it reasonable wear and tear to damage the floor or transition piece. I found the Tenants had insufficient evidence to show it was installed improperly. I also found that there were significant gouges from the couch, and scratches likely caused by the pets, as indicated in the photographs submitted by the Landlord. However, the hardwood floor has a useful life expectancy and policy guideline 40 to the Act sets out that,

> "When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.
>
> 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."

[Reproduced as written.]

Under this policy guideline the useful life of the hardwood floor is 20 years. I find that the floor was 5 years old and therefore, I reduce the claim of the Landlord for its repair by 25%, or a quarter of its life expectancy. Therefore, I allow the Landlord **$480.00** for repairs to the hardwood floor.

As for the mirrors on the closet doors, I allow the Landlord the cost of these, less their useful life expectancy of five years under the policy guideline which also provides 20 years for doors. I allow the Landlord **$302.30** as the reduced value of the mirrored doors.

I find it is more likely than not that the Tenants caused these cracks in the mirrors on the doors. I do not accept the evidence of the Tenants that the mirrors were cracked at the outset of the tenancy. The photographs submitted show these cracks were quite visible, and I find it more probable than not that these would have been seen by the female Tenant at the incoming condition inspection report. I do not accept they after they received the condition inspection report by email, they verbally told the Landlord the mirrors were cracked. I think it is more probable they would have replied by email at that time regarding the mirrors if they were damaged at the outset. There was evidence submitted for the hearing that established the parties did communicate by text and email and I find it unlikely the Tenants would not have replied to an email that contained a condition inspection report that they did not agree with.

Furthermore, I do not accept the evidence of the letter from the person who helped them move in. The letter seemed somewhat contrived as it followed the exact order of the Landlord's claims in his written materials that the Tenants had prior to the date the letter was written. I note the writer of this letter refers to a cracked mirror in the bedroom, not cracked mirrors on the

closet doors. I also find it unlikely on a balance of probabilities that someone helping friends move furniture and other items into a house would remember this discreet type of information in such detail nearly two years after the event. Likewise, I find it is not likely they would have tried to operate Roman window blinds in a home they were helping someone move into. Therefore, I give little weight to the evidence in the letter.

I note that under section 21 of the regulations to the Act, a condition inspection report completed in accordance with the regulation is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find that had the mirrors been cracked at the outset of the tenancy, it is far more likely that this would have been brought to the Landlord's attention by the Tenants either during the initial condition inspection report or shortly after when they received it by email. I do not accept their testimony they verbally informed the Landlord of these cracks right after they received the condition inspection report by email.

For all of the above reasons, I do not find the Tenants have provided a preponderance of evidence that would overcome the incoming condition inspection report, and I accept that the mirrors on the closet doors were not cracked at the outset of the tenancy.

As for the blinds, I do not allow the Landlord any amount for the Roman blinds. I found that the Landlord had failed to provide sufficient evidence that these would function properly without the pieces of wood that both parties agreed were not installed in the blinds, but were stored in a closet elsewhere in the rental unit. I found the Landlord had insufficient evidence on the blinds and this claim is dismissed.

As for the Landlord's claims the Tenants left the rental unit very dirty, I find that some of these claims have merit. I find the Tenants had insufficient evidence that the carpets were steam cleaned when the Tenant left, as required under policy guideline 1 to the Act.

I find that it is more likely than not that the Tenants' cat left feces in a couple of places that they did not notice when they were cleaning the rental unit. Cats do have an ability to climb to high places such as the top of a cabinet in a bathroom. It might be that the Tenants packed the litter box up too soon, or that the cat had deposited this sometime before the tenancy ended and it went unnoticed. I certainly do not accept that the Landlord would have handled cat feces and placed them in places around the rental unit, which I would have to accept under the Tenants' allegations that the Landlord acted unethically here. I find the Tenants had insufficient evidence to support such an allegation against the Landlord in any event.

I find the Landlord has also shown there were unclean walls, showers, tub, and a light switch plate left by the Tenants. I accept they also did not pull out and clean behind the fridge.

Nevertheless, I do not find that the Landlord has proven his entire claim for $1,200.00 for cleaning. For example, aside from the microwave oven filter screen, there was insufficient evidence that the other appliances in the rental unit were left unclean. The areas that were left unclean had specific photographs taken. However, there is a lack of evidence to support a total 60 hours of cleaning at the rental unit.

I do accept that the cleaning the Landlord has proven the Tenants should have done, would amount to approximately 10 hours of cleaning, for such things as the tub, light switch, cabinets, shower surround, carpets, and grease filter on the microwave, etc., and therefore, I allow him **$200.00** for cleaning the rental unit at $20.00 per hour.

I also find the Landlord had insufficient evidence to prove the microwave oven was no longer functioning due to the uncleaned filter screen. I have allowed some of the claim for cleaning, which would include the filter screen for the microwave. However, I find the Landlord had insufficient evidence the microwave no longer functioned due to it being damaged by the Tenants.

Lastly, I allow the Landlord the claim for the remaining useful life expectancy of the toilet. The guideline on useful life sets this at 20 years, and therefore I allow the Landlord **$165.00** for the replacement toilet. I find the Tenants have failed to prove the Landlord could have found a cheaper replacement toilet. Furthermore, as with all of the damages allowed here, the Tenants could have made these repairs themselves but did not do so.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.
>
> [Reproduced as written.]

Therefore, I allow the claims of the Landlord as follows:

a.	Damages to two register covers	25.74
b.	Replacement of the deadbolt lock	35.20
c.	Shower parts	68.74
d.	Hardwood floor repairs	480.00
e.	Mirrored closet door repairs	302.30
f.	Extra cleaning of the rental unit	200.00
g.	Toilet replacement	165.00
h.	Filing fee	100.00
i.	Amount agreed to by the Tenants	496.31

	Total allowed claim	**$1,873.29**

I find that the Landlord has established a total monetary claim of **$1,873.29** comprised of the above described amounts and the $100.00 fee paid for this application.

I order that the Landlord may retain the deposits held of $1,550.00 in partial satisfaction of the claim and I grant the Landlord an order for the balance due of **$323.29** under section 67 of the Act.

This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

I find the Landlord has been successful in many of his claims as set out above. The Tenants also agreed to some of the amounts claimed by the Landlord. The Landlord has proven many amounts he has claimed, but had insufficient evidence to prove all of his losses or claims.

After allowing the set off of the security deposit and pet damage deposit, I find the Tenants owe the Landlord **$323.29**, and I grant the Landlord an order for this balance due.

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: May 12, 2017

Residential Tenancy Branch