



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

The two hearings held in this matter dealt with the landlord's application pursuant to the Residential Tenancy Act ("the Act") for: a monetary order for damage to the rental unit pursuant to section 67; authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Preliminary Issue: Attendance

At the original hearing date for this matter, the tenants called in to the teleconference prior to the start of the hearing and again near the conclusion of the hearing. As a result of the tenants' timing in attending, the tenants were given a second opportunity at a second hearing date to present any response to the landlord's application. At the reconvened hearing, the landlord reiterated the submissions for her application and the tenants were given a full opportunity to respond.

Both parties were given a full opportunity to be heard, to present their testimony, and to make submissions. The tenants confirmed receipt of the landlord's evidentiary submissions. The tenants did not submit any documentary evidence with respect to the landlord's application. The time provided for both hearings totalled 100 minutes.

Preliminary Issue: Amendment to Landlord's Application

In her original application, the landlord sought to recover \$9157.00 in damages and a utility bill. On June 27, 2017, the landlord amended her application to reduce the amount sought against the tenants by \$109.69 – the utility bill the tenants have now paid. Therefore, she reduced her application for a monetary award to \$8461.69.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain all or a portion of the tenants' security deposit?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on June 1, 2015 as a month to month tenancy. The rental amount of \$1925.00 was payable on the first of each month. Both parties agreed that the tenants provided notice to end their tenancy, along with their forwarding address, on November 29, 2016. The tenants vacated the rental unit on December 31, 2016.

The landlord testified that she continues to hold the tenants' \$962.50 security deposit and \$962.50 pet damage deposit paid at the outset of the tenancy (May 7, 2015) by the tenants. The landlord sought to retain the deposits towards the cost of repairing damage to the rental unit as well as recovery of the filing fee for this application. The landlord testified that, at the end of this tenancy, the hardwood floors, bedroom carpeting and backyard landscaping had been damaged by the tenants. The landlord wrote in her amended application that she sought a monetary order in the amount of \$8461.69 however the total of the items she listed for repairs/damage to the rental unit can be summarized, with a different monetary amount as follows,

Item	Amount
Remove flooring	\$150.00
Hardwood floor repair	7162.00
Backyard landscaping remediation	175.00
Carpet cleaning	252.00
Cleaning Services	465.00
Window cleaning	36.75
Dumping fee	2.00
Lighting – specialty bulb replacement	9.92
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Sought by Landlord	\$8817.67

The landlord testified that she attempted to clean the carpets to get rid of stains before determining that she would need to replace the carpets. She provided an invoice for the carpet cleaning dated December 31, 2016 in the amount of \$252.00.

The landlord submitted a copy of the condition inspection report for this tenancy. At the beginning of the tenancy, the condition of the various areas of the rental unit indicated they were in good condition but for dirty windows/screens throughout the rental unit, a damaged stove-top, a dirty oven drawer, 2 bulbs out in the kitchen, a broken fireplace remote, entry carpet stained, dirty fixture in dining room, a missing glass pane in dining room, marks on counter in main bathroom, dirty lighting fixtures in the master bedroom, damaged and missing window covers throughout rental unit, and repairs and painting required for the exterior of the residence.

At the end of the tenancy, the condition inspection report indicates good condition but for the same dirty lighting fixtures and window coverings, the same stained entry way carpet, "damage" to the kitchen and hallways/stairs generally noted as needing wiping down, a dirty shower, stained and pulled master bedroom carpet, dirty baseboards and walls, dirty front deck. Under the notes section for end of tenancy damage for which the tenant is responsible, the landlord has written "flooring in kitchen and living room, pulls in carpet on stairs and master bedroom, side and back yard grass and flower beds weedy". At move-in and at move-out, the tenant signed the condition inspection report indicating that he agrees the report fairly represents the condition of the unit.

The landlord submitted photographs of the rental unit yard. The photographs showed; the landlord's family building a garden pathway; a photograph of green healthy grass; the yard with landscaping features including berms for trees and bark mulch in many areas of the garden. Overall, the photographs show the yard in good condition. The landlord submitted an estimate for work to the yard at the end of the tenancy. That estimate provided a cost of \$420.00 to return the yard to the condition it was in prior to the tenancy. The landlord testified that the contractor is scheduled to conduct the work next summer and that she is seeking only a portion of the cost from the tenants. The landlord testified that she had landscaping work done on her rental premises yard 3.5 years ago. The tenant testified that any perceived damage to the yard is from dry weather and the landlord's failure to care for her yard.

The landlord testified that she purchased the 1400 square foot premises in April 2008. She testified that the premises had been previously rented and that the home is approximately 12 years' old. She testified that the entire premise has 3 floors and that the tenants resided on the main floor. Prior to 2015, she testified that she lived in the residence with her family. She testified that she purchased new engineered hardwood flooring in October 2012. She testified that she did not have a receipt for the floors as they had been paid under an insurance claim. She testified that the carpets were re-

done in June 2013. She testified that exterior work including painting and landscaping were done in 2014 and 2015.

The landlord testified that the tenants had both a cat and a dog. She testified that the tenants' pets destroyed the carpets in the rental unit. She testified that she called the company who had installed her carpets and flooring and that they recommended she replace all the flooring in the home. She testified that because of the short timeline, the company agreed to install her carpet at the same rate/price from her previous installation. The landlord testified that the tenants did not pick up after their dog in the yard and she had to do extensive work to clean up the dog feces in the yard at the end of their tenancy.

The landlord submitted photographs of damaged carpet with stains, pulls and substantial (marks/tracks). The landlord testified that the carpets had been replaced in the rental unit 3.5 years ago. The landlord also submitted photographs of damaged hardwood (engineered/laminate) floors with scratches and chips of the top layer of the flooring. She referred to photographs of the floors where the colour is lighter than other areas and testified that these areas were damaged by water. The landlord testified that the floors were new to the rental unit 4.5 years ago. The landlord provided a quote and testified that the floors have not been repaired or replaced at this time.

The landlord submitted receipts for some minor clean-up at the end of the tenancy including window cleaning in the amount of \$36.75, a dump fee invoice for \$2.00, a light bulb purchase receipt for \$9.92. She testified that her entire cost for window cleaning was larger but that she only holds the tenants responsible for the windows that are reachable without a ladder. The landlord submitted the dumping cost of \$2.00 was for removal of items from the rental unit after the end of the tenants' tenancy. She testified that this amount reflects two trips to the dump to dispose of items left behind by the tenants. The landlord testified that the cost of replacing specialty light bulbs in the bathrooms of the residence was exceptional given that they are long-lasting, expensive bulbs.

The tenant testified that the tenants continually cared for the yard during their tenancy, conducting their own work to ensure the condition/health of the yard. The tenant testified that the wood floors were laminate and not engineered hardwood and therefore should have been substantially less costs to repair or replace. As well, the tenant testified that he believed the carpet could have been patched for repair and did not require replacement.

The tenant also submitted that the landlord did not file in sufficient time to retain their security and pet damage deposits in accordance with section 38 of the *Residential Tenancy Act*. The landlord testified that she was not aware she was required to return or apply to keep the tenants' security deposit within 15 days.

Analysis

With respect to the return or retention of security deposits, section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security and pet damage deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenant's security and pet damage deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security and pet damage deposit (section 38(6) of the *Act*). With respect to the return of the security and pet damage deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord was informed of the forwarding address on December 31, 2016. The landlord had 15 days after December 31, 2016 to take one of the actions outlined above.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security and pet damage deposits if "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." The tenants testified that they did not agree to allow the landlord to retain any portion of their security and pet damage deposits. As there is no evidence that the tenants have given the landlord written authorization at the end of this tenancy to retain any portion of their deposits, section 38(4)(a) of the *Act* does not apply to the tenants' security or pet damage deposits.

The tenant seeks return of both her security and pet damage deposit. While the landlord applied to the Residential Tenancy Branch to retain the tenants' deposits, she did so after the 15 day timeframe to make such an application. Given that the landlord acknowledged her failure to apply to retain the tenants' deposits within the required timeframe, I find that the tenants are entitled to a monetary order including \$1925.00 for the return of the full amount of their security and pet damage deposits.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the evidence of the tenant before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security or pet damage deposits in full within the required 15 days. The tenants gave sworn oral testimony that they had not waived their right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are therefore entitled to a total monetary amount from the landlord equivalent to double the value of their security and pet damage deposits combined with any interest calculated on the original amount only (\$962.50 amount x 2 deposits = \$1925.00 x 2 = \$3850.00 total owed by landlord to tenants) No interest is payable for this period.

With respect to the landlord's application for other monetary compensation, section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss (in this case, the landlord) bears the burden of proof.

The landlord must prove the existence of the damage/loss. I find that the landlord has proven damage and loss as a result of this tenancy by virtue of the provision of the condition inspection report that accurately reflects her testimony and indicates that the tenants were privy to the condition inspection.

The landlord must prove that the damage/loss stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Again, the

condition inspection report is clear and, according to Residential Tenancy Regulation No. 21 as laid out below, the condition inspection report is the best evidence of the condition of the unit unless proven.

Evidentiary weight of a condition inspection report

- 21** *In dispute resolution proceedings, a condition inspection report completed in accordance with this Part 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.*

The landlord must also provide evidence that can verify the actual monetary amount of the loss/damage. I find that the landlord has provided evidence with respect to monetary amount she seeks – with the condition inspection report to document any damage at the end of the tenancy. However, I find that while the landlord has proved, with invoices and the condition inspection report as well as undisputed testimony that the carpets required cleaning and repair, I find that she has provided insufficient evidence that patch work at the end of the tenancy would not suffice to address any damage done by the tenants during the course of their tenancy. Therefore, I find that the landlord is entitled to recover \$465.00 – the cost of cleaning of the carpets as well as a portion of the costs for replacing the carpet in lieu of patch repairs. I will address the second amount regarding carpets below.

I find that the landlord proved, with invoice and condition inspection report as well as undisputed testimony that the flooring required substantial repair work at the end of the tenancy that was beyond regular wear and tear over the course of the tenancy. Therefore, the landlord is entitled to compensation for the work done to remove the old, damaged flooring (\$150.00). In addition to the \$150.00 in flooring removal costs, I find that the landlord is entitled to a portion of the estimated flooring and carpet replacement costs. I note that the landlord has not incurred this cost at this point but has provided evidence that she intends to do so. However, I accept the tenant's argument at this hearing that given the age and type of flooring as well as consideration of wear and tear in a residential tenancy that the landlord should be entitled to repair ("patchwork") costs instead of replacement costs. I find that the landlord's evidence supports the need for repair/patch work but does not sufficiently support the need for full replacement. Therefore, in these specific circumstances, the landlord is entitled to recover \$2000.00 in addition to the \$150.00 for carpet and floor removal.

I find that the landlord proved, with invoice and condition inspection report as well as undisputed testimony that she is entitled to recover the \$2.00 dump fee costs for removal of the tenants belongings abandoned at the rental unit (property and junk/debris). However, I find that the landlord is not entitled to recover the \$36.75 cost of window cleaning. I refer to Residential Tenancy Policy Guideline No.1 reproduced below with respect to the responsibility to clean exterior windows. I find that the landlord was unable to provide sufficient evidence to suggest that the exterior of the windows were cleaned prior to the outset of this tenancy or during the course of the tenancy. Therefore, I find that the exterior window cleaning at the end of the tenancy is not the responsibility of tenants.

Residential Tenancy Policy Guideline No.1

- 1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean windows, in a reasonable state of repair.*
- 2. ... The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy The landlord is responsible for cleaning the outside of the windows, at reasonable intervals.*

I find that the landlord has provided sufficient evidence to show that she replaced the specialty light bulbs at the end of the tenancy. Policy Guideline No. 1 supports the tenants' responsibility in this regard,

The landlord is responsible for ... making sure all light bulbs and fuses are working when the tenant moves in.... replacing light bulbs in hallways and other common areas like laundry and recreational rooms...

The tenant is responsible for [replacing] light bulbs in his or her premises during the tenancy...

I find that the landlord is entitled to recover the cost of light bulbs in the amount of \$9.92 as they required replacement at the end of tenancy.

I find that the landlord has not provided sufficient evidence with respect to monetary amount she seeks for "damage" to the yard. The landlord did not submit a copy of the residential tenancy agreement and did not provide evidence of an addendum with respect to yard care; I note that within Policy Guideline No. 1, yard work ("property maintenance") is described as follows,

.... Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The

tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

... The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

[emphasis added]

As there is no indication of a separate and clear agreement with respect to the yard maintenance (particularly weeding and flower beds) and given the general standard in the Act and in Policy Guidelines, I find that the landlord is not entitled to recover the cost of landscaping work.

The landlord has proved, with reference to the condition inspection report, the residential tenancy agreement as well as Residential Tenancy Policy Guideline No. 1 that requires a tenant to professionally clean the carpets at the end of the tenancy, that she is entitled to recover \$252.00 – the cost of cleaning of the carpets according to the invoice submitted by the landlord. I accept the testimony of the landlord that this cleaning was done in an effort to attempt to mitigate damages and determine whether further repair of the carpets was necessary.

I find the landlord is entitled to compensation for damage to the rental unit as follows,

Item	Amount
Remove flooring	\$150.00
Hardwood floor repair & bedroom carpeting	2000.00
Carpet cleaning	252.00
Cleaning Services	465.00
Dumping fee	2.00
Lighting – specialty bulb replacement	9.92
Recovery of Filing Fee for this Application	100.00
Total Monetary Amount owed to Landlord	\$2978.92

Despite the landlord's failure to return or apply to retain the tenants' security and pet damage deposit in accordance with the Act, I find that the landlord is, pursuant to section 72 of the Act, entitled to retain a *portion* of the tenants' security and pet damage deposits towards the monetary amount calculated above (\$2978.92). As the landlord was successful in her application, I find that the landlord is also entitled to recover the \$100.00 filing fee for this application.

I calculate the monetary amounts owed to each party as follows,

Amounts payable to tenants	Amount
Return of Pet Damage & Security Deposits (\$962.50+ \$962.50= \$1925.00)	\$1925.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1925.00
Amounts payable to landlord	
Remove flooring	-150.00
Hardwood floor repair & bedroom carpeting	-2000.00
Carpet cleaning	-252.00
Cleaning Services	-465.00
Dumping fee	-2.00
Lighting – specialty bulb replacement	-9.92
Recovery of Filing Fee for this Application	-100.00
Total Monetary Order owed by landlord to tenants	\$871.08

Conclusion

I grant the tenants a monetary order in the amount of **\$871.08**.

The tenant(s) are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: August 3, 2017

Residential Tenancy Branch