



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF (Tenants' Application)
 MND, MNDC, MNSD, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Tenants' Application for Dispute Resolution, filed March 14, 2017, they sought return of their security deposit as well as recovery of the filing fee. In the Landlord's Application for Dispute Resolution the Landlord requested monetary compensation from the Tenant, authority to retain the Tenant's security deposit and to recover the filing fee.

The hearing was conducted by teleconference on August 8, 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 Tenants?
2. What should happen to the Tenants' security deposit?

3. Should either party recover the filing fee?

Background and Evidence

The Landlord's spouse testified as follows. He stated that they were not the original Landlords as they inherited the tenancy when they purchased the property in August of 2016. He further confirmed that the Tenants paid a security deposit of \$475.00 to the previous Landlord.

The Landlord's spouse confirmed that they did not complete a move in condition inspection report.

The Landlord's spouse confirmed that the Tenants moved out of the rental unit on February 27, 2017.

The Landlord's spouse stated that they met with the Tenant, M.K., to complete a move out condition inspection report and the Tenant just "ran away" with the completed Move out Condition Inspection Report.

The Landlords applied for dispute resolution on March 14, 2017.

In the within application the Landlords sought monetary compensation in the amount of \$3,537.00 for the following:

Cost to replace the stained and damaged carpet (estimate)	\$1,762.00
Cost to replace the wash basin stopper (estimate)	\$175.00
Cost to replace the tub stopper (estimate)	\$50.00
Cost to repair to the stove and oven due to "damage" and "leaking"	\$75.00
Cost to repair and painting of walls as a result of "more than two dozen holes"	\$1,000.00
Security deposit	\$475.00
TOTAL claimed by Landlord	\$3,537.00

The Landlord's spouse confirmed he had erroneously added the Tenants' security deposit of \$475.00 to the amount claimed such that the amount was actually \$2,587.00 for the above claimed damage as well as \$100.00 for the filing fee for a total of \$2,687.00.

The Landlord's spouse confirmed that they did not replace the carpet. He claimed that when the Tenants attempted to clean the carpet they damaged it with bleach.

The Landlord's spouse stated that to his knowledge the carpet was five years old at the end of the tenancy as the house was built in 2012.

The Landlord's spouse claimed the Tenants damaged and or lost the wash basin sink and tub stopper. He confirmed that he has not replaced either stopper and the amount claimed was an "estimate". He also stated that as the sink does not have a stopper his daughter is unable to live in the rental unit as she is afraid items will fall down the drain.

The Landlord's spouse stated that the stove door is now loose and does not properly close. He also claimed that the Tenant did not clean the oven as required. The Landlord failed to submit any photos of the oven stating that the Tenant "agreed" to contribute to the cleaning costs for the oven. The Landlord claimed the stove was also purchased in 2012.

The Landlord also claimed the cost of repair and painting of walls as he claimed over 24 holes were made on three walls as a result of shelves which were installed by the Tenant. He further claimed the Tenants were operating a business and required the shelving to store cloth diapers which they had made.

The Tenant, M.K., testified as follows.

M.K. confirmed that the previous owners did not complete a formal move in condition inspection report. He further confirmed that the current Landlord failed to conduct a formal move in condition inspection report, despite the Tenants offering to do one at the time they took over the tenancy.

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

He confirmed that the tenancy began October 2015.

He stated that the home was built in 2010 not 2012 as claimed by the Landlord. He confirmed that this is based on the information he received from the previous owners, from information he received from the city in which the rental unit is located as well as the fact that GoogleMaps includes photos of the house in 2010.

The Tenant stated that there was a stain in one of the bedrooms which they acknowledged was their responsibility. He further stated that they agreed to compensate the Landlord for the depreciated cost to replace the carpet in this bedroom; which was **\$120.00** based on the \$400.00 cost to replace the seven year old carpet. He also stated that he wanted to have the carpet cleaned and the Landlord did not permit them to clean the carpet.

In response to the Landlord's claim that the wash basin sink stopper and the tub stopper required replacement the Tenant stated that both had a little rubber sink stopper when they moved in and they were left at the rental when they moved out.

The Tenant further testified that the inside of the stove required cleaning and they agreed to pay the cost of cleaning in the amount of **\$60.00** for three hours of cleaning.

The Tenant further testified that there were nail holes from pictures and some small holes from shelves, which were approved by the previous Landlord. He stated that they were patched and painted. He also claimed that when they moved into the rental unit there was additional patching and painting from the previous tenants which did not match the walls. He also stated that the previous landlord confirmed that it had not been painted before the previous tenants, but he was not aware of when they moved in.

In response to the Landlord's claim that he ran away with the condition inspection report he testified as follows. He confirmed that the Landlords refused to complete a formal move out condition inspection report at the "first meeting" (when they returned the keys) although they did sign a document where they agreed to pay for the cleaning of the carpet in the bedroom and the cleaning of the inside of the oven. He further confirmed that they signed a document but the Landlord failed to provide them with a copy.

The Tenant stated that a couple weeks later they met with the Landlord again to complete a formal move out condition inspection report. He stated that the Landlord refused to sign the document until the Tenant gave him a cheque for the money. He stated that he did not submit the document in evidence as the Landlord refused to complete the report and refused to sign it.

In reply the Landlord stated that he relied on the information he received from the listing of the property as being built in 2012. He stated that he was reading the listing during the hearing. When I asked him to read the date the home was built he claimed he could not find that information. During the hearing I asked the Landlord to fax me a copy of

the listing which he confirmed he would do that day; I informed him that should he not do so, I would find the home was built in 2010, not 2012 as he claimed.

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 this case, the Landlord has the burden of proof to prove their claim.

I find, based on the evidence before me, the testimony of the parties and on a balance of probabilities as follows.

I find the rental home was built in 2010, such that at the time the tenancy ended the carpet, paint and stove were approximately seven years old.

I accept the Tenants evidence that the previous owner/landlord failed to perform a move in condition inspection report. I further accept the Tenant's evidence that the current/subject Landlord failed to perform such an inspection when she purchased the property and assumed the tenancy.

As such, I was not provided with compelling evidence of the condition of the rental unit when the tenancy began.

I am unable to find, based on the evidence before me, that the Tenant damaged the carpet as alleged by the Landlord. I also find the Landlord has failed to provide evidence of the actual cost to replace the carpet, relying instead on an estimate. I accept the Tenant's evidence that he agreed to compensate the Landlord for the depreciated cost to replace the carpet in one of the bedrooms and I therefore award the Landlord the **\$120.00** sum offered by the Tenant. I note that I would not have awarded this sum to the Landlord as I find they have failed to meet the burden of proving this claim. Similarly I award the Landlord the **\$60.00** offered by the Tenant towards the cost of cleaning the interior of the stove; again, based on the evidence before me I would not have granted the Landlord this compensation.

Similarly, I find the Landlord failed to prove the Tenant removed the wash basin and tub stopper. I accept the Tenant's evidence that both drains were stopped by an inexpensive rubber stopper. I therefore dismiss the Landlord's claim in this regard.

Additionally, I find the Landlord failed to prove the Tenant damaged the stove as alleged. The Landlord failed to submit any evidence to support this claim. Accordingly, I dismiss this portion of the Landlord's claim.

As noted, I accept the Tenant's evidence that the rental unit was built in 2010 and that it had not been painted since that time. Accordingly, the paint was approximately seven years old at the time the tenancy ended.

Residential Tenancy Policy Guideline 40—Useful Life of Building Elements provides that,

“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.”

Policy Guideline 40 further provides that interior paint has a useful life of four years. Accordingly, I find that the rental unit required painting in any event of the tenancy. I therefore dismiss the Landlord's claim for the cost of repainting the rental unit.

The is entitled to compensation in the amount of **\$180.00** representing the amounts the Tenant agreed to pay for the depreciated cost of the carpet and the cleaning of the oven.

Having been unsuccessful, the Landlord is not entitled to recover the filing fee.

The Tenant seeks return of the security deposit paid.

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.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit.

By failing to perform an incoming condition inspection reports in accordance with the *Act*, the Landlord extinguished her right to claim against the security deposit for damages, pursuant to section 24(2) of the *Act*. Accordingly, the Landlord had only one option pursuant to section 38(1), and that was to return the \$295.00 to the Tenant (this sum represents \$475.00 less the \$180.00 the Tenant agreed the Landlord could retain).

Residential Tenancy Policy Guideline 17 provides that in cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. In this case I find the Landlord breached their obligation to perform a *move in* condition inspection report first. I make no finding as to whether the Landlord or Tenant failed to participate in a *move out* inspection.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$690.00**, comprised of double the balance of the security deposit (\$475.00 (security deposit) - \$180.00 (amount Tenant agreed Landlord could retain)= \$295.00 x 2 = \$590.00) in addition to the \$100.00 filing fee.

Conclusion

The Landlord's claim is dismissed. As the Landlord failed to conduct a move in condition inspection report, she extinguished her right to claim against the security deposit for damage. Accordingly, the Tenant is entitled to \$690.00 representing double the balance of the security deposit he paid in addition to recovery of the \$100.00 filing fee.

The Tenant is given a formal Monetary Order in the amount of **\$690.00**. The Tenant must serve the Monetary 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: August 14, 2017

Residential Tenancy Branch