



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit or property; damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenants' security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I confirmed service of hearing documents and evidence upon each other. The landlord's hearing documents and evidence was sent to the tenants via registered mail on September 20, 2017 and November 15, 2017, respectively. The landlord's evidence included digital evidence. The tenants confirmed to me that they were able to view the content of the digital device and I have admitted the landlord's digital evidence into evidence.

The tenants served their rebuttal evidence to the landlord in person and to the Residential tenancy Branch on March 31, 2018. The tenant's evidence was also admitted into evidence.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants in the amounts claimed?
2. Is the landlord authorized to retain all or part of the tenants' security deposit?

Background and Evidence

The one year fixed term tenancy agreement started on August 29, 2016. The tenants paid a security deposit of \$775.00 and a pet damage deposit of \$775.00. The tenants were required to pay rent of \$1,550.00 on the first day of every month. The tenancy ended on August 31, 2017.

A move-in inspection report and a move-out inspection report were prepared at the start and end of the tenancy. The landlord has refunded the pet damage deposit to the tenants but continues to hold the security deposit, pending the resolution of this matter.

Below, I have summarized the landlord's claims against the tenants and the tenant's responses.

Hardwood flooring damage -- \$1,720.95

The landlord submitted that the tenants caused water damage to the parquet floor in the corner of the living room. The landlord stated that the same parquet flooring is both the living room and an adjacent bedroom and that to repair the damage the flooring in both rooms needed to be sanded and refinished. The landlord obtained two estimates and had the work performed in September 2017 by the contractor with the lower quote.

The landlord was uncertain as to the age of the flooring or when it was last refinished. The landlord stated that she has owned the house for 23 years and has never before refinished the floors in these rooms.

The tenants acknowledged the floor was damaged under a potted plant in the corner of the living room. The tenants acknowledge liability to pay a reasonable amount to rectify the damage but are of the position the landlord's claim against them to refinish all of the flooring in these two rooms is excessive. The tenants were of the view the flooring could have been dried out longer; or the damaged sections removed and replaced. The tenants also provided evidence pointing to other remedies such as applying a bleach solution or lightly sanding the damaged area. The tenants pointed out that the house was likely built in the 1920's and the useful life of the floors had been exceeded as evidenced by many other pre-existing marks and scratches in the floors, as well as loose sections of flooring.

The landlord acknowledged that there were loose sections of parquet flooring but not in the corner where the damage was located.

Cleaning -- \$315.00

The landlord submitted that she spent nine hours cleaning the rental unit and she seeks compensation for her time at the hourly rate of \$35.00. The landlord stated that \$35.00 per hour is the amount she would have received working at her job. The landlord pointed to her photographs in support of her claim and submitted that professional cleaning companies charge more than \$50.00 per hour.

The tenants stated they did a lot of cleaning before the tenancy ended but acknowledged that additional cleaning was required for the windows, window sills, blinds, dishwasher and a mark on the wall. The tenants acknowledged that they did not clean under the stove but pointed out the stove was not on rollers. The tenants also indicated that the landlord had the house painted in August 2017 and the paint fumes kept the tenant from spending a lot of time moving and cleaning in August 2017. The tenants were of the view that the landlord's expectations

were unreasonable and that a couple of hours at \$20.00 per hour would have been more reasonable, or \$40.00.

Yard work -- \$490.00

The landlord submitted that she spent 14 hours performing yard work at the property after the tenancy ended and she seeks compensation for her time at the hourly rate of \$35.00 per hour.

The landlord stated that she spent time removing debris from behind the garden shed, tree debris and the contents of a compost bin that included non-compostable items such as wood bits and kitty litter. Also, the garden beds had leaves and weeds in them and moss had to be removed from the lawn.

The landlord acknowledged that the written tenancy agreement is silent with respect to the tenant's obligations to perform yard work but the landlord asserted there was a verbal agreement between the parties concerning yard work that was outside of the tenancy agreement. I informed the landlord that my jurisdiction is limited to tenancy agreements, not contracts for services, and that the terms agreed upon by the parties ought to be reflected in the tenancy agreement. In the absence of such specific terms informed the parties that I would apply the standards established by the Act and as indicated in Residential Tenancy Policy Guideline 1.

In recognition that the tenants are not responsible for removing moss from lawn, the landlord was agreeable to reducing her claim to 10 hours.

The tenants submitted that there was no agreement about gardening obligations when the tenancy formed and then this issue became the source of a dispute near the end of the tenancy. Nevertheless, the tenant tried to accommodate the landlord's demands by weeding and purchasing mulch.

The tenants acknowledged that they were expected to cut the grass and that at the end of the tenancy the grass was due to be cut again. The tenants are agreeable to compensate the landlord for one grass cutting but are of the position that 10 hours is excessive.

The tenants pointed out that the yard and the compost were not inspected together at the start of the tenancy and its condition was not noted on the move-in inspection report. The tenants claim that the compost already had debris from pruning and bits of wood when the tenancy started and they added more of the same. Also, the landlord had added more pruning debris to the compost as well. The landlord did not give them explicit instructions as to what items may be put in the compost or where to dispose of the yard debris. The tenants acknowledged putting kitty litter in the compost but claimed it was made of pine pellets which is compostable.

I asked the landlord what she expected the tenants to do with tree or pruning debris during the tenancy. The landlord stated that she would have hauled that away during the tenancy if the tenants had asked her to do so.

Painting stair walls -- \$140.00 + \$59.18

The landlord submitted that the tenants caused a hole in the wall of the stairwell, almost the size of a tennis ball, and that it required the wall to be patched and the entire wall to be repainted. The landlord seeks compensation for four hours of labour at \$35.00 per hour plus the cost of paint in the amount of \$59.18.

The tenants acknowledged that a hole was created in the wall when the tenant fell down the stairs. The tenants pointed out that they had asked the landlord to provide better grip on the stairs as they were dangerous but the landlord's response was to tell them to wear better traction footwear. The landlord also installed a handrail and its installation created numerous small holes that the landlord stated she would have to touch up and repaint.

The landlord acknowledged that some small holes were created from installing the handrail but was of the position that the small holes could be touched up and did not require repainting the entire wall.

Closet organizer -- \$200.00

The landlord submitted that the tenants had removed the closet organizer in the bedroom during the tenancy, stored it in the crawl space, and then re-installed it at the end of the tenancy, albeit improperly. The landlord claims that the finish was damaged by being stored in the crawl space. The landlord reinstalled the closet organizer and repainted it. The landlord seeks compensation in an amount equivalent to buying a new closet organizer.

The tenants acknowledged removing the old closet organizer, storing it in the crawl space, and then reinstalling it, but claim it was reinstalled properly. The tenants stated they do not recall seeing any damage to the closet organizer and were of the position it was not in great shape to begin with. The tenants are of the position that a closet organizer may be purchased for less than that claimed by the landlord.

Kitchen floor damage -- \$2,076.13

The landlord submitted that the tenants caused a "star shaped" burn mark in the vinyl floor by the stove. The landlord has not yet replaced the floor but obtained an estimate and she seeks to recover the cost of new flooring from the tenants since it cannot be patched. The landlord explained that a patch will not adequately match the existing flooring. The landlord stated she does not know the age of the floor and acknowledged that she has never replaced it in the 23 years that she has owned the house.

The tenants deny causing damage to the kitchen floor. The tenants stated that the floor was already damaged by several cuts or knife marks in the floor when their tenancy started. The tenants were of the position the floor was at the end of its useful life and they are not responsible to pay for new kitchen flooring.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 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.

The burden of proof is based on the balance of probabilities. 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. In this case, the landlord, as the applicant bears the burden of proof.

Section 32 of the Act requires that a tenant is responsible to repair damaged he/she, or persons they permit on the property, causes by way of their actions or neglect. Section 37 of the Act requires that the tenant leave the rental unit reasonably clean and undamaged at the end of the tenancy. Sections 32 and 37 of the Act also provide that reasonable wear and tear is not damage. Accordingly, a landlord may seek compensation from a tenant where the rental unit is left damaged by the tenant, or persons permitted on the property by the tenant, by way of their actions or neglect; however, the landlord may not seek compensation for wear and tear or pre-existing damage.

It is important to point out that awards for damages are intended to be restorative. Accordingly, where a fixture, appliance or other building element is so damaged it requires replacement, it is often appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

Hardwood flooring damage

It is undisputed that the tenants caused damage to the hardwood flooring in the corner of the living room where they had placed a potted plant. Although this damage was not intended, I find it was the result of failure to protect the floor from water seeping onto the floor from the potted plant. Accordingly, I find the tenants liable to compensate the landlord for the damage they caused. The issue under dispute is the amount of compensation payable to the landlord.

The tenants provided evidence to suggest other remedies may have been undertaken in an attempt to remove or reduce the appearance of the dark water stain, including a bleach solution or light sanding. The tenants did not apparently undertake such remedies and the landlord had a floor refinisher inspect the floor. It is uncertain as to whether the other remedies the tenants presented would have been successful and I accept that sanding and refinishing the floor is effective at rectifying water damage.

I also accept the documentary evidence shows that the landlord had the flooring in the living room and adjacent bedroom sanded and refinished and that ensured the damaged area was rectified and avoided an obvious patch. However, I find the landlord's claim to hold the tenants responsible to pay for the entire cost of refinishing the floor in the living room and adjacent bedroom fails to take into account that the flooring was refinished least 23 years ago, if at all, and had pre-existing signs or wear and tear.

Residential Tenancy Policy guideline 40 provides that parquet flooring has an average useful life of 20 years. I find it reasonable to expect that after at least 23 years of use the flooring would have had evidence of use including scratches and scuffs. Upon review of the move-in inspection, I note that the living room flooring has a notation "black mark & dimples" and a similar notation is made for the bedroom. There was also agreement between the parties that the flooring had loose sections. Accordingly, I find that to hold the tenants responsible to pay to refinish floors is unreasonable.

In recognition that the tenants did cause water damage to the flooring, I find it appropriate to estimate a reasonable award for the landlord that also takes into account that the flooring had not been refinished in more than 23 years, if at all, and had pre-existing damage and/or wear and tear. In these circumstances, I find an appropriate award the landlord estimated to be \$200.00.

Cleaning

A tenant is required to leave a rental unit reasonably clean at the end of the tenancy pursuant to section 37 of the Act. The standard of "reasonably clean" is less than perfectly clean or impeccably clean and should the landlord bring the level of cleanliness to a higher standard the cost to do so is that of the landlord.

The move-out inspection report notes a number of areas that required cleaning and the landlord's photographs also support that certain items required further cleaning. The tenants did not dispute that additional cleaning was required but called into question the landlord's claim of \$490.00.

The landlord claims she spent nine hours cleaning but did not provide a detailed breakdown as to what tasks she did for nine hours. Based on the photographs, I accept that several hours would be required to clean the rental unit and I find the tenant's estimate of two hours is unrealistic. Therefore, on the balance of probabilities, I accept the landlord's claim that nine hours were spent cleaning and I award the landlord compensation for nine hours.

As for the hourly rate charged by the landlord, the tenants provided evidence showing cleaners charge \$20.00 per hour. Where a landlord performs a repair or cleaning, the award for compensation is based on the amount that is reasonable for the task performed, not what the landlord could have been paid had she gone to work. Therefore, I award the landlord compensation at the rate of \$20.00 per hour for a total award of \$180.00.

Yard work

The tenancy agreement before me is silent with respect to the tenant's obligations to perform yard work. Section 32 of the Act provides that a tenant is expected to maintain a property so that it meets reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. Residential Tenancy Branch Policy Guideline 1 provides information and policy statements with respect to a landlord's and a tenant's obligation to perform yard work, as follows, in part:

3. 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.

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

[My emphasis added]

A tenancy agreement does not obligate a tenant to become the gardener of the property or perform all tasks that a gardener would in exchange for compensation just because they become a tenant of the property. Nor, is a tenant expected to undertake all of the gardening tasks that a homeowner would undertake if the homeowner were residing at the property. If a landlord seeks to hold the tenant responsible to maintain the property greater than the obligation conveyed under the Act, the landlord and tenant may pursue a separate contract for services and if the tenant does not perform those services adequately the landlord may terminate the

contract for services and any damages that result as a breach of that contract may be pursued in the appropriate forum, such as small claims court or the Civil Resolution Tribunal. A contract for services usually involves compensation for the agreed upon tasks and in this case I was not provided any suggestion that there was compensation given to the tenants for yard work. Regardless, I do not have the jurisdiction to resolve disputes concerning a contract for services. Rather, my jurisdiction is limited to disputes concerning a tenancy agreement, the Residential Tenancy Act and its Regulations. Accordingly, I hold the tenants responsible to perform yard work as provided in Policy Guideline 1.

The tenants acknowledged that the grass should have been cut one more time at the end of their tenancy. For that, I award the landlord compensation of \$25.00.

The landlord provided photographs of the area around and behind a shed, mostly of a compost bin. Vines or shrub trimmings can be seen lying on the ground and on top of the compost bin and in another bin. However, I find the tenants are not responsible for pruning or shrub trimming or taking away the pruning debris. The landlord also stated that had the tenants notified her that there were trimmings that needed disposal during the tenancy she would have disposed of them which indicates that the time and cost to dispose of trimmings was that of the landlord. Therefore, I make no award for removal of trimmings or vines.

The landlord provided two photographs showing weeds in two garden beds; however, the tenancy agreement did not provide that the tenants were responsible for weeding the garden beds. Therefore, I make no award for weeding.

It was undisputed that the tenants placed kitty litter in the compost; however, the tenants stated that it was compostable. The landlord's photographs do not show any kitty litter and the landlord did not provide a detailed breakdown of the hours the landlord spent removing kitty litter, if she did. Accordingly, I find I do not have sufficient evidence to make an award for removal of kitty litter from the compost.

I do not see any other photographs or evidence that would point to the landlord spending 10 hours on yard work that the tenants are responsible for, with the exception of lawn cutting, which I have already awarded to the landlord above.

In light of the above, I award the landlord compensation of \$25.00 for yard work.

Painting stair walls

The landlord did not provide any photographs of the holes in the stairway walls. However, it was undisputed that during the tenancy the tenant caused a hole in the drywall from falling down the stairs and that the landlord had created other smaller holes when a handrail was installed.

It was also undisputed that the tenants had been raised to the landlords attention that the stairs were slippery and they requested non-slip treads be added to the stairs. The landlord declined to do that, explaining it would ruin the finish on the stairs, and opted for a handrail instead. In my view, the landlord is fortunate that a hole in the wall is the only consequence she faces due to her decision to leave the stair treads without better traction. I also find it unreasonable that she created holes in the stairway wall as well, when the handrail was installed, and seeks to recover all of the costs to repaint the stair walls from the tenants. Therefore, I deny the landlord's claim for stair wall paint and labour.

Closet organizer

It is undisputed that the tenants removed the closet organizer from the bedroom closet and stored it in the crawl space before it was reinstalled by the tenants at the end of the tenancy. The photograph provided by the landlord appears to show an area that is discoloured and I accept that it likely required re-painting; however, I am unpersuaded that the tenants are liable to compensate the landlord for a replacement closet organizer. The existing closet organizer appears to be older and I am of the view that a new organizer would be an improvement. Therefore, I award the landlord compensation based on an estimate to paint the discoloured area, or \$25.00.

Kitchen floor damage

The landlord alleged that the tenants damaged the kitchen floor and the tenants denied damaging the floor and pointed out that the floor was old with several pre-existing areas of damage.

Based on policy guideline 40, I view vinyl flooring to have an average useful life of 10 years, the same as carpeting. Considering the floor was at least 23 years old I am of the view that the flooring is at the end of its useful life and the value of the existing vinyl floor is negligible, if any at all. Accordingly, I find the landlord's request to recover 100% of the replacement cost of the kitchen flooring to be unreasonable and I dismiss the claim.

Filing fee and security deposit

The landlord was partially successful in her claims against the tenants; however, I am of the view that had the landlord been more reasonable in her claims, this dispute may have been avoided. Therefore, I make no award for recovery of the filing fee.

I authorize the landlord to make the following deductions from the tenants' security deposit and I order the landlord to return the balance of the security deposit to the tenants without further delay, calculated as follows:

Security deposit		\$775.00
Less authorized deductions for:		
Hardwood floor damage	\$200.00	
Cleaning	180.00	
Yard work	25.00	
Closet organizer damage	25.00	<u>(430.00)</u>
Balance of security deposit due to tenants		\$345.00

The tenants are provided a Monetary Order in the amount of \$345.00 to serve and enforce upon the landlord if necessary.

Conclusion

The landlord has been authorized to deduct \$430.00 from the tenants' security deposit and has been ordered to repay the balance of the security deposit in the amount of \$345.00 to the tenants without further delay. The tenants are provided a Monetary Order in the amount of \$345.00 to serve and enforce upon the landlord if necessary.

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 08, 2018

Residential Tenancy Branch