



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, OLC, FF

Introduction

In the first application the landlord Mr. K. seeks a monetary award for cleaning and for damage to the rental unit.

In the second application, made a day later, the tenants seek return of the \$1000.00 remainder of \$1275.00 security and pet damage deposits.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Did the tenants leave the premises reasonably clean and undamaged but for reasonable wear and tear as they were required to do by s. 37(2) of the *Residential Tenancy Act* (the *Act*)?

Background and Evidence

The rental unit is a two bedroom basement suite on the lower floor of a house the landlord owns. The landlord rents out the upper portion of the house to others.

The tenancy started in May 2016. There is a written tenancy agreement. The tenancy ended August 31, 2107. The monthly rent was \$1425.00, due on the first of each month. The tenants paid a \$600.00 security deposit and a \$600.00 pet damage deposit though they have presented a cancelled cheque indicating the total deposit money was \$1275.00.

The parties conducted a move-in inspection on May 6, 2016. A form of report was prepared listing: scratches on first bedroom floor by window / middle of floor, protruding stove control, scratch on back bedroom door, slight scratches on drywall, and scratch on baseboard. The tenant Mr. B. signed the document.

It would appear that the parties had a peaceful co-existence during this tenancy. The tenants gave their notice for the end of August 2017. The parties met in the early evening, about 6:30 p.m., on August 30 to conduct a move-out inspection.

After the walk through the landlord prepared a form of "final inspection" paper that stated that he and the tenant Mr. B. "remark the following." On it was listed that: a) the wood finish on the end of the kitchen counter was damaged, b) there was a "wax/oil" drip down the wall in the washroom – damaged wall, and c) there were paint scratches on the wall in the hall to bedroom.

The document goes on to note that Mr. B offered to allow \$275.00 from the initial deposit as compensaton. The document appears to be signed by the landlord but not by either of the tenants.

The tenants provided their forwarding address in writing to the landlord on August 31, 2017.

On September 14, the landlord commenced this application, seeking a total of \$9035.00 in repair and cleaning costs, broken down as: \$2500.00 for interior painting, \$800.00 to replace bedroom doors, \$75.00 to replace five sets of curtains, \$500.00 to replace the inside and base of kitchen cabinets, \$3200.00 to replace damaged maple flooring, \$500.00 to replace tile in the kitchen area, \$1050.00 to replace three heat registers and \$360.00 for cleaning services.

The landlord was able to re-rent this premises immediately. None of the work claimed for has been done as of this hearing date.

The landlord testifies that he failed to see the complete condition of the rental unit at the move-out inspection because the home faces east and it was quite dark in the house at that time of day. Some of the pot lights were out. It was only the next day when he returned to clean that he saw the full extent of the problems listed.

He provided a CD of 137 photos claimed to have been taken August 31. He reviewed each photo during the hearing. The photos show: dust and debris between a cupboard and a stove and on the tile floor, near the entry door, a cracked and broken tile abutting the entry threshold, various marks on the vinyl/tile floor possibly paint, a hardwood floor with some scratching and an end piece that has twisted slightly where it meets the vinyl tile, a dab of tar-like substance on the hardwood, discolourations on white painted walls allegedly from the use of a "magic eraser" product, approximately twenty-eight wall gouges or marks of indeterminate size some patched and sanded, dust on a light fixture and on a white metal area, two small holes left by screws into drywall, five or six small white streaks or debris on the hardwood, a cobweb above a door and another in a corner of the ceiling, slight baked on debris on two gas elements of the range, the cabinet floor beneath the sink showing marks left by jars or containers and showing evidence of moisture stains, scuffs or rub marks on a door, a mark or slight discolouration as well as dust/debris on a ceiling, a photo indicating not all pot lights were working (bulbs), a possible small nick or indentation on an interior door, a light scratch in a door, dust and debris on a window ledge and in a patio door runner, dust and debris under a fridge, frayed curtain bottoms, dust or debris on a baseboard, dust and debris behind a stove with spill marks down the side of the stove, debris under the grate of a floor vent, a significant scratch in hardwood floor, cat hair on a curtain and small nicks or marks on a wall mounted heater.

The landlord thinks the tenants mopped the hardwood floor even though they were told not to and that the moisture from mopping caused the floor piece noted in the photos to twist.

He says the small white lines on the hardwood are either paint or a scratch.

He says the vinyl tile flooring was a year old before this tenancy.

The landlord reviewed his estimates for the cost he considers necessary for the repairs. He is in the building industry and estimates the cost of replacing inside cupboard walls and base as his own cost.

The landlord provided a signed statement from the subsequent (and current) tenant who took possession September 1, 2017, the day after the end of this tenancy. The new tenant identifies: buckled and scratched maple flooring, rubbed and damaged finish on two bedroom doors and on wooden kitchen cabinets with water damage on the inside of the cabinets, numerous dings and rub marks on the walls and ceilings, the broken tile at the entry, a large drip mark or stain on the bathroom wall, an inoperable dishwasher "due to negligence," "completely unsanitary" condition in kitchen and bedrooms, and magic eraser rub marks throughout.

The tenant Mr. B. tells a very different story. He says that he and the landlord conducted a thorough inspection and agreed for the landlord to keep \$275.00 of the deposit money. The remaining deposit money was supposed to be sent to the tenants later but instead the landlord made this application.

He says that most all the items the landlord claims would have been readily apparent at the move-out. He says it was not dark in the rental unit when the parties met for the move-out walk through. He produces a video clip of the start of the walk through, taken from a partially concealed phone. The clip shows the interior of the rental unit to be well lit by the natural light in at least the kitchen and living room areas shown. The vinyl tile and hardwood are caught by the video and appear to be reasonably clean without any observable damage or staining.

The landlord received the video clip but says he was unable to view it on his computer. The clip is a standard mp.4 video file, viewable on most all devices with a USB port. The landlord opines that his kids have been fiddling with the computer and that's why he could not view it. I find that the video provided by the tenants was in a common format and viewable. The landlord could easily have taken steps to view it had he desired.

Mr. B. testifies that the brief move-in condition list was only the "worst" items. He says he had "bad vibes" after meeting the landlord and so took a number of photos after the move-in inspection. The thirty-three photos, dated stamped 06.05.2016, show: badly scratched hardwood on two floors (said to be the two bedrooms), a third bad scratch on another area of hardwood floor, a relatively heavy scratch on a wood door, purported staining and scratches on floor trim, dirt (possibly tar like) on floor trim, debris in a patio door runner, a door jamb missing its metal strike plate, various readily observable scratches on hardwood flooring with minor missing trim, unrepaired dents in walls (some resembling those presented by the landlord), the protruding range panel, the inside of the oven, claimed warping hardwood flooring (though not the piece in the

photo presented by the landlord), an unrepaired screw hole, a picture nail in drywall and a hook screwed into hardwood trim.

The tenant adduced fifteen photos bearing date stamps of 28.08.2017 purporting to have been taken August 28, five days after the tenants actually vacated. The photos show various walls, various aspects of the hardwood flooring, the tub and toilet, the kitchen area and stove. The photos present the rental unit as appearing reasonably clean. They are not detailed enough to show most of the items of damage the landlord claims.

The tenant Mr. B. adduces an undated, signed statement from his father Mr. J.C.P.B, attesting that on August 26, 2017 he was at the suite with his son and that they patched with Polyfilla and later sanded smooth a few minor indentations in drywall. He says he was there when the tenants handed back the keys and Mr. B offered \$275.00 as compensation. He says the landlord and Ms. C.K. were satisfied with the condition of the rental unit. He says all parties were happy and appeared satisfied with the rental unit's condition as they parted.

Analysis

In reaching this decision all of the evidence tendered during the hearing has been considered though all of it may not be directly referred to in this decision.

In this case both the landlord Mr. K. and the tenant Mr. B gave their testimony in a reasonably forthright and believable manner. No determination of credibility can fairly be made on that basis.

There is an implication that the parties settled this matter for \$275.00 at the move-out. The evidence does not prove that the landlord accepted the tenants' offer. There was no enforceable settlement.

Repairs

In regard to repairs the landlord has put himself in a very difficult position by failing to attend to his obligation to prepare a proper move-in or move-out condition report. Sections 23 and 35 of the *Act* imposed a duty on all residential landlords to prepare a report in accordance with the Regulation at the start and again at the end of a tenancy.

The Residential Tenancy Regulation s. 20 is very specific about what must be contained in a condition inspection report. It states:

A condition inspection report completed under section 23 or 35 of the Act must contain the following information:

(a) the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;

(b) the address of the rental unit being inspected;

(c) the date on which the tenant is entitled to possession of the rental unit;

(d) the address for service of the landlord;

(e) the date of the condition inspection;

(f) a statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:

- (i) entry;
- (ii) living rooms;
- (iii) kitchen;
- (iv) dining room or eating area;
- (v) stairs;
- (vi) halls;
- (vii) bathrooms;
- (viii) bedrooms;
- (ix) storage;
- (x) basement or crawl space;
- (xi) other rooms;
- (xii) exterior, including balcony, patio and yard;
- (xiii) garage or parking area;

(g) a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;

(h) any other items which the landlord and tenant agree should be included;

(i) a statement identifying any damage or items in need of maintenance or repair;

(j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;

(k) the following statement, to be completed by the tenant:

I,

Tenant's name

[] agree that this report fairly represents the condition of the rental unit.

[] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

.....
..
.....
..;

(l) a space for the signature of both the landlord and tenant.

(2) In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act [*condition inspection: end of tenancy*] must contain the following items in a manner that makes them clearly distinguishable from other information in the report:

(a) a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;

(b) if agreed upon by the landlord and tenant,

(i) the amount to be deducted from the tenant's security deposit or pet damage deposit,

(ii) the tenant's signature indicating agreement with the deduction, and

(iii) the date on which the tenant signed.

The requirement for the reports is, needless to say, an effort to avoid disputes over what damage occurred during a tenancy and to direct the parties to address their differences at the end of the tenancy in order to pinpoint what is in dispute. With that knowledge and with modern day devices such as the camera contained in even the most primitive cell phone, the parties can garner evidence to support their position.

Without a move-in report a landlord is put to the task of proving the condition of the premises as it was, in this case, over two years ago.

Without a proper move-out report a tenant can be put at a distinct disadvantage having to answer to issues that had not previously been raised regarding the condition of a rental unit he or she can no longer lawfully enter and examine.

The photos presented by each side show markedly different premises.

The vinyl tile damage and staining would have been apparent during the inspection.

The tenant's video shows the vinyl flooring on August 30 and there is no sign of any staining.

The broken tile at the entry would have been easily observable.

The minor nicks and scratches in the hardwood other than those preexisting are the inevitable result of day to day living and are considered reasonable wear and tear.

The warped or twisted floorboard should have been readily observable at the move-out inspection and in any event, it has not been shown to be the result of any tenant action.

The various nicks and gouges in the drywall are a natural incidence of living. Some are shown to be clearly visible in the tenants' move-in photos. Residential Tenancy Policy Guideline #1, "Landlord & Tenant – Responsibility for Residential Premises" confirms that such damage is incidental to living and directs a tenant to plaster and sand such marks before leaving. It is the landlord's job to do a painting touch up.

The mars or discolourations in the walls, apparently the result of using a "magic eraser" are not significant damage. Had the complaint been noted in a proper move-out report it could have been determined whether or not they simply washed off.

The alleged damage to the cupboards is chiefly in an area under the kitchen sink. It is an incident of daily living that such an area is prone to moisture, either from garbage or the plumbing. It is an area that should be relatively impervious to moisture damage. If the landlord has chosen to line that area with what appears to be unfinished veneered plywood, then he must run the risk of damage resulting from daily living.

Regarding curtains, they are clearly frayed. The landlord has not proved this damage occurred during the tenancy (no proper move-in report) nor that such damage was not easily observable during the move-out inspection.

In result, the landlord has failed to establish that the foregoing damage claimed was not reasonably observable during the move-out inspection on August 30 or that it occurred during the tenancy.

The broken tile occurred during this tenancy. From its location it is reasonable to conclude its edge broke from being walked on. That is reasonable wear and tear and not the responsibility of the tenants.

Cleaning

In regard to the cleaning of the premises, s. 37(2) of the *Act* requires that a tenant leave the rental unit “reasonably clean.” That standard is imposed by the statute regardless of the cleanliness of the premises at the start of the tenancy.

Needless to say, the opinions of a landlord and a tenant often differ widely about what is or is not “reasonably clean.” The question is always a subjective one. Nevertheless, the *Act* has imposed a duty on its arbitrators to make a determination.

The tenants’ move-out photos and the video clip show the premises to be reasonably clean. The landlord’s photos are, by and large, a view of the rental unit with a “fine toothed comb” showing cleaning that might be considered necessary to bring the rental unit to a “spic and span” or “as new” condition. That is above what the tenants are responsible for under the law. It should be noted, and as is explained in Guideline 1, a tenant is not responsible for cleaning behind appliances like stoves unless the appliance is on wheels. More than a few tenants have suffered liability for linoleum repairs after attempting to pull out a stove or fridge to clean behind it. There is no evidence this stove was on wheels and so the tenants were not responsible for cleaning what appears to be years of dust and debris buildup.

In result, the landlord has not demonstrated that the tenants left the premises in a state other than “reasonably clean” or that they left damage above reasonable wear and tear other than that shown in the August 30 document signed by Mr. B. The landlord has not demonstrated that the cost to correct the items listed in that document would cost over \$275.00 and so I award him \$275.00.

Conclusion

The landlord is entitled to a monetary award of \$275.00. As he has had only limited success and as the tenants offered him that amount before this application, I decline to award recovery of the filing fee. I authorize him to recover the \$275.00 award from the deposit money he holds.

The tenants are entitled to a return of the balance of their deposit money. The tenancy agreement indicates a total of \$1200.00 in deposit money. The tenants have tendered a cancelled cheque in the amount of \$1275.00 paid as deposit money. I find that the

tenancy agreement is the best proof of the amount. I award the tenants \$925.00 plus recovery of their \$100.00 filing fee.

The tenants will have a monetary order against the landlord in the amount of \$1025.00.

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 17, 2018

Residential Tenancy Branch