



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This proceeding dealt with cross applications. The landlords applied for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; unpaid utilities; and, authorization to retain the security deposit. The tenants applied for a Monetary Order for return of the security deposit and other damages or loss; however, the other damages and losses were dismissed with leave during the first hearing of March 8, 2018, as reflected in the Interim Decision that followed. The March 8, 2018 Interim Decision should be read in conjunction with this decision.

Over the two hearing dates both parties had an opportunity to be hearing and to respond to the submissions of the other party. While I was provided a considerable amount of written and oral submissions and evidence, all of which I have considered, with a view to brevity in writing this decision I have only summarized the most relevant submissions, arguments and evidence.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation from the tenants in the amounts claimed?
2. Are the landlords authorized to make deductions or retain the tenant's security deposit or should it be returned to the tenants?

Background and Evidence

The parties executed a tenancy agreement for a tenancy that started on December 1, 2013 and the tenants paid a security deposit of \$1,075.00. The parties executed multiple tenancy agreements with the most recent starting on August 1, 2016 and ending on August 31, 2017. The tenants vacated the rental unit on August 15, 2017.

A move-in inspection report was prepared with the tenant. A move-out inspection report was also prepared with the tenant present and the tenant agreed with the landlord's assessment of the condition of the property but did not authorize the landlord to make any deductions from the

security deposit. The landlords proceeded to make their Application for Dispute Resolution on August 28, 2017.

Below, I have summarized the landlords' claims against the tenants and the tenants' responses.

1. Carpet cleaning -- \$126.00

The landlords had the carpets cleaned after the tenancy ended at a cost of \$126.00. The tenants were agreeable to compensating the landlords this amount.

2. Damaged drywall -- \$225.00 + \$89.55

The landlords submitted that various drywall repairs were required at the end of the tenancy including: drywall paper that peeled off in the dining room; rub marks in the living room and master bedroom; a dent or chip in the stairway; and, scuffs in the master bedroom closet.

The landlords submitted that the damaged areas required filling and sanding, twice, and repainting. The landlord seeks compensation for nine hours of labour, at \$25.00 per hour, or \$225.00; plus, the cost of paint in the amount of \$89.55.

The landlords stated that the rental unit had been painted just prior to the start of the tenancy.

The tenants were of the position the landlords' claims are excessive. The tenants submitted that the scuffs and rub marks amount to wear and tear over 4 years of use. The landlords have an expectation to perform routine maintenance including painting at the end of a tenancy. The tenants also submitted that the wall paint was not good at the start of the tenancy. The tenants acknowledged responsibility for the drywall paper peeling off in the dining room when a sticker was removed from the wall and a chip in the stairway when they were moving but were of the position these areas were insignificant.

3. Floor damage -- \$37.50 + \$5.45

The landlords submitted that the floor at the top of the stairs was scratched beyond wear and tear. The landlord purchased wood filler and spent 1.5 hours to purchase and apply the wood filler. The landlord seeks compensation for 1.5 hours of labour, or \$37.50, plus the cost of the wood filler in the amount of \$5.45.

The tenants were of the position the laminate floor scratches amounted to wear and tear and that the landlord applying some wood filler to the scratches after a four year tenancy ought to be expected as part of the landlord's routine maintenance of the property.

4. Damaged patio screens --\$151.20 + \$89.60

The landlords submitted that the tenants removed the patio door screens during the tenancy, stored them under the deck, and that they were damaged at the end of the tenancy. The frames were warped and the screening ripped. The landlords had one screen replaced at a cost of \$151.20 and one was repaired at a cost of \$89.60. The landlords seek to recover these costs from the tenants.

The tenants submitted that one of the screens was warped at the start of the tenancy since the patio screen door did not slide well which was a reason the tenants removed it and stored it under the deck against the house. The screen doors remained there for four years. The tenants were of the position they did not damage the screen doors but that the landlord ought to expect to make some repairs from time to time and the landlords are "nickel and diming" them.

5. Cleaning floor heaters – \$112.50

The landlords submitted that three heaters were not working at the end of the tenancy. After cleaning the floor heaters of debris the heaters began working again. The landlords were of the position the tenants were responsible for cleaning the heaters during the tenancy. The landlords seek compensation for the landlord's time spent cleaning the floor heaters.

The tenants submitted that they maintained a very clean home but that they did not unscrew the floor heaters vents from the floor and dismantle the heaters to clean them or ask their house cleaner to do so. The tenants stated that the heaters also had fans in them. The tenants were of the position that landlords are responsible for cleaning furnace filters, vents and ducts, and pointed to Residential Tenancy Branch Policy Guideline 1 in support of their position.

6. Garage door opener -- \$200.00

The landlords submitted that the garage door opener stopped working during the tenancy due to a broken chain and a bent rail. Initially, the landlords obtained an estimate for a new garage door opener; however, during the hearing the landlords reduced their claim to \$200.00. The landlords explained that their incoming tenant was able to fix the garage door opener. The landlords want to compensate the new tenant for two hours of labour, or \$200.00. The landlords acknowledged they have not yet paid the new tenant.

The tenants denied that they caused any damage to the garage door opener. The tenants acknowledge that it stopped working during their tenancy but pointed out that just because something breaks down does not mean the tenants damaged it. The tenants questioned whether the landlords will ever compensate the new tenant for his labour given the amount of time that has passed and the landlords have yet to pay him.

7. Utility bill -- \$153.53

The landlords seek \$153.53 for the last water bill for the property. The tenants were agreeable to compensating the landlords for this amount.

8. Garbage removal -- \$62.50

The landlords seek compensation for 2.5 hours to gather and remove garbage and recyclables left at the property at the end of the tenancy. The landlords stated that garbage, garbage cans, and lawn furniture were left behind. The tenants had told the landlords that they, or someone else, would return to retrieve these items but no one did. The landlords hauled the items to their property and put in the garbage/recycling or took to a charitable organization. The landlords also had to clean out the woodstove.

The tenants acknowledged leaving a garbage can and a recycling bin behind. The tenants understood the incoming tenants wanted their lawn furniture so they left it behind. The tenants believed their son-in-law returned to the property to remove the remainder of their possessions. The tenants denied using the woodstove. Accordingly, the tenants are of the position that a claim for nearly 3 hours is excessive. The tenants suggest that 20 minutes is all that was needed.

9. Filing fee and postage

The landlords seek recovery of the filing fee paid for this Application for Dispute Resolution and the cost of postage to serve documents. The Act permits recovery of the filing fee but no other costs associated to filing or participating in a dispute resolution proceeding. Accordingly, I dismissed the landlords' request to recover postage costs summarily during the hearing. I will consider the landlords' request to recover the filing fee in the analysis section of this decision

10. Damage to laminate floor

The landlords' submitted that there was water damage to the laminate floor but the landlord's claim was for zero dollars. Accordingly, I did not consider this claim further and I did not seek a response from the tenants.

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. 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.

Section 32 of the Act requires that a tenant repair damage caused by way of their actions or neglect or the actions of persons permitted on the property by the tenant. Under section 37 of the Act, a tenant is required to leave the rental unit undamaged, reasonably clean, and vacant at the end of the tenancy. Sections 32 and 37 also provide that reasonable wear and tear does not constitute damage. Accordingly, a landlord may seek compensation from a tenant for breaches of section 32 and 37 of the Act but not for reasonable wear and tear or pre-existing damage.

Also of consideration is that awards for damages are intended to be restorative. 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*.

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

Carpet cleaning

The tenants were agreeable to compensating the landlords the amount claimed for carpet cleaning; therefore, I award the landlords' \$126.00 as requested.

Damaged drywall and repainting

The parties were in dispute as to what constitutes damage verses reasonable wear and tear. The landlords provided photographs and it was undisputed that there was an area of drywall that was damaged when a sticker was peeled off and a chip in the drywall in the stairway. Upon review of the landlords' photographs, I find these areas constitute damage that is beyond reasonable wear and tear.

As for the scuff and rub marks on the paint, I find these areas are more consistent with wear and tear when I consider the following: the tenancy was 3 years and 9 months in duration; Residential Tenancy Policy Guideline 1 provides that landlords are expected to repaint a unit a reasonable intervals; and, policy guideline 40 provides that interior paint has an average useful life of 4 years. Therefore, I find the unit was likely in need of repainting soon anyways and that would rectify the scuff and rub marks.

The landlords provided a detailed breakdown of the time spent patching drywall and repainting. I find the breakdown appears reasonable and I have relied upon it.

Based on my findings above and my reliance on the landlords' breakdown, I find the landlord entitled to 7.5 hours of labour for wall preparation, filling, sanding, and one coat of paint over the patched areas. However, I deny the landlords' claims for labour associated to the second coat of paint and the cost of paint. Therefore, I grant the landlords' claim, in part, in the amount of \$187.50 [7.5 hours x \$25.00 per hour].

Floor damage

The parties were in dispute as to whether some marks on the laminate floor in the entry and kitchen constituted damage or wear and tear. There is no question the landlord purchased wood filler shortly after the tenancy ended and I accept the landlord's submission that he applied the wood filler himself. The issue to determine is whether the landlords are entitled to recover the cost of the wood filler and labour to apply the wood filler from the tenants. As such, I must determine whether the landlords met their burden to prove the marks constituted damage beyond wear and tear.

The landlords provided the move-out inspection report which reflects "laminated floor spots" in the entry and "one chipped spot" in the kitchen floor. The landlords did not provide photographs of these damaged areas to review which I find unusual considering the landlords' provided photographs of nearly everything else in support of their other claims. In the absence of photographs, I find the written descriptions above do not satisfy me that the spots and the chip is beyond wear and tear one would expect over a tenancy nearly four years in duration. Therefore, I dismiss this portion of the landlords' claims against the tenants.

Damaged patio screens

It was undisputed that the tenant removed two patio screens from the patio doors during the tenancy and stored them under the deck. It was undisputed that the patio screens were damaged at the end of the tenancy as reflected in the move-out inspection report and the landlords' photographs.

The tenant claims one of the patio screen doors was warped at the start of the tenancy; however, the move-in inspection report does not indicate that. Rather, the move-in inspection report indicates the patio screen doors were in good condition at the start of the tenancy.

In light of the above, I accept that the patio screens were damaged during the tenancy and I find the cause of the damage is likely the tenant's removal and storage of the screens under the deck. While the tenants likely did not intentionally damage the screen I find their actions resulted in the damage nonetheless.

As for compensation for the landlords, one screen was replaced with a new one as the first service provider the landlord approached indicated the screens were not repairable. However,

the landlords did find another service provider that could repair the patio screen and had that one repaired at a lower cost. I find it appropriate to award the landlords compensation equivalent to the repair cost for two patio screens only as such an award takes into account that the landlords' now have a new patio screen door in place of an older one. Therefore, I award the landlords compensation of \$179.20 (\$89.60 x 2).

Cleaning floor heaters

The landlords cleaned the floor heaters after the tenancy ended. The parties were in dispute as to which party is responsible for cleaning the floor heaters.

Residential Tenancy Branch Policy Guideline 1 provides information and policy positions with respect to various repair and maintenance obligations. The policy guideline provides, in part:

BASEBOARDS AND BASEBOARD HEATERS

The tenant must wipe or vacuum baseboards and baseboard heaters to remove dust and dirt.

FURNACES

1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.
2. The tenant is responsible for cleaning floor and wall vents as necessary.

FIREPLACE, CHIMNEY, VENTS AND FANS

1. The landlord is responsible for cleaning and maintaining the fireplace chimney at appropriate intervals.
2. The tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it.
3. The tenant is required to clean the screen of a vent or fan at the end of the end of the tenancy.
4. The landlord is required to clean out the dryer exhaust pipe and outside vent at reasonable intervals.

The forced air floor heaters in the rental unit are not specifically described in the policy guideline. The landlords provided photographs of the floor heaters when they were opened up for cleaning. I can see that the floor vent cover appears to have holes for the vent cover to be screwed down to the floor. Another photograph shows what appears to be another interior screen overtop the fan in the heating unit. Based on these photographs it would appear to me that the floor heater has to be dismantled somewhat in order to clean it. Based on the requirements of a landlord and a tenant with respect to other heating devices in the policy guideline, I am of the view that it is beyond a tenant's responsibility to unscrew and dismantle and floor heater in order to clean it. Rather, I am of the view that the tenant would be responsible to vacuum or wipe the outermost vent cover but that any cleaning required under

the vent cover would be the landlord's responsibility. Therefore, I make no award to the landlords for cleaning the internal workings of the floor heaters and I dismiss this portion of their claim against the tenants.

Garage door opener

The landlords had the garage door opener and/or its components repaired by the incoming tenant. The parties were in agreement that the garage door opener stopped working during the tenancy but the parties were in dispute as to whether it stopped working because of damage caused by the tenants. Also at issue is the amount of compensation claimed by the landlords'.

The landlords' seek compensation of \$200.00 from the tenants. The landlords' acknowledged that they intend to give this money to the incoming tenant for two hours of work to repair the garage door opener. The tenants questioned the landlords' intentions.

Where a tenant repairs a fixture for the landlord, the parties may agree on compensation payable to the tenant. Considering the number of months that have elapsed since the repair was made by the incoming tenant, I am of the view that if the landlords' agreed to compensate the incoming tenant, or if they felt indebted to the incoming tenant for his efforts they would have already compensated the incoming tenant. In other words, the landlords' indebtedness to the incoming tenant should not depend on whether the landlords succeed in this claim against the former tenants. Therefore, I find I am unsatisfied the landlords have or will suffer a loss with respect to the garage door opener and I make no order for the tenants to give the landlords compensation.

Having been unsatisfied the landlords have or will suffer a loss with respect to the garage door opener, I find it unnecessary for me to determine whether the tenants caused any damage to the garage door opener.

Utility bill

The tenants were agreeable to compensating the landlords the amount claimed for the utility bill; therefore, I award the landlords \$153.53 as requested.

Garbage removal

It was undisputed that the tenants left some items behind at the rental unit when they vacated the property. The tenants claim that their son-in-law was to retrieve the possessions but the landlords' submitted that he did not or did not take everything. I accept that the landlords' position that they were left dealing with those items as the landlords had photographs of items left behind and the tenants were not there and they did not produce their son-in-law as a

witness during the hearing. As such, the issue to determine was the amount of possessions left behind and the reasonableness of the landlords' claim for compensation.

In one of the photographs the landlords' provided, two garbage cans are visible, among other things. The tenant stated that one of them was at the property when the tenancy started. When I look at the condition inspection report, it indicates there were two garbage cans provided at the start of the tenancy. I find it reasonably likely that one of the garbage cans did belong with the rental unit as stated by the tenant.

The tenants stated that the incoming tenants took the lawn furniture but the landlords denied that to be accurate. I find the tenants did not satisfy me that the incoming tenants took the lawn furniture based on the disputed testimony of the landlord.

The tenants were of the position the landlord's claims for 2.5 hours of labour was excessive and that 20 minutes was more reasonable. Based upon the photographs and considering one garbage can was likely belonging to the rental unit, I agree that 2.5 hours appears somewhat excessive. I find a more appropriate award appears to be the equivalent of 1.5 hours at \$25.00 per hour, or \$37.50.

As for cleaning the woodstove, there is a photograph of the inside of the woodstove and there appears to be a small amount of ash and a piece of paper in it. Policy Guideline 1 provides that a tenant is responsible for cleaning a fireplace if the tenant used it during the tenancy. The tenants stated they did not use the woodstove. When I look at the condition inspection report I do not see any mention of it being inspected at the start or end of the tenancy. Accordingly, I find the evidence is inconclusive as to whether the tenants used the wood stove and I make no further award for compensation to the landlords.

Filing fee, Security Deposit and Monetary Order

The landlords' were partially successful in their Application for Dispute Resolution and I award the landlords recovery of one half of the filing fee they paid, or \$50.00. I make no award for the tenants to recover their filing fee since disposition of the security deposit was already the subject of the landlord's application and the tenants' other claims were dismissed with leave, as reflected in the Interim Decision.

Based on the awards provided to the landlords' by way of this decision, I authorize the following deductions from the tenants' security deposit and I order the landlords' to return the balance of the deposit to the tenants without delay, as calculated below:

Security Deposit	\$1,075.00
Less authorized deductions for:	
Carpet cleaning	\$126.00
Damaged drywall	187.50

Damaged patio screens	179.20	
Utility bill	153.53	
Garbage removal	37.50	
Filing fee to landlords (partial)	<u>50.00</u>	<u>733.33</u>
Balance of security deposit payable to tenants		<u>\$ 341.27</u>

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposits & Set-Off*, I provide the tenants with a Monetary Order in the amount of \$341.27 to ensure the landlords refund the balance of the security deposit as ordered.

Conclusion

The landlords were partially successful in their claims against the tenants. The landlords have been authorized to deduct a total of \$733.33 from the tenants' security deposit and the landlords have been ordered to return the balance of \$341.27 to the tenants without delay. The tenants are provided a Monetary Order in the amount of \$341.27 to serve and enforce upon the landlords 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: June 20, 2018

Residential Tenancy Branch