# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant states that his and the other tenant's first and last names were set out in the wrong order on the application. The Landlord declined to amend the application at the hearing stating that the names were set out on the application as they were set out on the tenancy agreement.

Policy Guideline #23 provides that parties who are named as applicant(s) and respondent(s) on an application for dispute resolution must be correctly named and that where both parties are present at the hearing and one party was not correctly named, the application may be amended to show the correct name. Based on the evidence of the Tenant I find that the Landlord has not correctly set out the names of the Tenants and I amend the application to set the names out correctly.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy, under written agreement, started on September 1, 2016 and ended on April 30, 2018 by mutual agreement. Rent of $4,770.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected $2,300.00 as a pet deposit, $2,300.00 as a security deposit, and $4,600.00 as the last month's rent. The Landlord continues to hold the security and pet deposit. The Parties mutually conducted a move-in and move-out condition inspection with inspection reports copied to the Tenants. The Tenants provided their forwarding address on May 4, 2018.

The Landlord states that the Tenants left the unit unclean and claims $450.00. The Landlord provides an invoice for this cost. Although not detailed on the invoice the Landlord states that the amount claimed reflects 5 hours of cleaning with 3 persons at $90.00 per hour. The Landlord states that nothing was cleaned at move-out. The Tenant states that they originally agreed that the Landlord would have the unit cleaned and that the Landlord would sent the cost estimate to the Tenants.

The Tenant states that the Landlord never did send the estimate to the Tenants. The Tenant believes that the amount being claimed is excessive considering that the clean-up cost estimated by the restoration company and provided as evidence by the Landlord was only $200.00. The Landlord states that the cleaning company discussed the job with the Tenants before the cleaning was done and that the amount claimed in very reasonable given the very dirty state of the unit. The Landlord states that the unit is 1,500 square feet with 4 bathrooms and 3 bedrooms.

The Landlord states that the Tenants did not clean the carpet at move-out and claims the cost of $150.00. The Tenant does not dispute this claim. The Landlord states that the Tenants failed to remove the garbage in the unit and claims the cost of $200.00. The Tenant does not dispute this claim.

The Landlord states that the Tenant left four walls damaged with stickers and claims $1,400.00 as the costs for painting these walls. The Landlord states that after the stickers were removed the walls were left damaged. The Landlord states that it is unknown how many hours were spend on labour and what proportion of the costs being claimed include the material costs for the painting. The Landlord provides photos of walls and the invoice.

The Tenant states that only one half wall had stickers and that there was no damage on the other walls. The Tenant argues that there are insufficient details to support the excessive amount claimed and believes that a more reasonable amount would be approximately $80.00. The Landlord argues that the Tenant did not provide any evidence to support that this amount is reasonable and that the Landlord believes its costs are reasonable.

The Landlord states that the Tenants left a year and a half old storage locker broken and claims $70.00 as the cost to change the lock. The Tenant states that the Landlord sent an email agreeing that the damage was wear and tear. The Tenant states that the photos also show the damage is only wear and tear. The Landlord denies sending any email agreeing that this damage was wear and tear.

The Landlord states that the Tenants left the kitchen cabinets damaged requiring refinishing. The Landlord claims the estimated amount of $700.00. The Landlord states that the work was completed at the end of May 2018 but that no receipt was obtained as the work was paid in cash. The Tenant states that there were no scratches left on any cabinets and no damage beyond wear and tear such as slight damage to the handles.

The Landlord states that the Tenants left the engineered hardwood floors in the kitchen, living room, dining room den and hallways permanently damaged by stains. The Landlord states that this damage was discovered after the floors had been cleaned. The Landlord claims the estimated amount of $13,428.00. The Landlord states that the repairs were completed at the end of May 2018. The Landlord also states that the Landlord is not sure when the floors were completed as they just received the invoice. The Landlord states that they claimed the replacement costs against the Strata insurance and only had to pay the deductible of $10,000.00. The Landlord provides a letter from the Strata dated August 16, 2018. The Landlord states that it is unknown whether this amount has been paid.

The Tenant states that the deductible is excessive. The Tenant states that no damage to the floors was pointed out at the move out. The Tenant states that only the wall damage was agreed to when the other tenant signed the move-out form and that there was only agreement to this damage. The Tenant states that the report was otherwise blank and argues that the tenant's signature does not indicate agreement to damages that were later inserted by the Landlord. The Tenant states that the Landlord admitted in an email that the move-out form was filled out after the move-out. The Tenant provides a copy of emails in relation to the move-out inspection.

The Tenant states that there were only some mildly stained areas in some of the floors and that there were no stains in the den. The Tenant states that there were only 2 small 1 inch spots in one bedroom and 3 small one inch spots by the laundry. The Tenant states that there was only one other stain in the kitchen area that was approximately two feet by one foot. The Tenant states that the Landlord should have been able to remove and replace the affected slats. The Tenant states that there were about seven affected slats, that the damage was aesthetic only and that the flooring was still usable as flooring.

The Landlord states that the move-out form was not completed when the Tenant signed the document. The Landlord states that they tried to polish the floors to remove the stains but this did not work. The Landlord states that the manufacturer no longer had any matching product for patching. The Landlord states that the replacement started on May 15, 2018 and was completed by the end of May 2018. The Landlord states that the unit has not since been rented and that there have been no other tenants in the unit since the end of this tenancy. The Landlord states that the unit is no longer a rental as it has been listed for sale. The Landlord states that they do not know when the unit was listed for sale.

The Tenant states that the unit was listed around mid-February 2018 and that the Tenants had agreed to showings in this month. The Tenant states that the Landlord has poor reviews online and that this evidence is relevant given the Landlord's excessive claims. The Tenant states that the Landlords are using this dispute process to exploit tenants to cover costs that would bring in larger sale prices. The Tenant argues that the Landlord did not provide more than one estimate and there is no supporting evidence such as photos to support either the quality of the replacement flooring of the completion of the replacement.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage

or loss have been incurred or established. As the Tenants have not disputed the Landlord's claim for carpet cleaning or garbage removal I find that the Landlord has substantiated the costs claimed of **$150.00** and **$200.00**.

Given the email discussions in relation to the move-out report and based on the Tenant's oral evidence, I find on a balance of probabilities that the Tenants signed a move-out report that was not completed at the time. As a result I find that the move-out report was not duly completed by the Landlord at the time of the move-out and is therefore of little weight or assistance in determining the state of the unit at move-out.

Although the cleaning and painting costs seem excessive, based on the undisputed evidence that the Tenants did not undertake any cleaning or painting of the unit, agreed to leave the cleaning and wall repairs with the Landlord, and have not provided any documentary or oral evidence of better cleaning or painting costs, I find that the Tenants cannot now argue that they could have obtained a better price. Given the invoice and photos I find that the Landlord has substantiated that the unit was left unclean, the walls were left damaged and that the Landlord incurred the costs claimed. As a result I find that the Landlord is entitled to cleaning costs of **$450.00** and painting costs of **$1,400.00.**

As the Tenant did not dispute that the lock was left damaged I find that the Landlord has substantiated that the Tenants caused the damage. Given the photo I find on a balance of probabilities that the damage appears to be beyond wear and tear. The durability or life expectancy of the lock cannot be determined by the photo and the Tenant provided no supporting evidence that the lock had a short life. Given the invoice and as the Tenant provided no email to support that the Landlord considered the damage wear and tear, I find on a balance of probabilities that the Landlord has substantiated the Tenants damaged the lock and is entitled to the costs claimed of **$70.00**.

The Landlord's photos show some marks along the edges of the cabinets, particularly in the areas of high usage such as at the dishwasher closure area. This indicates that at least some of the damage is only wear and tear. I also consider that payments made in cash do not restrict the issuance of a receipt. For these reasons and as the Landlord only provided an estimate of costs to refinish the cabinets I find that the Landlord has not substantiated the Tenants caused all the damage or that the costs claimed were finally incurred. I therefore dismiss the claim for cabinet refinishing.

The Landlord provided evasive evidence on the sale of the unit and I therefore prefer the Tenant's evidence that the property was placed for sale prior to the end of the tenancy. While the photos of the floors show some damage they do not show damage to the use of the floors as floors. I find therefore that the damage was only aesthetic. The Landlord has either sold the unit or is selling the unit and there is no evidence that the Landlord suffered any rental income losses as a result of the damage. I also consider that the Landlord provided no supporting evidence that it could not mitigate the costs claimed by replacing the few wood slats that were damaged. As a result I find on a balance of probabilities that the Landlord has not substantiated the costs claimed to replace all the flooring in the unit and has only substantiated a nominal amount of **$100.00** for the aesthetic damage.

Section 1 of the Act provides that **"security deposit"** means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property. Section 19 of the Act provides that:

> (1)A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
> (2)If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

As the Landlord collected a sum of monies to secure a future rental payment in addition to collecting the security and pet deposit I find that the Landlord acted contrary to the Act. Although the Landlord no longer holds this additional deposit I strongly caution the Landlord against conducting itself in this manner in any future or current tenancies. Although the Landlord's claims have met with some success given this serious breach at the outset of the tenancy by the Landlord I decline to award recovery of the filing fee.

Deducting the Landlord's total entitlement of **$2,370.00** from the combined pet and security deposit plus zero interest of **$4,600.00** leaves **$2,230.00** to be returned to the Tenants forthwith.

Conclusion

I Order the Landlord to retain $2,370.00 from the security deposit plus interest of $4,600.00 in full satisfaction of the claim.

I grant the Tenants an order under Section 67 of the Act for **$2,230.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: November 14, 2018

Residential Tenancy Branch