



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FFL

Introduction

On May 22, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; and to keep the security deposit and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to compensation for damage or loss?
- Is the Landlord entitled to keep the security deposit?

Background and Evidence

The parties testified that the tenancy began on August 15, 2008. The Tenants were to pay the Landlord monthly rent in the amount of \$2,700.00. The Tenants paid the Landlord a security deposit of \$1,350.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that he did not complete a condition inspection report at the start of the tenancy. The Landlord testified that when the Tenants moved out there was damage to the unit and cleaning required. The Landlord testified that the rental unit was completely renovated in March 2006, and the unit was fresh in August 2008. The Landlord re-rented the unit to new Tenants on September 1, 2018. The Landlord is requesting compensation for the following items:

Re-soil and res-sod the back lawn	\$1,080.00
Repair and repaint main	\$5,295.00
Repair and repaint upper	\$2,000.00
Countertop replacement	\$1,117.00
Bathtub repair	\$441.00
Hardwood floor refinish	\$1,260.00
Carpet replacement	\$1,139.00
Paint front door	\$200.00
Miscellaneous damage	\$829.00
Utilities	\$1,009.00

Re-Soil and Re-Sod the Back Lawn \$1,080.00

The Landlord testified that the backyard was in perfect shape at the start of the tenancy. The Landlord testified that the Tenant allowed it to be used as a soccer pitch and failed to pick up leaves and chestnuts in the yard which resulted in soil erosion. The Landlord provided photographs of the yard taken in May 2009, and at the end of the tenancy.

The Landlord testified that the Tenant asked for assistance with the yard work in 2011 and the Landlord provided professional assistance for 4 years.

The Landlord provided an invoice for the yard work in the amount of \$1,080.00.

In reply, the Tenant testified that he fulfilled his obligation by cutting the grass and spreading seed. The Tenant submitted that heavy drought, water restrictions, and ice that eroded the lawn. The Tenant testified that the large maple tree roots became exposed over ten years.

Repair and Repaint Main \$5,295.00

The Landlord testified that he received a quote for the cost to repaint the main living area of the rental unit. The Landlord testified that there is multiple degradation on the surfaces of the unit. The Landlord testified that the Tenant drilled holes in the walls and

applied decals to the stair risers. The Landlord provided photographs of the walls, ceiling and window sills. The Landlord testified that the Landlord only painted the trim and the North West bedroom.

The Landlord testified that the interior paint was 8 -10 years old.

In reply, the Tenant testified that the interior of the rental unit required painting. He testified that the interior paint was more than 10 years old and the paint was not fresh when they moved in.

The Tenant submitted that there is no evidence from the Landlord of specific damage.

Repair and Repaint Upper \$2,000.00

The Landlord testified that there were gouges in the walls and the tenant painted around a fixture then removed the fixture. The Landlord testified that the area needs to be repainted. The Landlord provided photographs of the walls and ceiling of the upper floor.

In reply the Tenant testified that it was reasonable wear and tear. He testified that a few posters were hung with tape. The Tenant testified that the house needs to be repainted.

Quartz Countertop \$1,117.00

The Landlord testified that the countertop in the upper bathroom was left heavily stained. The Landlord testified that he attempted to clean it and could not remove the stain. The Landlord testified that the countertop was purchased new in 2006. The Landlord provided a quote for the replacement value. The Landlord provided two photographs of the countertop.

In reply, the Tenant testified that the countertop is blemished by soap or by water. The Tenant testified that it does not need to be replaced as it is perfectly functional. The Tenant could not recall if the blemish was present at the start of the tenancy.

The Landlord testified that the countertop is a porous material and if the Tenant had used a soap dish there would be no problem.

The Tenant testified that the Tenants did not use bars of soap.

Bathtub Repair \$441.00

The Landlord testified that there are dozens of gouges on the floor of the tub near the drain. He testified that the bathtub was new in March of 2006. The Landlord provided two photographs of the tub damage. The Landlord testified that it will cost \$441.00 to re-glaze the tub. The Landlord has not had the re-glazing work done.

In reply, the Tenant testified that he does not recall seeing any significant damage.

Hardwood Floor Refinish \$1,260.00

The Landlord testified that the wood floor of the rental unit was refinished in 2008. The Landlord testified that the glaze has been worn away in the south west bedroom. The Landlord submitted that it appears a chair has been dragged on the floor. The Landlord provided photographs of the floor and a quote for the cost of refinishing the floor.

In reply, the Tenant testified that there was a carpet on the floor and it was removed by a contractor. The Tenant testified that he had an office desk in that location. The tenant testified that he used a floor mat and submitted that he does not believe that the floor needs to be refinished.

Carpet Replacement \$1,139.00

The Landlord testified that the Tenant asked the Landlord to replace a carpet in May 2010. The Landlord replaced the carpet. The Landlord testified that there is a red stain on the carpet. The Landlord provided a photograph of the carpet. The Landlord testified that he has not tried to remove the stain. The Landlord testified that the carpet is now 8 years old.

In reply, the Tenant testified that they spilled something on the carpet. The tenant submitted that they had it professionally cleaned. The Tenant testified that it is just reasonable wear and tear.

Paint Front Door \$200.00

The Landlord testified that the Tenant left a decal on the front door and when it was removed it chipped the paint. The Landlord has not repainted the door. The Landlord testified that a painter verbally quoted him the amount of \$200.00 for the cost to repaint

the door. The Landlord provided a photograph showing a small portion of the front door.

The Tenant testified that there was 2 inch by 2 inch “no junk mail” sticker put on the door. The Tenant testified that he does not feel responsible for the cost to repaint the door.

Miscellaneous Damage \$829.00

The Landlord testified to the following:

- the bifold door in a bedroom has a hole in it. The Landlord provided a photograph. \$300.00.
- a linen curtain is missing. \$100.00.
- an antique door knob is broken. The Landlord provided a photograph. \$100.00.
- damage to the oven purchased in 2016. The Landlord provided a photograph. \$179.00. The Landlord submitted there was metal fusing in the oven.
- the garage downspout needs replacement. The Landlord provided a photograph. \$100.00.
- garbage on the property need to be hauled away. The Landlord provided a photograph. \$50.00.

In reply, the Tenant acknowledged that there was a hole in a bifold door and acknowledged that a curtain disintegrated when it was washed. The Tenant testified that the door knobs are old.

The Tenant acknowledged a discoloration on the bottom of the oven; however, he submitted that it is cosmetic only and does not affect the functionality of the oven.

Utilities \$1,009.00

The Landlord testified that the Tenant paid an extra \$150.00 up front each month for utilities. The Landlord testified that the amount paid was to be reconciled annually. The Landlord testified that the tenancy agreement requires the Tenant to pay 2/3 of the utility costs because there is a separate basement suite below. The Landlord is seeking the amount of \$1,009.00 which is the total amount after reconciling the bills over 10 years.

The Landlord provided a ledger of hydro and gas costs over the term of the tenancy. The Landlord did not provide the actual invoices for the hydro and gas costs.

In reply, the Tenant testified that the agreement was for the Landlord to reconcile the amounts and refund any excess each year. The Tenant testified that at the end of the tenancy he was provided a report for the amount of \$8.00 per month for 116 months. The Tenant testified that the Landlord never contacted him each year for the reconciliation of the utilities. He testified that he never knew if he had paid too much and he never received a copy of the bills. The Tenant could not recall if he ever asked the Landlord to see the bills.

Security Deposit

The Landlord testified that he received the Tenants' forwarding address in writing on April 30, 2018. The Tenants moved out of the rental unit on April 30, 2018. The Landlord applied for dispute resolution including a request to keep the security deposit on May 22, 2018.

The Landlord provided a copy of a move out condition inspection report dated May 3, 2018, bearing the signature of the Landlord and Tenant.

Analysis

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.

The Residential Tenancy Policy Guideline # 40 Useful Life of Building Elements provides that an arbitrator may consider the useful life of a building element and the age of the item at the time of replacement when calculating a Tenants responsibility. The policy guideline provides the following information for useful life:

- Doors 20 years
- Carpets 10 years
- Flooring hardwood 20 years
- Interior paint 4 years
- Exterior paint 8 years
- Stove 15 years
- Counters 25 years
- Tubs 20 years

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

Security Deposit

Sections 23 and 35 of the Act provide that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations. If a Landlord fails to conduct an inspection or prepare a report the Landlord has extinguished the right to apply to keep a security deposit at the end of the tenancy.

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

I find that the Landlord failed to perform a move in inspection with the Tenant as required by section 23 of the Act. The Landlord's right apply to retain the security deposit is extinguished. I find that the Landlord received the Tenants forwarding

address on April 30, 2018, and applied to keep the deposit on May 22, 2018. The Landlord failed to apply for dispute resolution to keep the deposit within 15 days and did not have the Tenants agreement to keep the deposit.

I find that the Landlord owes the Tenants \$2,700.00 which is double the amount of the security deposit.

Re-Soil and Re-Sod the Back Lawn \$1,080.00

I find that the Tenants left the back yard in poor condition at the end of the tenancy. The Landlord provided the better evidence showing the condition of the yard in 2009 and the poor condition of the yard in 2018. I find that the Tenants are responsible for the damage to the yard and the Landlord's cost to repair the yard to its previous condition. I award the Landlord the amount of \$1,080.00.

Repair and Repaint Main and Upper

I find that the useful life of interior paint is 4 years and that the rental unit had not been painted by the Landlord for duration of the 10 year tenancy. I find that the Landlord is responsible for the periodic painting of the rental unit. The Landlords claim for compensation for the cost to repaint the rental unit is dismissed.

I accept the Landlord's evidence that there were some gouges and other degradation to surfaces that are beyond normal wear and tear. I award the Landlord a nominal amount to cover the cost of repairing this damage. I award the Landlord \$200.00 for the cost to repair the gouges and other damage on the surfaces.

Countertop Replacement \$1,117.00

There is insufficient evidence from the Landlord that the countertop needs to be replaced. I find that the stain is cosmetic and does not affect the use of the countertop. There was no evidence that the Tenants agreed to follow special instructions for using the countertop at the start of the tenancy. I find that the countertop is 12 years old and is still being used by new tenants. I find that the staining on the countertop is normal wear and tear. The Landlord has not suffered a loss and the Landlord's claim is dismissed.

Bathtub Repair \$441.00

I find that the bathtub is 12 years old. I accept the Landlord's testimony that the tub was purchased new in 2006. I find that the damage in the tub is more than normal wear and tear. I find that the Tenant is responsible for damage to the tub area near the drain. After considering the age of the tub, I have reduced the award based on its useful life. The tub has 8 years of useful life remaining. I grant the Landlords \$176.40 for the cost to re-glaze the tub.

Hardwood Floor Refinish \$1,260.00

I find that the damage to the hardwood floors is normal wear and tear. The wood floors are going to show signs of use after a period of 10 years. The Landlords claim for the cost to refinish the floors is dismissed.

Carpet Replacement \$1,139.00

I find that the Tenant is responsible for the stain on the carpet. The Landlord failed to mitigate against loss when he did not try and remove the stain by shampooing the carpet. The Landlord's claim for the cost of carpet replacement is dismissed. I grant the Landlord the nominal amount of \$25.00 for the cost of cleaning the stained area of the carpet.

Paint Front Door \$200.00

I find that the useful life of exterior paint is 8 years and that the rental unit door had not been painted by the Landlord during the 10 year tenancy. Based on the age of the paint and the photograph provided, it appears the door may have required painting, regardless of the chip caused by the removal of the 2 inch decal. The Landlord has not performed the work. I find that the Landlord has not suffered a loss. The Landlords claim is dismissed.

Miscellaneous Damage

Bifold Door

I find that the Tenant is responsible for the damage to the bifold door. I find that the Landlord's claim for \$300.00 repair and paint the door is high, especially since it's the

Landlords responsibility periodically repaint the interior of the unit. I award the Landlord \$100.00 for the repair of the door.

Curtain

I find that the Tenant is responsible to replace the curtain. I grant the Landlord \$100.00 for the curtain.

Door Knob

There is insufficient evidence from the Landlord that damage to the door knob or plate was caused by negligent use by the Tenant. The Door knobs are very old and may break due to normal wear and tear. The Landlords claim for the replacement of the doorknob is dismissed.

Oven

The Landlord submitted that metal fusing occurred in the oven; however, there was no evidence linking the discoloration on the bottom of the oven with negligent use of the oven by the Tenant. I find that the discoloration of the oven tray is cosmetic only. The Landlord has not provided a receipt for the repair, so I find that the new tenants are still using the oven. I find that the Landlord has provided insufficient evidence that the Tenant is responsible for a repair cost. The Landlords claim is dismissed.

Downspout

I accept the Landlord's photographic evidence that a downspout was dented/ damaged. The Tenant did not respond to this claim. The Landlord did not provide a receipt or quote for the purchase of a new downspout and I find that the claim for \$100.00 is high. I award the Landlord \$50.00 for the replacement cost of the downspout.

Disposal of Garbage

I accept the Landlords evidence that garbage or items were left behind by the Tenants. While there is no receipt provided for the cost of disposal, I find that the amount claimed of \$50.00 is a reasonable amount for the cost to remove the items to the dump and dispose of them. I award the Landlord \$50.00

Utilities \$1,009.00

Estoppel is a legal rule that prevents somebody from stating a position inconsistent with one previously stated, especially when the earlier representation has been relied upon by others.

I find that the tenancy agreement is that the monthly amount paid by the Tenant was to be reconciled annually. The Tenant relied on this agreement and was not aware that money for utilities was owing. I find that the Landlord never contacted the Tenant every year for the reconciliation of the utilities. I find that it is not reasonable for the Landlord to wait until the end of the tenancy and produce an invoice for payment. Had the Landlord reconciled the amounts each year the Tenant could have demanded to see the actual bills to verify any amounts owing.

I find that the Landlord failed to follow the tenancy agreement with respect to reconciling utility payments and waited an unreasonable amount of time and therefore, the Landlord is estopped from seeking compensation for utilities.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a monetary claim in the amount of \$1,881.40.

The Landlord owes the Tenant \$2,700.00 due to a breach of section 38 of the Act regarding the security deposit.

After setting off the award of \$1,881.40 from the security deposit of \$2,700.00, I find that the Landlord owes the Tenant the balance of \$818.60.

I grant the Tenant a monetary order in the amount of \$818.60. The monetary order must be served on the Landlord and may be enforced in the Provincial Court.

Conclusion

I find that the Tenant owes the Landlord the amount of \$1,881.40.

After setting off the award of \$1,881.40 from the security deposit of \$2,700.00 awarded to the Tenant, I find that the Landlord owes the Tenant the balance of \$818.60.

I grant the Tenant a monetary order in the amount of \$818.60. The monetary order must be served on the Landlord and may be enforced in the Provincial 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: November 21, 2018

Residential Tenancy Branch