



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was reconvened from an adjourned hearing on June 25, 2019 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. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

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

Preliminary matter

The Landlord states that it was noticed shortly before the hearing date that the Landlord made an error in calculations for the lost rental income claimed of \$1,320.00. The Landlord seeks to amend its application to increase this amount to \$2,295.40 to reflect lost rental income for all of April and May 2017 and for 9 days in June 2017.

Rule 2.2 of the Residential Tenancy Branch (the “RTB”) rules of Procedure provides that claims are limited to what is stated in the application. Rule 4.2 of the RTB Rules of Procedure provides that in circumstances that can be anticipated, such as when the amount of rent owing has increased since the time the application for dispute resolution was made, the application may be amended at the hearing. As the only reason for the request to increase the lost rental income was due to an error by the Landlord, I find

that these are not circumstances that could be reasonably anticipated. I therefore find that the Landlord may not amend its application to increase the claim for lost rental income and that the Landlord is restricted to the amount claimed in the application of \$1,320.00.

Issue(s) to be Decided

Is the Landlord entitled to the compensation claimed?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on April 3, 2010. Rent of \$950.00 was payable on or before the first day of each month. As of October 1, 2016 rent of \$998.00 was payable. At the outset of the tenancy the Landlord collected \$475.00 as a security deposit. The Parties mutually conducted a move-in condition inspection on April 3, 2010 with a condition inspection report completed and copied to the Tenants. After the Tenants moved out of the unit the Tenants did not provide their forwarding address to the Landlord. The Parties did not conduct a move-out inspection. The Landlord conducted an inspection itself without a written report and provided evidence of the state of the unit through photos only.

The Landlord states that it does not know when the Tenants moved out and that no keys were returned. The Landlord states that on April 10, 2017 the Landlord received the Tenants' notice that they were ending the tenancy for the end of April 2017. The Landlord states that the Tenants' notice letter was postmarked April 6, 2017 and the Landlord provides a copy of the envelope containing the notice.

The Tenant states that they gave written notice to the Landlord to end the tenancy for April 30, 2017 and that this notice was mailed to the Landlord on March 27, 2017. The Tenant states that they moved out of the unit on April 15, 2017 and left the keys in the

unit. The Tenant states that the Landlord called them on April 10, 2017 and at that time the Landlord was informed that the Tenants would be out of the unit on April 15, 2017. The Tenant states that the Landlord never offered any move-out inspection on that call or thereafter. No rent was paid for April 2017.

The Landlord states that the unit was advertised on one online site, by placing a sign at the unit and through word of mouth. The Landlord states that it was about the last week of April or the first week of May 2017 that the unit was advertised for \$1,500.00. The Landlord states that because of the damages left by the Tenants the unit could not be rented until the damages were repaired and that the repairs were not completed until June 9, 2017. The Landlord states that the unit was rented for June 10, 2017 at a monthly rental rate of \$1,500.00. The Landlord claims unpaid rent for April and lost rental income for May 2017 and for 9 days in June 2017. The Landlord's claim as noted above in the preliminary matters is restricted to \$1,320.00.

The Tenants argue that they should not have to pay any rent or lost rental income as they were frustrated by the Landlord's failure, despite several ongoing requests, to make repairs, to deal with an infestation, and by continuous flooding and leaks with a resulting growth of mold and mildew. The Tenants state that they never sought any repair orders from the RTB. The Landlord states that he always responded to the Tenants' requests for repairs and that when the infestation was reported the Landlord brought in an exterminator. The Landlord states that the Tenants never reported mold or any leaks. The Tenants state that they left the unit clean and without damages and that the unit could have been rented for May 1, 2017. The Tenant states that the Landlord did renovations to the unit instead of renting the unit.

The Landlord states that the Tenants left the unit unclean and with damages. The Landlord provides photos. The Landlord claims as follows with receipts and invoices provided for all the claimed items:

- \$31.50 for the replacement of 3 screens on the living room windows. The Landlord states that the screens were new in the spring of 2016;
- \$210.00 for the labour costs to remove and rehang 4 damaged doors from the front exterior, the entry, the basement and a bedroom. The Landlord is unsure of the age of the doors or the age of the unit or when the Landlord purchased the unit. The Landlord thinks that the doors would probably be 10 years old;
- \$350.00 for the costs of repairs to one wall area damaged by a door knob and the labour costs to paint the wall and 3 doors. The Landlord states that the unit was last painted prior to the onset of the tenancy;
- \$124.32 for the replacement of 1 damaged door;
- \$388.94 for the costs to replace 2 damaged doors;
- \$6.37 for the costs to replace a broken kitchen cupboard hinge. The Landlord states that the cupboards are maybe 20 years old and that the hinge was original to the cupboards;
- \$53.70 for the costs to develop photos as evidence for this application;
- \$160.26 for the cost to replace 2 damaged fridge crispers. The Landlord states that the fridge was new in 2017;
- \$72.50 as the costs to clean the stove and fridge and the self-cleaning oven; and
- \$66.61, 15.62, 66.61 and 56.12 for the costs of paint and supplies to cover only the damaged areas on one wall left with a hole about 10" x 10" and for the costs of paint for four doors.

The Tenants do not dispute having left 2 screens with damage and do not dispute 2/3's of the replacement cost being claimed in the amount of \$21.00. the Tenants state that the Landlord provided 2 photos of the same screen taken from different angles and 1 photo of the other screen.

The Tenants do not dispute that they damaged the basement door and a bedroom door. The Tenants state that the Landlord has 10 doors on its list and the Tenants cannot determine from the Landlord's evidence which doors were replaced. The Tenants state

that the exterior door was only a piece of plywood and that the entry door was damaged at the outset of the tenancy from the removal of a cat door. The Tenant states that their dog did cause some damage to this door. doors described as replaced by the Landlord. The Tenants state that the doors were at least 20 to 30 years old and appear to be from the 1970's.

The Tenants state that the wall that was damaged by the door knob did not have any door stop from the outset of the tenancy.

The Tenants state that the costs for the crispers seem excessive in relation what they guess the cost of the new fridge to be around \$300.00. The Landlord states that the fridge cost \$700.00.

The Tenants state that they did wipe down the interior of the oven but did not clean the oven using the self clean. The Tenants state that they also wiped out the fridge.

The following evidence was provided at the reconvened hearing on the remaining claims of the Landlord:

The Landlord states that the basement sink drain was left blocked from the disposal of cat litter down the drain. The Landlord unplugged the drain and claims the cost of \$49.65 for the rental of a snake and some drain cleaning products. The Tenant states that the drain had been a problem from the onset of the tenancy and that the Landlord was at the unit at least twice a year to unplug the drain. The Tenant states that the dryer was not properly vented and was only connected to a window above the sink. The Tenant states that the lint would go into the sink and that the Tenant believes that this caused the problem. The Tenant states that scoopable litter was used and was always disposed of into garbage bags. The Tenant also questions the receipt as it comes from the company of one of the Landlord's family members.

The Landlord claims \$456.02 at the combined cost for the replacement of a damaged carpet, linoleum and a light fixture. The Landlord states that the Tenants removed the basement carpet that was new in 2010. The Landlord states that this was discovered at the end of the tenancy. The Landlord states that the Tenants removed the carpet due to the sink overflow and the animals that the Tenants had. Of the total amount claimed, the Landlord claims \$191.49 as the cost of the carpet replacement. The Landlord states that the Tenants also left the dining room linoleum ripped. The Landlord thinks that the linoleum was new a couple of years before the onset of the tenancy. The Landlord claims \$241.20 for the replacement of the linoleum. The Landlord states that the Tenants left a light fixture partially removed with broken glass. The Landlord states that the light fixture was probably new in March of 2010. The Landlord claims \$23.33 for the replacement cost. The Tenant states that the carpet was 20 to 25 years old at the onset of the tenancy and was never secured to the floor. The Tenant states that the carpet was removed 3 years prior to the end of the tenancy as it smelled and was moldy from the constant flooding from the sink. The Tenant states that the linoleum was at least 20 years old, was brittle and would break when it was mopped. The Tenant states that there was originally only a light bulb hanging so the Tenants purchased and installed the light fixture. The Tenant states that the fixture was left intact at the unit. The Landlord states that as far as the Landlord knew the fixture was present at move-in.

The Landlord states that all the blinds for all the windows in the unit were missing at the end of the tenancy. The Landlord states that it is unknown how many windows are in the unit. The Landlord states that the blinds were new just before the end of the tenancy and had been put in place when the Landlord replaced the windows. The Landlord states that the original blinds had been long gone at the time. The Tenant states that the Landlord is telling an outright lie. The Tenant states that at move-in the Tenants removed all the blinds and put them into storage as the Tenants did not want their pets damaging the blinds. The Tenant states that the Landlord replaced the windows during the tenancy but never put up any blinds. The Tenant states that they

used their own drapes for the window coverings. The Landlord states that no blinds have been found in the basement.

The Landlord states that the Tenants failed to leave the unit and yard clean and claims a total of \$353.50. The Landlord states that the interior cleaning took 15 hours over several days at a charge of \$15.00 per hour and that the yard clean up, including the cleaning of the exterior windows, took the remaining time for the costs claimed at the same hourly rate. The Landlord states that section 11 of the tenancy agreement requires the Tenants to maintain the yard. The Landlord states that the yard cleaning costs included time to remove a tree house, a pile of sawdust and to level the area where the Tenants had dug out a part of the yard to install a pool. The Landlord states that the Tenants were given permission to put in the pool and that the Tenants were told that the area would have to be returned to its original state at the end of the tenancy. The Tenant states that the unit was left spotlessly clean except for under the stove and fridge. The Tenant states that these appliances did not have wheels and the Tenants did not want to damage the flooring by forcing them out to clean. The Tenant states that the Landlord's photos show the cleanliness of the unit. The Tenant states that the only other unclean area was an area in the basement where junk had been left at the onset of the tenancy by the Landlord. The Tenant states that only recycling was left overflowing in the recycling bins. The Tenant states that except for the pool area hole the yard was left immaculate. The Tenant states that the hole was filled with sand before the pool was put in place. The Tenant states that the Landlord agreed to the installation of the pool about 1.5 years after the onset of the tenancy. The Tenant states that the Landlord was good with the sand filler and never said anything about requirements at move-out.

The Landlord states that 6 trips were made to the landfill to remove the garbage left behind by the Tenants. The Landlord claims \$400.00 for its time to take the garbage out. The Tenant states that no garbage was left in the upper part of the unit and that the only items left were those originally left by the Landlord. The Tenant argues that

they are not responsible for the removal of the Landlord's own stuff. The Tenant states that it only left a couple of board games and a couple of canned food items in one cupboard.

The Landlord claims the landfill fees of \$20.70 and 24.30 and 34.50 for the dumping of the garbage and items left by the Tenants in both the unit and yard. The Landlord states that all the junk was left by the Tenants and that the Landlord never left anything in the unit. The Landlord refers to the move-in condition report that does not note anything being present. The Tenant states that the area was not marked in the report as it was a back-storage room. The Tenant states that the Landlord's maintenance supplies such as primer, paint, trim, and wires were in the storage room. The Tenant states that the recycling materials left by the Tenants would not have cost any fee.

The Tenant states that they left a washer, dryer and deep fridge behind and that these items were only 2 years old. The Tenant states that the value of these items should cover any damage left by the Tenants. The Tenant states that they did a lot of work at the onset of the tenancy to clean the yard that had an 8-foot pile of plant and tree clippings and 4 to 5 piles of dead leaves. The Tenant states that they also landscaped the front yard. The Landlord states that the appliances left behind were junk. The Landlord states that if there was any value left to them the Tenants would more likely have given them away or sold them.

Analysis

Section 39 of the Act provides that Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit or the pet damage deposit, or both, and the right of the tenant to the return of the security deposit or pet damage deposit is extinguished. Given the undisputed evidence that the Tenants did not provide a forwarding address to the Landlord I find that the Landlord is entitled to retain the security deposit of **\$475.00**.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence that no rent was paid for April 2017 and the undisputed evidence that the Tenants gave notice to end the tenancy for the end of April 2017 I find that the Landlord has substantiated unpaid rent of **\$998.00**.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Given the Landlord's evidence of the envelope containing the Tenants' notice to end tenancy I find on a balance of probabilities that the Tenants did not provide a full month's notice to end the tenancy and therefore breached the Act. The Landlord's evidence is that the unit could not be rented due to damages left by the Tenants however, the Landlord's evidence is also that the unit was advertised for \$1,500.00, a sum much higher than the rent that was being paid by the Tenants. This higher rental amount is inconsistent with the Landlord's obligations to take reasonable steps to minimize the loss claimed from the Tenants' end of the tenancy and does not support that any damages to the unit left by the Tenants caused the unit not to be rented until June 2019. Further, it appears from the dates of the Landlord's invoices that the majority of the work done to the unit occurred prior to the end of April 2017. For these reasons, I find on a balance of probabilities that the Landlord failed to take reasonable steps to mitigate the costs being claimed for the Tenants' breach of the Act by giving short notice and that the limited damages left by the Tenants did not cause the Landlord to be unable to rent the unit for May 1, 2019. I dismiss the claim for lost rental income.

Considering the photos and the Tenant's evidence that only 2 screens were damaged I find on a balance of probabilities that the Landlord has only substantiated damage to 2 screens. Calculating the costs to replace those screens from the Landlord's claim for the costs of 3 screens I find that the Landlord has substantiated the cost of **\$21.00**. Given the undisputed evidence that there was no door stop on the one wall with damage, I consider that the damage to the door was only wear and tear in the circumstances. I therefore find that the Landlord is not entitled to costs to repair that wall.

Policy Guideline #40 provides that the useful life of interior paint is 4 years. Based on the Landlord's evidence that the unit had not been painted for the duration of the 7-year tenancy I find that the Landlord has not substantiated that the Tenants caused any loss to the paint. I dismiss all costs for painting and paint supplies related to the wall.

Policy Guideline #40 provides that the useful life of kitchen cabinets is 25 years. There is no evidence that the hinge was newer than the cupboard. As the Landlord gave vague and evasive evidence of the age of the house and cabinets and given the photos, I consider that, the cupboards, and therefore the hinge, was well over 25 years of age. I find on a balance of probabilities therefore that the Landlord has not substantiated that the Tenants caused damage to the hinge beyond wear and tear and I dismiss the claim for the cost to replace the hinge.

Policy guideline #40 provides that the useful life of a door is 20 years. The Landlord gave vague and evasive evidence in relation to the age of the doors. For this reason and considering the photos and Tenants' evidence I find on a balance of probabilities that the doors were well over their useful life. As a result, I find that there was no longer any value left to the doors and that the Landlord has not substantiated any loss. I dismiss the claims for labour and supply costs for the purchase of the new doors and for the painting of the doors.

As there is nothing in the Act that provides a party with compensation or costs of proceedings other than the recovery of the filing fee and as the photo costs were incurred for the purpose of providing evidence for the proceedings I dismiss the claim for photo costs.

Given the invoice for the cost to replace that damaged fridge crispers and considering that the Tenants did not deny that the damage was caused by them and did not provide any evidence to refute the costs claimed by the Landlord, I find on a balance of probabilities that the Landlord has substantiated the costs of **\$160.26** for the replacement of the crispers.

Given the Tenant's evidence of not fully cleaning the appliances and considering the Landlord's photos I find on a balance of probabilities that the Landlord has substantiated that the Tenants failed to leave the unit reasonably clean. Given the invoice for the cleaning costs of the appliances and floors in the unit, I find that the Landlord has substantiated the claim of **\$72.50**.

The Landlord's receipt for the costs related to the blocked drain sets out a date of February 13, 2018. I take the invoice to indicate that the repairs to the drain was done on February 13, 2018. Given the undisputed evidence that the drain was continually blocked during the tenancy and considering that the next tenancy was ongoing for 9 months at the time of the repairs, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the blockage at the time of the repairs and I dismiss the claim for repairs to the drain.

The Landlord only gave evidence that the Tenants caused the drain flood that occurred in 2018. This has not been substantiated as set out above. The Landlord did not give any evidence of the Tenants causing the undisputed numerous drain floods during the tenancy. Considering these facts, given the Landlord's evidence that the carpet was soiled by the drain floods during the tenancy and as there is no evidence to support any

proportionate costs that may have been caused by damage to the carpet by the pets, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the damage to the carpet. I dismiss the claim to replace the carpet.

Given the Landlord's vague evidence of the age of the linoleum, the Tenant's evidence of advanced age and the Landlord's photos that I consider support the evidence of advanced age, I find that the Landlord has not substantiated that any life was left to the linoleum. As a result, I find on a balance of probabilities that the Landlord has not shown that the Tenants caused any damage to the linoleum beyond wear and tear in the circumstances. I dismiss the claim for linoleum costs.

Given the Landlord's vague evidence of the age of the light fixture and its presence at the outset of the tenancy and accepting the Tenant's direct and detailed evidence that the fixture was purchased to cover a bare light at the onset of the tenancy, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused any loss to the Landlord in relation to the missing or broken light fixture. I dismiss the claim to replace it.

The Landlord's photos of the items left in the basement appears to confirm the Tenant's evidence that the one room was left with items that did not belong to the Tenants. There is no dispute that the Tenants left recycling and a few minor items in the unit. Based on the details provided in the Landlord's invoice, I find on a balance of probabilities that the Landlord has only substantiated a reasonable cost of **\$30.00** for the removal of the items left by the Tenants. Although the Landlord provides photos of windows, the photos are from a distance and do not depict uncleanliness. A tenant is not responsible for cleaning the external windows that I note are included in the costs for cleaning. I also note that the invoice may or may not be claiming for cleaning costs to the kitchen appliances as it notes them and the unit as clean but does not include the cleaning details other than the basement. For these reasons and as the Landlord has already been found entitled to cleaning costs for the unit I find that the Landlord has not

substantiated the additional costs claimed for cleaning. Based on the photos of the yard, I find on a balance of probabilities that the Tenants did leave the yard damaged. Given the invoice setting out 7.5 hours at \$15.00 per hour for cleaning the yard and removing the deck and treehouse I find that the Landlord has substantiated an entitlement to **\$112.50**.

The invoice for the blinds is dated either May 6, 2017 or June 5, 2017. This evidence of the Landlord is inconsistent with its evidence that the blinds were installed during the tenancy that ended in April 2017. For this reason and given the Tenant's evidence that no blinds were installed with the windows during the tenancy, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants took any blinds that belonged to the Landlord from the unit. I dismiss the claim for costs of the blinds.

The Landlord's invoice setting out a total claim of \$400.00 details 6 hours labour to both cleaning up the garbage and for trips to the landfill. As it has been accepted that the only items removed from the basement and the unit that were left by the Tenants was the recycling and a few other items, given that the Landlord has already been compensated for this clean up and considering the Tenant's evidence that appliances were also left at the unit I find that the Landlord has only substantiated a portion of the 6 hours claimed. As the invoice does not distinguish how many of the 6 hours is allocated to the landfill trips or the removal of the appliances, I find that the Landlord has only substantiated a nominal amount of **\$100.00** for its time to haul away any items left by the Tenants. As the Landlord's labour invoice sets out 3 hours labour for a cost of \$60.00 to remove the pool and deck and to repair the hole left by the pool without details on the time for each task and as the Landlord has already been compensated for the removal of the deck, I find that the Landlord has only substantiated a nominal amount of **\$50.00** for this claim. The Landlord's invoice sets out a claim for 7 hours labour to pick up paint supplies, flooring and blinds. As the Tenants have not been found to have damaged these items I dismiss these costs.

Given the photos of the yard showing the treehouse, deck and pool area, considering the undisputed evidence of the Tenants leaving appliances behind, and given the invoice for the dump fees, I find that the Landlord has substantiated its entitlement to these costs of **\$20.70**, **\$24.30** and **\$34.50**.

The Landlord has been found entitled to a total of **\$1,623.76**. As the Landlord's claims have met with at least partial success I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total amount of **\$1,723.76**. Deducting the retained security deposit entitlement of **\$475.00** from this amount leaves **\$1,248.76** owed to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$475.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$1,248.76**. 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 RTB under Section 9.1(1) of the Act.

Dated: August 27, 2019

Residential Tenancy Branch