Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and authorization to retain the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Procedural note

Prior to the hearing, the landlords had provided a written submission to reduce their monetary claim to a lesser amount. At the commencement of the hearing, the landlords stated that they were further reducing their claim by $1,090.00 as they were advised that if the amount has already been paid they cannot claim it. The amount of $1,090.00 corresponded to an item called "agreed month's rent" in their detailed monetary claim. I granted their request to reduce the claim as a reduction was not prejudicial to the tenants.

After approximately an hour of hearing time the landlords indicated that they did not want to withdraw their request for $1,090.00 as they wished to pursue the amount for liquidated damages.

The tenants stated this is the first time they had heard of a claim for liquidated damages and the tenants testified they were of the understanding the "agreed month's rent" corresponded to rent for the month of August 2011. The tenants explained that they had previously agreed to pay rent for August 2011 if the landlord was unsuccessful in re-renting the unit. Accordingly, the tenants had come prepared to deal with the claim by submitting that they did not owe August 2011 rent since the landlords had re-rented the unit for August 2011.

The landlords acknowledged the unit was re-rented for August 2011 but pointed to a letter dated July 6, 2011 in support of his position that the tenants knew the landlords

would be seeking liquidated damages. The July 6, 2011 letter is authored by the landlords and was included in the tenants' evidence package. The first sentence pertains to the amount of $1,090.00 and reads:

> "We discussed you vacating the premises you lease from us and you agreed to pay us the equivalent of the August rent, namely $1090.00."

Pursuant to section 59 of the Act, an application is to include full particular's as to the matter under dispute. This is consistent with the principles of natural justice that entitle a respondent to notification of the charges against them in order to prepare and provide a sufficient defence or response.

I found the landlords did not sufficiently identify liquidated damages in making their claims against the tenants and I did not further consider the claim for liquidated damages.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation for damages to the rental property and cleaning costs?
2. Are the landlords authorized to retain all or part of the tenants' security deposit and pet deposit?

Background and Evidence

The following information was undisputed by the parties. The tenancy commenced December 1, 2010 and the tenants paid a $545.00 security deposit and a $545.00 pet deposit. The tenancy agreement was for a fixed term set to expire May 31, 2012 and the tenants were required to pay rent of $1,090.00 on the 1st day of every month. The tenants vacated the rental unit in late July 2011 and the landlords re-rented the unit for August 2011.

The parties were in dispute as to whether a move-in inspection was conducted together. The landlords submitted that an inspection was performed with the tenants. The tenants submitted that they were not offered the opportunity to participate in a move-in inspection; rather, they only viewed the rental unit for the purpose of determining whether they wanted to rent it. The landlords acknowledged that they filled in the move-in inspection report after they got home that evening, without the tenants present, and did not obtain the tenants' signatures on the move-in inspection report.

On July 28, 2011 the landlords posted a Notice of Final Opportunity to participate in a move-out inspection with an effective date of July 31, 2011. The landlords acknowledged that when they attended the property on July 28, 2011 they found it vacant so they started cleaning the unit and making repairs. The tenants did not attend the property for the move-out inspection scheduled for July 31, 2011. The landlords testified that they completed a move-out inspection report without the tenants present and the report reflects the condition of the property as they found it on July 28, 2011.

The tenants testified that the landlords historically communicated with the tenants by delivering documents to the female tenant at her place of work. The tenants submitted that they had no idea a Notice was posted on the door on July 28, 2011 as they had no reason to return to the property after they vacated the property.

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

Item	Amount	Landlords' reason	Tenants' response
Closet door: labour and materials	90.00 20.95	Custom bi-fold door broken during tenancy.	Acknowledged it was broken while moving furniture. Tenants were moving furniture at request of landlord.
Kitchen wall	40.00	Gouged from tenants' kitchen chair repeatedly rubbing against wall. Tenant put one coat of paint over damage but underlying damage still visible.	Tenant had painted over. Did not look as bad as landlord is making it out to be.
Paint	15.14	Landlord supplied tenants with paint in order to repair towel bar and kitchen wall.	There were some gouges in wall when tenancy began. Landlord voluntarily left paint for tenants. Tenants did not use all of the paint and left the remainder behind.
Oven door lock	95.00	Self-cleaning oven with a lock. Lock must have been engaged and then someone	Tenants did know how to use and never used self-cleaning function or

		pulled on door to the point the lock was bent. There is a lock button on the range. The lock was working fine when the landlord used the oven prior to the tenancy commencing.	lock. No instructions for use left by landlords. Invoice for repair dated July 24, 2011 showing landlords in unit before tenancy over and inspection took place.
Carpet and blind cleaning	380.02	Tenants had pets in unit and suggested using COITS.	Tenants had one full time pet and would have rented a carpet cleaner if they had not been told by landlord that they only use COITS.
Housecleaning	100.00	Paid cleaner for 4 hours to clean: window tracks, top of shelves, windows, top of stove. Tenants had agreed to pay for up to $100.00 in cleaning.	Acknowledged that window sills and light fixtures not cleaned. Tried cleaning stove top but not provided any special tools or instructions for cleaning the smooth cook top. Agreeable to $50.00 for cleaning.
Registered mail costs	20.45	For serving dispute resolution packages.	No response required.
Filing fee	50.00		
Total claim	891.56		

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, the landlords 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 21 of the Residential Tenancy Regulation provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find the landlords failed to perform a move-in inspection report in accordance with the requirements of the Act or Regulations as the landlords acknowledged the move-in report was not completed with or presented to the tenants for signature. Therefore, I give little evidentiary weight to the move-in inspection report as it was not prepared in accordance with the requirements of the Regulations.

I also find the move-out inspection report was not completed in accordance with the Act or Regulations. The landlords posted the Notice of Final Opportunity to Participate in a Condition Inspection on the door of the rental unit on July 28, 2011. Under section 88 of the Act, in order to affect service by posting a document, the document must be posted at a place where the person being served resides. Based upon the landlords' actions on July 28, 2011, whereby the landlords entered the unit and commenced cleaning and repair activities, I find that the landlords were very aware the tenants had already vacated the rental unit when the Notice was posted. Thus, I find the Notice of Final Opportunity to Participate in a Condition Inspection was not sufficiently served upon the tenants.

I noted the the move-out inspection report does not include the date of the inspection, as required. Based on the landlords' verbal testimony, the move-out inspection report prepared by the landlords purportedly reflects the condition of the unit on July 28, 2011. If the landlords prepared the inspection report on July 28, 2011 the tenants had not been notified of an inspection that date and if the tenants had attended the property for purposes of the inspection on July 31, 2011 the condition of the property had been altered by the landlords between July 28, 2011 and July 31, 2011. Therefore, I find the move-out inspection was not completed in accordance with the Act or Regulations and I give it little evidentiary weight.

As I have given the condition inspection reports prepared by the landlords very little weight in establishing the condition of the rental unit I have relied upon the photographs provided by the landlords, the video provided by the tenants, the landlords' invoices and receipts, and the verbal testimony of both parties.

I make the following findings with respect to the landlords' claims for compensation for damages and cleaning against the tenants.

Towel rail – The landlords are claiming it took their repairman four hours to install a towel rail. I find four hours to be an extremely long period of time to install a towel rail. In an email from the landlord dated August 4, 2011 the landlord states that the original damage removed part of the drywall; however, the landlord did not provide any photographs in support of this position. The tenants provided a video of the unit at the end of tenancy showing the towel rail in place and no visible evidence of damaged drywall. In the absence of photographs or other evidence, such as a detailed invoice or statement of the repairman outlining the steps he took to repair the towel rail, I find the landlords have not satisfied me that four hours was necessary to repair the towel rail due to damage caused by the tenants. I have not relied entirely upon the invoice issued by the repairman as it does not provide any contact information for the repairman and the invoice is dated after the date the landlords' application was filed. Therefore, this portion of the landlords' claim is dismissed.

Closet door – The tenants acknowledged that the closet door was damaged when they were moving furniture. I find the reason the tenants were moving furniture to be irrelevant. Accordingly, I hold the tenants responsible for repairing the closet door. The landlords provided photographs of the damaged door and I accept that the cost of the repair is less than or equal to the cost of purchasing a new door and cutting it down to size. Therefore, I award the landlords the amount claimed of $90.00 for labour and $20.95 for materials.

Kitchen wall – The landlords submitted that the kitchen wall is gouged and stained from the tenants' chair rubbing against the wall. From the landlord's photograph I cannot detect a gouge or stain. Rather, it appears that the touch up paint is not of the same sheen as the rest of the wall, making the touched up area visible. It was the landlord that had supplied the paint to the tenants to use for such purposes. The tenants acknowledged a very small indentation that they submit is no more than reasonable wear and tear. In the absence of a detailed invoice or statement from the repairman I find that charging the tenants for two hours of labour to remedy damage to the wall has not been proven. Therefore, I dismiss this portion of the landlords' claim.

Paint – The landlord purchased paint July 13, 2011 and provided it to the tenants for their use. Under section 32 of the Act, damage does not include reasonable wear and tear. As provided in Residential Tenancy Policy Guideline 1 it is to be expected that tenants will put up pictures and landlords are expected to repaint units at reasonable

intervals. I find that the purchase of touch up paint by a landlord is an ordinary expense of a landlord especially when I consider that the landlords in this case have the benefit of the remainder of the paint not used by the tenants. Therefore, I find it unreasonable to charge the tenants for the cost of the entire gallon of paint and I dismiss this portion of the landlords' claim.

Oven door lock – The landlords have evidence that the oven door lock had to be replaced and has substantiated the cost of the new part. However, the most difficult part of this claim is in determining when the lock was damaged. I was provided disputed verbal testimony that the lock was damaged during the tenancy. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In the absence of a move-in inspection report that was prepared in accordance with the Act and Regulations, or evidence the tenants were shown the oven door lock was working at the beginning of the tenancy, I find the landlords do not have further evidence to support their position that the lock was undamaged at the beginning of the tenancy. Therefore, the landlords' have not met their burden of proof and this portion of the landlords' claim fails.

Carpet and blind cleaning – It is undisputed that the tenants had a pet or pets in the unit during their tenancy. Residential Tenancy Policy Guideline 1 provides that, generally, tenants will be responsible for carpet cleaning if the tenant had pets in the unit, regardless of the length of the tenancy. I find it reasonable that the blinds were cleaned upon hearing undisputed testimony that the tenants' cat sat on the window sills and there was fur on the blinds. I find the landlords have substantiated the costs associated to cleaning the carpets and drapes. Other than disputed verbal testimony I do not find other evidence to substantiate the tenants' submission that they were precluded from having the carpets cleaned by someone other than COITS. Therefore, I award the landlords' claim of $380.02 for carpet and blind cleaning.

General cleaning – The landlords have claimed they paid a cleaner $100.00 for four hours of cleaning services. The landlords submitted that the tenants had previously agreed to pay $100.00 for cleaning. The tenants denied they agree to pay $100.00 but had stated they would pay up to $100.00. The tenants had acknowledged not cleaning the window sills and light fixtures. From the tenants' video I accept that the tops of shelves were not wiped down. The landlords had also provided a photograph of the inside of the oven and it appears to require further cleaning. Therefore, I find, based on the balance of probabilities, the landlord has established an entitlement to cleaning costs of $100.00.

Registered mail costs—other than the filing fee, costs for preparing for or participating in a dispute resolution proceeding are not recoverable. Therefore, the landlords' request for the registered mail cost is denied.

Filing fee – Given the landlords' limited success in this application I award the landlords $20.00 towards the filing fee they paid.

As the landlords are in possession of $1,090.00 of the tenants' deposits, I authorize the landlord to deduct the amounts awarded to the landlords with this decision and order the landlords to return the balance to the tenants forthwith.

I calculate the tenants are entitled to return of the following amount and provide the tenants with a Monetary Order in this amount to serve upon the landlords:

Security deposit	$ 545.00
Pet damage deposit	545.00
Less: Closet door repair	(110.95)
Carpet and blind cleaning	(380.02)
General cleaning	(100.00)
Portion of filing fee	(20.00)
Balance owed to tenants	$ 479.03

Conclusion

The landlords have been authorized to deduct a total of $610.97 from the tenants' security deposit and pet deposit and have been ordered to return the balance of $479.03 to the tenants forthwith. The tenants have been provided a Monetary Order in the amount of $479.03 to ensure payment is made.

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 23, 2011.

Residential Tenancy Branch