Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes — Landlord: MND, MNR, MNSD, MNDC, FF
Tenant: MNDC, MNSD

Introduction

This hearing was convened by way of conference call in response to applications made by the landlords and by the tenant. The landlords have applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; and for a monetary order for return of the security deposit or pet damage deposit.

The named landlord attended the hearing for the landlord and as agent for the landlord company *(the landlord*). The tenant also attended the conference call hearing. The parties gave affirmed testimony, and provided evidence in advance of the hearing. Both parties called witnesses who also gave affirmed testimony. The parties were also given the opportunity to cross examine each other and the witnesses on the evidence.

The hearing did not conclude on the first day of testimony on January 3, 2012 and was adjourned to January 24, 2012 and again to February 17, 2012 for continuation.

During the course of the hearing, the tenant withdrew the claim for $500.00 with respect to mould, without prejudice.

Issue(s) to be Decided

- Are the landlords entitled to a monetary order for damage to the unit, site or property?
- Are the landlords entitled to a monetary order for unpaid rent or utilities?
- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

- Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement?
- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement?
- Is the tenant entitled to return of all or part of the pet damage deposit or security deposit?

Background and Evidence

Landlord's Testimony:
This month-to-month tenancy began on December 1, 2004 and ended on September 30, 2011. Rent in the amount of $746.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. On November 27, 2004 the landlord collected a security deposit from the tenant in the amount of $312.50 and no pet damage deposit was collected. The security deposit is still held in trust by the landlord.

The landlord testified that a move-in condition inspection report had been completed at the beginning of the tenancy and a move-out condition inspection report had been completed at the end of the tenancy, on September 30, 2011. The landlord completed a portion of the inspection without the tenant present; the tenant was in a different room with another agent of the landlords while the landlord completed portions and then the other agent went over the report with the tenant. When questioned about the report, the landlord stated that it was difficult to complete the move-out condition inspection report, and admitted that mistakes were made on the form because some items claimed by the landlord as damaged are marked as "good" on the report. A copy of the report was provided for this hearing.

The rental unit could not be re-rented after the tenant had vacated because of a strong smell of cat urine, and the landlords' agents had to wear masks while in the rental unit as a result of the odour. The landlords claim $746.00 for loss of revenue caused by the tenant's failure to properly clean the rental unit. During cross examination, the landlord also testified that an annual inspection had been completed inside the rental unit on May 31, 2011, and the smell existed then, although it was not mentioned to the tenant.

The landlords also claim $881.74 to replace the flooring, and $940.80 for tearing out the old carpeting and installing laminate, as well as $73.12 for supplies to complete the new floors. The apartment building was built in about 1976 to 1978, and the floors had been replaced, but before the landlord started working as manager of the building in 2000.

The landlords also claim 7 hours for cleaning at $25.00 per hour. The landlord cleaned cupboards, bathroom, hallway closets, window tracks, and the kitchen. Dried food and

pet fur had to be scraped off the floors under the fridge and stove. Photographs of the rental unit as it was left by the tenant were provided in advance of the hearing. The landlord also testified that if the tenant needed help moving appliances, the landlords would have provided someone to assist.

The landlord has also provided a Monetary Order Worksheet which sets out the landlords' claim as follows:

- $881.74 for purchase of the floor;
- $175.00 for cleaning;
- $840.00 for installation of new flooring;
- $746.00 for loss of revenue; and
- $45.98 for pet odour;

for a total of $2,688.72.

The landlord further testified that the tenant provided a forwarding address in writing on September 30, 2011.

Landlords' First Witness:
The landlords' witness testified that the witness, a carpet cleaner and assistant, and the apartment maintenance person were at the rental unit. The carpet cleaner had stated that because the carpet was still wet, they should return after 48 hours to see if the odour dissipated or if stains would come out. The tenant had shampooed the carpets after receiving advice from the Residential Tenancy Branch, but the landlord preferred the tenant to call a professional service.

The witness also testified that the tenant had left a message about the move-out preparation provided by the landlord to the tenant, but the parties did not converse. The form was provided in advance of the hearing.

Landlords' Second Witness:
Another witness for the landlords testified to being asked by the landlord to identify an odour in the tenant's apartment. The witness went to the apartment on October 4, 2011 and found the odour pungent. The witness could not identify the odour but the apartment was messy. Carpets were in bad condition, with food and debris left on them, and under the stove was very filthy with fuzzy mould, shower curtain clips, and shear filth.

When asked if the witness had any background or experience in dealing with large complexes or with mould, the witness testified to having such experience from working

in malls, but is not licensed or trained and has no expertise in mould. A corner of the carpet was pulled back, but the witness did not agree that the odour could have been from mould. On the day of the inspection the appliances were pulled out, but the witness does not know whether or not they were on rollers.

The witness had also provided a letter prior to the hearing, and the tenant asked about the statement in that letter of debris on the deck during the tenancy. The tenant asked if the landlord had taken lawn chairs and other items from another balcony and placed them on the tenant's balcony without the tenant's permission. The witness stated that the landlords' agents did not tell the witness that, and therefore, the witness could not verify whether or not the witness' statements in the letter were incorrect.

Landlords' Third Witness:

Another witness for the landlords testified to seeing the rental unit about 3 days after the tenant moved out because the witness and a roommate were considering moving into that rental unit from the one they lived in at the time. The witness was not in the rental unit on September 30, 2011. The witness also testified to a smell of cat all through the carpets and dirt around the sliding glass doors. Behind the stove, the witness saw a big clump of dirt. The witness and landlords' agents lifted the carpet; it was not tacked down and the floor was rotten underneath. Further, lights weren't cleaned, the bathroom was a disaster, grout had never been cleaned in the bathroom, and walls were dirty. The witness moved into the rental unit on October 28, 2011 after the landlords had completed renovations.

When asked if the witness had any training in mould, the witness testified to previously having a cat. When asked if the witness was aware of a prior extensive urine problem, the witness responded, "No," nor was the witness aware of whether or not the appliances were on rollers.

Landlords' Fourth Witness:

Another witness of the landlords testified to being in the rental unit on October 6, 2011 to paint and complete renovations for the landlords. When the witness arrived, the smell of spray from a cat was so strong the witness couldn't breathe. The witness opened windows and still wore a respirator and gloves while in the rental unit. The bathroom smelled, and the window tracks were not cleaned, and the hood fan in the kitchen was greasy or oily. The witness did not notice any stains or drywall softness on the window frames, but used TSP before painting.

When asked if the witness had any training in mould or plumbing, the witness replied that no training has been received. When asked if the odour could have been from

mould, the witness testified to having a cat, and did not know if mould would give off the smell of old urine.

Tenant's Testimony

The tenant provided a work sheet outlining the tenant's claims as against the landlords, as follows:

- $60.00 claim for repair to the toilet;
- $20.00 for repair to the fan;
- $100.00 for withdrawal of laundry services;
- $200.00 for no working toilet from May to June, 2008;
- $100.00 for no fan in the bathroom causing mould;
- $675.00 for restricted access to the terrace and living room space for two months during August and September, 2008;
- $200.00 for loss of food;
- $80.00 for repair to the fridge;
- $115.50 for loss of work;
- $500.00 for failure to maintain a healthy environment (which is withdrawn by the tenant, without prejudice); and
- $325.00 for return of the security deposit;

for a total of $$2,375.50, less the $500.00 withdrawn by the tenant.

The tenant testified that the toilet in the rental unit ran continuously, which was reported to the landlords' agents. The handle was replaced, but not the seat. The tenant had to glue the screws on the seat in place with Crazy Glue. Then in July, 2006 the toilet stopped working altogether. The landlords' agent told the tenant a plumber would be called but instead sent their own maintenance person but he didn't fix it. The tenant called a plumber and paid $60.00 and provided a copy of a receipt dated June 10, 2008. The seal was broken, and the photographs provided by the landlords for this hearing show grease on the toilet from attempted repairs, not a dirty toilet left by the tenant. The agent for the landlords who started the move-out condition inspection report stormed out of the rental unit, and the other agent took over but couldn't find where the toilet was dirty. The report was left with the markings made by the first agent.

The tenant also testified to paying $20.00 cash to an electrician from the tenant's place of employment to repair a fan in the dining room. The landlords' agent had again sent their own maintenance person to complete the repair, but was unsuccessful. No receipt was provided.

The tenant also testified to having M.S. and required in-house laundry. The tenant cannot go to the laundromat, which is located near the rental unit. In the summer of 2008 the laundry room in the rental complex was vandalized. The landlords never did repair it, and no notice was provided to the tenant of the loss of those facilities. The tenant claims $100.00 for the inconvenience of having friends do the tenant's laundry at the laundromat. The tenancy agreement does not show that laundry is included in the rent, but the form states, "laundry (free)," which is not marked with a checkmark, but the tenant stated that the tenant would not have rented the apartment if in-house laundry was not available, due to the tenant's illness.

The tenant also testified that on the August, 2008 long weekend, the tenant returned to the rental unit to find a Notice of Emergency Entry on the door. A pipe had burst, and the landlords' agent told the tenants that they had to move all items from the terrace, and the landlords' agent put all of the items from the neighbor's terrace onto the tenant's terrace, where it sat for two months. The tenant could not use the terrace or the living room because all of the tenant's outdoor furniture had to be moved into the living room. The tenant then found out that repairs were not required on either terrace; the repairs were to the terrace below and were fixed within a couple of days. Further, the landlords' agents had stored materials on the terrace and so did workers. The landlords' agent told the tenant to push the neighbor's items to the side, and then stated that the tenant's rental unit was to be inspected. The tenant claims $675.00 for loss of use of the living room and terrace for two months, being August and September, 2008.

The tenant also testified that about $200.00 of food was lost due to the landlords' maintenance person completing shoddy repairs. In April, 2011 the fridge door wouldn't close and ice began to build up. Oily black water was running down the inside of the fridge, and the fridge motor ran constantly. The maintenance person hit the walls of the fridge on the inside of the appliance with a hammer. The motor then seized, and the tenant found ruined food in the fridge and a chemical smell after that repair. The landlords got another person to fix it and on April 14, 2011 the landlord had that person taking photographs inside the rental unit without any notice to the tenant. The tenant had no fridge from April 14, 2011 to May 15, 2011, and testified to paying $80.00 for the electrical repair, but provided no evidence of that cost.

In May, 2011, the landlords' agent approached the tenant stating that an inspection had to be completed by the end of the week and scheduled it for May 25, 2011 at 11:00 a.m. The tenant was free that day, but later the tenant's boss required the tenant to work. The tenant agreed to work for half a day assuming that the inspection would be finished by noon. The tenant hired a cleaner knowing that the landlords' agent would judge the tenant on how clean the apartment was, but the landlords' agents did not show. The

tenant claims $115.50 for loss of wages caused by the landlords' demand for an inspection that never took place.

The tenant also testified to receiving a case of a previous tenant in the rental unit through the Freedom of Information process. The tenant testified that the Decision shows that the tenant from that case only stayed in the rental unit for 7 days claiming there were fleas and smells in the carpet. The landlords had claimed loss of revenue from that tenant, but the application was dismissed because the landlords had already rented the unit to this tenant. The Decision also stated that the landlords had to pay the tenant double the amount of the security deposit.

The tenant further testified that the mouldy windows and walls in the rental unit caused the carpet damage. The landlord was shown that on three occasions during the tenancy. The tenant had 2 cats, one of which died in 2008 and the other recently. The tenant also fostered a kitten for 3 weeks during the tenancy, and the tenant testified that the odour in the rental unit was from the mould, not from cats. The windows leaked so badly that when it rained water poured down the walls. The landlords' agents had the windows re-sealed in June, 2011.

The landlords' agents received the tenant's forwarding address in writing on September 30, 2011, and the tenant gave notice to vacate on August 31, 2011. The landlords never showed the apartment to any perspective tenants during the tenancy.

Tenant's First Witness:

One of the witnesses for the tenant testified to being an employee of a moving company who assists the disabled with moving, among other things. The witness moved this tenant on September 27, 2011 and returned to the rental unit on September 28 and September 29, 2011 with the tenant to help clean. The witness testified that it appeared that the tenant was still packing, and the rental unit still required cleaning when the witness arrived on September 27, 2011. The witness did not notice any unpleasant smells or cat urine in the rental unit, nor did the witness wear a mask. The appliances in the kitchen were not on rollers, and the witness recalls the tenant cleaning light fixtures. The witness re-calked the bathtub, and steam cleaned the carpets using the steam cleaner rented by the tenant. The age and style of the carpet was pretty much the same age as the building. The witness is a contractor and carpenter and stated that the carpet could be no newer than the 1980's and probably the 60's or 70's. The witness also testified that the trim around the windows had water damage from unsealed windows. Even after cleaning the sills several times, the damage came through and cleaning only removed the old paint. The terrace was also water logged and some boards had rotted. The apartment was cleaned from top to bottom. The witness testified that the tenant was pretty shaken up and asked the witness to return

expecting poor treatment by the landlords. The witness, the witness' friend and the tenant all attended to complete the cleaning.

The parties also testified to a disagreement that took place in the parking lot of the rental unit, and the tenant also called a witness to rebut the testimony of the landlord, but I find that evidence to be irrelevant to the issues before me, other than to say that it is clear that the parties had difficulties during the tenancy, and the tenant felt bullied by the landlord.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate, or reduce such damage or loss.

The *Residential Tenancy Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of a tenancy. I have reviewed the evidence of the parties, including the photographs, and I find that the tenant was not responsible for the mould build-up. It is clear that the windows leaked and I accept the testimony of the tenant that the rain water ran down the walls inside the rental unit during the tenancy, and the landlord was made aware of the problem well before the tenant moved out.

With respect to flooring, the landlords request a monetary order against the tenant due to a cat spray or urine smell in the carpets. Firstly, I find that the landlords have failed to establish that the odour in the apartment was cat spray or cat urine. It is just as likely that the smell was caused by mould due to the broken seals in the windows. Further, the landlords' agents testified that the carpets were in good condition but did not dispute the testimony of the tenant's witness that the carpets were in excess of 20 years old. Any award for damages made to the landlords must not put the landlords in a better financial position than the landlords would be in had the tenant not lived in the rental unit at all, and I find that any award that I make with respect to the flooring would put the landlord in a better financial position. If I were to award any amount for replacing the floors, the landlords would have new floors in the rental unit, which were far from new when the tenancy began. The landlords' claims for $881.74 to replace the flooring, and $940.80 for tearing out the old carpeting and installing laminate, as well as $73.12 for

supplies to complete the new floors are hereby dismissed. The landlords' claims for pet odour and loss of revenue are also dismissed.

With respect to the landlords' claim for cleaning in the amount of $175.00, the onus is on the landlord to prove that the rental unit was left by the tenant in a condition that was not reasonably clean other than normal wear and tear. I have reviewed the photographs provided by the landlords, as well as the move-in and move-out condition inspection reports. The tenant and the tenant's witness testified that the fridge and stove in the rental unit were not on wheels, and therefore, not accessible by the tenant to clean. That testimony was not disputed by the landlords' agents or witnesses, and I find that the tenant is not responsible for cleaning under appliances that cannot be moved by the tenant. The tenant's witness also testified to cleaning the rental unit from top to bottom. The landlord stated that the tenant failed to clean window tracks, and I have viewed the photographs and find that the frames are riddled with peeling paint, which is not the responsibility of the tenant. The landlord also claims that the tenant failed to clean cupboards and provided photographs as evidence. The photographs show again peeling paint, and one cupboard has mac-tac or some similar cover that is old and outdated. The tenant provided testimony that the marks on the toilet are not from a soiled toilet, but from grease left on it from the landlords' maintenance person, and viewing the photographs, I find that to be a reasonable statement.

The tenant also testified to cleaning light fixtures, however the photographs provided by the landlord show dust hanging from a fixture. Further, the photographs show that the tenant did not clean the fan above the kitchen stove.

The photographs also show different views of the fridge, or perhaps two different fridges. One photograph shows a fridge full of food, and two others show an empty fridge, both of which need cleaning. I don't know why the landlords would provide evidence of the fridge before the tenant's food had been removed, other than perhaps to show that the fridge needed cleaning before the tenant emptied it, which is not relevant to the landlords' claim.

In the circumstances, I find that the landlords had work to do in the rental unit whether or not the tenant complied with the landlords' preparation document for vacating the rental unit, and therefore, the landlords' claim for cleaning is hereby allowed at one hour, or $25.00.

With respect to the tenant's claim for damages, I find that the tenant has established a claim for $60.00 for repair to the toilet, but has not established a claim for $20.00 for repair to the fan or $80.00 for repair to the fridge, or for lost food; no evidence exists to prove the amounts claimed for those items. I further find that the tenant has failed to

provide sufficient evidence to establish the claim for $115.50 for loss of work, although I do find that the landlord was negligent in requiring the tenant to remain at home for an inspection that was not necessary at that particular time, and the landlord failed to show up for.

With respect to the tenant's claim for $100.00 as compensation for withdrawal of laundry services, there is no evidence to support that in-house laundry was a material term of the tenancy. The tenant testified to having MS, but in order to be successful in proving a material term of the tenancy, the tenant would have to have made it clear to the landlords at the outset of the tenancy that such services were so necessary that the tenant would not have rented the rental unit if the services were not available.

The tenant also withdrew the application for $500.00 for mould within the rental unit, without prejudice, and I find that by doing so, the tenant's application for $100.00 for no fan in the bathroom causing mould, is also considered withdrawn.

The tenant's application for restricted access to the terrace and living room space for two months was not disputed by the landlord. The landlord caused the tenant to give up space and was negligent by doing so and was negligent by not advising the tenant that the repairs were not necessary to the tenant's terrace nor the adjoining terrace for two months when the repairs actually took a couple of days.

A landlord is required to provide and maintain a rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant, and those obligations apply whether or not the tenant knew of a breach of those obligations at the time of entering into the tenancy agreement. A landlord is also required to provide a tenant with the entire rental unit, not a portion for any period, unless the landlord reimburses the tenant for the loss of what the tenant paid rent for. In this case, I find that the tenant has established a claim for loss of space for two months. In determining the quantum, I accept the testimony of the tenant that the tenant's living room and terrace were affected by the landlord's actions, and I find that the tenant's claim is justified in the circumstances. For the same reasons, I find that the tenant's claim for $200.00 for no working toilet from May to June, 2008 has also been established.

The tenant is also entitled to return of the $325.00 security deposit, with interest calculated from November 27, 2004 to February 17, 2012 in the amount of $11.06.

Summary:

In summary, I find that the landlord's claims for loss of revenue and floor repair have not been established, and those claims are hereby dismissed without leave to reapply. The landlord's application for cleaning is hereby allowed at $25.00.

The tenant's claims for $60.00 to repair the toilet, $200.00 for having no working toilet for two months, $675.00 for loss of the living room and terrace, and return of the security deposit have been established. The tenant's claims for loss of wages, repair to the fan, withdrawal of laundry services, $200.00 for loss of food, and $80.00 for repairs to the fridge are hereby dismissed.

The parties agree that the tenant provided a forwarding address to the landlord in writing on September 30, 2012. The landlords' application was filed on October 14, 2011, which is within the 15 days required under the *Act,* and therefore the tenant is not entitled to double recovery of the security deposit.

The *Act* also permits me to set off one award from the other, and I order the landlord to pay to the tenant the difference in the amount of $1,233.56, as follows:

Item	Owed to Tenant	Owed to Landlord
Security Deposit	$323.56	
Cleaning		$25.00
Toilet Repair	$60.00	
No toilet	$200.00	
Loss of space	$675.00	
	$1,258.56	$25.00
DIFFERENCE	$1,233.56	

Conclusion

For the reasons set out above, the landlords' application for a monetary order for unpaid rent or utilities is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant in the amount of $1,233.56, pursuant to Section 67 of the *Residential Tenancy Act.*

This order is final and binding on the parties and may be enforced.

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: February 24, 2012.

Residential Tenancy Branch