# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, FF / MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlords for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the combined security deposit & pet damage deposit / and recovery of the filing fee; ii) by the tenants for a monetary order reflecting the double return of the combined security deposit & pet damage deposit / and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the 2 year fixed term of tenancy began on May 1, 2011. Monthly rent of $1,325.00 was due and payable in advance on the first day of each month. A security deposit of $662.50 and a pet damage deposit of $662.50 were collected on May 1, 2011. There is conflicting evidence around whether a move-in condition inspection report was completed with the participation of both parties.

A previous hearing was held in a dispute between these same parties on March 26, 2012, with a decision issued by that same date. Pursuant to that decision an order of possession was granted in favour of the landlords effective March 31, 2012. That order was granted following the landlords' issuance of a 1 month notice to end tenancy for cause. The reason identified on the notice for its issuance was that the tenants were repeatedly late with payment of rent. Following the tenants' application for review of the decision, by way of review decision dated April 3, 2012, the decision and order of March 26, 2012 were upheld.

While the order of possession was served on the tenants on March 27, 2012, the tenants did not vacate the unit until April 5, 2012. Subsequently, the tenants claim they provided their forwarding address in a letter dated April 6, 2012. They further claim that they delivered this letter to the office of landlords' counsel on April 5, 2012; landlords' counsel stated that the letter was in fact delivered to her office on April 13, 2012. There is conflicting testimony around whether a move-out condition inspection report was completed with the participation of both parties on April 17, 2012.

To date, the landlords have not completed all cleaning and repairs and the unit continues to be vacant.

Analysis

Based on the documentary evidence and testimony, the various aspects of the respective claims and my findings around each are set out below. While all of the documentary evidence and testimony have been carefully considered, not all of the many details are included here.

LANDLORDS

**$220.83***: *unpaid rent for period of overstay from April 1-5, 2012*. I find that the landlords have established entitlement to the full amount claimed. Further, the tenants testified that they do not dispute this aspect of the landlords' claim.

**$1,104.17***: *unpaid rent / loss of rental income for the period from April 6-30, 2012*. I find that certain cleaning and repairs were required in the unit following the end of tenancy. I also find that the landlords have undertaken to mitigate their loss by commencing in a timely manner to complete the cleaning and repairs required.

Residential Tenancy Policy Guideline # 3 speaks to "Claims for Rent and Damages for Loss of Rent." As earlier noted, pursuant to the tenancy agreement the 2 year fixed term of tenancy commenced on May 1, 2011, and by the time tenancy ended the tenancy had not yet reached 1 year in duration. The aforementioned Guideline reads in part as follows:

> As a general rule [in the event that a tenant breaches the tenancy agreement, the landlord may be compensated] for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of

> the un-expired term of the tenancy. For example, a tenant has agreed to rent premises for a fixed term of 12 months at rent of $1000.00 per month abandons the premises in the middle of the second month, not paying rent for that month. The landlord is able to re-rent the premises from the first of the next month but only at $50.00 per month less. The landlord would be able to recover the unpaid rent for the month the premise were abandoned and the $50.00 difference over the remaining 10 months of the original term.

In the result, I find that the landlords have established entitlement to the full amount claimed.

$297.00: *cleaning inside unit*. While I find that there were likely some minor irregularities in the processes associated with the completion of both, the move-in and move-out condition inspection reports, I am satisfied that for the purposes of applying the legislation, the inspections and the reports were sufficiently completed.

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part:

> 37(2) When a tenant vacates a rental unit, the tenant must
>
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

I have considered the comparative results of the move-in and move-out condition inspection reports, and the tenants' claim that they paid $155.00 for cleaning in the unit at the end of tenancy, as well as the difficulty in finding agreement between parties where it concerns what constitutes "reasonably clean." On a balance of probabilities, I find that the landlords have established entitlement limited to **$200.00***.

$6,305.60: *final cost of re-painting the inside of the unit (versus the "estimate" included in the landlords' original application in the amount of $7,218.40).*

The tenancy agreement provides that no smoking is permitted inside the unit. However, the landlords claim that the unit smelled strongly of smoke at the end of tenancy; the move-out condition inspection reports clearly notes this. There is no mention of any such problem on the move-in condition inspection report. The landlords have concluded that the tenants, who both acknowledge being smokers, smoked in the unit. The landlords also argue that the cost of re-painting is higher than it might otherwise be

for the simple reason that extra measures were required to remedy the discolouration of paint arising from smoke, as well as the smell of smoke.

For their part, the tenants claim that their smoking was limited to outside areas and that neither they nor their guests smoked inside the unit.

I prefer the documented reference to smoke on the move-out condition inspection report. On a balance of probabilities I find that the tenants did smoke inside the unit on a sufficient number of occasions during the tenancy to require the unit to be repainted prematurely, principally to eradicate the related discolouration and smell of smoke.

Residential Tenancy Policy Guideline # 37 speaks to the "Useful Life of Work Done or Thing Purchased," and provides that the useful life of interior paint is 4 years (48 months). It is understood that the unit was last painted in July 2010 (calculated as July 1, 2010). Pursuant to the Guideline, the useful life of the interior paint would therefore expire 48 months later on June 30, 2014.

However, as re-painting in the unit was completed in May 2012 (calculated as May 1, 2012), the useful life of the interior paint was limited to 22 months (calculated as the period from July 1, 2010 to April 30, 2012, which is after tenancy ended and after some of the cleaning & repairs had been completed.) The "useful life" of the interior paint, therefore, fell short of its "useful life" by 26 months.

In the result, I find that the landlords have established entitlement to recovery of **$3,405.02***. This amount is calculated in view of the fact that 26 months is approximately 54% of 48 months. As earlier noted, in the circumstances of this dispute 26 months is the length of time that interior paint fell short of its "useful life" of 48 months. Following from this, 54% of the total cost of re-painting is calculated as the amount owed by the tenants ($6,305.60 x 54%).

**$280.00***: *damage to railing*. I prefer the landlords' documentary evidence (which includes a photograph and a receipt) and testimony, and I find on a balance of probabilities that the tenants' installation of a gate and the tenants' dog were responsible for this damage. In the result, I find that the landlords have established entitlement to the full amount claimed.

**$168.78***: *changing locks at the unit.* The landlords testified that as only 1 key was returned out of the 3 that were originally issued to the tenants, the locks on the unit had to be changed. Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In summary, I find that the landlords have established entitlement to the full amount claimed.

$11,503.71: *replacement of hardwood flooring*. The landlords testified that as none of this work has presently yet been undertaken, no related costs have been incurred. Accordingly, this aspect of the claim is hereby dismissed with leave to reapply.

$119.84: *plumbing*. This cost was incurred by the landlords as a result of a "consultation" provided by a plumbing and heating professional. This cost arose out of the landlords' concern to be assured that a sink(s) and related plumbing installed by the tenants in the garage, were "up to code" and did not adversely affect their house insurance policy. There is conflicting testimony around whether or not the landlords gave consent for this work to be undertaken: the landlords claiming that consent had not been given, the tenants claiming that it had. In any event, there is no evidence that remedial work was required as a result of the installation. I find that the landlords have established entitlement limited to **$59.92***, which is half the amount claimed.

**$32.60***: *dump fees*. I prefer the affirmed testimony of the landlords in combination with their documentary evidence which includes photographs, over the affirmed testimony of the tenants. In summary, I find that the landlords incurred costs arising from removal and disposal of discarded possessions left behind in the unit after the end of tenancy, and that the landlords have established entitlement to the full amount claimed.

$98.56: *electrical work.* The male tenant acknowledged that he is not an electrician but that he is handy and that he did undertake to complete some electrical work at the unit. The total amount charged to the landlords for the assessment and some apparently minor electrical repair is shown on the receipt as $182.27. The landlords have assessed $98.56 of this as the amount owed by the tenants. However, it is not entirely clear how the particular amount owed was determined. In the result, I find that the landlords have established entitlement limited to **$91.14***, which is approximately half of the full amount paid by the landlords ($182.27 ÷ 2).

**$100.00***: *filing fee*. As the landlords have mainly succeeded in their application, I find that they have established entitlement to the full amount claimed.

**Total Allowed: $5,662.46**

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TENANTS

$2,650.00: *double return of security & pet damage deposits* [2 x (662.50 + $662.50)]. Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security and pet damage deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit or pet damage deposit, and must pay the tenant double the amount of the security deposit and pet damage deposit.

I prefer the landlords' affirmed testimony in combination with the landlords' documentary evidence over the affirmed testimony of the tenants. In short, despite the date of the tenants' letter which appears as April 6, 2012, I find on a balance of probabilities that it was not until April 13, 2012 when the tenants provided their forwarding address in writing. Thereafter, on April 26, 2012 the landlords filed their application for dispute resolution, which I find is within the 15 day period available for doing same. Accordingly, this aspect of the tenants' application is hereby dismissed.

$50.00: *filing fee*. As the tenants have not succeeded with the principal aspect of their application, as above, their application to recover the filing fee is hereby dismissed.

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Following from all of the above, as the tenants' application has been dismissed, and as the landlords have established entitlement to a claim of $5,662.46, I order that the landlords retain the combined security deposit and pet damage deposit of $1,325.00 ($662.50 + $662.50), and I grant the landlords a monetary order under section 67 of the Act for the balance owed of $4,337.46 ($5,662.46 - $1,325.00).

Conclusion

The tenants' application is hereby dismissed in its entirety.

The landlords are ordered to retain the security deposit and pet damage deposit combined, and pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords for the balance owed in the amount of **$4,337.46.**

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: May 30, 2012.

Residential Tenancy Branch