



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNSD, FF
Tenants: MNSD, FF

Introduction

This hearing dealt with the cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and both tenants.

The landlord's agent testified that the landlord had provided additional evidence to the tenants and to the Residential Tenancy Branch on July 20, 2012. The agent confirmed that the evidence was sent by registered mail on July 20, 2012. Review of tracking information from Canada Post shows the evidence package was received by the receiving post office on the day of the hearing.

As such, I advised both parties that I would not consider the documents submitted in my decision but that I may consider the testimony provided by the landlord's agent that referenced the evidence.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began in 2007 as a month to month tenancy for a monthly rent of \$1,100.00 due on the 1st of each month with a security deposit of \$550.00 paid. The tenants submit the tenancy began on April 1, 2007 and the landlord's agent thought it began on May 1, 2007. The parties agreed that the rent at the end of the tenancy was \$1,300.00 and that the tenancy ended on or before March 31, 2012.

The landlord submits that she offered to complete a move out inspection for April 22, 2012 and that the tenants did not attend. The tenants testified that new tenants moved into the rental unit on April 1, 2012; the landlord's agent was not sure but he thought the new tenants moved in on May 1, 2012.

The tenants provided documentary evidence and testimony that they provided the landlord with their forwarding address on May 3, 2012. The landlord's agent did not dispute this date.

The landlord seeks compensation for damage to the rental unit and has submitted into evidence a document entitled Report of Rental Premises and Contents dated May 2007 that has only three notations on the document that include:

- "one kitchen cupboard door split"
- A check mark is noted in front of the word floor in the kitchen and a notation of damage that "panels raised move" and
- A check mark is noted in front of the word countertop in the bathroom and a notation of damage that states "bleach ring".

There are no notations regarding the condition of any other items in the rental unit despite spaces to identify if areas are dirty or damaged (yes or no). The Report includes a list of contents including couches; chairs; beds and many miscellaneous furnishings but does not indicate if these items were actually included in the rental property or what their condition was.

The report includes as listed rooms a living room; two bedrooms; a kitchen; a bathroom and miscellaneous. The landlord's agent described the rental unit has have 3 bedrooms and included ½ the basement where there was a rec room. Not all rooms are listed on the Report.

The landlord has also provided a typewritten document entitled "Move Out Items" where she lists various rooms and lists "damages" and "wear and tear". The landlord has

provided no explanation as to how she determined what was wear and tear and what was damage. In this report the landlord identifies the following damage:

Room	Damage
Basement Family Room	Stain on carpet cleaners couldn't remove
Downstairs kitchen	Burned laminate counter top and end trim; damage to cabinet under sink due to shut off valve bumped and left leaking
Upstairs Master bedroom	Shelf in bathroom medicine cabinet
Upstairs North Bedroom	2 window blinds
Upstairs South Bedroom	Wood finish peeled off closet door
General – various locations	Excessive number of holes in walls of entire house – repainting entire house necessary with 2 coats of paint and 150 additional patches done by painter
Unauthorized changes to permanent fixtures	Baseboards raised – living room (cords); Shelves removed – rec room downstairs.

The tenants acknowledge that there were a substantial amount of holes in the walls but testified that some of those holes were there at the start of the tenancy and that they had been covered only with a coat of paint from the previous tenants that eventually rubbed away during this tenancy. The tenants also submit that not all rooms had been painted prior to the start of this tenancy

The tenants had removed their possessions earlier in the month of March and in fact filled many holes and had their repairs sanded by hiring a person to complete it; they have provided a receipt. The landlord submits that there were 150 additional holes that her painter had to patch.

The landlord also submits that she obtained a quote by phone for \$4,400.00 to have the painting completed and that she was told that it would require two coats of paint because of all the holes and patching. The landlord submitted a receipt for painting in the amount of \$4,472.16, including two coats on the ceilings and walls and she seeks compensation in the amount of \$2,235.00.

The landlord submits that kitchen countertop was burned near the stove and the tenants accept that this damage was caused during the tenancy. The landlord submits that the cabinet under the sink in the kitchen was severely damaged as a result of water leaking for an extended period.

The tenants submit the cabinet was ok when they moved their belongings out and that this photograph taken by the landlord was of recent damage. They submit that if this

damage had occurred over a long period of time it would have showed black mould. The tenants submit that these photos were taken after they had moved out their belongings but before the end of the tenancy.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the undisputed testimony provided by the tenants and allowing 5 days for the delivery of mail I find the landlord received the tenants' forwarding address no later than May 8, 2012.

Despite the landlord's submissions that the tenants did not respond to requests to discuss resolving any of the problems I find the landlord had until May 23, 2012 to either return the tenants' security deposit in full or to file her Application for Dispute Resolution seeking to claim against the deposit. The landlord filed her Application on June 18, 2012. As such, I find the landlord has failed to comply with Section 38(1) of the *Act* and the landlord must pay the tenants double the amount of the security deposit.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find the landlord's "Report of Rental Premises and Contents" signed by both the landlord and the male tenant, to be an insufficient record of the condition of the rental unit or list of its contents at the start of the tenancy. I make this finding, in part because the report only actually records the condition of one kitchen cupboard; floor panels in the kitchen; and a counter top in the bathroom.

While the Report also lists a number of contents such as a couch; beds; chairs, etc there is no indication in the Report as to whether or not those items were actually

provided. As there is no notation beside any of these items including check marks in the “yes” or “no” boxes for condition and cleanliness, I find there is no confirmation that the item was actually provided as part of the tenancy.

Further, the report does not record a complete run through of the entire rental unit. From the landlord's agent's testimony the rental unit has three bedrooms and the Report only records 2 bedrooms and does not include a description of which bedrooms are recorded.

In regard to the landlord's claim for replacement blinds there is no record in one bedroom as to any of the contents and despite “drapes or curtains” being listed on the Report for the two bedrooms listed there is no indication that there were blinds provided at the start of the tenancy.

For the reasons above and since the tenants dispute the presence of blinds at the start of the tenancy, I find the landlord has failed to establish that she has suffered a loss to replace blinds as a result of a violation of the *Act*, regulation or tenancy agreement on the tenant's part.

As the report also does not provide any record of the condition of the walls at the start of the tenancy, and in conjunction with the tenants' testimony disputing the condition of them, I find the landlord has therefore failed to establish the tenants are responsible for any losses that result from excessive holes and the requirement for an extra coat of paint.

In regard to the sink cabinet, I accept that the damage occurred sometime after the start of the tenancy and before the end of the tenancy. While the tenants testified that this must have occurred after they moved their belongings out, the tenants are still responsible for the condition of the rental unit until the end of the tenancy, in this case March 31, 2012.

As such, and based on the balance of probabilities, I find the tenants are responsible for the replacement of the kitchen sink cabinet. In addition, as per the tenants' testimony I accept the tenants are responsible for the burn damage to the kitchen counter.

Despite the landlord's failure to provide written estimates I find her estimates for replacement of the counter top in the amount of \$700.00 and the cabinet in the amount of \$65.00 to be reasonable costs.

However, in the absence of a written estimate for labour costs, I find there are too many variables, with no evidence to support them, to determine the reasonableness of the landlord's estimate. As such, I dismiss the landlord's claim for labour costs.

Conclusion

For the reasons noted above, I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$335.00** comprised of \$1,100.00 double the amount of the security deposit; less \$700.00 replacement countertop and less \$65.00 kitchen sink cabinet.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As both parties were at least partially successful in their Applications I dismiss both parties claim to recovery of the filing fees for their respective Applications.

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: July 27, 2012.

Residential Tenancy Branch