Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF, O

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72; and
- other unspecified remedies.

The tenants applied for:

- authorization to obtain a return of double their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that he received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on June 11, 2013. The male tenant (the tenant) confirmed that the tenants received a copy of the landlord's dispute resolution hearing package sent by registered mail on August 12, 2013. I am satisfied that both parties served one another with the above packages and copies of their written evidence in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy? Which of the parties are entitled to the tenants' security deposit? Are the tenants entitled to a monetary award equivalent to the amount of their security deposit

as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are either of the parties entitled to recover the filing fee for their applications from one another?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on June 30, 2010. At the expiration of the initial term, the tenancy continued as a periodic tenancy until the tenants vacated the rental premises on May 1, 2013, after having provided the landlord with a March 22, 2013, notice to end their tenancy. The landlord confirmed having received the tenants' notice to end their tenancy. Monthly rent was set at $1,400.00, payable in advance on the first of each month. The landlord continues to hold the tenants' $700.00 security deposit paid on May 22, 2010.

Although both parties agreed that they participated in joint move-in and joint move-out condition inspections, the landlord did not create reports regarding either of these inspections as required by the *Act*.

The tenants' application for a monetary award of $1,450.00 requested the recovery of double their security deposit as the landlord has not returned their security deposit in full within 15 days of their provision of the end of their tenancy. The landlord confirmed that he received the tenants' forwarding address on April 23, 2013.

The landlord's application for a monetary award of $6,108.08 included the following items:

Item	**Amount**
Emergency Remediation- Property Strata Charges	$4,600.45
Cleaning During Move-Out	100.00
Carpentry Repairs – 3 Units	480.00
Carpentry Door Supply and Install	125.00
Filing Fee	100.00
Painting Work (25%)	695.63
Total Amount Requested	**$6,101.08**

At the hearing and in his written evidence, the landlord described a flooding incident of January 13, 2013. In this incident, water from the washing machine in this rental unit flooded this rental unit and two suites in this strata building below the rental unit. Although the strata provided a billing estimate of $4,600.45 to remediate the damage caused by the flood, the landlord entered written evidence that he strongly disagreed

with the amount of this bill, and insisted on doing the remediation work with his own tradesman. The landlord maintained that the tenant had improperly moved the cycle load button of the washing machine to a location between a medium and a high load, which allegedly led to the water continuing to flow and cause water damage. The landlord gave undisputed testimony that the male tenant provided him with this explanation of how the flooding occurred. The landlord gave evidence that this problem had never occurred in the past and has not recurred. The landlord testified that he paid the amount he was requesting from the tenant and that it was the tenants' mistake in keeping the washer dial between the standard settings that led to this major water leak. He testified that he had no insurance coverage for this type of damage and that he had not tried to collect anything from the tenants until the tenants had requested a return of double their security deposit from him.

The tenant testified that the knob on the landlords' 7 or 8 year old washing machine had gradually worn out and was not operating properly. He maintained that the landlord had not properly maintained the washing machine and that there was "zero negligence" on the tenants' behalf in this matter. The landlord said that the washing machine was approximately 6 years old.

The parties also presented conflicting evidence with respect to the condition of the rental unit when the tenancy began and when it ended. The tenants provided a very detailed description of the work they had to conduct to clean the rental unit, particularly the grout on the kitchen floor tiles when this tenancy began. The tenants also maintained that there were stains in other areas of the kitchen and masking tape on some of the walls. They subsequently matched the paint and painted over the places where masking tape remained on the walls.

The landlord testified that he had to hire a cleaner to clean the grout between the floor tiles at the end of this tenancy and to remove stains in the kitchen. He also provided written, photographic and sworn testimony that the tenants' attempt at matching the paint in this rental unit was very unsuccessful. He testified that he incurred additional painting costs to repair the work conducted by the tenants. The landlord also maintained that doors were damaged by a dog the tenants brought to live with them in this tenancy. He testified that he has been unable to afford to repair this damage.

Analysis –Tenants' Application

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section

38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord has not returned the tenants' security deposit in full within 15 days of the end of this tenancy. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit until months after the 15-day time limit for doing so. The landlord confirmed that he has not obtained the tenants' written authorization at the end of the tenancy to retain any portion of the tenants' security deposit.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double their security deposit with interest calculated on the original amount only. No interest is payable over this period.

Analysis – Landlord's Application

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. While both parties have supplied some photographic evidence, this evidence is not necessarily determinative of the true condition of the premises at the beginning and end of this tenancy. Given the conflicting evidence, I find that the absence of condition inspection reports makes it very difficult for the landlord to refute the tenants' claim that they left the rental unit in similar or better condition than at the beginning of this tenancy.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted **and** reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 36(1) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

> ***36*** *(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord...*
>
> > *(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

Similar provisions are in the *Act* with respect to joint move-in condition inspections.

Since I find that the landlord did not follow the requirements of the *Act* regarding the condition inspection reports, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is limited. However, the absence of such reports does not prevent the landlord from filing a claim for damage arising out of the tenancy.

I have carefully considered the oral, written and photographic evidence of the parties. I first note that the landlord is not entitled to a monetary award for repairs to one of the doors, which he admits have not been conducted. As such, the landlord has not demonstrated that he has incurred any real losses for this item.

The Residential Tenancy Branch's Policy Guideline 40 establishes the useful life of certain features of a rental unit. This Guideline notes that the useful life of an interior paint job to a rental unit is four years. In this case, the landlord said that he painted some of the rental unit during the course of the previous tenancy, before the tenants occupied the rental unit. He could not remember exactly when this occurred, but testified that the last painting of the rental unit likely happened four or five years ago. Although I agree with the landlord's claim that the tenants' matching of paint was not adequate, I find that the useful life of the last painting of this rental unit happened at least four years ago. As such, the rental unit was ready to be re-painted by the end of this tenancy and the landlord is not entitled to recover any monetary award from the tenants for this repainting.

I find that the absence of condition inspection reports makes it difficult to determine if any of the damage to grout between floor tiles, various portions of the kitchen and the remainder of the premises exceeded that which could be expected in a rental unit of this age. The tenants provided convincing sworn testimony and written evidence outlining the work that they undertook at the commencement of this tenancy to clean the grout between the kitchen tiles. While the landlord may have had to undertake the same work and hire a cleaner to perform this task, I am not satisfied that the landlord has demonstrated that the tenants left the kitchen floor or other areas of this rental unit in any worse condition than existed when this tenancy began.

At the hearing, the landlord testified that the chief area of his claim was for reimbursement for the costs he incurred to repair the damage caused by the flooding incident of January 13, 2013. There is undisputed evidence that extensive damage occurred to both this rental unit and to two other rental units arising out of this incident. As outlined above, both parties also entered sworn testimony and written evidence that this flood happened as a result of a problem with the knob on the washing machine provided by the landlord to the tenants. The tenant attributed this incident to the knob on the washing machine having gradually worn out over the years such that it no longer properly engaged in either the medium or high load cycles, but continued running. The tenant claimed that this was an unfortunate accident arising out of normal wear and tear to a part of the washing machine for which the tenants were in no way negligent. The landlord disagreed with the tenant's perspective on this incident. The landlord maintained that the tenants' failure to ensure that either one or the other of the cycle loads were engaged led directly to this damage and the considerable repair costs.

On a balance of probabilities, I cannot accept that this incident was anything but an unusual and unexpected accident resulting from an eventual failing of a seemingly innocuous part on the landlord's washing machine. As neither party had encountered any difficulty with the washing machine beforehand, I do not find that either party was necessarily negligent in operating it or in maintaining it. There is no evidence that the damage to the knob resulted from any negligence or wilful damage caused by the tenants. Unfortunately, this gradual failure in the knob resulted in considerable water damage when the knob failed to operate as it was designed. Under these circumstances, I find that no one can be faulted for the resulting water damage.

In reaching this conclusion, I note that the landlord testified that he had no intention of asking the tenants to reimburse him for this damage until such time as the tenants submitted their own application for dispute resolution. After waiting two further months and shortly before this hearing was scheduled to be convened, the landlord submitted his own application for dispute resolution in which he asked for reimbursement for the

repair of the water damage resulting from the washing machine in January 2013. Based on this history of the landlord's pursuit of this matter, it appears that the landlord accepted for many months that this was an unfortunate accident for which the tenants could not be held responsible.

For the reasons stated above, I dismiss the landlord's claim without leave to reapply.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenants to recover their original security deposit plus a monetary award equivalent to the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*:

Item	**Amount**
Return of Security Deposit	$700.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the *Act*	700.00
Tenants' Filing Fee	50.00
Total Monetary Order	**$1,450.00**

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the landlord's application without leave to reapply.

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: August 27, 2013

Residential Tenancy Branch