



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with applications by both the tenants and the landlord. The tenants applied for the return of their security deposit and to recover their RTB filing fee. The landlord applied for a monetary order for damage to the unit and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; to retain all or part of the security deposit; and to recover the RTB filing fee.

Both the landlord and tenants attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agree the tenancy started January 1, 2012 and the tenants were obligated to pay rent of \$1,495.00 monthly in advance on the first day of the month. The tenants also paid a security deposit of \$747.50.

The tenants gave evidence that they moved out of the rental unit on November 28, 2013, and gave the landlord their forwarding address in writing the same day. The tenants say that the landlord conducted a move-out inspection with them that morning. The only issue identified was that the bedroom carpet was somewhat dirty. The tenants say they agreed the landlord would get the carpet cleaned and if the carpet's appearance was improved by cleaning then the tenants would pay the cost of cleaning. The tenants had already cleaned the carpet themselves with a rental steam cleaner.

The tenants gave evidence they received a letter from the landlord dated December 11, 2013 in which the landlord said she was withholding \$360.00 from the security deposit. The December 11, 2013 note reads:

"I paid \$360 for cleaning the bedroom carpet and the unit [address] after you moved out. Now the unit is clean as you moved in two years ago. This amount is deducted from your damage deposit, you will receive \$387."

The tenants gave evidence that they were concerned the amount for carpet cleaning was too high. The only room in the unit that is carpeted is a small bedroom. The tenants emailed the landlord on December 23, 2013 and asked her to send them a copy of the receipt for carpet cleaning. The tenants also contacted some carpet cleaning companies for quotes for comparison. They told the landlord by email that quotes were in the range of \$70.00 to \$177.00.

The tenants did not immediately cash the landlord's cheque for \$387.00 because they were concerned that cashing the cheque might indicate they accepted the landlord's deduction. When they contacted the RTB on April 3, 2014, they were told they could cash the cheque without prejudicing their rights. They did so, but the cheque was returned "payment stopped"; the tenants provided a copy of the bank notification dated April 17, 2014.

The landlord gave evidence that the tenants called her to do the move-out inspection at 6 a.m. on November 28th because the tenants wanted to leave. The landlord lived upstairs in the same building. She said she had difficulty seeing because she has eye problems, and she was waiting for someone to come and help her with the move-out inspection because her knowledge of the rental process is limited. She said the bedroom carpet was really dirty. She denies that the bedroom carpet was the only issue. She says she told the tenants she would go through the rental unit and get back to them.

The landlord claims the following:

Repair floor	1,000.00	(or 6,000.00)
Replace garburator	450.00	
Replace toilet	220.00	
Labour for toilet	350.00	
Cleaning suite & carpet	320.00	
Repair door	120.00	
Replace showerhead	45.00	
Repair holes in walls	<u>80.00</u>	
	2,585.00	

Floor – The landlord gave evidence that the laundry area flooded and the laminate floor became wet. She had the washer hose repaired but the laminate floor now has a lot of cracks. She was told it would cost about \$1,000.00 to replace only the damaged area or \$6,000.00 to replace all the laminate (in case she cannot match the damaged area). The landlord provided photographs which appear to indicate the laminate planks have separated slightly from each other.

The tenants gave evidence that about 1.5 years before they moved out, they noticed the carpet in the laundry room was wet. They notified the landlord. The problem was a broken hose to the washing machine and the landlord had this repaired. The tenants did not notice any difference in the laminate floor after this incident.

Garburator – The landlord gave evidence that about four or five months after the tenants moved in, they told her the garburator did not work. She says she told them to just use the garbage instead and they agreed.

The tenants agree they told the landlord the garburator did not work, and the landlord declined to repair it.

Toilet – The landlord provided photos of a toilet with a cracked area inside the toilet bowl. The toilet bowl contains bright blue water, as from certain brands of toilet bowl cleaners. The landlord says she did not initially notice the toilet bowl was cracked, because of the blue water, however her realtor pointed it out to her on November 28, 2013. The landlord provided a receipt for \$220.64 from Home Depot for the new toilet and a handwritten receipt from an individual for \$330.00 to install the toilet. Asked how many hours it took for the toilet installation, the landlord said she does not know. Her evidence is that the contractor did not charge by the hour but suggested a flat rate of \$400.00 to install the toilet; he also replaced the shower head. She countered with \$300.00 and they settled on \$350.00 for the job.

The tenants gave evidence that the toilet bowl crack would have been very obvious during an inspection. Asked if the crack was there during their tenancy, the tenant said they were “not aware” of it during their tenancy.

Cleaning suite and carpet – The landlord provided a handwritten receipt from an individual dated Nov 28/13 for \$350.00 which states “for move out clean of unit”. The landlord said the work was done by a cleaning lady who also cleaned the bedroom carpet with some sort of machine. Asked how many hours the cleaning lady worked, the landlord estimated she was there from about 8 a.m. to noon. The landlord says she agreed to a flat rate of \$350.00 and also gave the cleaning lady a \$10.00 tip. She says the cleaning lady cleaned the kitchen and bathroom as well. The landlord provided photos of the kitchen at a distance and a close up of the gas stovetop; the stovetop in the photo is not clean.

The tenants gave evidence that they spent a lot of time cleaning. Regarding the stovetop, the tenant said they would not have left it that way. Asked if the landlord’s photo was of the rental unit stovetop, the tenant said it is the same brand and type but they did not leave it in the condition shown in the landlord’s photo. The tenants say the landlord did not raise any issue regarding cleanliness during the move-out inspection, except for the bedroom carpet.

Bedroom door – The landlord gave evidence that the bedroom door does not fit properly. She says a piece is missing from the top. The landlord provided two photos of a white painted doorframe edge. The photos appear to indicate the paint has been scraped away in small areas, possibly by an object or possibly by a tight-fitting door itself. The landlord says she has not repaired the door; she obtained a quote to take the door off, sand it, and paint it for \$120.00.

The tenants gave evidence that they do not know whether the scraped areas on the door frame were like that during their tenancy. They say they did not do anything that would have caused such damage, such as moving large furniture through the doorway.

Showerhead – The landlord gave evidence that the showerhead was missing after the tenants moved out. She provided a photo which shows a stainless steel fixture in the shower wall in the shape of a cylinder that does not widen at the end. The landlord says she has not purchased a new showerhead, but took the one from her unit and put it in the rental unit. She estimates the replacement cost at \$45.00.

The tenants gave evidence that the landlord's photo shows the showerhead; they say that the design of the showerhead is what appears in the photo (a cylinder that does not widen at the end the water comes out). They say they put a different showerhead on while they were living there, then replaced the showerhead that was there when they moved in.

Holes in walls – The landlord gave evidence that the tenants left about 9 or 10 nail holes in the walls which she filled in. The tenants agree there were about 9 or 10 nail holes when they moved out. They say they put up 7 or 8 pictures and that is not an unreasonable number.

The tenants gave evidence that they conducted the move-out inspection at 8 a.m. (not 6 a.m.) and it was light outside. The landlord did not indicate she had trouble seeing or that she was waiting for someone to assist her. The tenants deny that they agreed the landlord would look around and get back to them later. They note they paid rent for December 2013 despite not living there.

The tenants' evidence is that the landlord did not raise any concerns regarding the floor, garbage disposal, toilet bowl, showerhead, or general cleanliness of the unit until May 2014 (more than five months after the end of the tenancy) when the tenants filed their application for dispute resolution.

Analysis

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later). Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing.

In this case, I find the tenancy ended on November 30, 2013 (the last day of the rental period) and the tenants provided their forwarding address to the landlord in writing on November 28, 2013. The landlord did not apply for dispute resolution to make a claim against the security deposit within 15 days. Also, the tenants did not agree in writing to the retention of any part of

the security deposit. The landlord is therefore obligated to return the entire security deposit to the tenants.

According to Section 38(6), a landlord who fails to follow Section 38(1) must pay the tenant double the amount of the security deposit. In this case, the landlord failed to repay the tenants the amount of \$747.50 from their security deposit. The tenants are therefore entitled to an order for twice that amount, which is \$1,495.00. The tenants are also entitled to recover their RTB filing fee of \$50.00 because they were forced to apply for dispute resolution to obtain the landlord's compliance with the Act. The total amount due the tenants is therefore \$1,545.00.

At issue is whether the landlord is also entitled to a monetary order, which would be set off against the tenants' monetary order.

I find the landlord is not entitled to compensation to repair the laminate floor or the garburator. The landlord did not present any evidence to indicate the tenants did anything to cause damage to either the washing machine hose or the garburator.

It is not clear whether the tenants caused damage to the toilet bowl. The evidence of the parties is contradictory, in that the landlord says the tenants caused the damage and the tenants say they did not. I found it difficult to rely on the evidence of either party. When asked about the toilet bowl crack, the tenants' evidence was that it would have been obvious if the crack had been there during the inspection. I found this response less than candid. I noted the tenants did not directly say the crack was not there. It was only when I pointedly asked the tenants whether the crack was there that they said it was not.

On the other hand, I found it difficult to rely on the landlord's evidence. She apparently did purchase a new toilet, since she has a receipt for one. However, she paid an unusually high amount for labour (and this was also true of the cleaning costs she claims). If I were to estimate that a contractor charges \$40.00 per hour, the \$330.00 charge would encompass about 8 hours work. This is well in excess of the amount of time it normally takes to replace a toilet, even allowing for the time and cost of disposing of the old toilet. Based on the handwritten receipt with no company name, it does not appear the work was done by a plumber who might charge higher rates.

It would be difficult to damage a toilet in this manner without being aware of it. Therefore, I find that if the tenants did damage the toilet, they would have been aware of it. The tenants' actions in not cashing the partial security deposit refund cheque for several months and in protesting the amount of the security deposit deduction, are not the actions of tenants who were aware they had caused additional damage not mentioned by the landlord. A tenant who was aware of additional damage would be more likely to cash the partial refund cheque and say nothing more.

Also, I note that the landlord's December 11, 2013 letter to the tenants does not mention any problem with the toilet although the landlord claims she became aware of the problem when her

realtor pointed it out to her on November 28, 2013. Considering all the above factors, I find the landlord has not met her burden of proof that the tenants damaged the toilet.

I find it is very unlikely that the landlord paid \$350.00 for four hours of general cleaning work by a single cleaner who is not affiliated with a cleaning company, since this amount is well above standard rates. This causes me to have concerns about the landlord's credibility as a witness, and for that reason I do not accept her evidence that the rental unit required additional cleaning. This is despite the photos that show a dirty gas stovetop.

Bedroom door – The landlord's evidence (the photos and the quote) seems to indicate that the bedroom door fits too tightly in its frame. It is difficult to imagine how this could have been caused the tenants. I cannot tell whether the photos also show paint chipped off an outside corner that could not have been caused by a tight-fitting door. If there are such chips, I find the damage is minimal enough to constitute normal wear and tear. For that reason, the landlord is not entitled to compensation.

The parties disagree about whether the landlord's photo shows a showerhead on the wall fixture in the shower. I am satisfied that the photo does show a showerhead, noting a line around the circumference of the cylinder a few inches from the end that is likely where the showerhead unscrews from the pipe. Since I find the showerhead is not missing, this claim of the landlord's is dismissed.

According to Residential Tenancy Guideline 1 "Landlord & Tenant – Responsibility for Residential Premises", a tenant is not responsible for filling nail holes or the cost of filling nail holes, unless there are an excessive number. I find that 9 or 10 nail holes were not excessive in this case. For that reason, the landlord is not entitled to compensation.

In summary, I find the landlord has not proven any of her claims for compensation for damage. For that reason, there is no monetary amount due the landlord that might be set off against the amount due the tenants. I therefore grant the tenants a monetary order for the amount due them which is \$1,545.00 (as explained above). This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenants a monetary order for \$1,545.00. The landlord's application is dismissed.

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: September 2, 2014

Residential Tenancy Branch