Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid utilities and for damage to the unit, site or property 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 their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties attending the hearing confirmed that they had full authorization to act on behalf of their spouses who were not in attendance at this hearing.

The male tenant (the tenant) confirmed that both tenants received copies of the landlords' dispute resolution hearing package sent by the landlords by registered mail on September 19, 2014. The female landlord (the landlord) confirmed that on April 4, 2015, both landlords received copies of the tenants' dispute resolution hearing package sent by the tenants by registered mail on April 2, 2015. Both parties also confirmed having received one another's written evidence packages. I find that all of the above documents were duly served to one another by the parties in accordance with sections

88 and 89(1) of the *Act*. I did not have a copy of the tenants' most recent written evidence, a copy of an August 30, 2014 invoice, at the hearing. I allowed the tenants' counsel to fax this to me after the hearing as the landlord confirmed that she had received this evidence from the tenants beforehand. After the hearing, I received and considered this missing written evidence, which the tenants' counsel said had been sent to the Residential Tenancy Branch (the RTB) before this hearing.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid utilities or for damage arising out of this tenancy? Which of the parties are entitled to the tenants' security deposit? Are either of the parties entitled to recover their filing fees from one another?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, receipts, invoices, estimates, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of both claims and my findings around each are set out below.

The parties agreed that this tenancy for a two-level furnished home commenced as a one year fixed term tenancy on July 1, 2012. Although the initial Residential Tenancy Agreement (the Agreement) called for a monthly rent of $5,500.00, payable on the first of each month, the parties agreed that this rent was reduced to $5,200.00 during the first fixed term as the tenants did not require cleaning by the landlords. The landlords continue to hold the tenants' $2,600.00 security deposit paid on July 1, 2012. The monthly rent was further reduced to $4,950.00 when a new one-year fixed term Agreement took effect on July 1, 2013. In addition to the monthly rent, the parties agreed that for the duration of this tenancy the tenants were responsible for any monthly utility costs in excess of $400.00.

The parties supplied copies of the above-noted Agreements, as well an extension to the second Agreement that covered the period from June 30, 2014 until August 31, 2014. The parties agreed that the tenants vacated the rental unit and surrendered possession of the rental unit on September 2, 2014, with the agreement of both parties.

Although the landlord clearly had the tenants' correct forwarding address at the end of this tenancy, neither party provided a copy of the tenants' forwarding address in writing.

In the landlords' application, the landlords requested a monetary award of $12,087.66. However, the landlords' Monetary Order Worksheet of December 4, 2014 entered into written evidence by the landlords identified the following breakdown of this claim:

Item	**Amount**
Unpaid Utilities	$1,849.19
Replacement of Damaged Vacuum Brush	27.99
House Cleaning	604.54
Carpet Cleaning	369.07
Paint	23.60
Door Stain, Closet Handles	102.58
Trim Pieces	201.60
Fireplace Log Replacement and Cleanup	332.85
Appliance and Cooktop Servicing	562.45
Sofa and Chair Replacement	1,349.00
Ottoman Replacement	679.00
Replacement of Master Bedroom Carpet	1,509.48
Repairs to Front Door, Tables and Wood Cabinets	4,340.00
Replacement of Broken Light Fixture	23.19
Painting, New Closet Door and Light Fixture Installation	1,139.25
Total of Above Items	**$13,113.79**

The landlords also applied to recover their $100.00 filing fee for their application. The landlord testified that all of the work identified in the landlords' claim has been completed. She also confirmed that the landlords have paid for each of these items.

At the hearing, I noted that I could only consider a total requested monetary award of $12,087.66, as the landlords had not amended their application nor formally informed the tenants of their intent to seek this increased monetary award.

The tenants applied to recover their $2,600.00 security deposit plus their filing fee.

At the hearing, the tenants' legal counsel advised that the tenants were not disputing the following segments of the landlords' application for a monetary award:

- unpaid utilities;
- repair of one of the four closet doors;
- refinishing of one of the five pony wall caps;

- repair of the master bedroom door;
- repair of the wall at the entrance foyer; and the
- steam cleaning of carpets.

The tenant and his counsel also said that the tenants had agreed to reimburse the landlords for the cost of cleaning marks on the landlords' chair/sofa and ottoman. He said that these marks were made with washable marker and not indelible marker as alleged by the landlords.

The tenant testified that he undertook measures to address the damage concerns raised by the landlords in May 2014. The tenants' counsel also referred to the $787.50 invoice (including tax) submitted into written evidence by the tenants confirming the expenditures that the tenants incurred at the end of this tenancy for the following repair work:

- *Sand and restain front door to mach (sic) exterior door trim;*
- *Sand and restain coffee table. Visible deep pot stains.*
- *Sand and restain corner bookshelves on kitchen island.*

The landlords entered into written evidence a copy of the joint move-in condition inspection report of July 5, 2012, signed by both the landlord and the female tenant. Although the tenant and the landlords' contractor undertook a joint move-out condition inspection on September 2, 2014, when this tenancy ended, neither tenant signed the report subsequently created by the landlords regarding this move-out inspection.

The landlord gave sworn testimony that she and her contactor entered the rental unit on their own and "wandered around" without the tenant before the agreed inspection time on September 2, 2014. When the tenant arrived at the scheduled time, she said that her contractor walked around the rental premises with the tenant, identifying concerns he had about the condition of the rental unit. She said that neither she nor her contractor had the move-out condition inspection form with them that day, but her contractor gave the tenant estimates of what it would cost to undertake the necessary repairs to restore the rental unit to a condition whereby the property could be sold. The landlord testified that she completed the condition inspection form a few days later.

The tenant gave a different account of the circumstances regarding the joint move-out condition inspection on September 2, 2014. He confirmed that the landlord and her contractor had already entered the rental unit before he arrived. He gave undisputed sworn testimony that he walked around the main floor of the rental unit with the

landlord's contractor. He said that the contractor told him that there was no need to view the lower level of the rental unit together because everything there was fine. He said that much of the time involved in the inspection was devoted to sitting with the landlord's contractor and listening to his estimates of the costs of repairs.

The landlord testified that she sent the tenants three or four emails asking them to sign the joint move-out condition inspection report. When the tenants refused to sign this report, the landlords sent it to the tenants. The tenant gave undisputed sworn testimony that the original copy of the landlords' move out report was largely illegible. The landlord confirmed that she sent a legible copy of that report to the tenants with the landlords' December 2014 written evidence package. The parties entered into written evidence copies of the move-in and move-out condition inspection reports.

The tenants provided a copy of the landlords' May 20, 2014 request for an inspection of the rental unit as the landlords were considering whether to extend the Agreement or prepare the property for sale. The tenants also entered into written evidence a copy of a May 26, 2014 email from the landlords in which they outlined the results of their inspection. In addition to a detailed review of the features of the rental unit that the landlords maintained were damaged, the landlords noted the following:

> *…Needless to say, there is damage throughout the house that goes far beyond normal wear and tear…*
> *We have not had a professional assess the damage and feel $12,000.00 plus the damage deposit forfeiture would be adequate. Whether or not you extend your tenancy that amount would still have to be paid.*
> *Currently the house is not saleable or rentable to any other tenant in this condition…*

Although the landlord said that the tenants did try to undertake some of the required repairs, she said that the landlords were not at all satisfied with the steps taken by the tenants to restore the rental unit to the condition it was in when this tenancy began. She confirmed the tenant's claim that most of the photographs she included in her evidence package were taken either at the time of her May 2014 inspection of the rental unit or after the tenancy ended. She also confirmed that the landlords undertook additional repairs and renovations to this property in order to increase the market appeal of this property in anticipation of the landlords' sale of the property. She said that the landlords did not include these repairs and renovations in their monetary claim against the tenants. She said that the only items identified in the landlords' monetary worksheet resulted from damage or losses arising out of this tenancy for which the tenants were responsible. The tenant and his lawyer disputed this assertion,

maintaining that some of the damage resulted from reasonable wear and tear during the course of the tenancy, other damage may have been present when the tenancy began but was not noticed at that time by the tenants, and other portions of the landlords' claim were exaggerated. The tenants' counsel also noted that the amount claimed by the landlords was very close to the original estimate provided in the landlord's May 26, 2014 email.

Analysis

As the tenants have not disputed the landlords' claim for unpaid utilities, I find that the tenants did not fulfill their obligations under their Agreement to pay for these utility costs. I grant the landlords a monetary award in the amount of $1,849.19, the undisputed amount claimed for utilities by the landlords.

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 landlords 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.

In considering a damage claim of this type, it is very helpful to compare the signed joint move-in and joint move-out condition inspection reports. The parties presented a signed joint move-in condition inspection report which reveals that there were no substantive concerns about the condition of the rental unit at the beginning of this tenancy; a fact confirmed by the tenant at the hearing. Although a joint move-out condition inspection was scheduled for September 2, 2015, this inspection did not lead to a signed joint move-out condition inspection report. The details of that inspection are in dispute and the landlords' report of that inspection was not written at the time of the inspection, nor was it conveyed to the tenants in a legible fashion until December 2014, months after this tenancy ended. At the hearing, the landlord confirmed that she and her contractor let themselves into the rental unit with the landlords' keys before the tenant appeared and released the tenants' keys to transfer possession of the rental unit to the landlords. The landlord also confirmed that she and her contractor inspected the premises without the tenant before the tenant arrived to assess the extent of the repairs

required at the end of this tenancy. The landlord did not dispute the tenant's testimony that the landlord transferred responsibility for conducting the joint inspection of the premises to her contractor, who only walked through the upper level of this two-level rental unit with the tenant. The tenant gave undisputed sworn testimony that most of his time with the contractor was spent sitting at a table listening to the contractor prepare estimates of the costs of repairing the rental unit. The tenant also gave undisputed sworn testimony that the contractor told him that there was no need to inspect the lower level of this rental home because it was in acceptable condition and there were no problems there.

Although I have given the landlords' claim careful consideration, I find portions of the landlords' evidence does not meet the test required to allow a claim for damage. Without signed joint move-in and joint move-out condition inspection reports, I must rely on other means of assessing the extent to which the damage claimed properly reflects damage beyond reasonable wear and tear that occurred during the course of this tenancy. The tenant admitted that there was considerable damage at the time of the landlords' May 2014 inspection of the rental unit. However, he provided sworn testimony, supported by some written evidence in the form of receipts for repairs he commissioned, that the tenants repaired some of the damage before the end of this tenancy. I find that the landlords' photographs many of which appear to have been taken well before the end of this tenancy and some after the tenancy ended lend only limited support to the landlords' claim.

With little reliable supporting evidence to rely upon, I must evaluate the sworn oral testimony presented by the parties. In addition to the manner and tone (demeanour) of the sworn testimony of the parties who attended the hearing, I have considered their content, and whether it is consistent with the other events that took place during this tenancy.

Although the landlords' contractor appears to have been very actively involved in the joint move-out inspection of this rental unit and in the assessment of damage, the landlords did not call him as a witness for this hearing. In the absence of evidence from the landlords' contractor and any dispute by the landlord as to the tenant's claim that the move-out inspection did not include any visit to the lower level of the rental unit, I have serious concerns about the thoroughness of the joint inspection of September 2, 2014. The landlords' decision to enter the rental unit before the joint inspection occurred also supports the tenant's testimony regarding the deficiencies in the joint move-out condition inspection process. While the landlord testified that the overall repairs and renovations far exceeded the amounts claimed from the tenants, she did not provide

documentation in this regard. She did not dispute the claim made by the tenants' counsel that she left cleaning the rental home until the repairs and renovations were completed. Although this was no doubt a prudent approach, she did not provide details to substantiate her assertion that the cleaning amounts claimed from the tenants only reflected the cleaning required to restore the rental unit to its original state, as opposed to a requirement to clean after the landlords' own upgrades.

By contrast, I found the tenant's demeanour during the hearing has convinced me of his credibility. The tenant answered all questions asked of him in a calm and candid manner, and never wavered in his version of what happened. The tenant and his counsel also made many important admissions, including the fact that a number of the landlords' claims were valid. This suggested that the account provided by the tenant of the circumstances regarding damage that arose during this tenancy was for the most part truthful. I also note that the tenant was uncertain as to whether certain aspects of the landlords' claim for repairs and cleaning truly required the replacement of items damaged during the course of this tenancy.

Based on a balance of probabilities, I find that the landlords are entitled to a monetary award for a number of items in their claim.

Section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." Although I accept that some general house cleaning was necessary as a result of the condition of the rental unit at the end of this tenancy, I find that much of this cleaning was also required as a result of the renovations undertaken by the landlords to ready these premises for placement on the real estate market. For these reasons and after comparing the condition inspection reports, the photographs, the receipts and the sworn testimony of the parties, I allow the landlords a monetary award for cleaning in the amount of $320.00, reflecting two full days of cleaning at an hourly rate of $20.00 (i.e., 8 hours of cleaning @ $20.00 per day @ 2 days = $320.00).

I allow the landlords' undisputed claim for the recovery of $369.07 for professional carpet cleaning of the rental unit at the end of this tenancy.

At the hearing, the parties presented conflicting evidence as to the extent of repairs required to five pony walls in this rental home. The tenant and his counsel conceded that the tenants were responsible for the repair of one of the five parts of the landlords' claim for repair of the pony walls in this rental home. As I find that the landlords have failed to provide sufficient evidence to demonstrate they are entitled to a monetary

award for the repair of all of the damage to the pony walls, I limit the landlords' entitlement to one-fifth of the overall $1,000.00 cost of these repairs. This results in a monetary award of $200.00 for this item.

For somewhat similar reasons, I find that the landlords' entitlement to a monetary award for repair of doors in the basement is limited to the repair of one of the four doors claimed by the landlords. There is undisputed sworn testimony that the landlords' contractor did not inspect the lower level of the rental unit with the tenant at the joint move-out condition inspection, indicating that there was no need to do so as there was no damage there. Under these circumstances, I allow the landlords' claim for the repair of one of these doors, resulting in a monetary award of $225.00, representing one-quarter of the total claim of $900.00 for the repair of doors in this rental unit. In making this finding, I note that the tenants' counsel conceded that the tenants were responsible for one of the four damaged doors identified in the landlords' claim.

Based on the landlords' ~~undisputed claim~~ **sworn testimony** with respect to the **condition of the** front door of the rental unit **at the end of this tenancy**, I find that the landlords are entitled to a monetary award of $550.00, the refinishing charge identified in the landlords' claim. **Although I accept that the tenant attempted to repair the front door, I find that the landlord provided convincing sworn testimony that repairs to the front door were still necessary by the end of this tenancy. I accept that the landlords did incur the claimed costs to repair the front door for damage that arose during the course of this tenancy and, as such, are entitled to recover the $550.00 cost they incurred in repairing the front door of this rental unit.**

Based on the landlords' undisputed ~~claim~~ **sworn testimony supported by written evidence**, I find that the landlords are entitled to a monetary award of $23.19 for the replacement of a broken light fixture as well as $52.50 for the labour associated with the replacement of that fixture.

I have also considered the landlords' claim for the replacement of a chair/sofa and ottoman, totalling $2,048.00 ($1,349.00 + $699.00). The landlords provided photographs of these damaged items in which it would appear that the landlords' children had defaced these furnishings with some form of marking pen or magic marker. The tenant testified that he never lets his children use indelible markers, so the markings would have been washable. When the landlords raised concerns about these items following the May 2014 inspection, he advised them that the tenants agreed to compensate the landlords for the cleaning of these items. At the hearing, the landlord testified that she tried to have these items professionally cleaned, but the cleaners were

unable to remove these marks from the chair/sofa and ottoman. She noted the following comment provided by the professional cleaners in their invoice entered into written evidence by the landlords:

Chair + ottoman unable to clean due to marker stains on cotton.

I find that there is adequate evidence to demonstrate that the landlords suffered a loss as a result of the damage caused to the chair/sofa and ottoman by the marking pens. At the hearing, the landlord gave undisputed sworn testimony that these items were approximately four years old. RTB Policy Guideline No. 40 establishes the useful life of various items in a residential tenancy. In the case of furnishings, the useful life is estimated at ten years. Based on the landlords' undisputed sworn testimony as to the age of the furniture damaged during the course of this tenancy, I find that the landlords are entitled to a monetary award of $1,228.80 (i.e., $2,048.00 x 60% = $1,228.80) for the replacement of furniture damaged during this tenancy.

In considering the remainder of the landlords' application, I note that Policy Guideline No. 40 establishes that the useful life of an internal paint job is set at four years. The useful life of carpeting is set at ten years. The useful life of a stove is set at fifteen years. The landlord testified that the rental unit was last painted four years before this tenancy began. The landlord also testified that the carpets, damaged by ink during the course of this tenancy, were in place by at least 1998. The landlord said that the stove was purchased in 1998. As the paint job, the carpets and the cooktop had all reached the end of their useful life well before this tenancy ended, I dismiss the landlords' application for the recovery of the costs they incurred to repaint the premises, to lay new carpet and to repair the cooktop on the stove without leave to reapply.

The landlords' application for repairs included repairs to a 25-year old teak table and a 20 year-old oak table. While Policy Guideline No. 40 does not establish a separate estimate for the useful life of tables of this type, I do not find that the photographs and evidence submitted by the landlords identify damage that exceeds that which would be expected for tables of this age in a rental property. I dismiss this aspect of the landlords' claim without leave to reapply.

I have also considered the landlords' application for the replacement of an artificial fireplace log set. The tenant said that the tenants never used this item during the course of their tenancy and were uncertain as to whether any damage that occurred arose during their tenancy or before their tenancy began. An item of this type might also have some type of unspecified useful life and it is not at all clear as to whether this damage arose during this tenancy or whether that damage extended beyond

reasonable wear and tear. For these reasons, I dismiss the landlords' application for the replacement of the fireplace log set without leave to reapply.

I also dismiss the landlords' application to repair a damaged vacuum cleaner. I find little evidence that this damage exceeded that which could be expected for a used vacuum cleaner on the basis of reasonable wear and tear.

Without listing them specifically, I have also considered the remaining items that the landlords claimed were damaged during the course of this tenancy. While there may have been some additional costs incurred by the landlords arising out of this tenancy that were beyond reasonable wear and tear, I find, for the most part, that the landlords' evidence failed to clearly distinguish between which repairs were necessary to restore the condition of the rental unit and which repairs were designed to upgrade the condition of the property for its resale. The tenants' undisputed evidence of repair work they undertook following the photographic evidence submitted by the landlords presents a further complicating factor in assessing the validity of the landlords' remaining repair claims. Under these circumstances, I grant the landlords a somewhat nominal additional monetary award of $250.00 for repairs to trim, walls, doors and other features of this rental unit, which I find were necessary due to the actions of the tenants and their family during this tenancy.

I allow the landlords to retain the tenants' security deposit plus applicable interest to partially offset the monetary award issued in this decision. No interest is payable over this period.

As the landlords were partially successful in their application, I find that they are entitled to the recovery of $50.00 of their $100.00 filing fee.

Although the tenants are entitled to a return of their security deposit, this amount is offset by the landlords' entitlement to a monetary award for unpaid utilities and damage that exceeds the value of the tenants' security deposit. Under these circumstances and as the landlords' claim to retain the security deposit was already properly before the RTB well in advance of the tenants' application and as the landlords' successful claim far exceeds the amount of the tenants' security deposit, I find that the tenants are not entitled to recover their filing fee from the landlords.

Conclusion

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid utilities, part of their filing fee and damage to the rental unit, less the value of the security deposit for this tenancy:

Item	**Amount**
Unpaid Utilities	$1,849.19
House Cleaning	320.00
Carpet Cleaning	369.07
Furniture Replacement	1,228.80
Repairs to Pony Wall	200.00
Replacement of Broken Light Fixture ($23.19 + $52.50 = $75.69)	75.69
Refinishing of Front Door	550.00
Replacement of Broken Closet Door	225.00
Additional Repairs and Damage	250.00
Less Security Deposit	-2,600.00
Plus $50.00 of Landlords' $100.00 Filing Fee	50.00
Total Monetary Order	**$2,517.75**

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

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: April 27, 2015

Residential Tenancy Branch

DECISION AMENDED PURSUANT TO SECTION 78(1)(A) OF THE RESIDENTIAL TENANCY ACT ON **MAY 14, 2015** AT THE PLACES **INDICATED ON PAGE 9**.