



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Peter Wall Mansion & Estates and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MND MNSD FF
Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 26, 2021.

The Landlord and the Tenants both attended the hearing. Both parties confirmed receipt of each other's documentary evidence and Notice of Hearing packages. No issue with service of the documentation was raised by either party, except the Tenants acknowledged they did not provide a copy of their video file to the Landlord, as they didn't know how.

As stated in the hearing, the Tenants should have put this on a USB stick, or on a CD, and ensure the Landlord had a copy in accordance with the Rules of Procedure. However, they did not. Since this video was not served to the Landlord, I find it is not admissible, and will not be addressed any further.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenants

- Are the Tenants entitled to the return of double the security deposit held by the Landlords?

Landlord

- Are the Landlords entitled to compensation for damage to the rental unit?
- Are the Landlords entitled to keep the security deposit to offset the amounts owed by the Tenants?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that:

- The tenancy began in March of 2016, and ended on December 31, 2020
- The Landlord collected a security deposit in the amount of \$797.50 and a pet deposit in the amount of \$200.00
- A move in and move out condition inspection was completed, and a copy of the condition inspection report was provided into evidence.
- The move-out inspection was completed on December 28, 2020, and at the bottom of that report, the Tenants provided their forwarding address in writing.
- The Landlord filed an application against the deposits on January 28, 2021.
- The Landlord acknowledged getting the Tenants' forwarding address in writing that same day.
- The Landlord returned \$287.50 of the security and pet deposit, and retained \$710.00.

The Landlord pointed to the condition inspection document to support that she had an agreement with the Tenants at the end of the tenancy, whereby she could retain \$710.00 for the 3 items below. The Tenants acknowledge signing the condition inspection report, but deny that they every agreed to any amounts being deducted. The Tenants assert the Landlord falsified the agreement document (attached alongside the condition inspection report), and completed the deduction amounts after they had signed the documents. The Tenants also state the "agreement" document the Landlord presented regarding the deductions from the deposits was not signed by them, and it

appears the Landlord has added one of the Tenant's initials after the fact. The Tenants pointed to how different the signatures were from where they actually signed the condition inspection report, to the part where the Landlord added in their initials to the "Agreement" document, after the fact.

Landlord's application

The Landlord is seeking permission to retain the \$710.00 for damage to the rental unit for 3 items as follows:

1) \$400.00 – Blind replacement

In the hearing, the Landlord explained that she was seeking this amount to cover the cost to replace the blind on the patio door, which she asserts was broken by the Tenants. The Landlord provided 2 photos of the blinds to show the dirt on one of the blinds. The Landlord did not explain which blind was in the photos.

The Landlord also cited the condition inspection report to show that the blinds were noted to be in good condition at the start of the tenancy, and at the end the Landlord noted "to replace broken balcony blinds" under the "drapes/blinds" heading. Beside that, the Landlord wrote \$400.00 which is her approximation of what it cost to replace the blinds. The Landlord stated that she had to replace both blinds (bedroom and balcony) in the rental unit because they need to match, and the one in the living area was broken. More specifically, the Landlord stated that the blind on the balcony door had two broken cords/cables and they would no longer open or close.

The Landlord provided a copy of the invoice for the blind replacement. This invoice lists the overall cost was \$459.06, and was to "supply and install 3 vertical" blinds. The Landlord did not explain or provide any evidence to establish how old the blinds were.

The Tenants stated that the photo of the blinds provided by the Landlord is of the bedroom, and there is no evidence to show what exactly was broken on the balcony door blinds. The Tenants feels that since this \$400.00 amount is to cover the cost of replacing the balcony blind, there should at least be photos of that blind, as the photo of the bedroom blind is not relevant. The Tenants stated that the blinds were not broken at the end of the tenancy and were functioning correctly. The Tenants assert the Landlord is trying to get them to pay for upgrades to old blinds that needed replacement anyways.

- 2) \$300.00 – Interior wall painting
- 3) \$10.00 – Balcony cleaning

The Landlord pointed to a couple of photos she took at the end of the tenancy to show the Tenants had caused some minor wall damage, and did a poor wall patching job. The Landlord stated that there was an excessive number of holes and patches on the wall in the hallway, and as a result, she had to have the walls in the area repainted. The Landlord also stated that the walls had to be repainted because the Tenants smoked in the rental unit, and made the walls yellow. Under the condition inspection report, the Landlord put “have to paint” under the “walls, ceilings” category. The Landlord did not explain what the issue was with the balcony, or what exactly required cleaning. The Landlord provided an invoice showing she paid \$380.00 to put one coat of paint on the hallways, the living room, and the bedroom. The Landlord did not provide any statements or evidence to demonstrate when the unit was last painted.

The Tenants deny that they failed to clean the balcony, and also deny that they ever smoked in the rental unit. The Tenants acknowledge that they hung a couple of photos, with adhesive strips on the wall, and when they removed the strips, it damaged the wall. As such, they did 4 small patch jobs to fill minor blemishes where they hung a couple pictures. The Tenants stated that they only hung a small handful of things, even though they lived there for around 4 years.

Tenants' application

The Tenants are seeking the return of the remaining \$710.00 of their security and pet deposit currently held by the Landlord, and double the deposit, if possible.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

Each application will be addressed separately. For each application, the burden of proof is on the person who made that application to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. The Applicant must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

Landlord's Application

First, I turn to the alleged agreement the Landlord stated she had with the Tenants to retain \$710.00 from the deposits. I have reviewed the condition inspection report signed by the Tenant, and I find little if any resemblance to the signature on the "agreement" document, regarding deductions. I note the Tenants deny that this agreement document was ever presented to them, and they feel the Landlord has fraudulently completed it in their absence. I find there is insufficient evidence this was signed by either of the Tenants, such that I could be satisfied that any agreement was reached regarding authorized deductions from the deposits. I have placed little to no weight on the "agreement" document provided by the Landlord.

The only end of tenancy documents the parties both agree to signing was the move-out condition inspection report. Although the move-out condition inspection report lists some of the costs for damages, I do not find it is sufficiently clear such that I could find that the Tenants agreed to any deductions from their deposit. It is not sufficiently explicit in that the amounts noted on the condition inspection report were amounts the Landlord was hoping to collect, or whether they were amounts the Tenants authorized the Landlord to retain. I find the format and layout of the condition inspection report is not sufficiently clear or detailed. Also, the Landlord's explanation was poorly articulated and hard to follow. I find there is insufficient evidence that any agreement was reached regarding deductions from the deposits at the end of the tenancy.

The Landlord should consider using the condition inspection reports posted on the RTB website, as they provide more clarity on these matters.

1) \$400.00 – Blind replacement

Having reviewed this matter, I note the onus is on the Landlord to demonstrate the Tenants are responsible for the damaged blind. I found the Landlord's explanation about the blinds was unclear, and difficult to follow. The Landlord noted on her application that the blinds were "dirty" and needed to be replaced. Then, at the hearing, she stated she is seeking this amount to cover the costs to replace a broken balcony blind. It is unclear why the Landlord would provide photos of the dirty bedroom blind, if she was seeking compensation for a broken balcony blind. I find the Landlord's application, and explanation in the hearing lacked clarity, and was very difficult to follow. Further, the invoice provided by the Landlord does not sufficiently detail which blinds cost which amount, and why there were 3 blinds noted on the invoice. The Landlord also gave a confusing and unclear explanation in the hearing about how the \$400.00

was calculated, and why she speaks to dirty blinds on her application, but only to the broken balcony blind in the hearing.

Based on the poorly explained and presented evidence and testimony, I find the Landlord has failed to sufficiently demonstrate what is owed, and why. I dismiss this item, in full.

- 2) \$300.00 – Interior wall painting
- 3) \$10.00 – Balcony cleaning

I have reviewed the testimony and evidence on this matter. I note the photos provided by the Landlord show that there were a few small wall patches done. However, I do not find there is sufficient evidence to demonstrate that the Tenants created an excessive or unreasonable number of nail holes.

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises provides the following guidance with respect to walls and painting:

WALLS

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

I note the Tenants acknowledged they used some adhesive wall hangers which caused some minor wall damage. It appears these blemishes were somewhat patched at the

end of the tenancy. However, the wall patches appear rough, and would likely need further work prior to repainting. I find the Tenants ought to be liable for some of the costs to remediate this hallway, given the wall hanger damage.

However, I also note there is no evidence as to when the rental unit was last repainted. I turn to *Residential Policy Guideline #40 - Useful Life of Building Elements*, which shows that the useful life expectancy of painted interior walls is set at 4 years, after which point, it could be reasonably expected that the Landlord should repaint the walls under normal conditions. It appears the walls have not been repainted in at least that long, since the Tenants lived in the unit for around 4 years. As such, I decline to award the Landlord the full costs to repaint the unit, since the useful life of the interior paint had likely already lapsed.

In this case, I find a nominal award is more appropriate, given all of the above. “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I award the Landlord a nominal award of \$100.00 to help cover some of the costs associated with minor wall/paint repair in the affected areas. With respect to the balcony cleaning costs, I find the Landlord failed to explain or even address this matter, whatsoever, in the hearing. I find the Landlord failed to explain why the balcony cleaning amount is owed.

I find the Landlord is partly successful with her claim and is entitled to \$100.00, as above.

With respect to the Tenants’ application to recover their security and pet deposit, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant’s forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the evidence and testimony confirmed the Landlord was in receipt of the Tenants’ forwarding on December 28, 2020, the same day the move-out inspection was completed. The Tenants confirmed that they paid rent until the end of December 2020, and both parties agree that the tenancy officially ended as of December 31, 2020.

Therefore, in the absence of a more clear agreement about deductions from the deposits, the Landlord had until January 15, 2021, to either repay the security deposit, in full, to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlord only returned \$287.50 of the deposits. As stated above, I do not find there is sufficient evidence that the Landlord and the Tenants made any clear agreements with respect to the deductions from the deposits. As such, they were required to repay the deposit, in full, or file an application against the deposits within 15 days of the end of the tenancy. The Landlord did not apply against the deposits until January 28, 2021. Accordingly, I find the Tenants are entitled to recover double the amount of the security (\$797.50) and pet deposit (\$200.00) held by the Landlord ($2 \times \$997.50 = \$1,995.00$) less the amount already returned (\$287.50) pursuant to section 38(6) of the *Act*. This entitles the Tenants to \$1,707.50 for this item.

Since both parties were partly successful, I decline to award the recover of the filing fee paid.

In summary, the Landlord is awarded \$100.00, as above, and the Tenants are entitled to recover \$1,707.50. After offsetting these amounts, I find the Tenants are entitled to a monetary order in the amount of \$1,607.50.

Conclusion

The Tenants are granted a monetary order pursuant to Section 38 and 67 in the amount of **\$1,607.50**. This order must be served on the Landlords. If the Landlords fail 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.

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, 2021

Residential Tenancy Branch