Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes — Landlord's application: MND-S, MNDC-S, FF
Tenants' application: MNSD, FF

Introduction and Preliminary and Procedural Matters-

This hearing convened by teleconference on March 10, 2022, in response to the cross applications of the parties (application) seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for compensation for alleged damage to the rental unit by the tenants, compensation for a monetary loss or other money owed, authority to keep the tenants' security deposit to use against a monetary award, and recovery of the cost of the filing fee.

The tenants applied for a return of their security deposit and recovery of the cost of the filing fee.

The landlord's agent, DC, and the tenants' agent, GR, attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The hearing continued for 60 minutes, at which time the hearing was adjourned due to insufficient time. An Interim Decision was issued on March 12, 2022, which is incorporated by reference and should be read in conjunction with this Decision.

The hearing reconvened on June 6, 2022 and continued for 74 minutes. DC did not enter the teleconference until 33 minutes into the hearing. The hearing was adjourned due to insufficient time. An Interim Decision was issued on June 9, 2022, which is incorporated by reference and should be read in conjunction with this Decision.

At the final hearing, DC and GR were in attendance. The parties were provided the opportunity to present their evidence orally and make submissions to me.

During the three hearings in these matters, I was provided a considerable amount of evidence, particularly from the tenants' agent, including: documentary, photographic, and oral evidence. The relevant oral and written submissions for this dispute were all reviewed. However, not all details of the parties' respective evidence are reproduced here. Further, only the evidence that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants, to keep the tenants' security deposit, and recovery of the cost of the filing fee?

Are the tenants entitled to a return of their security deposit, doubled, and recovery of the cost of the filing fee?

Background and Evidence

I heard evidence that the tenancy between the landlord and the tenant JB began in 2008 in the lower rental unit and in 2012, the tenant moved upstairs. DC said that there was no written tenancy agreement until 2017. However, no written tenancy agreement was filed in evidence and the tenants submitted that there was no tenancy agreement with either the upper or lower unit.

DC said there was a former agent, JB, handling this tenancy, and that he has been the agent for this tenancy since 2015.

GR said she has been fully involved with this tenancy and the lower unit tenancy since 2008 as she is the mother of tenant JB.

Landlord's application –

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Painting	$12,000.00
2. Carpet replacement	$6,843.90
3. House cleaners	$685.00
4. Yard care	$1,375.00
5. Junk removal	$785.00
6. Handyman service, agent's services	$2,500.00
7. Home Depot, others	$777.16
8. Budget Glass	$32.64
TOTAL	**$24,998.69**

Painting –

DC testified that the photos submitted show that the walls were full of felt tip pen and pen markings. The markings were all over the house.

DC said that the rental unit was last painted just before 2010 or 2011, and that the photos were taken on August 15, 2021. There was an arrangement for a move-out inspection, but DC had words with tenant KB and GR. DC said he was upset at the condition of the rental unit. The rental unit "stunk" and the tenant was told they were not getting their security deposit.

DC said there was no move-out condition inspection report (Report) and believes he was justified in not doing an inspection and keeping the security deposit due to the condition of the rental unit.

DC confirmed that there was no evidence of a move-in condition inspection report (Report) or photos of the rental unit.

Carpet replacement –

DC said there were cigarette burns in the carpet and it was beyond repair and could not be cleaned. DC said the carpet at the time was 14 years old as it had been replaced in 2006.

House cleaners –

DC said that most of the cleaning involved wiping the walls and cleaning the windows. To support this claim, the landlord submitted an email from the cleaners, but with no attached receipt showing what work was done.

Yard care –

DC stated that the yard work involved the driveway, garbage removal, such as old tools, toys, and beer cans, and trimming.

Junk removal –

DC testified that they had to remove junk from the house, such as old schoolbooks, with JB's name written on them.

Handyman service, agent's services –

DC said that he had to be at the residential property to coordinate with all the tradespersons, as well as perform general handyman services. DC said he spent time there from August 15, through the end of September 2021.

Home Depot, others; Budget Glass –

DC testified that the child's closet doors had to be replaced, along with the master doors and all painted. There was also a broken bathroom door and bathroom mirror.

The landlord's relevant evidence included two monetary order worksheets showing different monetary claim amounts, a 5-page written statement of response to the tenants' evidence, invoices, and undated photographs in and around the rental unit. I note that in the written response, DC included an email from the owner, which shows pictures from 2006 were attached. It was not clear if the photos, or all the photos, were filed in evidence.

Tenants' agent's response –

GR testified that she could not reconcile the amounts claimed on the monetary order worksheet. GR pointed out that there was a difference of $14,525.82 between the monetary order worksheet and the receipts in the landlord's evidence. GR said that DC provided different amounts of handyman services for himself and the painting company invoice was $11,429 although the claimed amount was $12,000. GR said that the carpet document was an estimate, not a receipt. GR said that the housecleaning claim was $685, but the receipt was for $665. GR said that there was not one invoice for the $777.16 claim.

GR said the house is 48 years old and has been a rental unit throughout the years with nothing being done in that time. She said that JB moved into the basement unit in June 2008, and later moved upstairs on July 1, 2012 when the other tenants moved out.

As to the painting claim, GR said the rental unit had not been repainted or repaired during the entire tenancy except for the sundeck.

GR denied that the rental unit was left in the state depicted in the landlord's photographs. She submitted that the landlord's photographs were old and not taken at the end of the tenancy. She submitted that some of the photos were taken for a previous dispute resolution between the parties or taken prior to the tenants' removal of belongings, as DC had access to the rental unit for trades prior to the final clean and the end of the tenancy. GR said she spent over 60 hours cleaning the rental unit in the extreme heat of the summer and shortly after having a knee replacement surgery.

GR referred to her photographs and distinguished them from the landlord's photographs. She said her photographs were taken on August 14, 2021 and that the ceiling with the peeling paint was like that for the entire tenancy and that the roof was always leaking. GR said the landlord's evidence shows that the carpet was well beyond its useful life. GR said that the marks in the carpet were there from the previous tenancy and the tenants had the carpets steam cleaned every 6 months.

GR asserted that the dining room carpet was fine for its age.

GR said that she does not know why the cleaners came, but that DC had been texting JB since June about cleaning.

As to the yard care, GR said under the Act, when there is a dual residency, the landlord is responsible for the outside of the residential property. Apart from that, DC wanted the shrub down and then had it cut.

GR stated that one of the photographs of the carpet was from the lower rental unit. She said she did not know why the landlord would have someone power wash the driveway when they never had before. She said that a lot of things were left in the shed that did not belong to the tenants. GR said that there were no supporting documents for the handyman services.

GR stated that there was to be a final, move-out inspection on August 15, 2021, at 3 pm and to complete the report. KB arrived just prior to her arrival, and when she arrived at 2:55 pm, she understood that KB and DC had words. DC, who was sitting in his truck, got out and said that the tenants would be getting no money back. GR stated she and her husband just looked at each other and asked what was happening. GR said she was ready with the documents necessary for the inspection; however, DC locked the door and refused the inspection. GR said she put the written forwarding address between the screen and front door.

GR stated that when JB began her tenancy in 2008 in the lower rental unit, they paid a $400 security deposit and when she moved upstairs, the $400 transferred along with an additional $600, for a total amount of $1,000. There is interest on that amount of $9.22.

The tenants provided a significant amount of evidence, including photographs, several written responses to all the landlord's claims, with references to each of the photographs and photographs said to be taken at the end of the tenancy, five invoices from a garbage removal company referencing dumpster bin removal from the rental unit address.

Tenants' application –

In their application, the tenants and agent provided a substantial amount of evidence, including some duplicated from the responsive evidence to the landlord's application and some in continuation of the response to the landlord's application.

GR submitted that they provided the tenants' written forwarding address in a letter dated August 15, 2021, addressed to the owner and DC, along with the address being listed on the enclosed RTB form for service of a forwarding address.

GR submitted that a total security deposit of $1,000 was paid and has not been returned. GR submitted that there was no move-in or move-out condition inspection report (Report). The tenants' total claim is $2,000, for double the amount of the security deposit.

The landlord's evidence included a statement dated October 15, 2021, stating that the security deposit of $400 was brought forward and used for cleaning/restoration of the basement suite and the security deposit of $600 was applied for restoration of the main floor suite.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Landlord's application –

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; **and**,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord 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 tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage.

Finally, it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

Under sections 23(4) and 35(4) of the Act, a landlord **must** complete a condition inspection report in accordance with the Regulations.

The undisputed evidence is that there was no move-in or move-out Report. On the agreed upon date of the final inspection, there was apparently a heated exchange of words between DC and KB, just prior to GR arriving before the 3:00 pm agreed upon time. This may have been caused by DC informing KB they would not be getting any money back due to the condition of the rental unit.

However, I find this apparent exchange does not relieve the landlord of their obligation to conduct the move-out inspection. KB had already left, but GR arrived shortly thereafter to conduct the inspection. Further, I disagree that a short, general statement from the wife of the previous overall condition of the rental unit at the move-in was an inspection Report. The wife was not present to provide testimony in support and to be cross-examined by the tenants' agent. Additionally, DC was not present at the beginning of the tenancy or for 3 years afterwards.

For these reasons, I find that the landlord failed to comply with their legal obligations under the Act to conduct a move-in or move-out inspection and complete the Report. As a result, I find there was insufficient evidence of the condition of the rental unit at the beginning of the tenancy with which to compare the condition at the end.

Section 21 of the Regulations provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this matter, I find the testimony of both parties to be clear, credible and delivered in a forthright manner. For this reason, I must consider the documentary and photographic evidence of the parties, bearing in mind the landlord has the burden of proof in this matter, on a balance of probabilities.

The evidence was clear that the two agents were acrimonious towards the other. In their written evidence, both agents called each other liars while trying to bolster their respective claims and responses. However, apart from that, I must consider whether the landlord met their burden of proof, on a balance of probabilities. What this means is, the facts and circumstances as claimed are more likely than not to have occurred.

I find it is important to note that there was no direct evidence from the landlord or the prior agent to corroborate the state of the rental unit, or even a Report from the start of the tenancy. This tenancy had been ongoing for 3 years prior to DC being involved at all with the tenancy.

Painting, carpet replacement –

The agent submitted that the carpet was 14 years old and that the painting was last done in 2010 or 2011. However, I do not find there was sufficient evidence to support even these statements. The tenants' agent said the carpet was 48 years old.

In consideration that the carpet was at least 14 years old and the painting was at least 10 years old at the end of the tenancy, I find these items had surpassed their useful life and were fully depreciated at the end of the tenancy, as outlined in Tenancy Policy Guideline 40. Painting has a useful life of 4 years and carpet has a useful life of 10 years.

I further find the tenants' evidence that DC began requesting entry to the rental unit prior to the end of the tenancy in order to let tradespersons in to inspect is sufficient proof that the landlord intended to replace the carpet and paint the rental unit, regardless of the state of the rental unit at the end. Apart from that, I would expect a landlord to make at least general repairs and upgrades after such a long-term tenancy.

Having reviewed the photos of the landlord, I agree that the markings on the walls were damage beyond reasonable wear and tear. Having reviewed the photos of the tenants, I find several photos of peeling paint, which I find shows not only the age of the paint, but that the landlord would have to sand and repaint the rental unit.

Apart from that, having reviewed the landlord's original monetary order worksheet, the painting claim of $12,000 was for the whole house, not just for the rental unit. I do not find it is the tenants' responsibility to pay for painting of a part of the house in which they did not live. I therefore find the landlord's evidence inconsistent on this point.

As I find that the carpet and painting had significantly surpassed their useful life and were fully depreciated, that the landlord had intentions to paint and replace the carpet after the tenancy ended indicated by the text messages wanting early entry for tradespersons, and that the landlord submitted inconsistent evidence as described, I find the landlord submitted insufficient evidence to support these two claims and I therefore **dismiss** the landlord's claim for carpet replacement and re-painting of the rental unit, **without leave to reapply.**

Housecleaning –

The landlord's photographs show that the rental unit, or parts of the rental unit, was not overall left reasonably clean. The tenants' agent testified that she cleaned the rental unit for 60 hours and provided photographs said to be taken on August 14, 2021 of a reasonably clean unit. Also, I find it possible that the landlord took photographs while the tradespersons were inspecting the rental unit, before the final cleaning of the rental unit. I also find the landlord's evidence was insufficient, as there was no receipt provided to detail what was cleaned in the rental unit and the amount claimed was different than shown on the documentary evidence.

Apart from that, it would not be up to the tenants to have the rental unit move-in ready for the next tenants.

Due to the conflicting evidence, I find the landlord submitted insufficient evidence to support their claim on a balance of probabilities. I therefore **dismiss** the landlord's claim for cleaning, **without leave to reapply.**

Yard care –

Under Policy Guideline 1, I do not find the tenants to be responsible for property maintenance of the residential property where there are two separate rental units and as there was insufficient evidence that the tenants had exclusive use of the yard.

For this reason, I **dismiss** the landlord's claim for yard care, **without leave to reapply**.

Junk removal –

In these matters, I find the tenants submitted evidence of many dumpster bins of items being removed and taken away from the rental unit, which I find supports GR's version of events that she cleaned the rental unit. Additionally, I have no proof that the photographs submitted by the landlord were taken at the end of the tenancy, as there was no move-out inspection.

I find it just as likely as not that the garbage was removed by the tenants and I therefore dismiss the landlord's claim of $785.00, **without leave to reapply**.

Handyman service, agent's services –

The landlord has claimed the cost of coordinating trades and repairs, i.e., for DC's services. However, an applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act. The cost of an agent performing their duties, or hiring an agent, is a choice made by the landlord; as a landlord is not barred from performing the duties themselves. There was no evidence before me that the landlord was unable to perform the agent's duties. As a result, I **dismiss** this claim, **without leave to reapply**.

Home Depot, others; Budget glass –

The documentary evidence filed by the landlord in their application to support this claim was a receipt for $60.37 for "Key" to Home Depot and for $98.55 to Home Hardware for primer/sealer. There was no receipt for the broken mirror filed by the landlord with the RTB. I find these two documents to not support the claim of $777.16 for Home Depot and $32.64 for a broken mirror.

As a result, I find the landlord submitted insufficient evidence to support these claims and they are **dismissed, without leave to reapply**.

Tenants' application –

I find the tenants submitted sufficient evidence to support that they paid a security deposit of $400, for the lower rental unit, and that security deposit was transferred to the new tenancy on the upper rental unit. I also find the tenants submitted sufficient evidence to show that they added another $600 to bring a total security deposit of $1,000 in trust for the tenants.

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit.

Additionally, when a landlord fails to properly complete a condition inspection report, as is the case here, the landlord's right to make a claim against the security deposit for damage to the property is extinguished under sections 24 and 36 of the Act.

In this case, the landlord's application claiming against the security deposit was filed on August 24, 2021, within 15 days of the end of the tenancy and receiving the tenants' written forwarding address. Although the landlord's right to claim against the security deposit for damage to the rental unit was extinguished, the landlord's claim also included a claim for agent fees, cleaning and garbage removal. As part of the landlord's claim was not for damage to the property but for other losses, I find that the landlord complied with the requirement under section 38 to make an application to keep the deposit within 15 days of the end of the tenancy. The tenant is therefore not entitled to double recovery of the security deposit, and I dismiss that portion of the tenants' application.

I note that also under Policy Guideline 17, the landlord still retained the right to file a claim against the deposits for any monies owing for **other than** damage to the rental unit. [*My emphasis*]

Although I find the tenants are not entitled to double their security deposit, as I have dismissed the landlord's monetary claim against the tenants' security deposit, I find the tenants are entitled to a return of their security deposit of $1,000.

I also find the tenants are entitled to interest in the amount of $3.02. This is interest calculated from July 1, 2008, on $400, the original security deposit, through the present. Since 2009, interest on security deposit has been disallowed. The additional security deposit of $600 was paid after this year.

Due to the above, I therefore find the tenants have established a total monetary claim of $1,103.02, comprised of their security deposit of $1,000, interest of $3.02, and the filing

fee paid for this application of $100, which I have awarded them due to their successful application.

Conclusion

The landlord's application is dismissed, due to insufficient evidence as described herein.

The tenants' application for double the security deposit is dismissed, without leave to reapply. The tenants' application for single the security deposit is granted, and they have been issued a monetary order in the amount of $1,103.02, as noted above.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 12, 2022

Residential Tenancy Branch