



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on August 18, 2023. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Landlord and both Tenants attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each other's documentary evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Landlords entitled to a monetary order for damage or loss under the Act?
- Are the Landlords entitled to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested?

Background and Evidence

Both parties agreed that the tenancy started on or around August 13, 2021, and ended on or around February 28, 2023. The Landlord collected, and still holds, a security deposit of \$887.50 and a pet deposit of \$887.50. A move-in and move-out inspection was completed, and a report was also completed for these events, provided into evidence.

The Landlord filed an application against the deposits on February 28, 2023, which is the same day the tenancy ended.

The Landlords are seeking the following, as per this application form:

- 1) \$214.99 – Window covering cleaning costs

The Landlord provided a receipt to show that she paid the above noted amount to have the blinds cleaned professionally, at the end of the tenancy. The Landlord pointed to clause 23 in the tenancy agreement, which states that the Tenants must have the blinds professionally cleaned at the end of the tenancy, if they were professionally cleaned at the start of the tenancy. The Landlord stated the blinds were professionally cleaned at the start of the tenancy but provided no evidence of this. The condition inspection report does not refer to whether or not the blinds were cleaned at either the start or the end of the tenancy in the relevant rooms.

The Tenants stated that they had the entire unit professionally cleaned, which included blind cleaning. However, they feel the Landlord has unreasonable standards and so she paid to clean them again.

- 2) \$50.00 – deck cleaning

The Landlord stated that this took her a couple of hours of her time to clean the deck. Photos were provided showing accumulated dirt.

The Tenants stated that they agreed, at the move out inspection, that they would pay for this item.

- 3) \$1,535.61 – Flooring refinishing

The Landlord stated that the Tenant's dog was a puppy and ended up damaging the hardwood floors in about 60% of the home. The Landlord stated she refinished the floors before the tenancy started, and although this was completed by her, and not professionals, she states she used professional products. As a result, the flooring should still last a normal amount of time. The Landlord provided photos of the flooring, taken at the end of the tenancy, showing heavy scratches in numerous spots in the rental unit. The Landlord pointed to the move-in inspection report to show that the wooden floors were in "satisfactory" condition at the start of the tenancy.

The Landlord stated she calculated this amount by taking the amount it cost her (equipment and supplies) to refinish the floors at the start of the tenancy, and multiplied it by 60%. Receipts were provided. The Landlord stated that it is misleading to look at the floors as "softwood", since they are regular wooden floors, that have not been an issue in the past. The Landlord stated that the scratches were clearly from dog nails.

The Tenants stated that at the time of the move-in inspection, it was noted on the report that there was some wear and staining in the front hall, and some "gouges" in the kitchen floor. The Tenants pointed out that the Landlord came through the rental unit a few times and never mentioned anything about the damage, until the end. The Tenants assert that this is normal wear and tear, and could have been from cleaning, walking etc.

Analysis

Security deposit

Under sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and Residential Tenancy Regulation (the "Regulations"). Further, section 38 of the Act sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the parties and the CIR, I find the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the Act. I do not find that there is any evidence that the Landlords extinguished their rights in relation to the security deposit pursuant to section 24 of the Act.

Based on the testimony of the parties, I accept that the tenancy ended February 28, 2023, and the Landlord filed an application against the deposits that same day.

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 Landlord applied in time, and the deposits will not be doubled.

Monetary Claim

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:

The burden of proof is on the applicant 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. Once that has been established, the applicant must then 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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 37 of the *Act* states:

- (2) When a tenant vacates a rental unit, the tenant must*
 - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...*

The meaning of "reasonable wear and tear" is set out in Policy Guideline 1 as follows:

Reasonable wear and tear refers to natural deterioration that occurs due to

aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

1) \$214.99 – Window covering cleaning costs

Although I acknowledge there is a term in the tenancy agreement for this issue, I note it is contingent on the Landlord professionally cleaning the blinds before the tenancy. I find the Landlord has provided insufficient proof this was done, as no invoice was provided. I decline to award this item.

2) \$50.00 – deck cleaning

I note the Tenants stated that they agreed at the time of the move-out inspection that they would pay this amount. I award this item, in full.

3) \$1,535.61 – Flooring refinishing

I accept that the Landlord refinished the floors at the start of the tenancy. Although this was not done professionally, I note the Landlord stated she used the same products. I find no evidence that the nature of the previous refinishing job would have contributed to the visible wear and tear. It is not in dispute that the Tenants had a puppy, and that only some of the floors were covered by area rugs. I note the Landlord has provided photos of the scratched areas in various locations. I agree with the Tenants that their area rugs “mitigated” the damage, but I find it more likely than not that there was in fact some damage caused by their puppy where there were no rugs. I find the scratching in the photos is excessive, and not “normal wear and tear”, regardless of the type of wood. I find it more likely than not that this was caused by the Tenants dog, rather than other normal use. I find the scratching is excessive, and the Tenants ought to be liable for some of this item. However, I also note that the floors were not in perfect condition at the start, as per the move-in condition inspection report.

It appears that a couple of rooms already had some blemishes and marks. That being said, I am satisfied the Tenants did cause further damage beyond the minor marking noted in the move-in report. I decline to award the full amount of the claim. However, I find a more appropriate amount is 50% of the claimed amount, given the potential for pre-existing damage. There are no similar photos taken at the start of the tenancy, such that I could directly compare the photos taken at the end of the tenancy. I award 50% of this item, \$767.81.

Since the Landlord was partly successful, I award the recovery of the filing fee, \$100.00.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. Interest is due on the deposits, but only for 2023: \$21.83 interest owing (1.95% rate for 63.00% of year). In summary, I grant the monetary order based on the following:

Claim	Amount
Total of items above	\$817.80
Filing fee	\$100.00
Less: Security and pet Deposit currently held by Landlord	(\$1,796.83)
TOTAL:	\$(879.03)

I order the Landlords to return the remaining balance of the deposit.

Conclusion

The Tenants are granted a monetary order in the amount of **\$879.03**, as specified above. This order must be served on the Landlord. If the Landlord fails 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: August 31, 2023

Residential Tenancy Branch