

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNDS, FF

Introduction

This hearing was convened in response to an application filed by the tenant and an application filed by the landlord. Both parties were represented in the hearing and each was given an opportunity to participate in the hearing and each provided submissions and affirmed testimony to this process.

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*.

The tenant seeks:

- Money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- Return of all or part of the security deposit

The landlord seeks:

- Money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- keep all or part of the security deposit
- To recover the filing fee from the landlord for this application in amount of \$50

It is noteworthy that the parties engaged in a dispute resolution process and hearing before an Arbitrator spanning the dates of October 31, December 08, and December 31, 2008. A decision and order was consequently rendered dated December 31, 2008. Therefore, at the outset of this hearing the parties were expressly advised that I would only, and can only consider from them, new, relevant and compensable and eligible claims, which are not the subject of, or were resolved in a previous application,

decision, or order by an Arbitrator - for example, the parties claims for loss of wages for attending previous and current RTB dispute resolution hearings.

Since the last hearings, the tenants vacated the rental unit on March 28, 2009, and the landlord immediately re-rented the premises to new tenants.

Both parties orally amended their respective claims in the hearing as follows.

The tenant's new, relevant and compensable claims on application are:

- \$630 - "because the landlord continued to fail to maintain and repair the house" for the months of January, February and March 2009: unfinished bathroom and living room renovations to date.
- \$150 - puported value of two (2) appliances (stove and dryer) the tenant brought into the rental unit with the landlord's consent, which remain in the vacated rental unit.
- \$250 – for tenant's *installation* of carpeting sourced by the tenant – tenant's labour – no receipt
- \$20 – delivery of carpet sourced by the tenant – no receipt
- \$180 - cleaning costs subsequent to work performed by *tradesmen* on eight separate dates
- \$150 - for inadequate heating of master bedroom for months of January, February, March 2009
- \$2482.81 – for moving and relocation expense from the rental unit:

Gas	\$ 120.00
6 movers	\$ 360.00
Packing material	\$ 2.81
Packing (\$100 per day x 10 days)	\$1000.00
Unpacking and setting up new home	\$1000.00
- Return of the security deposit of \$700 plus interest, and double the root amount as compensation under Section 38 of the Residential Tenancy Act (the Act).

The landlord's new, relevant and compensable claims on application are:

- the landlord seeks to have the two (2) appliances (stove and dryer) referenced by the tenant ordered to be retained by the landlord, at no monetary cost to them

- the landlord seeks to have the carpet installed by the tenant ordered to be retained by the landlord, at no monetary cost to them.
- \$50 for loss of revenue for each month of April and May 2009 (\$100) – the landlord was able to re-rent the rental unit, but at a \$50 reduction in rent due to market conditions.
- \$77.16 in advertising costs to re-rent the rental unit on tenant's determination to vacate prior to end date of fixed term lease
- The landlord seeks to retain a portion of the security deposit in satisfaction of their monetary claim.
- \$50 for recovery of the filing fee for this application from the tenant

Issue(s) to be Decided

Has the tenant established, on a balance of probabilities, that they have suffered a loss due to the landlord's neglect or failure to comply with the Act? And, if so established, did the tenant take reasonable steps to mitigate the loss?

The burden of proving loss and damage rests on the claimant, and, there is an obligation upon the claimant to act reasonably to mitigate or minimize the loss.

Is the tenant entitled to the monetary amounts claimed?

Has the landlord established, on a balance of probabilities, that they have suffered a loss due to the tenant's neglect or failure to comply with the Act? And, if so established, did the landlord take reasonable steps to mitigate the loss?

The burden of proving loss and damage rests on the claimant, and, there is an obligation upon the claimant to act reasonably to mitigate or minimize the loss.

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

This tenancy began in June 2008. The monthly rent was payable at \$1400 per month for a one year fixed term ending May 31, 2009. At the outset of the tenancy the landlord collected a security deposit in the amount of \$700, which the landlord still holds.

The tenant's claim for \$630 represents a reduction of rent for 3 months at \$210 per month. The lack of completion of renovations to the bathroom and living room, although subjects of previous hearings, the tenant claims persisted for another three (3) months,

and beyond a reasonable time following the last hearing decision of December 31, 2009. I note that the decision of the previous Arbitrator did not specify the formula, if any, used to determine the loss of value of the tenancy in the subject of incomplete renovations in the rental unit.

The evidence of the tenant is that they sourced out two appliances for the rental unit to replace the purportedly faulty appliances of the landlord, and with the landlord's consent brought the appliances into the rental unit for the tenant's use thereafter. The tenant claims the landlord derived a benefit from these appliances for which the landlord is responsible to repair or replace. The landlord acknowledges the 'old' appliances were passable, but did not function in all aspects. The landlord agreed to their replacement to satisfy the tenant. The tenant now wants to be compensated for their residual value, which they place at \$75 each.

The parties agree that the issue of the subject carpet in the rental unit was previously determined, except for the cost of its installation. The tenant installed the carpet and seeks compensation for this work in the amount of \$250. The tenant testified that they delivered the carpet into the rental unit and want compensation of \$20 for its delivery. The landlord disputes the validity of this portion of the claim.

The tenant seeks \$180 compensation for their own labour in cleaning, after the landlord's contractors worked in the rental unit and left the unit without cleaning up on eight (8) separate days of work.

The tenant testified that during the months of January to March 2009 the master bedroom could not be heated to a desirable temperature, in spite of the landlord's attempt to provide ancillary heating via an oil heater. The tenant seeks compensation equivalent to \$50 per month for 3 months.

The tenant testified that their claim for moving and relocation costs are in response to compensation for their determination and choice to move, due to their general frustration with the landlord, and general lack of trust in the landlord to complete work at the rental unit, in spite of previous compensation via an Arbitrator's decision and order. The tenant testified that they determined not to seek additional resolve to their issues with the landlord via dispute resolution during the tenancy, but rather to subsequently seek costs for moving out, instead.

It is undisputed by the parties that the tenant supplied their forwarding address to the landlord on March 28, 2009, if not prior to this date and requested the return of their security deposit. The landlord and tenant agreed on a move out inspection report that there was no cause for the landlord to claim any amount from the security deposit. The landlord filed an amended application for dispute resolution to retain all or a portion of the security deposit on April 16, 2009.

The landlord testified that although they were successful in re-renting the rental unit once the tenant vacated, they were only able to do so at a reduced rent of \$1350 per month. The landlord provides an invoice for advertising costs related to re-renting the rental unit.

The landlord seeks to retain the two contested appliances as compensation for swapping these appliances with their original ones.

Although the landlord seeks to retain the subject carpeting in this dispute, the tenant is not claiming it (but rather is claiming costs for its *installation*.)

Analysis

I have reviewed all submissions and reflected on all the testimony and claims of the parties, and given full regard to all the parties' circumstances.

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss.

Simply stated, the claimant bears the burden of establishing each claim on the balance of probabilities. 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. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

As to the landlord's claims:

I find the landlord is entitled to the differential in rent of \$50 per month for each of April and May 2009 in respect to the tenant's determination to vacate the rental unit prior to the end of the fixed term lease – for a total of **\$100**.

I find the landlord is entitled to recover advertising costs of **\$77.16**.

The previous decision by an Arbitrator dated December 31, 2008, on the tenant's application, declined to compensate the tenant for the stove and dryer even though the landlord has received a benefit. Therefore, **I find** this portion of the landlord's application is not only an example of a matter which has been previously determined in the appropriate forum (*res judicata*) but is conclusively presumed that the landlord now owns these appliances, as the tenant's claim for them was previously denied. I find I do not need to grant these appliances to the landlord. I also find I do not need to determine the landlord's claim for the carpeting for the same reasons, and for the reason that the tenant lays no claim to the carpeting.

As the landlord is partially successful in their application, the landlord is entitled to partial recovery of the filing fee in the amount of **\$20**.

As to the tenant's claims:

I prefer the tenant's testimony, in finding the landlord failed to pursue the required work to the rental unit's bathroom and living room with diligence. I note that the previous Arbitrator's *global award of damages* was partially in respect to shoddy bathroom and

living room repairs and that his award captured the issue of these lingering repairs. I prefer to again resort to this means of compensation in this portion of the tenant's claim, and grant the tenant **\$450** for the ongoing nature associated with these lingering repairs.

I find the tenant's claim for the value they have assigned to the two appliances are *res judicata* – already determined in the appropriate forum by a prior Arbitrator's decision, and already determined in this decision, as well. I therefore dismiss this portion of the tenant's claim without leave to reapply.

In respect to the tenant's claim for carpet installation in the amount of \$250 - no means have been forwarded to verify the actual amount required to compensate for this loss by the tenant. I am satisfied; however, that the carpet was not installed by the landlord, and that the landlord would be responsible for this cost and has also derived a benefit. In the absence of preferred and conclusive evidence, **I grant** the tenant **\$175** for carpet installation, and its delivery.

I find the tenant's claim for their labour to clean-up after *tradesmen* during eight days in June and July 2008 was part of the previous Arbitrator's *global award of damages* and therefore, again, *res judicata* - already determined in the appropriate forum by a prior Arbitrator's decision.

I find the tenant's claim for compensation due to lack of, or inadequate heat, into the master bedroom is justified. In spite of the landlord's efforts to address the problem of no heat into the room with an oil heater, these efforts did not quell the problem, which persisted during the winter months. I grant the tenant's claim for **\$150** in compensation.

I find the tenant's claim for moving and relocation costs does not meet the test for damage and loss claims. The tenant's reason for moving may be understandable considering their journey with this landlord and what has transpired during the tenancy. However, it is unreasonable for the landlord to simply be handed an invoice for the choice of the tenant and their determination to move. I decline to award the tenant moving and relocation costs and dismiss this portion of the tenant's claim without leave to reapply.

In respect to the security deposit, **Section 38(1)** of the Act provides as follows:

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit or to make an application for dispute resolution claiming against the security deposit within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of **\$700** and was obligated under section 38 to return this amount together with the **\$6.14** in interest which had accrued. The amount which is doubled is the **\$700** base amount of the deposit before interest for a total entitlement of **\$1406.14**.

The respective entitlements of the landlord and the tenant are reflected in the following calculation:

Total of tenant's entitlements	\$2181.14
Total of landlord's entitlements (\$197.16)	-\$197.16
owing to tenant	\$1983.98

Conclusion

I grant the tenant a monetary order under Section 67 of the Act for **\$1983.98**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated June 08 , 2009