



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

MND, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for loss or damage, to retain all or part of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence and to make submissions during the hearing.

Preliminary Matter

Each party possessed a copy of the Condition Inspection Report of which only one page was included in the Landlord's dispute resolution file. The landlord testified that she had submitted a complete copy of this report to the Residential Tenancy Branch (RTB). The tenant confirmed that he had received a complete copy of the report in the evidence that the landlord served to him. Each party was asked to submit a copy of the report to the RTB upon conclusion of this hearing. These copies were received, were identical and relied upon as evidence.

Issues to Be Decided

Is the landlord entitled to compensation in the sum of \$575.00 for damages or loss?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Issues

This tenancy commenced on November 6, 2008 and a \$375.00 deposit was paid by the tenant on November 7, 2008. The tenancy terminated on June 18, 2009 as the result of a Notice to End Tenancy issued by the landlord.

The landlord claimed compensation as follows:

	Amount Claimed
damaged bedroom blind	75.00
damaged screen door	97.00
damaged herb garden	100.00
Molly Maid costs	200.00
mail box key	3.00
Total	475.00

The landlord testified that she repaired the blinds herself, that the screen door had yet to be repaired; that she did not use the maid service, that she cleaned the rental herself, charging the amount quoted by the maid service. Five photographs of the blinds submitted by the landlord show a vertical blind that has had a number of the sections fall from the valance. The landlord stated that she had to purchase a new chain in order to repair the blind.

The landlord stated that the carpets were steam cleaned two months prior to the tenant moving in and that they were not cleaned after the previous tenant of two months moved out. The landlord testified that the carpet was stained.

The landlord stated that shortly after she gave the tenant an eviction notice the tenant destroyed her herb garden out of anger toward her. The landlord testified that she witnessed the tenant doing this but did not confront the tenant or call the police. The landlord stated she worked for two hours repairing the garden and that she could not replace the plants as it is too late in the season. The landlord stated that the plants cost more than \$100.00. Photographs of a garden area dated June 6, 2009 were supplied as evidence by the landlord.

The landlord stated that the tenant did not return a mail box key.

The landlord provided no verification of any of the costs claimed.

The tenant testified that he did meet with the landlord to complete a move-out condition inspection with a witness present. The tenant stated he spent approximately 20 minutes with the landlord and stated that the landlord's agent followed him from the rental unit and attempted to have him sign a blank inspection report. The tenant's witness provided testimony confirming that she was present during the inspection and that the landlord accused the tenant of damage. The witness testified that the rental unit was clean and that as they left the rental the agent for the landlord attempted to have the tenant sign a blank inspection report.

The tenant stated that the blinds have plastic clips and that the sections would often fall to the floor. The tenant stated that the screen door did have a broken wheel and that first time he used the door it fell out of the frame, so he placed the screen in a closet. The tenant testified that he did not receive a mail box key. The tenant testified that when he moved into the rental unit it was not clean and that items had been left behind such as cans and wine bottles. The tenant stated he told the landlord he would clean the unit to his own standards. The tenant stated that the allegation in relation to the herb garden is fictitious.

The tenant provided photographs of the blinds, kitchen and the herb garden.

Analysis

When claiming for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by 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 Respondent 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 or damage

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 agreement or a contravention of the Act on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the landlord did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlord has provided eight photographs as evidence, three of the herb garden and five of the blinds. The landlord did not provide any photographic evidence of the need for cleaning, nor did the landlord provide verification of any expenditure made. The landlord has also claimed compensation for items when the landlord has not made any expenditure or repair.

I find that vertical blinds will lose sections from time to time and accept the tenant's testimony that this was the case with the rental unit blind. I find that the balance of the landlord's claim is without merit. There was no move-in condition inspection report completed and the move-out condition inspection failed due to the tenant leaving before it was completed due to disagreement over the state of the rental unit. The landlord did complete the move-out condition inspection report, but in the absence of a move-in condition inspection, I place little weight on this report. Despite the absence of a move-out inspection signed by the tenant, the landlord could have provided verification of her loss and evidence that the damage existed.

The photographs of the herb garden submitted by each party show some plants and what appears to be dead grass. There is no evidence before me that the tenant caused damage to the herb garden and, even if I did accept that the tenant caused damage to the garden, the landlord has failed to provide verification of any costs incurred.

Therefore, the landlord's claim for compensation is dismissed without leave to reapply. The landlord applied to retain the deposit and interest held in trust in the sum of \$375.85. As the landlord's claim against the deposit has failed I Order that the landlord return, forthwith, the deposit, plus interest, to the tenant.

Conclusion

The landlord's claim for compensation for damages and retention of the deposit is dismissed without leave to reapply.

I Order that the landlord return to the tenant, forthwith, the deposit plus interest in the sum of \$375.85, held in trust by the landlord and under section 67 of the Act I grant the tenant an order in that amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Dated August 07, 2009.

Dispute Resolution Officer