



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; authorization to retain the security deposit and pet deposit; and, recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

I determined that the tenant provided late submissions in response to the landlord's claims and that the tenant's submissions were served upon the landlord the evening before this hearing. I did not accept the tenant's late written submissions; however, the tenant was provided full opportunity to respond to the landlord's claims verbally during the hearing.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit and if so, the amount?
2. Is the landlord authorized to retain all or part of the security deposit or pet deposit?

Background and Evidence

The tenancy commenced in April or May 2009 and ended December 31, 2010. The tenant was required to pay rent of \$850.00 on the 1st day of every month. The tenant paid a \$425.00 security deposit and a \$300.00 pet deposit. The landlord and tenant participated in a move-in and move-out inspection together. The landlord prepared written inspection reports. The tenant indicated that she did not agree with the landlord's assessment of the condition of the rental unit on the move-out inspection report. The tenant provided her forwarding address to the landlord at the time of the move-out inspection which was January 4, 2011. The landlord made this application with the time limit required by the Act.

Below I have summarized the landlord's claims and the tenant's responses to those claims against her.

<u>Item</u>	<u>Amount claimed</u>	<u>Landlord's reason</u>	<u>Tenant's response</u>
Dog waste removal	31.36	Landlord was invoiced separately for cleanup after her own dogs and the tenant's dogs. The landlord is only charging tenant for removal of tenant's pet waste.	Dog waste removal was performed approximately three weeks after tenancy ended and landlord has dogs.
Painting	453.60	Tenant agreed to paint hallway, doors and trim and was permitted to deduct \$100.00 from rent as compensation. Tenant did not paint these items.	Tenant agreed she did not paint these areas but painted other areas of house. Tenant acknowledged she should be held responsible for the \$100.00 she was compensated at most.
Hose tap repair	187.60	Landlord had hose and tap installed in yard approx 4.5 years ago. Tenant ran over with lawnmower. Hose was not previously broken as a break would have flooded yard.	Tenant agreed she ran over connection with lawnmower as she did not see it lying in the grass. Tap did not work well and was barely hanging on.
Lawn repair	282.24	Tenant's dog dug holes in lawn and wore a track in lawn. Tenant failed to mow lawn and is long and dead.	Tenant's dog dug one hole and landlord told her to put sod from vegetable garden next to house. Lawn was cut regularly.
Drapes	56.00	Tenant stored the drapes in the shed. Drapes got mouldy and the tenant threw out the drapes.	Landlord told tenant she did not want drapes. Tenant threw out drapes after landlord told her to.
Change lock	33.60	Tenant did not return one set of keys to rental unit.	Tenant's ex-boyfriend destroyed key. Landlords normally have to change

			locks after tenancy.
Total	\$ 1,380.40		

Evidence provided for this hearing included a copy of the tenancy agreement, condition inspection reports, photographs of the unit and property, invoices and estimates for repairs.

Analysis

Under the Act, a tenant is required to leave a rental unit reasonably clean and undamaged at the end of the tenancy. In addition, the tenant is required to return all the keys to the landlord.

A condition inspection report is considered evidence of the condition of a rental unit unless there is a preponderance of evidence to the contrary. In this case the parties agreed to the condition of the rental unit at the time of the move-in inspection and I accept what is recorded on the move-in inspection report as representative of its condition at that time. However, the tenant indicated she did not agree with the landlord's assessment in preparing the move-out inspection report. Thus, I have considered the landlord's evidence and the submissions of both parties in determining the condition of the rental unit at the end of the tenancy.

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 section 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 whatever was reasonable to minimize the damage or loss.

Cleaning

Upon review of the move-in inspection report I accept that the rental unit was in fair condition but that it was not dirty since the inspection report has a difference code for items that are dirty. By the tenant's own admission I accept that the tenant did not sufficiently clean certain areas of the rental unit including the bathroom and baseboards. Upon review of the photographs of the rental unit I also accept the landlord's submissions that other areas such as walls, doors, cupboards and floors also required

cleaning. However, I do not find sufficient evidence of that the exterior of the house required additional cleaning. Thus, I accept the landlord's request for compensation for 15 hours. I find the landlord's request for compensation is high and **I award the landlord 15 hours at \$15.00 per hour for an award of \$225.00.**

Dog Waste removal

Upon hearing from the parties, I prefer the landlord's submission that she had two separate invoices prepared at the first opportunity for dog waste removal and that one invoice was for her own dog waste and one invoice was for the tenant's dog waste. Based upon the invoice supplied as evidence, **I award the landlord \$28.00.**

Painting

Based upon the parties' submissions it is undisputed the tenant did not paint the hallway, door or trim and she was compensated \$100.00 by deducting this amount from rent. I find the tenant's violation of this agreement cost the landlord \$100.00 and this is the amount the landlord is entitled to recover from the tenant. **I award the landlord \$100.00.**

Hose tap repair

The move-in inspection report does not speak to the condition of the hose tap at the beginning of the tenancy. I was provided with disputed verbal testimony as to the condition of the hose at the beginning of the tenancy with the tenant stating it was in poor condition. It was undisputed that the hose was severed when it was run over by the lawn mower operated by the tenant. I was provided a photograph of the post with the tap connected to a piece of plywood which shows the hose is no longer attached to the tap. On the photograph the landlord states the "underground steel braided line severed by tenant while mowing." I find that a hose that is underground would not be severed during lawn mowing. Further, had the hose been securely fastened to the post and went underground at the post a lawnmower would not sever the hose. Therefore, I prefer the tenant's version of events that the hose came unattached as its condition was poor and it was run over by the lawn mower when the hose was lying in the grass.

In light of the above, I find it more likely than not that the hose required repair before it was run over and I do not find the tenant responsible for this cost. **The landlord's claim for the hose tap repair is dismissed.**

Lawn repair

The addendum to the tenancy agreement provides that the tenant is responsible for all maintenance and upkeep for the fence back yard. I accept that the tenant was required to keep the grass cut as a reasonable interpretation of this term; however, I do not find

the term to be expressed in a manner that clearly communicates all the rights and obligations under it. In other words, the term is too vague. Thus, I find any responsibilities beyond grass cutting are not enforceable against the tenant.

The tenant claims she did cut the grass regularly; however, the landlord's photographs of the lawn show a worn path near the house and clumps of long, dead grass. The landlord claims that there are holes dug in the yard but I do not see any in the photographs. I consider a worn path to be wear and tear which is not damage. I am not satisfied that the long, dead grass will not recover in the spring. Therefore, I do not find the landlord's claim for top soil and seeding to be supported by the evidence before me and **I dismiss this portion of the landlord's claim.**

Drapes

I accept that the rental unit was furnished with drapes that the tenant removed and stored in the shed. Upon being stored in the shed the drapes turned mouldy. Upon hearing from the parties, I find the tenant took it upon herself to store the drapes in the shed which is the cause of the damage. Accordingly, I hold the tenant responsible for the depreciated value of the drapes. I accept that the landlord purchased the drapes shortly before the tenancy commenced for \$81.78 and that the depreciated value of the drapes at the end of the tenancy would be approximately \$56.00. Therefore, **I grant the landlord's request to recover \$56.00 from the tenant for damage to the drapes.**

Keys

It is undisputed that the tenant did not return one of the keys. The landlord elected to change the locks. Both of the parties raised arguments with merit concerning the need to change locks. Therefore, I split the cost of changing the locks between the parties and **I award the landlord \$15.00 of the amount claimed.**

I award the landlord a portion of the filing fee to reflect the success with the landlord's claims.

In light of the above, the landlord is authorized to retain a portion of the tenant's security deposit and pet deposit and is Ordered to return the balance of the deposits, calculated as follows:

<u>Item</u>	<u>Amount claimed</u>	<u>Amount awarded</u>
Dog waste removal	31.36	28.00
Painting	453.60	100.00

Hose tap repair	187.60	Nil
Lawn repair	282.24	Nil
Drapes	56.00	56.00
Change lock	<u>33.60</u>	<u>15.00</u>
Total claim	\$ 1,380.40	\$ 424.00
Filing fee partially awarded		15.00
Less: security deposit and pet deposit		<u>(725.00)</u>
Balance to be returned to tenant		\$ 286.00

The tenant has been provided a Monetary Order with this decision to ensure the landlord returns \$286.00 to the tenant.

Conclusion

The landlord was partially successful in this application. The landlord has been authorized to retain a portion of the tenant's security deposit and pet deposit and must return the balance of \$286.00 to the tenant. The tenant has been provided a Monetary Order in this amount to enforce as necessary.

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: February 25, 2011.

Residential Tenancy Branch