



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with applications by both the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38.;

The tenants applied for authorization to obtain a return of double their security deposit pursuant to section 38. Both parties applied to recover their filing fees for their applications from the other party.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenants confirmed that they received a copy of the landlord's original dispute resolution hearing package sent by registered mail on December 19, 2010 and his amended application sent by registered mail on April 15, 2011. The landlord confirmed that the tenants handed him their dispute resolution hearing package on December 23, 2010. I am satisfied that these documents were served in accordance with the *Act*.

At the hearing, the landlord asked to revise the amount of his amended application for a money award from the original \$367.02 and the amended \$59.98 to the new amount of \$515.02. The parties agreed at the hearing that it was apparent from the landlord's amended application that he was seeking a monetary award that would enable him to retain all but \$59.98 from their security deposit. At the hearing, I revised the landlord's application for a monetary award to reflect that the landlord was seeking a monetary award of \$515.02.

At the hearing, the tenants confirmed that they had received the landlord's written evidence including three photographs. The landlord denied having received the tenants' evidence package that they sent by registered mail on April 15, 2011. These documents are considered served five business days after their mailing. Since the

tenants did not serve this evidence to the landlord within the time frame established under the *Act* and the landlord did not have their evidence I have not considered the tenants' late evidence in my decision-making.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy? Which of the parties are entitled to the tenant's security deposit? Are either of the parties entitled to recover their filing fee for this application?

Background and Evidence

This month-to-month tenancy commenced on August 29, 2010. Monthly rent was set at \$1,150.00, payable on the 30th of each month. The landlord continues to hold the tenants' \$575.00 security deposit paid on August 23, 2010.

The landlord entered written evidence of a joint move-in condition inspection report conducted between his son and the tenants on August 30, 2010. The landlord also submitted written evidence of an inspection report of a joint move-out condition inspection conducted on November 30, 2010 when the tenants vacated the rental unit.

Although joint move-in and move-out condition inspections for this tenancy were conducted and reports of these inspections were prepared by the landlord, there was contradictory evidence regarding the content of the joint move-out report and the timing of the landlord's provision of that report to the tenants.

The landlord said that the reports as entered into evidence were accurate and fully completed when he handed the tenants a copy of the joint move-out condition inspection report on December 13, 2010 along with his summary of the items he wished to deduct from their security deposit. He said that his son witnessed that he handed this report to the male tenant. His son did not attend the hearing as a witness and his son's written statement submitted as evidence by the landlord made no mention of the landlord's hand delivery of the inspection report to the tenants. The landlord testified that he sent a second copy of the move-out inspection report to the tenants with his April 2011 evidence package for this hearing.

The tenants testified that they were not provided a copy of the condition inspection report until they received it with the landlord's registered mail evidence package sent on April 15, 2011. They also disputed the content of the condition inspection report. The male tenant testified that the landlord added a number of items to the list of those allegedly damaged, using a different pen after the joint move-out condition inspection of

November 30, 2010. He alleged that the following items appear to have been identified as damaged at the end of the tenancy using a different pen than was used in the remainder of the move-out inspection report:

Bedroom outside front glass broken.

Hallway Thermostat cover broken + Thermostat

The landlord's revised and amended application sought a monetary award of \$515.02 for the following items he maintained were damaged by the tenants during this tenancy:

Item	Amount
Broken Window	\$308.00
Broken Thermostat	24.61
Landlord's Labour to Replace Thermostat	20.00
Replacement of Bathroom Stopper	2.41
Mowing Lawn	80.00
Carpet Cleaning	80.00
Total Monetary Award Requested	\$515.02

The landlord asked that this monetary award be deducted from the tenants' security deposit he was holding.

The tenants applied for a monetary award of \$1,190.00. This amount included an award of double their security deposit because they maintain that the landlord neither applied for dispute resolution to retain their security deposit nor returned it to them within 15 days of their providing him with their forwarding address in writing.

Analysis

Landlord's Application for a Monetary Award for Damage or Loss Arising out of Tenancy

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. 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.

In considering the landlord's application for a monetary award, I have taken into account the written evidence and the oral testimony of the parties. The major damage requested in the landlord's application was for damage to a window in the master bedroom. The male tenant said that this damage was not noted specifically in the

master bedroom section of the landlord's move-out condition inspection report. He claimed that this item was added after the inspection. However, the landlord's December 13, 2010 document summarizing the damage to the rental unit did include reference to this bedroom window which he then estimated at \$190.00. The female tenant testified that the window in question was actually damaged before they moved into the rental unit. There is no reference to a broken window in the rental unit in the joint move-in condition inspection report signed by the male tenant and the landlord's son at the commencement of this tenancy. The tenants did not question whether the window was actually replaced or whether it was damaged. Based on the evidence considered and the balance of probabilities, I find that the tenants are responsible for replacement of the window in question.

In considering the amount of the landlord's claim for a monetary award, the tenants challenged the authenticity of the invoice submitted into written evidence by the landlord. The tenants questioned the absence of an HST Number on the invoice and asked about the presence of two separate dates on the invoice. The landlord said that the billing date was printed when he paid the amount owing for the replacement of the window. Based on the evidence submitted, I find that the landlord is entitled to a monetary award of \$308.00 for replacement of the window.

I also find that the tenants are responsible for the landlord's expenses of \$24.61 in replacing the thermostat and \$2.41 for replacing a bathroom stopper.

The landlord provided undisputed evidence that the tenants did not mow the lawn before they vacated the rental unit and that the lawn was badly in need of mowing by the end of this tenancy. He provided undisputed testimony that this is a large lawn and that it takes 5 to 6 hours to complete this task. I find that the landlord is entitled to a monetary award of \$50.00 for this item.

The landlord submitted oral and written evidence that the tenants did not properly clean the carpet at the end of this tenancy. He submitted a receipt for steam cleaning of the carpets that occurred prior to the commencement of this tenancy. Based on my review of the joint move-out condition inspection report, I am not satisfied that the carpets were properly identified as requiring cleaning when the parties conducted their joint move-out condition inspection on November 30, 2010. Based on a balance of probabilities, I find that this item was likely added to the condition inspection report after the parties conducted their condition inspection. In addition, the landlord has not presented adequate receipts or invoices to enable me to issue a monetary award for cleaning of the carpet. I dismiss the landlord's application for a monetary award for carpet cleaning.

Tenants' Application for Return of Security Deposit

I find that the tenants are entitled to a return of that portion of their security deposit plus applicable interest that remains after the deduction of the landlord's successful claim for a monetary award for damage and loss arising out of this tenancy. No interest is payable over this period. As outlined below, I find that the tenants are entitled to a monetary Order of \$189.98.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1) of the *Act*, then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the provision by the tenant of the forwarding address.

In this case, the male tenant testified that he provided the landlord with his written forwarding address on November 30, 2011 at the time of the condition inspection. The landlord testified that he did not receive the tenants' forwarding address until December 2, 2010. At that time, he said the tenants incorrectly identified their forwarding address as being in Municipality S without a postal code. When he checked for a postal code, the address they had provided to him appeared to be in Municipality D. He said that he did not receive the tenants' correct forwarding address until December 22, 2010 when he received their application for dispute resolution.

In reviewing the condition inspection report, I find that the address apparently provided by the tenants to the landlord was in Municipality S and not in Municipality D. I also note that the tenants' address identified by the landlord in his December 17, 2010 application for dispute resolution was in S. Based on the incomplete nature of the address provided by the tenants and the undisputed testimony of the landlord regarding the tenants' incorrect identification of the city of their new residence, I find that the landlord complied with the provisions of section 38 of the *Act* by applying for dispute resolution within 15 days of receiving their written forwarding address. For these reasons, I find the tenants are not entitled to an order requiring the landlord to return double their security deposit.

As both parties were partially successful in their applications, I issue no monetary award regarding the recovery of the filing fees for their respective applications

Conclusion

I allow the landlord to retain a total of \$385.02 from the tenants' security deposit. I issue a monetary Order in the tenants' favour in the amount of \$189.98 in the following terms which requires the landlord to return the portion of the tenants' security deposit that remains once his monetary award for damage to the rental unit has been deducted.

Item	Amount
Replacement of Broken Window	\$308.00
Replacement of Broken Thermostat	24.61
Replacement of Bathroom Stopper	2.41
Mowing Lawn	50.00
Less Security Deposit	-575.00
Total Monetary Order	(\$189.98)

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.