



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, MNDC, FF*

Introduction

This hearing dealt with applications by both the Landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for cost of cleaning, repairs and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim.

The tenant applied for the return of double the security deposit for compensation for living with mould, leaks and unfinished repairs and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. This hearing was conducted on May 05, 2011 and adjourned to June 03, 2011.

At the start of the hearing it was determined that the landlord made an application to retain the security deposit, in a timely manner and in keeping with s.38 of the *Residential Tenancy Act*. Therefore the tenant's application for the return of double the security deposit is dismissed.

Issues to be decided

Is the landlord entitled to a monetary order to recover the cost of repairs and the filing fee? Is the landlord entitled to retain the security deposit? Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started on February 28, 2009 and ended in December 2010. The monthly rent was \$1,600.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$800.00 and a pet deposit of \$200.00.

The landlord stated that she had listed the home for sale in September 2008 and at that time they hired a reputable company to replace the roof. The house did not sell and the landlord took it off the market in November 2008. The landlord lived in the rental unit until the start of the tenancy when they moved out of Province. The landlord had an agent manage the rental unit in her absence.

The tenant stated that she moved in on February 28, 2009 but had an opportunity to inspect the rental unit on February 22, 2009. The home had a suite in the basement. The kitchen on the main floor had a water filtration system. The landlord stated that it was never hooked up by the landlord. The male tenant stated that on February 22, while viewing the rental unit prior to moving in, he noticed water leaking from the filtration system and attempted to tighten a valve of the system. He stated that he inadvertently turned it the wrong way, but corrected it immediately. The tenant stated that he took photographs of the condition of the home on this date.

In October 2009, the tenant reported a leak in the basement. The agent contacted the tenant and after some delay with finding a mutually suitable time, the agent visited the unit. The sub tenant in the basement had poked a hole in the ceiling to let the water out. The agent cut open the area around the hole to determine the cause of the leak. The agent went upstairs to find the source of the leak. The agent has filed a statement in which he testifies that he found that the leak was from the cold water line having been bumped. He states that the tenant told him that he attempted to connect the water filtration system and during the process it started to leak and he could not get it to stop.

The agent stated that the damage would have been minimized if the tenant had allowed him to attend to it sooner. He stated that the tenant was involved in his children's sporting activities and refused to allow the agent access to the house in his absence. The agent testified in his statement that he had helped the landlord install the kitchen sink taps soon after the landlord purchased the home and the filtration system was present but not connected.

In March 2010, the tenant reported a leak in the garage. The agent visited after numerous calls to make an appointment and fixed a leaking bathtub tap. The agent also noticed another leak under the vanity sink and requested the tenant to wrap it with a towel till his return. The agent returned the next day to fix the leak.

Also in March 2010, the tenant reported a leak from the skylight. The landlord contacted the roofing company who fixed the problem as the roof was under warrantee.

The agent stated that the next call for service was in April 2010 for a leaking hot water tank. The agent requested to check it out the next morning but was advised that his key would not work as the locks were changed. The tenant met the agent on his lunch break and after assessing the problem, it was not convenient for the tenant to have the agent return that day. The agent returned the next day to fix the problem.

The agent stated it was very difficult to gain access to the rental property for repairs as the tenants were involved in their children's sporting activities and did not want the agent to visit the home in their absence.

The landlord stated that she had to replace the locks because the tenant did not give her keys to the changed locks. She also stated that at the start of the tenancy there was a microwave oven in the lower suite which was missing. The landlord filed a note from the previous tenant who confirmed that the microwave was present at the end of his tenancy. The landlord also stated that two garbage cans were missing. The landlord stated that the home was in need of cleaning and filed photographs of the condition of the home. The photographs show damage to some walls including pink writing on the wall, damage to taps that were new at the start of tenancy and scratches on a basement door.

The landlord is claiming the following:

1.	Toilet repair	\$6.71
2.	Locks	\$67.11
3.	Missing microwave oven	\$83.99
4.	Missing garbage cans	\$42.54
5.	Carpet cleaning	\$150.00
6.	Cleaning 30 hours @ \$15.00	\$450.00
7.	Paint	\$127.68
8.	Taps	\$50.39
9.	Paint brushes	\$38.21
10.	Returned cheque	\$7.50
11.	Fix basement ceiling	\$1,680.00
12.	Railing varathane	\$15.66
13.	Labour for painting, fixing walls and plumbing	\$450.00
14.	Filing fee	\$50.00
	Total	\$3,219.79

The tenant stated that the holes in the ceilings that were made to fix the leaks were never closed and were unsightly. The tenant stated that she took pictures at the time she moved in and moved out, but did not file the move out pictures as she misplaced them. The tenant is making a claim for compensation for having to live with several leaks, mould from the various leaks and unfinished repairs.

The tenant is claiming the following:

1.	Compensation - \$250.00 for 14 months	\$3,500.00
2.	Mailing costs	\$21.55
3.	Security deposit	\$1,000.00
4.	Filing fee	\$50.00
	Total	\$4,571.55

Analysis

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.

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.

Landlord's application:

Based on the sworn testimony and documentary evidence before me, I find as follows:

1. Toilet repair - \$6.71

The landlord did not file evidence to support her claim and the tenant denied having caused any damage to the toilet. Therefore the landlord's claim for toilet repair is dismissed.

2. Locks - \$67.11

The tenant agreed that she had changed the locks without informing the landlord. The landlord has filed a receipt and therefore I find that the landlord is entitled to the cost of changing the locks.

3. Missing microwave oven - \$83.99
4. Missing garbage cans - \$42.54

The tenant denied having taken the microwave oven and the garbage cans. The landlord has not proven that these items were present at the start of tenancy. Therefore the landlord's claims for these items are dismissed.

5. Carpet cleaning - \$150.00

The landlord did not file an invoice in support of her claim. Therefore it is dismissed.

6. Cleaning - \$450.00

Based on the photographs that the landlord filed, I find it reasonable to award the landlord \$300.00 towards the time spent cleaning the rental unit.

7. Paint - \$127.68

8. Taps - \$50.39

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the painting and the taps. As per this policy, the useful life of interior painting is four years and the useful life of taps is fifteen years. The landlord painted the rental unit in September 2007 and therefore by the end of the tenancy in December 2010, the painting had approximately nine months of useful life left. The landlord installed the taps in October 2008 and therefore by the end of the tenancy, the taps had thirteen years of useful life left. Accordingly, I find that the landlord is entitled to \$23.94 for paint and \$43.55 for the taps which is the prorated value of the remainder of the useful life of these items.

9. Paint brushes - \$38.21

The landlord is not entitled to the cost of paint brushes as these items remain in the possession of the landlord after their use.

10. Returned cheque - \$7.50

The landlord is entitled to the cost of a returned cheque.

11. Fix basement ceiling - \$1,680.00

Based on the sworn testimony of both parties and the documentary evidence in front of me, I find that on a balance of probabilities, the tenant's action of tightening a valve of the filtration system in the wrong direction caused the leak. The damage from the leak could have been minimized, if the tenant allowed the agent to visit the unit in his absence, for the purpose of repairs.

The landlord stated that she did not get the ceiling fixed for lack of funds and therefore has filed a quotation for what it will cost her to get the work done. I find it adequate to award the landlord half the cost of fixing the damage to the ceiling in the amount of \$840.00.

12. Railing varathane - \$15.66

The tenant denied having caused damage to the railing. This claim is dismissed.

13. Labour for painting, fixing walls and plumbing - \$450.00

The landlord filed photographs of markings and damage to the walls. I find it reasonable to award the landlord the cost of labour to repair and paint walls and install the taps. Therefore I award the landlord \$450.00.

14. Filing fee - \$50.00

The landlord has established a major portion of her claim and is therefore entitled to the recovery of the filing fee.

Overall the landlord has established a claim as follows:

1.	Toilet repair	\$0.00
2.	Locks	\$67.11
3.	Missing microwave oven	\$0.00
4.	Missing garbage cans	\$0.00
5.	Carpet cleaning	\$0.00
6.	Cleaning 30 hours @ \$15.00	\$300.00
7.	Paint	\$23.94
8.	Taps	\$43.55
9.	Paint brushes	\$0.00
10.	Returned cheque	\$7.50
11.	Fix basement ceiling	\$840.00
12.	Railing varathane	\$0.00
13.	Labour for painting, fixing walls and plumbing	\$450.00
14.	Filing fee	\$50.00
	Total	\$1,782.10

Tenant's application:

1. Compensation - \$3,500.00

The tenant has applied for compensation for the leaks that she had to endure, the ensuing mould and the unfinished repairs. Based on the sworn testimony of both parties, I find that the tenant did have leaks in the garage ceiling and the laundry room. The agent opened the ceiling to determine the cause and did not repair the ceiling once the job was done. The landlord acted in a diligent manner and responded to calls for service in a timely manner.

However, since the repair work was never fully finished during the tenancy, the tenant lived with an unsightly ceiling for approximately one year which diminished the value of the tenancy. In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. For this reason, I will award the tenant a minimal award of \$500.00.

2. Mailing costs - \$21.55

The legislation does not permit me to award any litigation related costs other than the filing fee.

3. Security deposit - \$1,000.00

The tenant is entitled to the return of the balance of her security deposit after the landlord’s claim is offset against it.

4. Filing fee - \$50.00

The tenant has proven a relatively small portion of her claim and therefore I will award the tenant \$25.00 towards the filing fee.

The tenant has established the following claim:

1.	Compensation	\$500.00
2.	Mailing costs	\$0.00
3.	Security deposit	\$1,000.00
4.	Filing fee	\$25.00
	Total	\$1,525.00

The landlord has established a claim of \$1,782.10 and the tenant has established a claim of \$1,525.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order under section 67 of the *Residential Tenancy Act* for the balance \$257.10. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for **\$257.10**.

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: June 08, 2011.

Residential Tenancy Branch