



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of repair to the rental unit, cable bills and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenants were represented by a social worker TG.

Issues to be decided

Has the landlord established a claim against the security deposit and if so in what amount? Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on January 29, 2011 and ended on March 31, 2011. The monthly rent was \$1,800.00. The tenants were a party consisting of one social worker and four youth who came to Canada and applied for refugee status. They were in the care of the Government. The social worker TG approached the landlord looking to rent this basement suite. The rental unit is a three bedroom self contained suite. The landlord allowed the tenants the use of a large recreation room as a fourth bedroom. Prior to moving in, the tenant paid a security deposit of \$900.00.

The landlord stated that the tenant ordered adult movies and other shows on cable TV, resulting in a bill of \$304.65. TG did not dispute this amount and agreed to pay it.

TG stated that at the start of the tenancy the main entrance gate was broken and the landlord's wife had problems opening it to allow the tenants to move in. Therefore this access to the property remained unlocked. The landlord stated that this entrance to the property was not for daily use and was used only when large items needed to be moved on and off the property. The landlord stated that despite informing the tenants, they continued to use this entrance on a daily basis, which resulted in the gate coming off its hinges. TG stated that while it was possible that the youth caused some damage to the gate, there were also other visitors to the property who used the gate and in addition the gate was not fully functional in the first place.

The landlord has made a claim for a total of \$302.40 which consists of \$195.00 to repair the gate and \$75.00 to paint the gate, plus applicable tax. The landlord filed an invoice to support this claim.

The landlord stated that the youth broke a mirror and a towel rack in the bathroom. TG did not dispute this and agreed to pay the landlord's claim of \$336.00 to replace the mirror and \$4.47 to replace the towel rack. The landlord filed invoices to support his claim.

The landlord stated that the youth caused two burn marks on the kitchen counter top which were approximately one inch in diameter. TG agreed that they had. The landlord has filed an estimate to replace this fifteen year old counter top in the amount of \$1,372.00.

The landlord stated that at the end of tenancy there were about 5-6 bleach stains on the 4 year old carpet. He filed an estimate to replace the carpet in the total amount of \$4,318.48. Based on the age of the carpet, the landlord has claimed a prorated portion of this amount - \$2,591.09.

The landlord stated that there was a motion sensor switch that was broken by the youth and he replaced it with a regular switch. The landlord purchased a motion sensor switch and is claiming the cost in the amount of \$33.59. The landlord filed an invoice to support this claim.

The landlord is claiming the following:

1.	Cable invoice	\$304.65
2.	Repair broken gate	\$302.40
3.	Replace mirror	\$336.00
4.	Replace towel rack	\$4.47
5.	Replace kitchen counter top	\$1,372.00
6.	Replace carpet	\$2,591.09
7.	Replace motion sensor switch	\$33.59
	Total	\$4,944.20

Analysis

1. Cable Invoice \$304.65

The tenant agreed to pay this amount.

2. Repair broken gate \$302.40

Based on the testimony of both parties and the documentary evidence before me, I find that on a balance of probabilities, the youth did play some part in the breakdown of the gate. However, the gate was not fully functional prior to the tenancy and there may have been others who used the gate as well. Therefore I find it adequate to award the landlord half the cost to fix the gate in the amount of \$97.50 plus tax for a total of \$109.20. I find that the landlord is not entitled to the cost of painting the gate.

3. Replace mirror \$336.00

4. Replace towel rack \$4.47

The tenant agreed to cover the cost of replacing both these items.

5. Replace kitchen counter top \$ 1,372.00

The tenant took responsibility for the two burn marks on the counter top but expressed surprise that she was responsible for replacing the entire kitchen counter top.

The counter top has not been repaired by the landlord and is currently in use by the new tenant. Therefore I also find that the counter top is functional and the damage is cosmetic. The landlord has filed a quotation for the replacement of the countertop in the amount of \$1,372.00. I find that while the counter top has two burn marks, this damage does not affect its functionality. However, the marks have reduced the value of the counter top and I will award the landlord an arbitrary amount towards this loss of value.

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. Based on the estimate filed by the landlord, the age of the countertop (15 years) and the useful life of a countertop as per *Residential Tenancy Policy Guideline #37* (25 years), I award the landlord a minimal award of \$200.00.

6. Replace carpet \$2,591.09

The landlord filed photographs of the damage to the carpet which indicate that there are some bleach stains in 4-5 areas of the carpet. Based on the documentary evidence, I find that the tenant is responsible for the bleach stains on the carpet. The landlord has not replaced the carpet and has already re-rented the unit. Again, the damage is cosmetic and as a result the landlord has suffered a loss of value of the item. Pursuant to *Residential Tenancy Policy Guideline #16*, and based on the estimate filed by the tenant, I award the landlord nominal damages in the amount of \$300.00.

7. Replacement of motion sensor switch \$33.59

The landlord filed a receipt dated July 14, 2011 for the cost of a motion sensor switch. Based on the testimony of both parties, I find that the landlord is entitled to the cost of replacing the switch.

I find that the landlord has established a claim as follows:

1.	Cable invoice	\$304.65
2.	Repair broken gate	\$109.20
3.	Replace mirror	\$336.00
4.	Replace towel rack	\$4.47
5.	Replace kitchen counter top	\$200.00
6.	Replace carpet	\$300.09
7.	Replace motion sensor switch	\$33.59
	Total	\$1,288.00

Overall the landlord has established a claim of \$1,288.00. Since the landlord has been successful in a major portion of his claim, I find that he is also entitled to the recovery of the filing fee of \$50.00 for a total entitlement of \$1,338.00.

I order that the landlord retain the security deposit of \$900.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$438.00. 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 in the amount of \$438.00.

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: August 03, 2011.

Residential Tenancy Branch