

DECISION

Dispute Codes: *MNDC, MNSD, FF.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for repairs, cleaning, travelling to and from the rental unit, painting, the filing fee and to retain the security deposit in satisfaction of his claim. The tenant applied for a monetary order for the return of double her security deposit and the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for repairs, cleaning, travel and the filing fee? Is the tenant entitled the filing fee and the return of double her security deposit?

Background and Evidence

The tenancy started on March 01, 2009 and ended on April 30, 2011. The rent was \$1,000.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$600.00 and a pet deposit of \$200.00. The rental unit is a 25 year old house which was renovated approximately six months before the tenants moved in. The landlord replaced the hardwood floors, updated the toilets and shower heads, replaced the deck and had the house painted inside and outside.

A move in inspection was conducted on March 01, 2009. The tenant signed the report. During the move out inspection, on April 30, 2011, the landlord stated that the tenant was in a rush to board the ferry and both parties did a walk through while the landlord took pictures, but did not complete the report until later. The tenant agreed that the landlord did not fill out the report in their presence but denied being in a rush.

On May 31, 2011, the tenant gave the landlord her forwarding address in writing. The landlord mailed a copy of the move out inspection report to the tenant with a request to sign and return. The landlord filed this application on June 09, 2011 which is within the legislated time limit of 15 days.

Both parties gave opposing testimony regarding the condition of the house at the time the tenant moved out. The landlord filed photographs to support his verbal testimony.

The landlord stated that there was a strong odour of pet urine inside the rental unit. The tenant stated that she had cleaned the unit with water and ammonia and there was no odour of pet urine. The landlord also stated that he was shocked at the dirty condition the tenant had left the home in while the tenant stated that she had thoroughly cleaned the unit prior to moving out. The landlord stated that the odour of pet urine was so strong in the area of the parquet flooring that cleaning would not remove the odour. The moisture had seeped under the parquet and to remove the odour, the landlord had to replace the flooring. The landlord also stated that the deck was stained in the areas that the tenant's large dogs slept and he had to pressure wash the deck to remove the stains and the odour.

The landlord stated that the toilet was plugged and upon using a snake to clean it, he found that a child proof item had been dropped into the toilet bowl inhibiting the flow of water through the system.

The landlord stated that he suffered a loss of income for the month of May due to the work that was required to restore the unit to a condition in which it could be rented out. The landlord filed photographs of the unit after the tenant moved out.

The landlord is claiming the following:

1.	Back room - treatment to remove pet urine odour	\$174.00
2.	Clean stairs carpet	\$80.00
3.	Replace temperature gauge	\$50.00
4.	Rental of tool to unplug toilet plus labour	\$50.00
5.	Replace missing knobs, bath tub stoppers	\$15.00
6.	Fix water trap	\$10.00
7.	Replace burned out bulbs	\$20.00
8.	Touch up paint plus labor	\$35.00
9.	Pressure wash deck	\$20.00
10.	Landscaping	\$75.00
11.	Repair oven door	\$10.00
12.	Removal of garbage/Kid pool	\$50.00
13.	Ferry trips and gas	\$210.00
14.	Replace parquet	\$533.50
15.	Cleaning	\$200.00
	Total	\$1,532.50

Analysis

Landlord's application:

1. Back room - treatment to remove pet odour - \$174.00

Based on the testimony of both parties, I find that the landlord did incur a cost to paint and use an odour treatment to rid the back room of the odour of pet urine. Accordingly, I find that the landlord is entitled to his claim of \$174.00

2. Clean stairs carpet - \$80.00

The move in inspection report states that the carpet on the stairs was clean "*like new*". The landlord filed photographs that show stains on the carpet. I find that the landlord is entitled to the cost of cleaning the carpet in the amount of \$80.00.

3. Replace temperature gauge - \$50.00

The tenant agreed to replace the temperature gauge.

4. Tool rental to unplug toilet plus labour - \$50.00

The landlord found a child proofing item inside the toilet system which was obstructing the flow of water. Since the tenant has a young child, on a balance of probabilities, it is more likely than not that the object was placed inside the toilet by the child. Therefore I find it appropriate to award the landlord \$50.00 to unplug the toilet.

5. Replace missing knobs, bath tub stoppers - \$15.00

The tenant did not dispute this claim. She stated that she was not aware of the fact that they were missing. I find that the landlord is entitled to the cost of replacing these items.

6. Fix water trap - \$10.00

It is the landlord's responsibility to do repairs and maintenance due to normal wear and tear. Therefore the landlord's claim for the cost of fixing the water trap is dismissed.

7. Replace burnt out bulbs - \$20.00

The tenant did not dispute this claim and she agreed that she had not replaced the burnt out bulbs. Therefore the landlord is entitled to his claim.

8. Touch up paint plus labor - \$35.00

The tenant agreed that after fixing the wall, the touch up paint she used was not the same shade as the other part of the wall. I find that the landlord is entitled to his claim.

9. Pressure wash deck - \$20.00

The landlord stated that the deck was replaced six months prior to the start of tenancy. The tenant's large dogs used the deck to sleep on and the area that they used was stained and had an odour to it. I find it appropriate to award the landlord his claim for the cost of pressure washing the deck.

10. Landscaping - \$75.00

The landlord and tenant offered opposing testimony with regard to the tenant's responsibility to maintain the yard. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In the absence of a tenancy agreement, I am unable to determine that the maintenance of the yard was the tenant's responsibility. Accordingly, the landlord's claim for landscaping is dismissed.

11. Repair oven door - \$10.00

Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant. The landlord did not provide evidence to show that the oven door needed repair due to negligence on the part of the tenant. Therefore the landlord's claim is dismissed.

12. Removal of garbage and kid's pool - \$50.00

The tenant agreed that she had left the pool and some items behind. The photographs filed by the landlord support his claim. Therefore the landlord is entitled to \$50.00 for the removal and disposal of these items.

13. Ferry trips and gas - \$210.00

The landlord chooses to run his rental business from a distance and therefore is not entitled to the cost of travel.

14. Replace parquet - \$533.50

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 flooring. As per this policy, the useful life of flooring is 20 years.

Since the parquet was 20 years old, by the end of the tenancy, the flooring had outlived its useful life. Accordingly, the landlord's would have had to replace the flooring at his own expense. The landlord stated that the flooring was in good condition but emanated an odour that could not be eradicated with cleaning. The odour was coming from under the flooring as the moisture had seeped through.

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. Therefore even though the flooring had outlived its useful life, I find that the landlord incurred some costs to rid the area of the odour of pet urine. Accordingly, I find it appropriate to award the landlord \$150.00 towards his claim.

15. Cleaning - \$200.00

Based on the testimony and photographs filed into evidence, I find that the landlord is entitled to the cost of cleaning.

The landlord has established the following claim:

1.	Back room treatment to remove pet urine odour	\$174.00
2.	Clean stairs carpet	\$80.00
3.	Replace temperature gauge	\$50.00
4.	Rental of tool to unplug toilet plus labour	\$50.00
5.	Replace missing knobs, bath tub stoppers	\$15.00
6.	Fix water trap	\$0.00
7.	Replace burned out bulbs	\$20.00
8.	Touch up paint plus labor	\$35.00
9.	Pressure wash deck	\$20.00
10.	Landscaping	\$0.00
11.	Repair oven door	\$0.00
12.	Removal of garbage/Kid pool	\$50.00
13.	Ferry trips and gas	\$0.00
14.	Replace parquet	\$150.00
15.	Cleaning	\$200.00
	Total	\$844.00

The landlord has proven a major portion of his claim and is therefore also entitled to the recovery of the filing fee of \$50.00.

Tenant's application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of the end of tenancy or the date the forwarding address is received in writing, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

In this case, the tenant gave the landlord her forwarding address in writing to the landlord on May 31, 2011 and the landlord applied for dispute resolution on June 09, 2011. Since the landlord applied for dispute resolution within the legislated time period, the tenant is not entitled to the return of double the security deposit. Accordingly the tenant's application is dismissed and she must bear the cost of filing her application.

Overall the landlord has established a claim of \$894.00. The landlord has the security deposit and pet deposit in his possession. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord under section 67 of the *Residential Tenancy Act*, a monetary order in the amount of \$94.00 which consists of the landlord's proven entitlement minus the deposits that he is holding. 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 **\$94.00**

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: September 14, 2011.

Residential Tenancy Branch