

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This is an application filed by the Landlord for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

At the beginning of the hearing it was learned that the Tenant did not receive the initial September 16, 2011 notice of hearing and evidence package. The Tenants state that it was not received. The only package the Tenant received was a September 22, 2011 amended application with the notice of hearing and evidence package. The Landlord is unable to provide any proof of service for the September 16, 2011 package. The Landlord states that the September 22, 2011 package was sent by registered mail and has provided a copy of the Canada Post Registered Mail Receipt in evidence. The Tenant has confirmed receiving the amended package. With no proof of service, I find that the initial package sent September 16, 2011 is prejudicial and cannot be considered in this hearing. The amended package sent September 22, 2011 with Canada Post Registered Mail Receipt evidence submitted shall be used for this hearing.

At the beginning of the hearing it was also noted that each party submitted late evidence the day before the hearing. Residential Tenancy Branch Rules of Procedure 3.5 state, evidence must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution hearing as those days are defined in the “definitions” part of the Rules of Procedure. In this situation the evidence was received by the RTB on November 14, 2011. The Tenant states that they have not received any “late” evidence. I find that accepting this late evidence for either party is prejudicial and will not consider it for this hearing.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

## Background and Evidence

Both parties agree that the tenancy ended August 31, 2011 and received the forwarding address in writing on the same day. The Landlord currently holds a security deposit of \$500.00 paid on February 4, 2011. Neither party has provided a completed inspection report for the move-in or move-out.

The Landlord served the amended notice of hearing and evidence package by registered mail on September 22, 2011 and has provided a Canada Post Registered Mail Receipt in evidence. The Tenant has confirmed receiving this package.

The Landlord is seeking compensation for repair of a broken door for \$133.24. The Tenant states that this door was repaired and returned to the Landlord. The Landlord has confirmed this. Both parties agree that no further action is required for this portion of the claim.

The Landlord seeks \$225.00 for a broken window in the living room. The Tenant disputes this stating that this was one of two windows that were broken when they originally took possession of the rental. The Tenant has a witness, R.A.F. who was the previous Tenant who states that these windows were broken before his Tenancy began with the Landlord. The Landlord states that this is an estimated amount, but has no evidence to support this claim. The Landlord states that the broken window has not yet been repaired. The Landlord has submitted a copy of an estimate from Rainbow Glass for the cost of \$179.20 (one window replacement at \$160.00 plus HST) and \$168.00 for labour (\$150.00 plus HST).

The Landlord seeks compensation for \$137.94 for the replacement of a broken pedestal sink. The Landlord provided a two piece pedestal sink during the tenancy for the Tenant to install. During the Tenancy the bottom portion of the sink was broken as confirmed by the Tenant in his direct testimony. The Landlord bases this replacement cost on comparison shopping at Rona, but has not provided any supporting evidence. The Tenant disputes this cost stating that the bottom piece of the pedestal can be replaced for approximately \$20.00, but is unsure of the actual cost.

The Landlord is claiming \$494.00 for the cost of garbage removal. The Landlord claims that this is for the cost of two dump fees for \$60.00 and \$40.00, 8 hours of labour at \$20.00 per hour for her time, Gas cost of \$50.00 for borrowing a truck, canopy and trailer from E.M. to take the garbage to the dump, lost salary of \$80.00, travel time costs of \$72.00, \$150.00 for gas for her to travel to and from the rental, garbage fees of \$13.00 and courier costs of \$22.92. The Tenant disputes the Landlord's claim stating that the garbage on the property is not theirs. The Tenant's witness, R.A.F. confirms

the Tenant's claim that when he was the Tenant, that the property was full of garbage when he started his tenancy.

The Landlord seeks compensation of \$515.00 for garbage removal from the property because the Tenant's failed to comply with clause #1 in the addendum to the tenancy agreement. The Landlord states that this is an estimated cost as no work has yet been made. The Tenant disputes this stating that clause #1 gave an amended time to allow for this removal until December of 2011, but since the tenancy ended in August of 2011 there is no time for the Tenant to comply with this clause.

The Landlord is seeking compensation of \$1,500.00 for breaching other clauses in the addendum to the tenancy agreement. The Landlord states that she is waiting for a quote for the scope of work not completed by the Tenant listed in the addendum. The Tenant disputes this also stating that as the tenancy is ended the terms of the addendum cannot be completed as he is no longer residing at the rental. The Landlord has not supplied any details of these clauses in breach or of any evidence for the monetary amount being sought.

The Landlord is seeking a total of \$50.99 for carpet cleaning costs due to dog urine stains on the carpet. The Landlord states that there were no stains when the Tenant moved into the rental unit. The Tenant disputes this and has their witness, R.A.F. the previous Tenant who states that the carpets were old and that the stains existed during his tenancy. The witness states that he helped install the used carpet during his tenancy. The Landlord states that no receipts exist as she has not performed the cleaning.

### Analysis

As both parties have attended the hearing by conference call and the Tenant has confirmed receipt of the amended notice of hearing and evidence package, I am satisfied that each has been properly served with the application and evidence in this hearing.

No action is required for the Landlord's first claim as both parties have agreed that he broken window on the door was repaired and returned to the Landlord.

The Landlord's claim of \$225.00 for a broken window has not been established by the Landlord. The Landlord has not suffered a loss as the window has not yet been replaced and that the Landlord has failed to establish that the Tenant was responsible. In the absence of any supporting evidence, I find that this portion of the Landlord's claim

is dismissed as I find the Tenant's witness credible that the window was broken before the Tenant's moved in.

The Landlord's claim for \$137.94 for the replacement of the pedestal sink is in dispute. The Landlord has failed to establish the cost. The Tenant confirms that the pedestal sink was broken by his dog. With the cost in dispute, I find that the Landlord has failed to establish her claim for the entire \$137.94. I do however find that the Landlord is entitled to a nominal award of \$75.00 for broken portion of the sink.

The Landlord's claim for \$494.00 in costs has not been established. The claims are in dispute and the Landlord has not provided any supporting evidence to establish these costs or the claim that the Tenant was responsible for this garbage. On a balance of probabilities without any supporting evidence, I dismiss this portion of the Landlord's claim.

I find the Landlord has been unsuccessful in establishing a claim for the \$515.00 for the removal of garbage. These are costs not suffered by the Landlord as none of this work has been done as well as no invoices for this estimate is in evidence to support this claim. I find this clause in the tenancy was frustrated by the ending of the tenancy and that there was no opportunity for the Tenant to comply with it. This portion of the claim is dismissed.

The Landlord's claim for \$1,500.00 in compensation for work not done as listed in the addendum to the tenancy agreement has not been established. The Tenancy was ended and the terms frustrated as such. The Landlord has failed to provide any evidence of loss or of how her monetary claim is accounted for. I find that this portion of the Landlord's claim is dismissed.

The Landlord's claim of \$50.99 for carpet cleaning has not been established. As the Landlord does not have any supporting evidence and the Tenant has disputed being responsible for the stains. Based upon the witness testimony and on a balance of probabilities, I find that the Landlord has not proven her claim and dismiss this portion of the claim.

As explained to the parties during the hearing, the onus or burden of proof is on the party making 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. When questioned about each other's oral testimony, both parties would offer a different version of the event. In addition, with no documentary evidence to support the Landlord's claim, I'm left with just their oral testimony.

On a balance of probabilities with no supporting evidence by the Landlord, the Landlord's application is dismissed with the exception of the nominal award of \$75.00 where the Tenant acknowledged negligence in the broken pedestal sink. The Landlord is entitled to recovery of the \$50.00 filing fee. I order that the Landlord may retain the balance due of \$125.00 from the deposit and must return the remainder of \$375.00. Accordingly, I grant the Tenant a monetary order for the remainder of \$375.00 security deposit.

### Conclusion

The Landlord may retain \$125.00 from the \$500.00 security deposit.  
The Tenant is granted a monetary order for the return of \$375.00 for the remainder of the security deposit.

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: November 17, 2011.

---

Residential Tenancy Branch