



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

The tenants had submitted documentary evidence in support of their own claim for compensation. At the hearing, I explained to the tenants that absent a formal application for dispute resolution, I could not hear their claim for compensation.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on May 1, 2009, ended on September 14, 2011 and that an \$850.00 security deposit was paid at the outset of the tenancy. I address the landlord's claims and my findings around each as follows:

- 1. September rent.** The landlord seeks to recover \$1,739.10 in unpaid rent for the month of September. The landlord testified that on August 18, 2011 she received the tenants' notice that they were vacating the unit at the end of August. The tenants claim that they gave her the notice on August 9, which is the date on the notice. The parties agreed that the tenants found replacement tenants who began their tenancy on October 1. The parties further agreed that the tenants paid no rent in the month of September. The tenants claimed that the landlord agreed that she would accept the security deposit as rent if they moved out on September 14. The landlord testified that she told the tenants she would accept the security deposit as half the month's rent if they paid for the remaining half of the month. The tenants were contractually obligated to pay rent on the first day of each month. *The Residential Tenancy Act* specifies that to end a month-to-month tenancy, notice must be served before rent is due to take effect at the end of the following month.

So in order to end their tenancy on August 31, the tenants would have had to provide notice no later than July 31. In order to end their tenancy on a day other than the end of the month, the tenants would have had to have obtained the landlord's consent in writing. Section 53 of the Act provides that incorrect effective dates are automatically changed. I find that the tenants' notice ended the tenancy on September 30 and I find that the landlord is entitled to receive the full month in rent. I award the landlord \$1,739.10.

- 2. Repair costs.** The landlord seeks to recover \$100.00 as the cost of repairing damage to a doorway in the rental unit. The parties agreed that during the tenancy, the tenants installed a door in a doorway which had not previously had a door. The landlord testified that at the end of the tenancy, she had to patch holes, replace missing moulding and repaint the area. The landlord performed the work herself and therefore was unable to provide an invoice for the labour. The landlord provided no invoice for paint or the cost of the moulding purchased to replace the missing parts. The tenants acknowledged that they should be responsible for the mouldings, but claimed that they repaired all of the holes at the end of the tenancy with the assistance of a professional contractor. They claim that the landlord's photographs were taken before the repairs were made and stated that after they did the final walk-through and filled out the condition inspection report, they made repairs. .

The tenants questioned the integrity of the condition inspection report which they signed. Box Y on page 3 of 4 of the report lists damage to the rental unit as: "Lawn cutting, painting, patched walls, replace missing mouldings on walk through, curtain rods." The tenants claim that Box Y was blank when they signed the report and said that the only comments in the report were the comments written in the columns to indicate comparisons between the beginning and end of the tenancy. The landlord vehemently denied having added comments in Box Y after the report was signed. The tenants also noted that on page 4 of 4 of the report, the landlord is directed to provide the original to the tenants, which they did not receive.

It is unfortunate that the condition inspection report, a government publication, directs landlords to provide originals to tenants because this is not a statutory requirement. I find it unlikely that the landlord added commentary to Box Y after the tenants had signed, because it simply restates what was reported in the columns, which the tenants acknowledged was written prior to their having signed. I find that the condition inspection report was not altered and that it accurately represents the condition of the unit at the end of the tenancy. In the column indicating the condition of the kitchen walls and trim, there is a comment: "moulding missing on floor, needs paint." I find it unlikely that the parties would complete a final inspection on the last

day of the tenancy and then the tenants would go through the rental unit making repairs. I find on the balance of probabilities that the doorway was not adequately repaired, that mouldings were missing and that the landlord had to expend money and labour to effect repairs. The landlord should have provided a receipt indicating the cost of paint and replacement mouldings, but I find that this is not fatal to their claim. However, in the absence of a log recording hours spent and an estimate for the cost of paint and replacement mouldings, I find the \$100.00 claim to be excessive. In the absence of proof of the hours worked and cost of materials, I find that \$50.00 will adequately compensate the landlord and I award her that sum.

- 3. Lawn maintenance.** The landlord seeks an award of \$80.00 to compensate her for the labour involved with cutting, raking and trimming the lawn and landscaping. The parties agreed that the tenants had told the landlord that they had arranged for someone to tend to the lawn at the end of the tenancy at a cost of \$80.00 and that this party did not show up to complete the work. The tenants left the lawn untended at the end of the tenancy and the landlord reasoned that \$80.00 would be a reasonable amount to charge given that this was the amount that the tenants had indicated they would be willing to pay. I find that because the tenants had at one point acknowledged that the yardwork was valued at \$80.00, they have fixed the measure of damages to which the landlord should be entitled in compensation for the work the landlord had to perform because of the tenants' failure to complete the work themselves or through the services of their agent. I award the landlord \$80.00.
- 4. Cleaning.** The landlord seeks an award of \$100.00 for cleaning required in the rental unit. The landlord testified that the unit was not adequately cleaned at the end of the tenancy and that she had to spend considerable time cleaning the unit. She provided a photograph showing debris under the refrigerator. The tenants testified that they cleaned the unit when they vacated but neglected to clean underneath the refrigerator. The condition inspection report indicates nothing at all about the rental unit being unclean and in the absence of photographs showing that any area other than underneath the refrigerator was soiled, I find that the landlord has not proven on the balance of probabilities that additional cleaning was required. Although there was clearly debris under the refrigerator, I find that as the cleanup of that area would have taken less than 10 minutes, it is so minor that it is not compensable. I dismiss this part of the landlord's claim.
- 5. Curtain rod replacement.** The landlord seeks to recover \$30.00 of the \$40.28 she spent replacing curtain rods which were missing at the end of the tenancy. The condition inspection report indicates that there were both curtain rods and blinds in the living room at the outset of the tenancy and that the curtain rods were missing at

the end of the tenancy. The tenants claimed that there were only blinds but not curtain rods at the beginning of the tenancy and suggested again that the landlord could have added to the report after they signed it. As stated earlier in this decision, I find it unlikely that the landlord added to the report after it was signed. I find that the curtain rods were in place at the beginning of the tenancy and were missing at the end and that the tenants should be responsible for the cost of replacing the rods. I award the landlord the \$30.00 claimed.

- 6. Filing fee.** The landlord seeks to recover the \$50.00 filing fee paid to bring this application. As the landlord has been substantially successful in her claim, I find that she should recover the filing fee and I award her \$50.00.

Conclusion

In summary, the landlord has been awarded the following:

September rent	\$1,739.10
Lawn maintenance	\$ 80.00
Curtain rod replacement	\$ 30.00
Filing fee	\$ 50.00
Total:	\$1,949.10

I order the landlord to retain the \$850.00 security deposit and I grant her a monetary order under section 67 for the balance of \$1,099.10. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order 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*.

Dated: December 05, 2011

Residential Tenancy Branch