



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

For the tenant: MNSD, MNDC, FF
For the landlord: MNSD, MNDC, MND

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The tenant filed on July 16, 2012 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order for double the original security deposit (\$695) - Section 38
2. Compensation for loss of quiet enjoyment – Section 67
3. An Order to recover the filing fee for this application (\$50) - Section 72.

The landlord filed on September 16, 2012 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A monetary Order for damages (\$1272.32) – Section 67
2. An Order to retain the security deposit - Section 38
3. Compensation for damage or loss under the Act, Regulation or tenancy agreement – Section 67

Both parties attended the hearing and were given opportunity to present relevant evidence and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

Each party acknowledged receipt of the other's document evidence. The landlord provided a copy of the tenancy agreement.

The rental unit is a furnished living accommodation. The tenancy began on June 10, 2011. At the outset of the tenancy the landlord collected a security deposit in the amount of \$397.50 which the landlord still retains in trust. The tenant vacated September 30, 2011.

The parties are in disagreement as to the circumstances surrounding the *start of tenancy* condition inspection and the requisite report. Despite this fact, the tenant and the landlord each signed the Condition Inspection Report (CIR) submitted into evidence. The report indicates only one deficiency with which both parties were in agreement – *Entry - some scuffing on inside trim.*

The parties disagree as to the circumstances surrounding the *end of tenancy* condition inspection and the requisite report. Despite this fact, the parties agree that the landlord was in receipt of the tenant's forwarding address on October 05, 2011. The landlord completed their own inspection in the absence of the tenant and sent the tenant a letter outlining their findings respecting the condition of the rental unit. In turn, the tenant provided a series of photographs purportedly taken before returning the keys to the landlord – all of which was provided.

The tenant requests the return of the security deposit. In addition, the tenant claims compensation for a loss of quiet enjoyment. The tenant claims the landlord behaved in an intrusive manner during the period of the tenancy which impacted on their privacy and quiet enjoyment of the rental unit. The tenant claims they felt uncomfortable in their home whilst the landlord was around. The tenant provided a witness;

Witness #1 – JD – daughter of tenant

The witness provided sworn testimony and a signed statement. The witness testified that during their visits, they found the landlord "invasive" – always outside, monitoring them, watching and listening to them. The witness further testified that the tenant took care to respect and protect the landlord's property.

The landlord claims that they too reside on the property and are in close proximity to the rental unit, and are often on the property attending to affairs and maintenance and enjoyment of their property and the needs of other tenants, as homeowners and landlords. The landlord disputes that they ever conducted themselves in an intrusive or disrespectful manner toward neither the tenant nor their guests. The landlord disputes they disrupted the tenant's right to quiet enjoyment and have only ever been tolerant and patient with the tenant's breaches of their tenancy agreement.

The landlord claims the tenant caused damage to the rental unit during the 3 ½ month tenancy. The landlord submitted the tenant caused damage to the bathroom: wall damage, and a broken faucet handle. In the kitchen: cut on counter top, and grease spots on ceiling requiring painting. In the living room: sofa was left dirty and stained, requiring professional cleaning, and some scratches and nicks to a chest of drawers.

The landlord also provided a list of items which they claim were left unclean – requiring 6 hours of cleaning by the landlord. The landlord provided 6 photographs depicting some of the deficiencies claimed. The tenant denies all of the landlord's claims and testified that their photographs provide an accurate depiction of the condition of the unit.

In addition, the landlord claims that the tenant permitted other persons to reside in the rental unit for a majority of the tenancy, and permitted more than 1 car to be parked on the property for 2 months – for which the landlord claims compensation in accordance with the tenancy agreement.

The landlord's monetary claim is as follows;

Remediation of claimed damage (invoice)	\$529.18
More than 1 tenant for 2 months	\$200.00
More than 1 car parking for 2 months	\$150.00
3 damaged shrubs, by dog	\$83.97
Excess electricity for 2 months	\$90.00
Loss of revenue for 5 days	\$129.17
<i>Monetary claim by landlord total</i>	<i>\$1272.32</i>

Analysis

It must be emphasized that the burden of proof rests on each applicant to prove their respective claims.

On the preponderance of all the evidence and testimony submitted by both parties, and on balance of probabilities, I have reached a Decision and find as follows:

Tenant's claim

In respect to the circumstances surrounding the condition inspections, I find the landlord has not proven their claim the tenant was provided with at least 2 opportunities for the end of tenancy inspection in concert with Section 35 (2) of the Act. The landlord failed to provide the tenant with the second opportunity for inspection by providing the tenant with such notice in writing, in the approved form [Residential Tenancy *Regulation* - Section 17 (2)(b)] . Therefore, I find that the tenant's right to the return of the security deposit are not extinguished. In addition, **Section 38(1)** of the Act provides as follows **(emphasis for ease)**

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

- 38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- 38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing on October 05, 2011, and is therefore liable under section 38(6) which provides:

- 38(6) If a landlord does not comply with subsection (1), the landlord
 - 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
 - 38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$397.50 and was obligated under section 38 to return this amount. The amount which is doubled is the \$397.50 original amount of the deposit. As a result I find the tenant has established an entitlement claim for **\$695.00**, without leave to reapply.

I find the tenant has not provided sufficient evidence to prove their claim that the actions or conduct of the landlord breached the tenant's right to quiet enjoyment as afforded by Section 28 of the Act. As a result, **I dismiss** this portion of the tenant's claim, without leave to reapply.

As the tenant was partially successful in their claim, the tenant is further entitled to recovery of the **\$50** filing fee for a total entitlement of **\$745.00**.

Landlord's claim

If a claim is made by the landlord for *damages* to property, the normal measure of damage is the cost of repairs (with some allowance for loss of rent or loss of occupation during the repair), or replacement (less depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable, and the landlord is required to mitigate their costs accordingly. I must further be emphasized that the landlord must provide sufficient evidence that the costs for which they claim compensation are for conditions beyond reasonable wear and tear, and are the result of the conduct or neglect of the tenant.

I find the landlord's evidence respecting the condition of the rental unit at the end of the tenancy is not sufficient to justify all their monetary claims. While I accept the landlord's 6 photographs depicting some of the deficiencies found by the landlord, it was further available to the landlord to provide additional photographs to support their claim for *damages* versus reasonable wear and tear. In the absence of sufficient evidence, I **dismiss** the landlord's claim for damages, without leave to reapply.

I find the landlord has submitted an extensive list of those areas within the rental unit requiring cleaning, for which the landlord provided some photographs in support of this claim. The landlord has not made a claim for professional cleaning of the sofa. Again, I find it was available to the landlord to provide additional photographs to support this claim. None the less, on balance of probabilities, I find I prefer the evidence of the landlord over that of the tenant in respect to the landlord's claim for cleaning. As a result, I grant the landlord their claim for **\$90.00**, without leave to reapply.

I find the tenant's own document evidence acknowledges responsibility for *their dog* damaging the landlord's plants - offering the landlord the cost of replacement out of their security deposit. I accept this evidence and in so doing I find the landlord is owed compensation. I grant the landlord their claim for 3 damaged shrubs in the amount of **\$83.97**, without leave to reapply.

As I have dismissed the landlord's claim for damages, I find the landlord has not provided evidence to support their basis that 5 days loss of revenue is the direct result of actions or neglect by the tenant. Rather, I find the landlord's evidence aptly supports they had to expend at least one day for cleaning. As a result, I **grant** the landlord's claim for loss of revenue in the amount attributable to 1 day's loss of revenue of **\$25.00**, without leave to reapply.

I find the landlord's evidence respecting excess usage of electricity (above the 1000 KWH per month stated in the tenancy agreement) is not conclusive/sufficient to support their claim of \$90.00. The landlord's evidence is for 2 months totaling 926 KWH – well below the provisions of the tenancy agreement of 1000 KWH per month. As a result, I **dismiss** the landlords' claim, without leave to reapply.

I find the landlord's evidence respecting an excess number of occupants for the rental unit is unsupported and insufficient to establish their claim. The tenant is allowed to have guests, and the landlord has not provided sufficient evidence that the guest's visits exceeded the provisions in the tenancy agreement. Therefore, I **dismiss** this portion of their claim, without leave to reapply.

I find the landlord's evidence respecting an excess number of vehicles parked on the property is largely unsupported. However, I find the tenancy agreement is clear that the rent included parking for 1 vehicle and the tenant's evidence and testimony regarding this matter supports they had a quantum of overnight guests, and they do not adequately address the landlord's claims of excessive parked vehicles, other than to state the landlord exaggerated this claim. I find that in this case, I *prefer* the evidence of

the landlord. As a result, I grant the landlord their claim of **\$150.00** for an excess number of vehicles parked on the property contrary to the tenancy agreement, without leave to reapply.

As a result of all the foregoing, I find the landlord has established a total entitlement claim for **\$348.97**, without leave to reapply.

Calculation for Monetary Order

Tenant's award	\$745.00
Total Monetary Award for tenant	\$396.03

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$396.03**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: October 03, 2012

Residential Tenancy Branch