



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

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

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the security deposit, and to recover the filing fee.

The tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for return of the security deposit, and to recover the filing fee.

The tenant and two agents for the landlord (the “agents”) attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

Preliminary and Procedural Matters

The agents testified that they mailed their evidence to the tenant via registered mail consisting of many pages. The tenant disputed receiving a package with many pages. The tenant testified that she only received the Notice of Dispute Resolution Hearing in the package. As a result, the landlords were provided the opportunity to have the hearing adjourned as their evidence was served on the Residential Tenancy Branch on time. The agents declined the opportunity to have the hearing adjourned, and as a result, their evidence was excluded from the hearing.

The tenant requested an adjournment to allow time for her DVD evidence to be reviewed and considered. The tenant stated that she served the DVD on the landlord on Friday, October 5, 2012. The agents stated that they did not receive the DVD until after the long weekend on Tuesday, October 9, 2012 as the DVD was delivered after business hours on Friday, October 5, 2012. Based on the above, and taking into account that the tenant submitted her application on July 26, 2012 and had at least ten weeks to serve her evidence, yet failed to serve her evidence in accordance with the rules of procedure, the DVD evidence was excluded and the tenant's application for an adjournment was declined. I note the agents were ready to proceed and objected to having the hearing adjourned. As an alternative to both parties, the parties were permitted to read their evidence into the hearing via oral testimony.

I have considered all of the oral testimony provided during the hearing. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the tenant entitled to a monetary order under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*?
- What should happen to the security deposit under the *Act*?

Background and Evidence

A fixed term tenancy began on January 1, 2012 and was to expire on December 31, 2013. Monthly rent in the amount of \$800.00 was due on the first day of each month. A security deposit of \$400.00 was paid by the tenants at the start of the tenancy.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") effective July 12, 2012. The tenant did not dispute the Notice. The tenant vacated the rental unit on July 12, 2012.

Neither party provided a detailed breakdown of their monetary claims in their application details. As a result, both parties set out the specifics of their claims at the start of the hearing prior to consideration of the merits of their respective applications.

Tenant's application

The tenant reduced her claim from \$3,798.00 to \$3,746.80 during the hearing as her original claim for furniture did not match the total being claimed. The tenant's amended claim consisted of the following:

Reimbursement for bed bug treatment	\$296.80
Return of Security Deposit	\$400.00
Loss of furniture due to bed bug treatment spray (consisting of a \$200.00 couch, \$50.00 mirror, \$200.00 bed frame, \$50.00 velvet chair, \$50.00 shelf, and \$100.00 table)	\$650.00
Claim for return of ½ month's rent for the full 6 months that tenant was in rental unit due to alleged failure of landlord to disclose existence of bed bugs (calculated at \$400.00 per month times 6 months)	\$2,400.00
TOTAL	\$3,746.80

The tenant claims that she submitted a receipt for bed bug treatment as evidence to the landlord. The agents disputed receiving any evidence from the tenant other than the Notice of the Hearing. The tenant described a pest control company invoice through oral testimony. The tenant testified that she first called the female agent on June 1, 2012 regarding bed bugs. The female agent disputed receiving a call from the tenant on that date. The female agent stated that on June 22, 2012, she received a call from the tenant regarding "pests" in her rental unit, however, the tenant was not sure what the pests were. There was no mention of bed bugs at that time, according to the female agent.

Both parties agree that the landlord followed up to her concern by providing a number for the pest control company that the landlord recommended. The tenant confirmed to receiving the number for the pest control company from the landlord, however, did not make an appointment to have that pest control company treat her rental unit. The agents stated that if she had contacted that company, there would have been no charge to the tenant. Instead, the tenant confirmed contacting a different company and arranged to have a different company attend and treat the rental unit at a cost of \$296.80. The agents denied approving the other company or receiving an invoice from the other company regarding the treatment of pests in the rental unit.

The tenant was asked why she decided to contact a different pest control company than the pest control company recommended by the landlord. The tenant stated that she did not like how the pest control contractor recommended that she vacuum before they arrived. She did not feel that the contractor was professional.

The tenant did not provide evidence to support her claim of the existence of bed bugs including photos, witnesses or witness testimony. The tenant did not provide evidence to support the alleged damage to and value of her furniture being claimed. The tenant confirmed during the hearing that she did not provide anything in writing to the landlord regarding her concerns about bed bugs during the tenancy. The tenant stated that she was stressed regarding the bed bugs and did not pay July 2012 rent as a result of the bed bugs. The agents testified that they did not receive anything in writing from the tenant regarding her concerns of alleged bed bugs.

Landlords' application

The agents' reduced the landlord's claim from \$1,798.00 to \$1,772.50 during the hearing as the landlord's original claim did not match the total being claimed. The landlord's amended claim consisted of the following:

Unpaid rent for July 2012	\$800.00
Rental unit cleaning (13.75 hours at \$20.00 per hour - consisting of 2 cleaners at \$10.00 per hour)	\$275.00
Removal and disposal of tenant's abandoned furniture	\$145.00
Drywall repairs (11.25 hours to mud, sand and repaint at \$30.00 per hour)	\$337.50
Minor repairs to cupboard (1/2 hour at \$30.00 per hour)	\$15.00
Five months of tenant having a cat (\$40.00 per month times 5 months as per Pet Agreement)	\$200.00
TOTAL	\$1,772.50

The parties agree that July 2012 rent in the amount of \$800.00 was not paid by the tenant. Rent was due on July 1, 2012, however, the tenant failed to pay the rent and vacated the rental unit.

The agents testified that the rental unit required 13.75 hours of cleaning. The agents performed the cleaning themselves at a charge of \$10.00 per cleaner times two

cleaners for a total claim for cleaning of \$275.00. The tenant did not dispute the amount or that cleaning was required in the rental unit.

The tenant testified that she left her furniture in the rental unit upon vacating. The tenant has claimed for the cost of the furniture due to bed bug spray contamination. The agents are claiming \$145.00 for moving and disposal of the tenants abandoned furniture comprised of 7.25 hours at \$20.00 per hour as both agents worked to remove and dispose of the tenant's furniture. The tenant did not dispute the agents' testimony regarding this claim.

The agents have claimed \$337.50 for repairs to the drywall of the rental unit comprised of 11.25 hours at \$30.00 per hour. The male agent stated that he did the repair work which consisted of mudding, sanding and painting. The tenant disputed the testimony of the agents for this claim. The tenant testified that she did not create any holes in the drywall, and that the landlord had not repaired pre-existing holes that were there when the tenant moved in. The agents confirmed during the hearing, that a move-in condition inspection report was not signed by the parties at the start of the tenancy. As a result, there is no way to determine the condition of the rental unit at the start of the tenancy.

The agents have claimed \$15.00 for a minor cupboard repair comprised of ½ hour at \$30.00 per hour. The agents did not provide additional evidence of the cupboard repair as their evidence was excluded at the start of the hearing. The tenant did not dispute this portion of the agents' testimony.

The agents testified that a Pet Agreement was signed at the start of the tenancy which stated that the tenant agreed to pay \$40.00 per month for every month that the tenant had a cat in the rental unit. There was no pet damage deposit requested or paid was submitted as evidence. The agents are claiming \$200.00 comprised of 5 months of \$40.00 per month as the agents have alleged that the tenant had never paid the required fee in accordance with the Pet Agreement. The tenant disputed the agents testimony. The tenant denies having a cat for more than two or three days before she gave the cat to her sister. As a result, the tenant denies that the cat lived in the rental unit.

Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on both parties as both parties have submitted claims for damages or loss. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenant's claim for compensation for pest control and furniture damage – The parties agree that the landlord was eventually advised verbally by the tenant regarding “pests” and as a result, the landlord provided the tenant with a number for a pest control company. The tenant made a decision to not use the company provided by the landlord, and use a company of her own choosing. The tenant alleges that that company she chose ruined her furniture by spraying bed bug spray on her furniture, resulting in contamination. The landlord's response to the tenant's claim was that if she used the company they provided the contact information for, there would have been no charge to the tenant.

I find that the tenant failed to prove that the landlord breached the *Act*, regulation or tenancy agreement resulting in damage to the tenant's furniture. Furthermore, **I find** the tenant made a choice to use a different company at a cost to the tenant and has failed to prove that the landlord breached the *Act*, regulation or tenancy agreement resulting in the need to hire a pest control company at her own expense. As a result, **I dismiss** the tenant's claim for compensation for her furniture in full due to insufficient evidence, without leave to reapply.

Tenant's claim for ½ month's rent for 6 months due to alleged bed bugs – The tenant failed to provide any evidence of bed bugs, including witness testimony or other corroborating evidence. The agents allege that the rental unit did not have bed bugs

before the tenant moved in, and that “pests” were not reported verbally until June 2012. **I find** that the tenant failed to prove that the landlord breached the *Act*, regulation or tenancy agreement resulting in bed bugs being inside the rental unit. Therefore, **I dismiss** the tenant’s claim due to insufficient evidence, without leave to reapply.

Landlord’s claim for unpaid rent for July 2012 – A fixed term tenancy began on January 1, 2012 and was to expire on December 31, 2013. Monthly rent in the amount of \$800.00 was due on the first day of each month. The tenant failed to pay rent for July 2012. Section 26 of the *Act* requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*. Therefore, **I find** the tenant breached section 26 of the *Act* and **I find** that the tenant owes rent in the amount of **\$800.00** for July 2012.

Landlord’s claim for rental unit cleaning and removal and disposal of tenant’s furniture – The tenant confirms that she purposefully left her furniture at the rental unit as it was allegedly contaminated. Section 37 of the *Act* requires that the tenant leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. **I find** the tenant breached section 37 of the *Act* by leaving what the tenant describes as “contaminated furniture” in the rental unit. **I find** the landlord suffered a loss by having to remove and dispose of the tenant’s furniture based on the undisputed testimony of the agents regarding this portion of the claim. Therefore, **I find** the landlord has established a monetary claim of \$420.00 comprised of \$145.00 for furniture removal and disposal, and unit cleaning of \$275.00.

Landlord’s claim for drywall repairs and minor repairs to the cupboard – The tenant disputed the agents’ testimony in terms of the drywall repairs, however, did not dispute the testimony related to the minor repair to the cupboard. The agents testified under oath, that they did not have a signed copy of the move-in inspection report, and the tenant denies making any new holes since moving in, and that several holes existed in the rental unit that were never repaired by the landlord and were not caused by her. As a result, **I find** the landlord has failed to prove that the tenant breached the *Act*, regulation or tenancy agreement resulting in damage to the drywall. Therefore, **I dismiss** the landlord’s claim for drywall repairs in the amount of \$337.50 due to insufficient evidence, without leave to reapply.

As the tenant did not dispute the minor damage to the cupboard being claimed by the landlord, I accept the agents undisputed testimony that the landlord suffered a loss of \$15.00 for the minor repair to the cupboard. Therefore, **I find** the landlord has established a monetary claim of **\$15.00** comprised of the minor repair to the cupboard.

Landlord's claim for 5 months of tenant have a cat – The agents testified that a Pet Agreement exists that states the tenant agreed to pay \$40.00 per month for the tenant having a cat. **I find** that there is no remedy for charging rent for a cat under the *Act*. The landlord should have required a pet damage deposit at the start of the tenancy, however, failed to do that. As a result, **I dismiss** the landlord's claim of \$200.00 comprised of 5 months at \$40.00 per month as there is no remedy under the *Act* for such a claim. **I order** the landlord to comply with section 38 of the *Act* relating to pet damage deposits in the future. Failure to comply with my order may result in applications by other tenants for compensation under the *Act* if there are future attempts to charge what I consider to be rent for a pet under the *Residential Tenancy Act*.

Section 5 of the *Act* states:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

[emphasis added]

As the landlord was partially successful in their application, **I grant** the landlord the recovery of half of their filing fee in the amount of **\$25.00**.

Monetary Order - I find the landlord has established a total monetary claim of **\$1,260.00** as follows:

Unpaid rent for July 2012	\$800.00
Rental unit cleaning (13.75 hours at \$20.00 per hour - consisting of 2 cleaners at \$10.00 per hour)	\$275.00
Removal and disposal of tenant's abandoned furniture	\$145.00
Minor repairs to cupboard (1/2 hour at \$30.00 per hour)	\$15.00
Filing fee	\$25.00
TOTAL	\$1,260.00

I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit of \$400.00 which has accrued no interest to date.

I authorize the landlord to retain the full security deposit of \$400.00 in partial satisfaction of the claim and **I grant** a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord in the amount of **\$860.00**.

I find the tenant's application did not have merit. Therefore, **I do not grant** the tenant the recovery of the filing fee.

Conclusion

I dismiss the tenant's application in full due to insufficient evidence, without leave to reapply.

I do not grant the tenant recovery of the filing fee.

I find the landlord has established a total monetary claim of \$1,260.00. I authorize the landlord to retain the full security deposit of \$400.00 in partial satisfaction of the claim, and I grant the landlord a monetary order for the balance owing in the amount of \$860.00.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 17, 2012

Residential Tenancy Branch