



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit, key deposit and accrued interest. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit or damage or loss under the Act, regulations or tenancy agreement?
2. Is the landlord authorized to retain the security deposit, key deposit and interest?

Background and Evidence

The tenancy commenced September 1, 2004 and ended July 31, 2012. The landlord is holding a security deposit, key deposit, and accrued interest totalling \$491.93.

The tenant and the landlord's agent participated in a move-in inspection together and an inspection report was prepared. Despite giving the tenant the opportunity to participate in a move-out inspection the tenant chose not to participate. The landlord proceeded to inspect the unit and prepare a move-out inspection report without the tenant present.

I have summarized the landlord's claims against the tenant and the tenant's responses below:

<u>Item</u>	<u>Claim (\$)</u>	<u>Landlord's reasons</u>	<u>Tenant's responses</u>
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Kitchen sink	216.78	Multiple burn marks. Claiming cost to remove and replace. See video.	No recollection of burn marks. No photographs provided.
Bedroom/Den light fixture	12.32	Broken glass	May have been broken.
Bathroom light bulbs	12.51	Several bulbs burned out.	A couple of bulbs may have been burned out.
Kitchen light cover and kitchen light bulb	12.59 + 12.66	Plastic covering cracked (original to construction). Florescent tube burned out.	Did not touch light cover. Very brittle due to its age. Florescent tube was burned out.
Labour to purchase, remove, install light fixtures and bulbs	100.00	Four hours @ \$25/hr.	Excessive claim.
Cleaning	865.00	Hired three persons for three hours each at cost of \$240.00. Spent a further 25 hours cleaning @ \$25.00/hr. Unit extremely stained with nicotine, surfaces grimy and sticky, gas fireplace full of charcoal and dust, deck dirty and greasy. Did not claim all hours spent cleaning. Issues with cleanliness apparent before tenancy ended. See communication.	Tenant acknowledged smoking in unit. The tenant spent 5 hours cleaning the night before moving out and had the carpets cleaned. Labour rate excessive. Landlord performed deep cleaning because property listed for sale. Less cleaning would be required to re-rent unit. Deck dirty in part because of landlord's renovations upstairs. Landlord harassed tenant about cleanliness standards prior to end of tenancy.
Filing fee	50.00		
Less: security & key	<u>(491.93)</u>		

deposit & interest			
Total claim	1,373.93		

Evidence provided to me by the parties included: the tenancy agreement; communication between the parties; condition inspection reports; evidence the property was listed for sale; invoices and receipts; and photographs.

Analysis

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 section 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.

The Act provides that a tenant is to leave a rental unit reasonably clean and undamaged at the end of a tenancy. Normal wear and tear does not constitute damage.

The Residential Tenancy Regulations provide that a condition inspection report is the best evidence of the condition of a rental unit if prepared in accordance with the Regulations. I accept the move-out inspection report accurately reflects the condition of the rental unit as the tenant had the opportunity to participate in the inspection and chose to leave it to the landlord to perform without him present.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced items I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 41 where necessary.

With respect to each of the landlord's claims I provide the following findings and reasons.

Carpeting – Carpeting has an average useful life of 10 years. The carpeting in the rental unit was 10 years old at the end of the tenancy. As the carpeting was fully depreciated at the end of the tenancy I make no award for carpeting.

Kitchen sink – The move-in inspection report makes no mention of the kitchen sink and I find its condition at the beginning of the tenancy has not been substantiated. Nor did the landlord depreciate the claim for replacement of the sink. I find the landlord has not established a basis for claiming the full replacement cost of the kitchen sink against the tenant. Therefore, I dismiss this portion of the landlord's claim.

Bedroom/Den light fixture – I accept that this light fixture was broken during the tenancy for which the tenant is responsible. I estimate the depreciated loss 50% of the replacement cost and I award the landlord \$6.16.

Bathroom and kitchen light bulbs – Residential Tenancy Policy Guideline 1 provides that a tenant is expected to replace light bulbs that burn out during their tenancy. I accept that these bulbs burnt out during the tenancy and the tenant is responsible for the cost to replace them. I award the amounts claimed of \$12.51 and \$12.66 to the landlord.

Kitchen light cover – Given the cover is plastic and original to the construction of the building several years prior I accept that the plastic became brittle due to aging for which the tenant is not responsible. I dismiss this portion of the claim.

Lighting labour – Given the limited success of the landlord in establishing the tenant's liability for replacement lighting I award the landlord two hours of labour or \$50.00. I do not find the labour charge of \$25.00 per hour to be excessive.

Cleaning – Based upon the condition inspection reports, the photographs and the undisputed testimony that the tenant smoked in the rental unit, I accept that the rental unit required a significant amount of cleaning to bring it up to a standard of reasonably clean. Having heard the tenant spent only five hours cleaning and the landlord did not claim for all the hours she and others spent cleaning I accept that the landlord has claimed against the tenant to bring the rental unit up to reasonably clean standards. I do not find the labour charge of \$25.00 to be excessive. Therefore, I grant the landlord's claim for cleaning in the amount of \$865.00.

Filing fee – I find the landlord's claim to have merit and I award the filing fee to the landlord.

Deposits and Monetary Order – The security deposit has been forfeited by the tenant as he chose not to participate in the move-out inspection. Nevertheless, I find the landlord's losses are reduced by the deposits forfeited. Therefore, I offset the security deposit, key deposit, and accrued interest against the amounts awarded to the landlord and I provide the landlord with a Monetary Order in the net amount calculated as follows:

<u>Item</u>	<u>Award (\$)</u>
Kitchen sink	Nil
Bedroom/Den light fixture	6.16
Bathroom and kitchen light bulbs	12.51 12.66
Kitchen light cover	Nil
Labour to purchase, remove, install light fixtures and bulbs	50.00
Cleaning	865.00
Filing fee	50.00
Less: Deposits and interest	<u>(491.93)</u>
Monetary Order	504.40

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord is authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$504.40 to serve upon the tenant and enforce as necessary.

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 27, 2012.

Residential Tenancy Branch