

DECISION

Dispute Codes

For the tenant: MNSD FF

For the landlord: MND MNSD MNDC 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 tenant applied for a monetary order for the return of double her security deposit and pet damage deposit, and to recover the filing fee.

The landlord applied for a monetary order for damage to the unit, site or property, to keep all or part of the pet damage deposit and security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

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 evidence orally and in documentary form prior to the hearing, and make submissions to me.

The parties agreed at the outset of the hearing that they received the evidence package from the other party and had the opportunity to review the evidence prior to the hearing. As a result, I find the parties were served in accordance with the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. 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*, and if so, in what amount?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the security deposit and pet damage deposit under the *Act*?

Background and Evidence

A fixed term tenancy began on November 1, 2011 and was to revert to a month to month tenancy as of October 31, 2012. Monthly rent in the amount of \$1,275.00 was due on the first day of each month. A security deposit of \$637.50 and a pet damage deposit of \$637.50 was paid by the tenant at the start of an earlier tenancy. The tenancy ended on August 31, 2012 through the mutual agreement of the parties.

Tenant's claim

The tenant is seeking the return of double her security deposit of \$637.50 and double her pet damage deposit of \$637.50 under the *Act* in the amount of \$2,550.00. The tenant's application listed the monetary claim as \$2,500.00, which the tenant clarified during the hearing was an error and should have read \$2,550.00.

The tenant stated that the landlord did not perform a move-in condition inspection or a move-out condition inspection during the tenancy, which the landlord confirmed. The tenant stated that she sent her forwarding address to the landlord by e-mail, text and by regular mail. The landlord stated that he received the tenant's forwarding address on September 6, 2012.

The tenant received a cheque from the landlord dated September 12, 2012 in the amount of \$565.50. The landlord stated that he withheld \$709.50 from the tenant's original \$1,275.00 combined security deposit and pet damage deposit due to damages to the rental unit. The tenant stated that she did not agree to any deductions or sign over any amount to the landlord at the end of the tenancy. The landlord's claim for damages will be addressed later in this decision; however, it is important to note that the landlord did not file his application until December 12, 2012.

The tenant confirmed that she has not cashed the landlord's cheque in the amount of \$565.50 and based on the date of the cheque, September 12, 2012, is not yet stale dated.

Landlord's claim

The landlord has claimed \$1,328.96, however, the amounts provided by the landlord during the hearing exceed the amount being claimed as the actual total is \$2,038.46 as follows:

Item #	Description	Amount
1	Hardwood floor repair	\$504.00
2	Hardwood floor materials	\$20.00
3	Suite cleaning	\$142.50
4	Painting	\$56.00
5	NSF fee for rent cheque	\$7.00
6	Stove bowl replacement	\$33.96
7	September rent due to repairs needed	\$1,275.00
	TOTAL	\$2,038.46

Landlord Items 1 and 2

The landlord has claimed \$504.00 plus \$20.00 in materials for the labour to repair the hardwood floor boards that he claims were damaged by the tenant during the tenancy. The landlord claims the hardwood floors were new at the start of the tenancy, and the tenant testified that she assumed they were brand new when she moved into the rental unit.

The landlord provided five color photos showing scrapes and scratches on the hardwood flooring. The tenant testified that she likely scratched the floors and that there was a little chunk and a scrape on the flooring.

The landlord submitted an invoice from a contractor as evidence of his loss which shows \$450.00 plus HST for the labour to replace the hardwood flooring boards for a total of \$504.00, and testified that he has only claimed \$20.00 for the materials as he had some spare boards remaining from the original flooring purchase. The tenant agreed to the \$20.00 materials charge during the hearing, but did not agree to the labour charges to replace the flooring.

Landlord Item 3

The landlord testified that he has claimed \$142.50 for suite cleaning as the tenant left the rental unit dirty. The tenant disputed the landlord's testimony and stated that she did not leave the rental unit dirty. The landlord confirmed that there were no photos or evidence such as a condition inspection report to support that the rental unit was left in a dirty condition. The only evidence submitted by the landlord was a photocopy of a cheque in the amount of \$142.50 which he claims he wrote to a cleaning company and which includes the word "cleaning" in the notes area of the cheque. The cheque is made out in the name of a specific person and not a company name.

Landlord Item 4

The landlord has claimed \$56.00 for painting to the rental unit. The landlord testified that walls were damaged and required re-painting. The one wall photo submitted as evidence does not show a damaged wall. An invoice for "wall painting" in the amount of \$50.00 plus HST for a total of \$56.00 was submitted in evidence. The tenant disputes that she damaged the walls during the tenancy.

Landlord Item 5

The landlord has claimed \$7.00 for an NSF fee due to a cheque provided by the tenant that was returned due to insufficient funds. The tenant agreed to the \$7.00 NSF fee during the hearing.

Landlord Item 6

The landlord has claimed \$33.96 for stove bowls replacement. The landlord submitted several photos of stove bowls which appear dirty and a receipt from a home repair store which include stove bowls in the items listed. The landlord did not provide evidence of the condition of the stove bowls at the start of the tenancy. The tenant disputes that she damaged the stove bowls during the tenancy.

Landlord Item 7

The landlord has claimed \$1,275.00 for September 2012 rent. The landlord stated that he was unable to rent the rental unit due to the required repairs. The landlord was unsure of the dates when the work was completed in the rental unit. The landlord estimated that the work began on September 7, 2012 and ended on September 10, 2012 with the cleaning being completed on September 11, 2012. The landlord stated that new tenants moved into the rental unit on October 1, 2012. The landlord did not have any witnesses to support that the work was completed on the dates provided.

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.

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 double security deposit and double pet damage deposit –

Section 23 of the *Act* requires that a landlord conduct a move-in condition inspection report at the start of the tenancy while section 35 of the *Act* requires that a landlord conduct a move-out condition inspection report at the end of the tenancy. The parties agree that the landlord did not conduct either condition inspection.

As a result of the landlord breaching sections 23 and 35 of the *Act*, the landlord extinguished his right to claim towards the security deposit and pet damage deposit. Therefore, the landlord was not entitled to claim towards either deposit. Instead, the landlord decided to retain \$709.50 and mailed a cheque to the tenant in the amount of \$565.60, which the tenant has not cashed yet. The cheque is not stale dated and is still cashable as a result.

Section 38 of the *Act*, requires that a landlord must return or make a claim against the security deposit within 15 days of the later of the end of tenancy and the date the forwarding address is provided. As the full security deposit and pet damage deposit has not been returned to the tenant and the application for dispute resolution was not filed

until December 12, 2012, which is over three months after the landlord states he received the forwarding address of the tenant, **I find the tenant is entitled to the return of double her security deposit and pet damage deposit.**

Therefore, the original security deposit of \$637.50 is doubled to \$1,275.00 and the original pet damage deposit of \$637.50 is doubled to \$1,275.00 for a total of **\$2,550.00**. This amount is less the amount already paid by the landlord which the tenant should cash in the amount of \$565.50, for a total balance owing to the tenant by the landlord in the amount of **\$1,984.50**.

Landlord's claim: Items 1 and 2 – The landlord has claimed \$504.00 plus \$20.00 in materials for the labour to repair the hardwood floor boards that he claims were damaged by the tenant during the tenancy. During the hearing, the tenant agreed to the amount of \$20.00 for the materials as the landlord already had spare hardwood flooring boards remaining from when the flooring was originally installed.

Based on the tenant's testimony that she considered the floors to be new at the start of the tenancy and that she likely scraped them and acknowledged a scrape and chunk out of the flooring, and taking in account the color photos which support the damage to the flooring, I find the tenant damaged the hardwood flooring. As a result of the above, I find the landlord has met the burden of proof by proving the value of the loss and that the tenant damaged the flooring beyond reasonable wear and tear. Therefore, I grant the landlord the amount of \$504.00 for the labour to install the hardwood flooring boards, and the \$20.00 for the materials for a total claim for these items of **\$524.00**.

Landlord's claim: Item 3 – The landlord has claimed \$142.50 for suite cleaning. The tenant disputes the testimony of the landlord and claims she did not leave the rental unit in a dirty condition. The landlord submitted a photocopy of a cheque in the amount of \$142.50.

I find the landlord has failed to meet the burden of proof by proving that the tenant breached the Act, regulation or tenancy agreement by leaving the rental unit in a dirty condition and has failed to prove the value of the loss or damage regarding this portion of his claim. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Landlord's claim: Item 4 – The landlord has claimed \$56.00 for painting to the rental unit. The landlord testified that walls were damaged and required repainting. The one wall photo submitted as evidence does not show a damaged wall. An invoice for "wall

painting” in the amount of \$50.00 plus HST for a total of \$56.00 was submitted in evidence. The tenant disputes that she damaged the walls during the tenancy.

I find the landlord has failed to meet the burden of proof by proving that the tenant breached the *Act*, regulation or tenancy agreement by damaging the walls resulting in the need for re-painting. I find the photo provided by the landlord does not show damage to the walls. Therefore, I dismiss this portion of the landlord’s claim due to insufficient evidence, without leave to reapply.

Landlord’s claim: Item 5 – The landlord has claimed \$7.00 for an NSF fee due to a cheque provided by the tenant that was returned due to insufficient funds. The tenant agreed to the \$7.00 NSF fee during the hearing. As a result, I find the landlord is entitled to the recovery of the **\$7.00** NSF fee from the tenant in relation to this portion of the landlord’s claim.

Landlord’s claim: Item 6 – The landlord has claimed \$33.96 for stove bowls replacement. The landlord submitted several photos of stove bowls which appear dirty and a receipt from a home repair store which include stove bowls in the items listed. The landlord did not provide evidence of the condition of the stove bowls at the start of the tenancy. The tenant disputes that she damaged the stove bowls during the tenancy.

I find the landlord has failed to meet the burden of proof by proving that the tenant breached the *Act*, regulation or tenancy agreement by damaging the stove bowls or that the stove bowls were new at the start of the tenancy. Therefore, I dismiss this portion of the landlord’s claim due to insufficient evidence, without leave to reapply.

Landlord’s claim: Item 7 – The landlord has claimed \$1,275.00 for September 2012 rent. The landlord stated that he was unable to rent the rental unit due to the required repairs. The landlord was unsure of the dates when the work was completed in the rental unit. The landlord estimated that the work began on September 7, 2012 and ended on September 10, 2012 with the cleaning being completed on September 11, 2012. The landlord stated that new tenants moved into the rental unit on October 1, 2012. The landlord did not have any witnesses to support that the work was completed on the dates provided and took three days to complete prior to cleaning.

As the only repair that the landlord has been successful in proving is the hardwood flooring repair, I do not accept the landlord’s testimony that it took three days and one day of cleaning to install 3 hardwood flooring boards and that the rental unit was not ready until September 11, 2012. I find it more likely that the landlord could have arranged to have had the flooring repaired in one day and could have done more to

minimize his loss of September 2012 rent. As a result, I find that the landlord did not do what was reasonable to minimize his losses and has not met the burden of proof regarding this portion of his claim. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

As the tenant was successful with her monetary claim, **I grant** the tenant the recovery of their filing fee in the amount of **\$50.00**.

As the landlord's was successful with only a portion of his claim, **I grant** the landlord the recovery of half of his filing fee in the amount of **\$25.00**.

I find the tenant is owed **\$1,478.50** by the landlord comprised of the following:

Return of double the original security deposit of \$637.50	\$1,275.00
Return of double the original pet damage deposit of \$637.50	\$1,275.00
<i>(Less partial refund of deposits from landlord via cheque to be deposited by tenant dated September 12, 2012)</i>	- (\$565.50)
Tenant's filing fee	\$50.00
Subtotal owing to tenant by landlord	\$2,034.50
<i>Less landlord's items 1 and 2 (hardwood flooring labour and materials)</i>	- (\$524.00)
<i>Less landlord's item 5 (NSF fee)</i>	- (\$7.00)
<i>Less landlord's \$25.00 portion of filing fee</i>	-(\$25.00)
Total owing balance owing to tenant by landlord	\$1,478.50

I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,478.50**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant was successful with her claim. I grant the tenant a monetary order in the amount of \$1,478.50 pursuant to section 67 of the *Act*.

I dismiss items 3,4,6 and 7 of the landlord's application in full due to insufficient evidence, without leave to reapply.

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: January 09, 2013.