



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD and FF

Introduction

By application of November 14, 2012, the landlords sought a monetary award of \$2,259.57 for damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Issue(s) to be Decided

This matter requires a decision on whether the landlords are entitled to monetary award for the claims submitted and in what amounts.

Claims in damages require that several factors be taken into account: whether damages are proven and attributable to the tenant, the comparison of move-in vs. move-out condition inspection reports, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. The burden of proof falls to the applicants.

Background, Evidence and Analysis

This tenancy began on February 1, 2011 and ended on October 31, 2012. Rent was \$1,020 per month and the landlord holds a security deposit of \$487.50 paid at the beginning of the tenancy.

The landlords submitted into evidence a copy of the move-out condition inspection report, photographs and receipts for repairs to the rental unit in support of the following claims on which I find as follows:.

Loss of wages - \$1,350.04. The landlord is self-employed and submitted this claim as representative of the earning lost for time spent in cleaning and repairing based on his average income. There is no mechanism in the *Act* to accommodate a claim for lost wages as time a landlord takes away from work is discretionary and, in this case, substantially greater in cost than the value of the claimed labour at prevailing rates. I have permitted the landlords to modify some claims to account for their labour at \$20 per hour in lieu. Otherwise this claim is dismissed.

Dell computer - \$250. The tenant concurred that this item had been moved in error with her furnishings. She stated she had wished to return it, but had not done so out of reluctance to meet with the landlords with whom her relationship had become strained. I have ordered, and the tenant has agreed to return this item within a week of the hearing. If she does not do so, the landlords are at liberty to apply for monetary compensation.

Scarecrow sprinkler - \$111.99. As with the computer, this item must be returned or the landlord may apply again for monetary compensation. The tenant is to pick up a table, chairs and mounted tire left behind at the same time.

Rubbermaid deck box - \$133.28. The tenant concurred that this item had been damage during her tenancy and agreed that the landlord should be compensated for the replacement cost. The clam is allowed in full.

Rent carpet shampoo machine and labour - \$111.35. This claim is based on the cost of renting a carpet cleaning machine at \$31.35 plus, as noted under loss of wages, I have permitted the landlord to transfer landlord labour to specific claims. Based on photographic evidence, I accept the landlord's clam that carpet cleaning took four hours and I allow \$80 for that labour. This claim is allowed in full.

Dump fees – \$26.60. Although the tenant contested whether all materials taken to the dump belonged to her, I am persuaded by photographic evidence that materials left behind by the tenant were enough to require the trip. I note also that the landlords were considerate in continuing to store the tire, table and chairs. This claim is allowed in full.

Top off oil tank - \$65. The tenants concurred that they were responsible for the cost of restoring the oil tank to the level it was at when the tenancy began. The claim is allowed in full.

Fence repairs - \$531.31. This claim is made up of a receipted claim for \$241.31 for materials, \$50 for rental of a post hold auger, and 12 hours labour at \$20 per hour which equals \$240. According to the tenants, the landlord gave consent for them to remove and rebuild a portion of the fence in order to keep deer out of the garden made by the tenants. The tenants stated that the fence was partially rotted and leaning.

The landlord stated he had consented to removal of the fence on the tenants' claim that this was to be a very long term tenancy and on the understanding that the fence would be restored by the tenants at the end of the tenancy.

The parties concur that the fence was 15 to 20 years old.

On the basis of that and the photographic evidence, I find that the fence was nearing the end of its useful life and that, on the balance of probabilities, the tenants are correct in observing that parts of it were rotting. Nevertheless, I find that by removing a section, the tenants bear some responsibility for restoring that section. Taking into account depreciation, normal wear and tear, and the landlord's qualified consent, I find the tenants are responsible for \$100 of this cost.

Filing fee - \$50. As the landlords application has substantially succeeded on its merits, I find that they are entitled to recover the filing fee for this proceeding from the tenant.

Security deposit – (\$487.50). As authorized by section 72 of the *Act*, I order that the landlords retain the security deposit in set off against the balance owed.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Rubbermaid deck box	\$133.28
Rent carpet shampoo machine and labour.	111.35
Dump fees	26.60
Top off oil tank	65.00
Fence repairs	100.00
Filing fee	<u>50.00</u>
Sub total	\$486.23
Less retained security deposit	- 487.50
TOTAL	\$ (1.27)

Conclusion

With authorization to retain the tenant's security deposit, I find that the landlords are left with a surplus of **\$1.27**. Given the broad tolerances in some of the estimates made in this decision, and the impracticality of issuing a Monetary Order for such a small amount, I find that this matter is concluded by authorization for the landlords to retain the security deposit. The award to the landlords is adjusted to the amount of the security deposit.

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: February 15, 2013

Residential Tenancy Branch

