



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNDC, MNR, MNSD, FF

Introduction

This hearing was convened to address a claim by the landlord for a monetary order and an order authorizing her to retain the security deposit in partial satisfaction of the claim and a cross-application by the tenant for a monetary order and an order compelling the landlord to return the security deposit. The hearing was held over 2 days and both parties participated on each day.

The first hearing was adjourned because the tenant claimed he had not received the landlord's evidence. I instructed the parties to exchange evidence and I also instructed the tenant to provide descriptions of his digital evidence. The parties exchanged evidence as directed but the tenant did not provide the requested descriptions and the landlord objected to that evidence being admitted.

I reviewed the digital evidence and determined that as it is comprised of a video of a single room and still photos of the same room, there is little description that the tenant could have offered. I determined that the video and photographic evidence is admissible.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to a monetary order as claimed?

Should the security deposit be returned to the tenant?

Background, Evidence and Analysis

The parties agreed that the tenancy began on May 1, 2013 at which time the tenant paid a \$390.00 security deposit and ended on October 31, 2013 when the tenant surrendered the keys. The parties further agreed that the tenant was obligated to pay \$780.00 per month in rent. The rental unit is a single room in a suite rented by the landlord and that the tenant was also allowed to use common areas in the apartment. The landlord claimed that after the tenant signed the tenancy agreement, the landlord gave him a 22 page binder (the "Cleaning Binder") in which she outlined the tenant's responsibility for cleaning, shared expenses and precise

directions for issues such as using kitchen utensils and how to rotate water jugs in the refrigerator. The tenant denied having received the Cleaning Binder.

The parties did not agree on whether a condition inspection of the unit had been performed. The landlord testified that at the beginning of the tenancy, she and the tenant walked through the unit together and filled out a condition inspection report. She gave the report to the tenant to sign and he said he would review it and sign it. The landlord stated that she repeatedly asked the tenant to sign and return the report, but he failed to return it to her. The tenant acknowledged that he did not sign the condition inspection report as requested but stated that he and the landlord did not inspect the unit together. The parties agreed that they did not conduct a joint inspection at the end of the tenancy.

Because the parties' testimony around the condition inspection at the beginning of the tenancy is diametrically opposed, it is necessary for me to make a finding of credibility. Where their testimony differs, I prefer the testimony of the landlord to that of the tenant. The landlord's testimony was consistent, credible and well documented with supporting evidence whereas the tenant's answers were often incomplete, evasive and dismissive as he appeared to believe he would bear no liability for anything whatsoever as long as the landlord did not have his signature on the condition inspection report.

I find it more likely than not that the parties conducted an inspection together at the outset of the tenancy and prepared the written report which the tenant then refused to sign. I find that the landlord met her obligations with respect to inspecting the unit together with the tenant at the outset of the tenancy.

At the end of the tenancy, the landlord was obligated to provide to the tenant 2 opportunities to inspect the rental unit, the second opportunity being provided on a form available through the Residential Tenancy Branch. I find that the landlord failed to meet this obligation and pursuant to section 38 of the Act, has extinguished her right to claim against the security deposit.

While the landlord has extinguished her right to claim against the deposit, there is nothing in the Act which prevents her from making a claim for damages. In the event she is successful in such a claim, section 72 of the Act permits me to apply a security deposit to any award made to her.

Because the tenant has the move-in condition inspection report and did not submit it into evidence, I have used the move-out condition inspection report from the previous tenancy (the "RH Report") as evidence of the condition of the unit at the time the tenancy began.

I address the landlord's claims and my findings around each as follows:

1. **Rent and shared expenses.** The landlord seeks to recover \$780.00 for rent owed for the month of August and \$90.00 in shared expenses. The landlord claimed that the tenant was obligated under the terms of the tenancy agreement and Cleaning Binder to pay \$30.00 per month for shared expenses such as water filters and cleaning supplies and that he failed to make payments in the months of August, September and October. The landlord entered

into evidence a copy of the tenancy agreement in which the addendum provides that “Common use items e.g. dish soap, TP, Brita Filters, cleaning supplies etc will be shared expenses” [sic]. She testified that the tenant did not pay rent in the month of August and that on September 30, she served him with a 10 day notice to end tenancy for unpaid rent, just a few days after she had served him with a one month notice to end tenancy for cause.

The tenant testified that he paid his rent for the month of August in cash and denied having received the 10 day notice to end tenancy for unpaid rent. He also denied having received some of the letters the landlord submitted into evidence in which she mentioned outstanding rent for August and stated that she had not mentioned rental arrears during the tenancy. He questioned why the landlord would not begin pursuing arrears as soon as they were due. The tenant stated that he did not regularly pay the landlord for shared expenses in April – July as she had claimed and as he had not received the Cleaning Binder, he did not consider himself bound by the landlord’s requirement to pay for common expenses. He stated that he thought he may have given her \$30.00 on one occasion to help her out.

Although the tenant claimed to have paid his rent for August in cash and submitted a copy of his bank statement showing that on August 2 he withdrew \$780.00, I am not satisfied that this cash was actually handed to the landlord. The landlord testified that she had told him she would not accept cash payments, she regularly provided receipts for his other rental payments even though she was not required to do so as the payments were made by cheque, and the receipts for September and October note an outstanding balance for August. The tenant did not deny having received these receipts and offered no explanation as to why he did not have a receipt for his August payment or why he would not have challenged the notation on the September and October receipts indicating that he was in arrears. I find it more likely than not that the landlord did not pursue the outstanding rent because she understood the tenant to be experiencing financial difficulty and that they had an agreement that he would catch up on the arrears over time. I find on the balance of probabilities that the tenant did not pay rent in the month of August and I award the landlord \$780.00.

Although the tenancy agreement indicates that there are common expenses payable by the tenant, it does not identify the amount of those common expenses. The landlord had the obligation to clearly set out the tenant’s obligations in the tenancy agreement. There exists in contract law the doctrine of *contra proferentem* which provides that when there is ambiguity in a contract, the ambiguous term is construed against the party that drafted the agreement. Applying this doctrine results in the term being unenforceable as it does not clearly identify the amount payable. For that reason, I dismiss the claim for common expenses.

2. **Cleaning.** The landlord seeks to recover \$100.00 as the value of her labour for two weeks in which she cleaned the common areas during the tenancy and an additional \$50.00 for the time she spent cleaning after the tenant vacated the rental unit. The Cleaning Binder, which

the tenant denied having received, very clearly identifies everything that requires cleaning, the means by which areas are to be cleaned and the frequency with which it is to occur. The tenant insisted that he adequately cleaned the rental unit and common areas both during the tenancy and at the end.

First addressing the claim for the cost of cleaning during the tenancy, I find it more likely than not that the landlord gave the tenant the Cleaning Binder as she is meticulous in her record keeping and passionate about the manner in which her household is run and I find it highly unlikely that she would not have provided the tenant with her expectations of him. However, because the Cleaning Binder is not part of the tenancy agreement, I find that the tenant is not bound by its requirements. He did not agree to clean common areas and in the absence of such an agreement, the default position is that the landlord is responsible for the cleaning of common areas. I therefore dismiss the claim for cleaning costs during the tenancy.

Section 37 of the Act requires the tenant to leave the rental unit in reasonably clean condition. Having viewed the video and photographs from both the landlord and tenant, it is clear that the landlord expected the tenant to leave the rental unit in spotlessly clean condition. I do not consider a minor layer of dust on shelves or the floor to be unreasonably clean. Rather, I find that the tenant left the unit in reasonably clean condition. The fact that the landlord exacts higher standards of cleaning should not be visited on the tenant. I therefore dismiss the claim for cleaning costs at the end of the tenancy.

3. **Moving furniture.** The landlord seeks to recover \$20.00 as the value of her labour to move furniture into the rental unit at the end of the tenancy. She testified that the tenant moved a chair, lamps, a chair cover and pillows out of the tenant's room at the beginning of the tenancy to give the tenant more space for his belongings and that the items were moved with the understanding that the tenant would move the items back in the room at the end of the tenancy. The tenant failed to do so and she had to move the items. There is nothing in the tenancy agreement requiring the tenant to move furniture back into the room at the end of the tenancy and in the absence of such evidence, I find that the tenant was under no legal obligation to move the items back into the room. I therefore dismiss the claim for the cost of moving furniture.
4. **Laundry and detergent.** The landlord seeks an award of \$30.00 to wash 7 loads of laundry at the end of the tenancy and an additional \$60.00 as the cost of laundry detergent as she alleged that the tenant used her laundry detergent during the tenancy. The tenant acknowledged that he left bedding and pillow covers beside the washing machine at the end of the tenancy, but disputed that there were 7 loads of laundry. He denied having used the landlord's laundry detergent during the tenancy and disputed that he could have used \$60.00 worth of detergent for the duration of the tenancy in any event.

The landlord entered into evidence a number of letters which were sent to the tenant throughout the tenancy. The tenant denied having received many of these letters. I find it

more likely than not that the tenant received the letters in question. As stated above, the landlord is meticulous in her record keeping, hyper vigilant about the condition of her house and inclined to communicate all of her grievances. I find it completely in keeping with her character to send numerous letters to the tenant outlining the ways in which he had failed to meet her expectations. I find it very likely that the tenant simply ignored or discarded the letters.

There are several letters in which the landlord asked the tenant to stop using her laundry detergent. This indicates that the tenant was using the detergent for a period of several months. I agree with the tenant that the claim for \$60.00 is excessive, particularly in the absence of evidence as to how much the landlord's detergent costs. While it is possible that she uses an extremely expensive brand of detergent, there is no evidence before me to support that. I therefore find that an award of \$20.00 will adequately compensate the landlord for the detergent taken by the tenant and I award her that sum.

I find that the tenant was obligated to wash the bedding at the end of the tenancy. However, I am not satisfied that the bedding would amount to 7 loads of laundry. I find that compensating the landlord for 3 loads of laundry at the cost of \$5.00 per load is adequate and I award the landlord \$15.00 for a total award of \$35.00 under this heading.

5. **Wall repair.** The landlord seeks to an award of \$25.00 as the value of her labour to repair a wall in the rental unit. The landlord testified that the room had been freshly painted when the tenancy began and provided photographs of an area of the wall behind the bedroom door which had approximately 8 small gouges and scratches in an area approximately 1' x 2". She testified that she spent time repairing the wall and seeks to be compensated for her labour. The tenant denied having caused the damage and stated that the marks were not there when he left the rental unit. He pointed out that his videotape does not show the damage.

The RH Report does not reflect any damage to the wall. I accept that the wall had been freshly painted at the outset of the tenancy and I find that the tenant caused the damage thereon. I find that the tenant's videotape does not show any damage because the door to the rental unit was open against the wall at the time the video was made. I find the landlord's claim for the cost of her labour is reasonable and I award her \$25.00.

6. **Replacement of shelf.** The landlord seeks to recover \$30.00 as the estimated cost to replace a bathroom shelf which she claims was irreparably damaged by the tenant. She provided a photograph of the shelf which shows that it was rusted in damaged. The tenant denied having caused this damage.

The RH Report does not reflect any damage to the shelf. I find that the tenant caused the damage and should pay for the cost to replace the shelf. The landlord apparently has not yet replaced the shelf and provided no proof that her \$30.00 estimate is accurate. Taking into account the fact that the shelf was not brand new at the outset of the tenancy and that

some of its useful life has already expired, I find that \$15.00 will adequately compensate the tenant and I award her that sum.

7. **Replacement of hand towels.** The landlord seeks to recover \$10.00 as the estimated cost of replacing 2 hand towels which she claims were missing at the end of the tenancy. She testified that the towels were taken from the linen closet and were not for the tenant's personal use but rather were for use in common areas. The tenant testified that there may have been a few times when he mistook the towels meant for common areas for ones he was permitted to use but he denied having taken the towels.

Given the landlord's meticulous record keeping and attention to detail, I accept that the towels were missing at the end of the tenancy. The landlord again did not provide proof that her \$10.00 estimate to replace the towels is accurate, but I find that this estimate is relatively low for the cost of replacing hand towels and I accept that it is reasonable. I award the landlord \$10.00.

8. **Replacement of lamp shade.** The landlord seeks to recover \$50.00 as the cost to replace a lamp shade which she claims was irreparably damaged by the tenant. The landlord testified that the tenant had tipped the shade, causing the bulb to melt the plastic. The tenant acknowledged having damaged the lamp shade but testified that when he showed the landlord the shade, she said not to worry, which he took as excusing him from a responsibility to replace it.

In the absence of a specific statement by the landlord that she absolved the tenant of responsibility for the lamp shade, I find that he is responsible to replace it. Again the landlord did not provide evidence to support her claim that it would cost \$50.00 to replace the shade, nor did she provide evidence as to the age of the shade. The landlord is not entitled to replacement costs, but rather to the value of the item at the time of the damage. I find that some of the useful life of the lamp shade would have already expired by the time the damage occurred. I find that \$20.00 will adequately compensate the landlord and I award her that sum.

9. **Refinishing of metal bed frame.** The landlord seeks to recover \$125.00 as the value of her labour to refinish a metal bed frame which she claims was damaged by the tenant. The landlord said that there was a slight dent in the top of the bed frame at the beginning of the tenancy, but at the end of the tenancy, there were significant scrapes and marks. She testified that she had to scrape down the entire frame, apply primer and repaint. The tenant denied having caused the damage.

The RH Report does not reflect any damage to the bed frame, but the landlord has acknowledged one slight dent pre-existed the tenancy. I find that the tenant caused the new damage and should pay for the cost to repair it. However, given the age of the item and the fact that there was pre-existing damage, I find that the tenant should be responsible for just

part of the cost of the repair. I find that an award of \$50.00 will adequately compensate the landlord and I award her that sum.

10. **Replace damaged pot.** The landlord seeks to recover \$60.00 as the estimated cost to replace a pot which she claims was irreparably damaged by the tenant. The tenant acknowledged having damaged the pot but stated that the damage was limited to a mark and it was still usable. The landlord insisted that the pot had to be replaced.

I accept that the pot in question was damaged by the tenant, but without photographic evidence, it is impossible for me to determine whether the pot is still usable or whether it is, as the tenant asserted, simply discoloured. I am not satisfied that the landlord has to replace the pot and for that reason I dismiss this claim.

11. **Kitchen counter repair.** The landlord seeks to recover \$20.00 as the value of her labour to repair a chip in the kitchen counter which she claims was caused by the tenant. The tenant testified that he rarely used the kitchen, usually eating out.

The RH Report does not reflect any damage to the countertop. Although the tenant claimed that he did not use the kitchen often, he clearly used it enough to damage the pot discussed above and I find it more likely than not that the tenant is responsible for the damage to the countertop. I find the landlord's cost of repairing the countertop to be reasonable and I award her \$20.00.

12. **Replace pillow covers.** The landlord seeks to recover \$22.00 as the estimated cost to replace pillow covers which she claims were irreparably stained by the tenant and were new at the start of the tenancy. The tenant claimed that the discolouration of the pillow covers was reasonable wear and tear.

I find that reasonable wear and tear for linens after a short tenancy is more significant than reasonable wear and tear for furniture as linens are more susceptible to staining. I find that the damage in question can be characterized as reasonable wear and tear and for that reason, I dismiss this claim.

13. **Repair vanity.** The landlord seeks to recover \$30.00 as the value of her labour to repair the vanity which she claims was damaged by the tenant. The landlord provided photographs of the vanity from the previous tenancy to compare with photographs taken at the end of this tenancy and the photographs show wear and damage to the finish at the end of the tenancy. The tenant denied having caused any damage.

The photographs clearly show that the finish on the top of the vanity was affected during the tenancy. I find that the tenant must be held responsible for the cost of repairing the vanity. However, I note that it is an older piece of furniture which likely would have required finishing at some point in the near future in any event as there was damage to the face of the vanity during the previous tenancy. For that reason, I find that \$10.00 will adequately

compensate the landlord for the tenant's contribution to the damage and I award her that sum.

14. **Repair sewing table.** The landlord seeks to recover \$10.00 as the value of her labour to repair a sewing table which she claims suffered water damage at the hands of the tenant. The tenant denied having caused damage.

The RH Report does not reflect any damage to the sewing table and I find it more likely than not that the tenant caused the damage in question. I find the landlord's claim to be reasonable and I award her \$10.00.

15. **Replace table cloth.** The landlord seeks to recover \$20.00 as the estimated cost to replace a table cloth which she claims was irreparably damaged by the tenant. The tenant acknowledged that there were some stains but argued that they resulted from reasonable wear and tear.

Again, in my view, reasonable wear and tear for linens after a short tenancy is more significant than reasonable wear and tear for furniture as linens are more susceptible to staining. I find that the damage in question can be characterized as reasonable wear and tear and for that reason, I dismiss this claim.

16. **Cleaning cigarette butts.** The landlord seeks to recover \$20.00 as the value of her labour to remove cigarette butts from outside the rental unit. The tenant denied having smoked during the tenancy.

For the reasons explained on the first page of this decision, I find the landlord to be more credible than the tenant. The landlord's letters indicate that she fielded complaints from neighbours who observed the tenant smoking and she testified that there were cigarette butts strewn on and under the deck. I find it more likely than not that the tenant smoked during the tenancy and did not clean up the cigarette butts he left behind. I find that the landlord is entitled to compensation for cleaning up after the tenant and I find her claim to be reasonable. I award the landlord \$20.00.

Turning to the tenant's claim, the tenant seeks an award of double his security deposit and \$60.00 which represents 2 hours of missed work to attend the hearing. The Act imposes a penalty on landlords who fail to file their application for dispute resolution within 15 days of the end of the tenancy. In this case, the landlord filed her application exactly 15 days after the end of the tenancy and therefore is not liable for double the security deposit and I accordingly dismiss that claim. As explained during the hearing, the only litigation related expense I am empowered to award under the Act is the cost of a filing fee. As I do not have authority to award lost wages, I dismiss that claim.

Both parties seek to recover the \$50.00 filing fee paid to bring their applications. As the tenant was unsuccessful in his claim, I dismiss his claim for the recovery of the deposit. I award the landlord \$50.00 as she was successful in her claim.

Conclusion

In summary, the tenant has been unsuccessful in his claim and the claim is dismissed in its entirety. The landlord has been successful as follows:

August rent	\$ 780.00
Laundry and detergent	\$ 35.00
Wall repair	\$ 25.00
Shelf replacement	\$ 15.00
Hand towel replacement	\$ 10.00
Lamp shade replacement	\$ 20.00
Bed frame refinishing	\$ 50.00
Kitchen counter repair	\$ 20.00
Vanity repair	\$ 10.00
Sewing table repair	\$ 10.00
Removing cigarette butts	\$ 20.00
Filing fee	\$ 50.00
Total:	\$1,045.00

The landlord has been awarded a total of \$1,045.00. Pursuant to s. 72 of the Act, I order the landlord to retain the \$390.00 security deposit in partial satisfaction of the claim and I grant her a monetary order under section 67 for the balance of 655. This order may be filed in the Small Claims division of the Provincial Court and enforced as an order of that Court.

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: May 16, 2014

Residential Tenancy Branch

