



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MND, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. For a monetary order for damages;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to monetary compensation for damages?

Is either party entitled the security deposit?

Is either party entitled to recover the cost of the filing fee from the other party?

Background and Evidence

The tenancy began January 2012. Rent in the amount of \$1,400.00 was payable on the first of each month. A security deposit of \$700.00 was paid by the tenant. The tenancy ended on March 1, 2014.

Landlords' application

The landlords claim as follows:

a.	Damaged or missing items	\$ 350.00
b.	For cleaning cost 20 hours at \$25.00 per hour	\$ 500.00
c.	Administrative cost for dispute	\$ 32.93
d.	Filing fee	\$ 50.00
	Total claimed	\$ 932.93

At the outset of the hearing the landlord explained that they have only requested a monetary order in the amount of \$700.00, in their application, as that is the amount of the tenant's security deposit and they are not seeking an additional monetary order.

Damaged or missing items

The landlord testified that there were items missing or broken from the rental unit at the end of the tenancy. The landlord stated the vanity/linen tower was broken, the bathroom mirror was missing, the heat vent cover was broken, 1 smoke detector was broken and 1 smoke detector was missing, the flush mount light was broken, the kitchen light broken, the fan was broken and the doors were missing from the wardrobe. Filed in evidence are photographs of the items listed above.

The landlord testified that they provided an estimate for the damaged or missing items; however, since the property had sold their actual loss was \$350.00, as that was the amount they had to pay to the new owner. Filed in evidence is a receipt for money paid to the new owner, which support the landlords' claim.

The tenant testified that he did take the bathroom mirror, because he paid for the mirror. The tenant explained that the original mirror was broken and was not replaced by the landlord. The tenant stated that the vanity/linen tower and the heat vent cover are in the same condition as when the tenancy started. The tenant stated that there was only one smoke detector at the start of the tenancy and the smoke detector that was provided did not have a cover and the smoke detector was left in the same condition as when the tenancy started. The tenant stated that the fan was not broken and it was missing two fan blades when the tenancy started. The tenant stated the kitchen light was not broken and the wardrobe doors were not missing.

The tenant testified that he believes that the landlords have purposely staged the rental premises after the tenancy ended as their photographs are not consistent with the

photographs that they took prior to leaving the premises. Filed in evidence are photographs of the rental unit.

Cleaning cost

The landlord testified that the tenant failed to clean the rental premises to a reasonable standard and it took her and her husband 10 hours each, over a 2 day period to clean the house plus remove the empty bottles and to dispose of the two car batteries.

The landlord testified that the tenant did not clean the following items: the stove, the organic bin, the living room vent, some of the cabinets, the baseboards, and the window sills and tracks which were covered in mould and dog hair. Filed in evidence are photographs, which support that the above items were not sufficiently cleaned.

The tenant testified that the bottles and the one car battery were there when the tenancy started and he should not be responsible to pay for disposing items that were left behind by previous tenants. The tenant stated that the stove and window sills were not cleaned and were left in the same conditions as provided at the start of the tenancy. The tenant stated he did not clean the organic bin.

The landlord argued that the stove and windows were cleaned at the start of the tenancy. The landlord stated that the photographs they have submitted support their position as you can clearly see mould and dog hair in the window tracks and it would not be reasonable that they would be in the exact same condition as when the tenancy started as this is a cleaning issue.

Administrative cost for dispute

The landlord writes, in their application that they seek to recover the administrative costs for registered mail, for the delivery of evidence and the picture processing.

Tenant's application

The tenant claims as follows:

a.	Double the security deposit	\$1,400.00
b.	Filing fee	\$ 50.00
	Total claimed	\$1,450.00

The tenant testified that he sent his forwarding address in April 2014 and the landlord did not return the deposit as required.

The landlord testified that the tenant sent his forwarding address by registered mail, which was received on April 15, 2014. The landlord stated that they filed their application with 15 days as required by the Act.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, each party has the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlord's application

Under section 37 of the Act, the tenant is required to return the rental unit to the landlords reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Damaged or missing items

In this case, both parties have provided a different version of events as to the condition of the rental unit at the start of the tenancy and the condition of the rental unit at the end of the tenancy, both versions are equally probable.

However, in this case the burden of proof is on the landlords. I find without further evidence, such as a move-in and move-out condition inspection report that the landlords have failed to prove that the damage was caused by the action or neglect of the tenant. Therefore, I dismiss this portion of the landlords' claim.

Cleaning cost

In this case, both parties have provided a different version regarding the bottles and the battery and both version are probable. I find without further evidence from the landlords, such as a move-in condition inspection report that the landlords have failed to prove that these items were not left behind by the previous tenant.

However, I am satisfied that the tenant failed to clean the appliances, some of the cupboards, the baseboards and the window tracks and sills, as the photographs submitted by the landlords support their position. Further, I find it would not be reasonable that these items are in the same condition after a tenancy that exceeded two years as this is a cleaning issue and I find it highly unlikely that the dog hair which is seen in the photographs was there at the start of the tenancy.

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is expected to clean the above items at the end of the tenancy. Therefore, I find the tenant has breached section 37 of the Act and this caused losses to the landlord when they had to clean the items that were the tenant's responsibility.

In this case, the evidence of the landlord was that it took a total of 20 hours to clean the rental premise and seek compensation at the rate of \$25.00 per hour. However, as the landlords have not been fully successful with their claim for cleaning, I find it would be reasonable to compensate the landlords for 10 hours of labour based on the photographs that were submitted as evidence and payable at the rate of \$20.00 per hour as that is a reasonable hourly rate based on industry standards. Therefore, I grant the landlords for cleaning the total amount of **\$200.00**.

Administrative cost for dispute

In this case, the landlord seeks to recover administrative cost they incurred for serving their documents and preparing for their evidence for hearing. However, I find there is not provision under the Act that allow a party to recover these costs. Therefore, I dismiss this portion of the landlords' claim.

I find that the landlord has established a total monetary claim of **\$250.00** comprised of the above described amount and the \$50.00 fee paid for this application. I authorize the

landlord to deduction the amount of \$250.00 from the tenant's security deposit in full satisfaction of this claim.

Tenant's application

Under section 38 (1) of the Act, within 15 days of the tenancy ending or the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: repay the security deposit to the tenant or make an application for dispute resolution. Section 38 (6) of the Act, states if a landlord does not comply with subsection (1) the landlord may not make a claim against the security deposit and must pay the tenant double.

In this case, the evidence of both parties was that the landlord received the tenant's forwarding address on April 15, 2014 and the landlord's application was filed on April 30, 2014. I find the landlord complied with section 38(1) of the Act. Therefore, I find the tenant is not entitled to double the security deposit and not entitled to recover the filing fee, as the security deposit was dealt with in the landlord's application which was filed prior to the tenant's application.

However, as the landlords were only successful with a portion of their claim and the landlords were authorized to keep part of the security deposit in full satisfaction of their claim, I find the tenant is entitled to a monetary order for the balance due of their security deposit in the amount of **\$450.00** pursuant to section 67 of the Act.

Should the landlord failed to return the above balance to the tenant. The tenant may enforce the monetary order in the Provincial Court (Small Claims Division).

Conclusion

The landlord is granted a monetary award and is authorized to retain a portion of the security deposit in full satisfaction of the award. The tenant is granted a monetary order for the balance due of their 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: August 13, 2014

Residential Tenancy Branch

