



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC MNSD
For the landlord: MND MNR MNSD FF

Introduction

This hearing was convened as a result of the cross applications of the parties under the *Residential Tenancy Act* (the “*Act*”).

The tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for the return of double her security deposit under the *Act*.

The landlord applied for a monetary order for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, and to keep all of part of the tenant’s security deposit, and to recover the filing fee.

The tenant, the landlord, and the father of the tenant attended the first portion of the hearing on March 14, 2014. 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. After seventy minutes, the first portion of the hearing was adjourned to allow for additional time to hear testimony. The hearing was reconvened on June 13, 2014, and continued for another eighty-four minutes. Attending on June 13, 2014, were the original parties, and “AM”, the husband of the landlord, who was also a witness for the landlord.

Regarding documentary evidence, both parties confirmed that they received and had the opportunity to review the evidence from the other party prior to the hearing, including digital evidence. I find the parties were served in accordance with the *Act*. A summary of that evidence is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

During the hearing, the tenant was advised that her application for monetary compensation was being refused, pursuant to section 59(5)(c) of the *Residential Tenancy Act (Act)*, because her application for dispute resolution did not provide sufficient particulars of her claim for compensation, as is required by section 59(2)(b) of the *Act*. I find that proceeding with the tenant's monetary claim at this hearing would be prejudicial to the landlord, as the absence of full particulars including a monetary breakdown of the amount being claimed, makes it difficult, if not impossible, for the landlord to adequately prepare a response to a claim against them. As a result, the tenant's application is **dismissed with leave to reapply**. As a result of the above, only the landlord's application was considered during this proceeding. The tenant was advised, however, that due to the landlord applying to retain the tenant's security deposit, I would consider whether the landlord complied with section 38 in my decision in determining what should happen to the tenant's security deposit and whether the security deposit should double under the *Act*.

In addition, as "AM" was not a named landlord in the tenancy agreement, "AM" was removed from the tenant's application as a respondent landlord pursuant to section 64 of the *Act*. Given the above, the front page of this Decision will only reflect the name of landlord "SP" and the tenant, "LF".

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on February 1, 2012, and reverted to a periodic, month to month tenancy after August 31, 2012. The tenant paid a security deposit of \$450.00, which the landlord continues to hold. Monthly rent of \$900.00 plus 1/3 of utilities was due on the first day of each month.

The landlord has claimed \$4,594.95 as follows:

Item Description	Amount
Item 1. Unpaid utilities	\$360.30
Item 2. Cleaning labour and supplies	\$354.81
Item 3. Replace damaged custom bedroom door	\$354.50
Item 4. Install towel bar	\$26.25
Item 5. Repair garburator	\$50.00
Item 6. Clogged drains and broken pop-up drain	\$40.00
Item 7. Replace thermostat	\$42.39
Item 8. Replace damaged drywall behind bathroom vanity	\$360.00
Item 9. Replace flooring in bedroom and repair flooring in great room	\$1,479.60
Item 10. Replace broken, burned and incorrect bulbs	\$87.10
Item 11. Replace water damaged washroom vanity cabinet	\$840.00
Item 12. Paint all patched and damaged walls, doors and trim	\$1,000.00
Item 13. Filing fee for dispute resolution hearing	\$50.00
Subtotal	\$5,044.95
<i>Less Security Deposit</i>	<i>\$450.00</i>
TOTAL	\$4,594.95

The parties agreed during the hearing that the tenant's portion of utilities, including water, electricity and gas was 1/3 of the utilities. The tenancy agreement submitted in evidence supports this.

The parties agreed that both an incoming and an outgoing condition inspection report were completed during the tenancy. A copy of the incoming and outgoing condition inspection report was submitted in evidence.

The parties agreed that the tenancy ended on November 12, 2013, when the tenant vacated the rental unit. The tenant provided her written forwarding address on the outgoing condition inspection report dated November 12, 2013. The landlord filed her application for dispute resolution claiming towards the tenant's security deposit on November 26, 2013.

Settlement Agreement

During the hearing, the parties reached a mutually settled agreement on item #1 of the landlord's claim, unpaid utilities. The tenant agreed to pay the outstanding utilities in the amount of \$360.30 as claimed by the landlord. As a result of the above, I will not

consider item #1 further, until I account for the amount of \$360.30 later in this Decision. The tenant did not agree with any other portion of the landlord's claim. This settlement agreement was reached in accordance with section 63 of the *Act*.

Evidence regarding remainder of landlord's claim

Regarding item #2, the landlord referred to the breakdown of the amount being claimed in the amount of \$354.81, in her documentary evidence. The landlord has claimed \$300.00, comprised of 15 hours of cleaning at \$20.00 per hour, plus \$54.81 in cleaning supplies. The landlord stated that one person performed the cleaning. The tenant stated that she disagreed with the outgoing condition inspection report. The tenant signed that she disagreed with the outgoing condition inspection report dated November 12, 2013.

The landlord referred to the USB drive containing photos submitted in evidence. The tenant also referred to photos submitted in evidenced, however, confirmed that although she served colour photos on the Residential Tenancy Branch, the landlord was served with black and white photos, and not colour photos.

The landlord stated that some of the photos were taken on the evening of November 12, 2013, during the outgoing walkthrough at 5:00 p.m. The tenant agreed that the outgoing walkthrough was at 5:00 p.m. on November 12, 2013. The landlord stated that some of the photos were also taken on December 1, 2013 when new tenants moved into the rental unit. The landlord stated that all cleaning was completed before December 1, 2013. The tenant referred to two blurry photos submitted by the tenant in evidence.

The tenant confirmed that the appliances and the rental unit were "brand new" at the start of the tenancy, which is supported by the incoming condition inspection report. The landlord referred to a photo of the oven indicating a dirty oven. The landlord referred to a receipt in the amount of \$54.81 for "cleaning supplies".

Regarding item #3, the landlord has claimed \$354.50 to repair a damaged custom bedroom door. The landlord stated that the door has not been fixed and that new tenants have moved into the rental unit. The landlord referred to a quote in the amount of \$128.80 regarding this portion of her claim. The tenant stated that the door was damaged to the improper installation of the door stopper. The parties referred to several photos submitted in evidence showing the damage to the door and the repair to the door by the tenant. The tenant agreed that she did not report the damage to the door to the landlord.

Regarding item #4, the landlord has claimed \$26.25 to install the towel bar. The tenant confirmed that she knocked off the towel bar while cleaning. A photo was submitted in evidence supporting this portion of the landlord's claim. The landlord referred to invoice #252 indicating \$25, plus GST for a total with tax of \$26.25 to repair the towel bar.

Regarding item #5, the landlord has claimed \$50.00 to repair the garburator and confirmed that she did not submit a receipt in evidence. The landlord also confirmed that there were no photos of the garburator. The landlord referred to the condition inspection report which indicates "garburator sounds busted".

Regarding item #6, the landlord has claimed \$40.00 to repair a clogged drain and broken pop-up drain. The landlord referral to several photos submitted in evidence. The tenant denied breaking the pop-up drain, and stated that the drain worked at the end of the tenancy. The landlord did not submit a receipt for \$40.00, and stated that she has claimed \$20.00 in labour, plus \$20.00 to travel to pick up the pop-up drain. The condition inspection report does not indicate a clogged drain or broken pop-up drain.

Regarding item #7, the landlord has claimed \$42.39 to replace a thermostat that the landlord claims was not working in the master bedroom after the tenant vacated the rental unit. The parties agreed that the condition inspection report did not indicate a broken thermostat. The landlord stated that she did not notice the thermostat during the condition inspection report. The landlord referred to a receipt submitted in evidence for the thermostat in the amount of \$22.39 and stated that the extra \$20.00 was for "labour" to install the thermostat. The landlord called witness "AM" who stated that the thermostat was not working after the tenant vacated the rental unit as the thermostat "could not be turned off".

Regarding item #8, the landlord has claimed \$360.00 to replace damaged drywall behind the bathroom vanity. This portion of the landlord's claim is not mentioned in the condition inspection report. There was no receipt in the amount of \$360.00 submitted in evidence to support this portion of the landlord's claim. The landlord referred to a letter and photos in support of this portion of their claim. The tenant stated that the condition of the vanity was related to a leak in the bathroom and that the landlord was advised of the leak. The landlord disputed that there was a leak in the bathroom.

Regarding item #9, the landlord has claimed \$1,479.60 to replace damaged flooring in the master bedroom and great room. The tenant agrees that the flooring was new at the start of the tenancy. The landlord stated that floors were not repaired and that the new tenants moved into the rental unit without the flooring repaired. The tenant did not deny that the floors were damaged, however stated that the damage was "reasonable wear

and tear". The landlord referred to a quote submitted in evidence in the amount of \$1,479.60 and that the work has not been completed to date. The landlord referred to several photos which were blurry. Only one photo of the flooring was not blurry, which did not show significant damage to the flooring, and just a minor mark in the flooring. The great room is not noted in the outgoing condition inspection report as damaged.

Regarding item #10, the landlord has claimed \$87.10 to replace broken, burned out and incorrect light bulbs. The landlord stated that some of the bulbs replaced by the tenant were too high of wattage rating for the lights the bulbs were installed in. The condition inspection report supports that the bathroom, and kitchen range hood bulbs were burned out. The landlord referred to receipts which total the amount of \$47.10, and the landlord stated that she was also charging for \$20.00 for her labour to replace the bulbs and \$20.00 for her time to locate the correct bulbs, for a total of \$87.10.

Regarding item #11, the landlord has claimed \$840.00 to replace water damage in the bathroom vanity cabinet. This portion of the landlord's claim is not mentioned in the condition inspection report. The landlord referred to photos, a quote and receipt submitted in evidence. The landlord confirmed that she attended the rental unit after the tenant advised her of a leak and stated that no leak was found. The landlord stated that the washing machine was disconnected August 25, 2013, and was never reconnected "just to be safe", according to the landlord. The landlord confirmed that a service person was not contacted during the tenancy regarding the leak described by the tenant.

Regarding item #12, the landlord has claimed \$1,000.00 to paint all the patched and damaged walls, doors and trim. The condition inspection report submitted in evidence supports that the kitchen had chipped paint and patched walls, the living room had holes patched on two walls and gouges on the window sill, the main bathroom had the towel bar to re-install, the master bedroom had a patched wall. The tenant did not deny the accuracy of the photos submitted in evidence to support this portion of the landlord's claim. The landlord referred to a receipt in the amount of \$800.00 marked "paid" and stated that additional trim work of \$200.00 was not completed. The tenant confirmed that her father assisted with patching the walls in preparation for painting.

Regarding the filing fee, the filing fee will be address later in this Decision.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, 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.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

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.

Firstly, regarding the tenant's security deposit, I find the landlord complied with section 38 of the *Act* by submitted their application claiming towards the tenant's security deposit within 15 days of the end of tenancy date, November 12, 2013, which was also the date of the outgoing condition inspection report. The landlord applied for dispute resolution claiming towards the tenant's security deposit on November 26, 2013, which is within 15 days of November 12, 2013. As a result, the tenant's security deposit **does not** double under the *Act*.

Regarding item #2 of the landlord's claim, section 37 of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[my emphasis added]

The landlord stated that some of the photos were taken on the evening of November 12, 2013, during the outgoing walkthrough at 5:00 p.m. The tenant agreed that the outgoing walkthrough was at 5:00 p.m. on November 12, 2013. The landlord stated that some of the photos were also taken on December 1, 2013 when new tenants moved into the rental unit. The landlord stated that all cleaning was completed before December 1, 2013. The tenant referred to two blurry photos submitted by the tenant in evidence.

I find that the landlord has met the burden of proof to support this portion of their claim. I find the photos and condition inspection report support that the rental unit was not left reasonably clean at the end of the tenancy. I prefer the photos of the landlord over those submitted by the tenant as the tenant failed to submit identical photos to the landlord by serving only black and white photos, while serving the Residential Tenancy Branch with colour photos. In addition, I find that many of tenant's photos were primarily blurry and as a result, afford the blurry photos no weight.

The parties agreed that the rental unit and appliances were "brand new" at the start of the tenancy, which is supported by the incoming condition inspection report. The landlord referred to a photo of the oven indicating a dirty oven. The landlord referred to a receipt in the amount of \$54.81 for "cleaning supplies". Given the above, I find the tenant breached section 37 of the *Act*, and that the landlord has met the burden of proof for this portion of her claim, and is entitled to compensation in the amount of **\$354.81** for cleaning labour and supplies.

Regarding item #3, the landlord has claimed \$354.50 to repair a damaged custom bedroom door. The landlord stated that the door has not been fixed and that new tenants have moved into the rental unit. I find that the landlord has failed to meet part three of the four-part test for damages or loss described above as the quote for \$128.80 does not match the amount being claimed, which is \$354.50. Furthermore, I find that the landlord has not suffered a loss as new tenants moved into the rental unit without the work being completed. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Regarding item #4, the landlord has claimed \$26.25 to install the towel bar. The tenant confirmed that she knocked off the towel bar while cleaning. A photo was submitted in evidence supporting this portion of the landlord's claim. The landlord referred to invoice #252 indicating \$25, plus GST for a total with tax of \$26.25 to repair the towel bar. I find that the landlord has met the burden of proof to support this portion of her claim as the tenant confirmed that she knocked off the towel bar, and the photo evidence supports that there was damage as a result, and a receipt submitted in evidence supports the amount being claimed. I find the tenant breached section 37 of the *Act* by damaging the wall where the towel bar was originally attached and that the landlord is entitled to compensation in the amount of **\$26.25** to re-install the towel bar.

Regarding item #5, the landlord has claimed \$50.00 to repair the garburator and confirmed that she did not submit a receipt in evidence. The landlord also confirmed that there were no photos of the garburator. The landlord referred to the condition inspection report which indicates "garburator sounds busted". I find the landlord has failed to meet the burden of proof to support this portion of her claim as the landlord submitted no receipts to prove the value of the alleged loss. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Regarding item #6, the landlord has claimed \$40.00 to repair a clogged drain and broken pop-up drain. The landlord referral to several photos submitted in evidence. The tenant denied breaking the pop-up drain, and stated that the drain worked at the end of the tenancy. As there was no documentary evidence presented to support this portion of the landlord's claim and the condition inspection report does not indicate a clogged drain or broken pop-up drain, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Regarding item #7, the landlord has claimed \$42.39 to replace a thermostat that the landlord claims was not working in the master bedroom after the tenant vacated the rental unit. The parties agreed that the condition inspection report did not indicate a broken thermostat. The landlord stated that she did not notice the thermostat during the condition inspection report. The landlord referred to a receipt submitted in evidence for the thermostat in the amount of \$22.39 and stated that the extra \$20.00 was for "labour" to install the thermostat. I find the landlord has failed to meet the burden of proof for this portion of their claim as the condition inspection report does not support this portion of the landlord's claim. The tenant has the right to rely on the details provided in the outgoing condition inspection report and failure to do a thorough outgoing condition inspection is not the responsibility of the tenant. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Regarding item #8, the landlord has claimed \$360.00 to replace damaged drywall behind the bathroom vanity. This portion of the landlord's claim is not mentioned in the condition inspection report. There was no receipt in the amount of \$360.00 submitted in evidence to support this portion of the landlord's claim. The landlord referred to a letter and photos in support of this portion of their claim. The tenant stated that the condition of the vanity was related to a leak in the bathroom and that the landlord was advised of the leak. The landlord disputed that there was a leak in the bathroom. I find the landlord has failed to prove parts one, two, and three of the four-part test for damages or loss described above. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Regarding item #9, the landlord has claimed \$1,479.60 to replace damaged flooring in the master bedroom and great room. The tenant agrees that the flooring was new at the start of the tenancy. The landlord stated that floors were not repaired and that the new tenants moved into the rental unit without the flooring repaired. The tenant did not deny that the floors were damaged, however stated that the damage was "reasonable wear and tear". The landlord referred to a quote submitted in evidence in the amount of \$1,479.60 and that the work has not been completed to date. The landlord referred to several photos which were blurry. Only one photo was not blurry, which did not show significant damage to the flooring, and just a minor mark in the flooring. The great room is not noted in the outgoing condition inspection report as damaged. I find that landlord has failed to meet part one of the four-part test for damages or loss described above. Most of the photos submitted of the flooring were blurry and the one clear photo, I find supports reasonable wear and tear which can be expected during a tenancy. As a result, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Regarding item #10, the landlord has claimed \$87.10 to replace broken, burned out and incorrect light bulbs. The landlord stated that some of the bulbs replaced by the tenant were too high of wattage rating for the lights the bulbs were installed in. The condition inspection report supports that the bathroom, and kitchen range hood bulbs were burned out. The landlord referred to receipts which total the amount of \$47.10, and the landlord stated that she was also charging for \$20.00 for her labour to replace the bulbs and \$20.00 for her time to locate the correct bulbs, for a total of \$87.10. According to Residential Tenancy Branch Policy Guideline #1 – Landlord & Tenant – Responsibility for Residential Premises, the tenant is responsible light bulbs in the premises during the tenancy. Given the above, I find the landlord is entitled to **\$47.10** in compensation for the light bulbs. **I dismiss** the portion of the landlord's claim related to labour and time to locate the bulbs in the amount of \$40.00, due to insufficient evidence, **without leave to reapply**.

Regarding item #11, the landlord has claimed \$840.00 to replace water damage in the bathroom vanity cabinet. This portion of the landlord's claim is not mentioned in the condition inspection report. The landlord referred to photos, a quote and receipt submitted in evidence. The landlord confirmed that she attended the rental unit after the tenant advised her of a leak and stated that no leak was found. The landlord stated that the washing machine was disconnected August 25, 2013, and was never reconnected "just to be safe", according to the landlord. The landlord confirmed that a service person was not contacted during the tenancy regarding the leak described by the tenant. I find that landlord has failed to meet part one of the four-part test for damages or loss described above as there was no mention of this part of the landlord's claim on the outgoing condition inspection. As a result, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Regarding item #12, the landlord has claimed \$1,000.00 to paint all the patched and damaged walls, doors and trim. The condition inspection report submitted in evidence supports that the kitchen had chipped paint and patched walls, the living room had holes patched on two walls and gouges on the window sill, the main bathroom had the towel bar to re-install, the master bedroom had a patched wall. The tenant did not deny the accuracy of the photos submitted in evidence to support this portion of the landlord's claim. The landlord referred to a receipt in the amount of \$800.00 marked "paid" and stated that additional trim work of \$200.00 was not completed.

Based on the condition inspection report, the photo evidence, and the tenant confirming that her father assisted with patching many of the walls in preparation for painting, I find that the landlord has met the burden of proof to support **\$800.00** of this portion of the landlord's claim. **I dismiss** the portion of the landlord's claim related to additional trim work in the amount of \$200.00, **without leave to reapply**. The landlord confirmed that the trim work has not been completed and the receipt only supports the amount of \$800.00 of the \$1,000.00 being claimed.

I find the landlord's application did have merit. Therefore, **I grant** the landlord recovery of the filing fee in the amount of **\$50.00**.

The tenant's security deposit of \$450.00 has accrued \$0.00 in interest since the start of the tenancy, which the landlord continues to hold.

I find that the landlord has established a total monetary claim of **\$1,638.46** comprised of \$360.30 for unpaid utilities by way of a mutually settled agreement, \$354.81 for cleaning labour and supplies, \$26.25 to re-install the towel bar, \$47.10 for light bulbs, \$800.00 for painting, plus \$50.00 for the filing fee. **I ORDER** the landlord to retain the tenant's full

security deposit of \$450.00 in partial satisfaction of the landlord's monetary claim. I **grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$1,188.46**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I order the parties to comply with the terms of their mutually settled agreement described above.

The landlord's application had merit. The landlord has established a total monetary claim of \$1,638.46 as described above. The landlord has been ordered to retain the tenant's full security deposit of \$450.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$1,188.46. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant's application has been refused pursuant to sections 59(5)(c) and 59(2)(b) of the *Act*. The tenant is at liberty to reapply. I note that this decision does not extend any applicable time limits under the *Act*.

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: July 7, 2014

Residential Tenancy Branch

