



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACGREGOR REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNDC RR FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for a monetary order for the cost of emergency repairs, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, to recover the cost of the filing fee, and "other" although the tenant provided insufficient details of "other" in his application.

The tenant and landlord agent D.M. (the "agent") attended the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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

Preliminary and Procedural Matters

At the outset of the hearing, the parties mutually agreed to remove the name of the landlord agent, D.M. from the tenant's application. Based on the above, the name of landlord agent D.M. was removed from the tenant's application.

During the hearing, the tenant requested to withdraw several portions of his monetary claim. The first portion of the tenant's claim that he requested to withdraw relate to code "MNR" for the cost of emergency repairs. The tenant stated he was withdrawing that

portion of his application as the landlord has already addressed his concerns relating to emergency repairs. The next portion of his claim that the tenant requested to withdraw relate to item 4, property management costs of \$425.00 and item 5, weeding and pruning costs of \$100.00. As a result, the cost of emergency repairs, item 4 and item 5 as described above will not be considered further.

Issues to be Decided

- Is the tenant entitled to a monetary order under the *Act*, and if so, in what amount?
- Has the tenant provided sufficient evidence to support a rent reduction for repairs, services or facilities agreed upon but not provided?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The fixed term tenancy agreement began on June 1, 2014 and is scheduled to expire on May 31, 2016. Monthly rent is \$3,200.00, per month which is due on the first day of each month. The tenant continues to occupy the rental unit.

The tenant's amended monetary claim, which reflects the portions withdrawn based on the tenant's request described above, is comprised as follows:

Item Description	Amount claimed
Item 1. Lawn cutting @ \$35 per week from June 15, 2014 to August 31, 2014	\$420.00
Item 2. Sprinkler repair	\$125.00
Item 3. Washing dishes @ \$25 per day from June 29, 2014 to August 12, 2014	\$1,125.00
Item 4. Property management costs	Withdrawn by Tenant
Item 5. Weeding and pruning	Withdrawn by Tenant
Item 6. Filing fee	\$50.00
Item 7. Registered mail costs	\$21.43
TOTAL	\$1,741.43

Regarding item 1, the tenant referred to the tenancy agreement addendum that indicates the tenant's responsibility to cut grass was crossed out and removed from the addendum, which the agent stated was correct. In other words, cutting of the lawn was

included in the monthly rent. The tenant stated that he was claiming \$420.00 for June 15, 2014 to August 31, 2014, for 11 weeks at \$35.00 per week. I note that the tenant made a mathematical error, as 11 weeks multiplied by \$35.00 per week equals \$385.00. As a result, I find the tenant's claim is actually \$385.00 and not \$420.00 as claimed for this portion of the tenant's claim, due to the tenant's error noted above. The tenant testified that he did not have any receipts or estimates to support this portion of his monetary claim and that he assigned a value of \$35.00 per week for lawn cutting as that was "the amount for the guy he should have hired", referring to the person the agent should have hired.

The agent stated that a self-employed landscaper, K.B. was hired to maintain the rental unit property; and was contracted to cut the lawn a minimum of once every two weeks and depending on the time of the year, on a weekly basis. The agent stated that landscaper K.B. reported to him that he felt "shoved out" from the property because of the tenant and that the tenant took over the cutting from the landscaper. The tenant disputed this and confirmed that he did not have any photos to support that the grass required cutting for the period being claimed. Both parties referred to several e-mails submitted in evidence.

Regarding item 2, the tenant has claimed \$125.00 for a sprinkler repair. The tenant testified that he did not submit any receipts, invoices or other documentary evidence to support that he suffered a loss of \$125.00 to have the sprinkler repaired by A.P., who is directly related to the tenant. The tenant confirmed that there was no agreement between the tenant and the landlord for the tenant to arrange for the sprinkler repair.

Regarding item 3, the tenant has claimed \$1,125.00 in compensation for being without a dishwasher between June 29, 2014 and August 12, 2014. The tenant stated that he assigned a value of \$25.00 per day for his time to wash the dishes based on the amount he pays a house cleaner. The landlord stated that he was notified by the tenant regarding a problem with the dishwasher on July 7, 2014, and that on July 10, 2014 a repair person attempted to contact the tenant, and the tenant could not be reached. The parties agree that on July 13, 2014, the dishwasher problem was diagnosed by a service technician and on July 14, 2014, the agent confirmed there was a delay obtaining a quote for repair, which did not occur until July 28, 2014. On July 29, 2014, the cost of the repair in the amount of \$544.00 was authorized by the landlord and the parties agreed the dishwasher was repaired on August 12, 2014.

Items 4 and 5 were withdrawn by the tenant. Regarding item 6, the filing fee will be determined later in this Decision. Regarding item 7, this item was **dismissed** as there is no remedy under the *Act* for the recovery of the cost of mailing documents for the

purposes of a dispute resolution hearing. The remedy under the *Act* is to apply for the recovery of the filing fee which the tenant has done and will be addressed later in this Decision.

Analysis

Based on the documentary evidence, 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 what was reasonable under the *Act* to minimize the damage or loss.

In this instance, the burden of proof is on the tenant 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 landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable 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.

Item 1 – For this portion of his claim the tenant referred to the tenancy agreement addendum that indicates the tenant's responsibility to cut grass was crossed out and removed from the addendum, which the agent stated was correct. In other words, cutting of the lawn was included in the monthly rent. The tenant stated that he was claiming \$420.00 for June 15, 2014 to August 31, 2014, for 11 weeks at \$35.00 per

week. As noted above, I find the tenant's claim is actually \$385.00 and not \$420.00 as claimed for this portion of the tenant's claim, due to the tenant's error noted above.

I find the tenant has provided insufficient evidence to support this portion of his claim. The tenant failed to submit receipts, estimates, or photos in support of this portion of his monetary claim. Furthermore, I afford no weight to the tenant's \$35.00 estimate for lawn cutting as the tenant failed to provide evidence that he contacted a landscaping company and was provided with that amount. In addition, I find the agent's version of events is equally probable; that self-employed landscaper, K.B. was hired to maintain the rental unit property and was contracted to cut the lawn and the agent stated that landscaper K.B. reported to him that he felt "shoved out" from the property because of the tenant and that the tenant took over cutting the lawn. Based on the above, I find the tenant has failed to meet the burden of proof. Therefore, **I dismiss** this portion of the tenant's claim, **without leave to reapply**, due to insufficient evidence.

Item 2 – The tenant has claimed \$125.00 for a sprinkler repair. The tenant testified that he did not submit any receipts, invoices or other documentary evidence to support that he suffered a loss of \$125.00 to have the sprinkler repaired by A.P., who is directly related to the tenant. The tenant confirmed that there was no agreement between the tenant and the landlord for the tenant to arrange for the sprinkler repair. I find the tenant failed to meet the burden of proof by failing to meet part three of the test for damages or loss described above. The tenant failed to produce any documents that support that the tenant suffered a loss of \$125.00. Therefore, **I dismiss** this portion of the tenant's claim, **without leave to reapply**, due to insufficient evidence.

Item 3 - The tenant has claimed \$1,125.00 in compensation for being without a dishwasher between June 29, 2014 and August 12, 2014. The tenant stated that he assigned a value of \$25.00 per day for his time to wash the dishes based on the amount he pays a house cleaner. The landlord stated that he was notified by the tenant regarding a problem with the dishwasher on July 7, 2014, and that on July 10, 2014 a repair person attempted to contact the tenant, and the tenant could not be reached. The tenant confirmed that the technician could not reach him on July 10, 2014.

The parties agree that on July 13, 2014, the dishwasher problem was diagnosed by a service technician and on July 14, 2014, the agent confirmed there was a delay obtaining a quote for repair, which did not occur until July 28, fourteen days later. On July 29, 2014, the cost of the repair in the amount of \$544.00 was authorized by the landlord and the parties agreed the dishwasher was repaired on August 12, 2014.

While I accept that the tenant's dishwasher failed and required a repair, I find that the only time period in which the tenant is entitled to compensation is between July 14, 2014 and July 28, 2014 inclusive, due to the landlord admitting to a delay in obtaining a quote for the dishwasher repair. I find that the other time period is a reasonable time period under the *Act* to wait to diagnose, order the required part and repair a dishwasher, considering the tenant could not be reached on July 10, 2014 when the service technician attempted to contact the tenant. As a result, I find the tenant failed to meet the burden of proof to prove parts one and two for the time period of June 29, 2014 to July 13, 2014, and July 29, 2014 to August 12, 2014.

I will now deal with the amount being claimed by tenant for compensation for washing dishes, in other words, being without a dishwasher, which the tenant has claimed a value of \$25.00 per day. The tenant writes in an e-mail that he spends an hour per day washing dishes and he arrived at the amount based on what he pays a house cleaner. I afford that information little weight in my decision as monthly rent is \$3,200.00 per month, which for an average month of 30 days, works out to a daily rent rate of \$106.66 per day. The amount of \$25.00 per day works out to be just over 23% of the daily rent rate of \$106.66 per day. I find that the loss of the use of the dishwasher does not represent 23% of the entire value of the tenancy per day. Accordingly, I find the tenant's claim to be both unreasonable and excessive. As a result, **I grant** the tenant a nominal amount of \$10.00 per day for the 15 day period of unreasonable delay between July 14, 2014 and July 28, 2014 inclusive, which totals **\$150.00** in compensation for the tenant for this portion of the tenant's claim. The remainder of this portion of the tenant's claimed is **dismissed, without leave to reapply**, due to insufficient evidence.

I find the tenant has provided insufficient evidence to support a rent reduction as claimed. Accordingly, **I dismiss** the tenant's application for a rent reduction.

Items 4 and 5 were withdrawn by the tenant. Regarding item 6, as a portion of the tenant's claim had merit **I grant** the tenant the recovery of the filing fee in the amount of **\$50.00**.

Regarding item 7, this item was **dismissed** as there is no remedy under the *Act* for the recovery of the cost of mailing documents for the purposes of a dispute resolution application. The remedy under the *Act* is to apply for the recovery of the filing fee which the tenant has done and which the tenant has been granted above.

The tenant has established a total monetary claim of **\$200.00**, comprised of \$150.00 for item 3, plus recovery of the \$50.00 filing fee. **I grant** the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of **\$200.00**. This order must be served

on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant has established a total monetary claim of \$200.00, comprised of \$150.00 for item 3, plus recovery of the \$50.00 filing fee. The tenant has been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$200.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: October 14, 2014

Residential Tenancy Branch

