



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to keep all or part of the security deposit, and to recover the cost of the filing fee.

The landlord appeared at the teleconference hearing on July 17, 2014 and the reconvened hearing on September 30, 2014 and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the original teleconference hearing or the reconvened teleconference hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application"), and documentary evidence were considered. The landlord testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on March 31, 2014. The landlord provided a registered mail tracking number in evidence and confirmed that the registered mail package was mailed to the forwarding address provided by the tenant in an e-mail from the tenant to the landlord dated March 18, 2014. The landlord testified that the registered mail package was returned to the landlord and marked as "unclaimed".

Documents served by registered mail are deemed served 5 days after they are mailed in accordance with section 90 of the *Act*. Based on the above, I accept that the tenant was deemed served as of April 5, 2014. I note that refusal or neglect on the part of the tenant to accept or receive registered mail does not constitute grounds for a Review Consideration.

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 periodic, month to month tenancy agreement was signed by the parties on November 27, 2011 and according to the landlord, began on December 1, 2011. Monthly rent in the amount of \$1,400.00 was due on the first day of the month. A security deposit of \$700.00 was paid by the tenant at the start of the tenancy which the landlord continues to hold.

The landlord has claimed \$2,457.50 comprised of the following:

Item Description	Amount
1. Carpet cleaning	\$334.06
2. Patio power washing	\$78.75
3. House cleaning	\$300.00
4. Cat damage to front door	\$219.00
5. House cleaning supplies	\$27.53
6. Light bulbs	\$28.44
7. Patio door screen	\$45.00
8. Cost of house paint	\$504.72
9. Labour for repainting	\$800.00
10. Damage by cat and children to railing	\$120.00
Total	\$2,457.50

The landlord stated that the tenant vacated the rental unit on March 1, 2014. The landlord received the tenant's written forwarding address on March 18, 2014 by e-mail and applied for dispute resolution claiming towards the tenant's security deposit on March 27, 2014 which is within the required 15 day timeline under section 38 of the *Act*.

Regarding item #1, the landlord has claimed \$334.06 for carpet cleaning. The landlord confirmed that she did not submit any receipts for carpet cleaning in support of this portion of her claim and that no incoming or outgoing condition inspection report was completed in accordance with the *Act*.

Regarding item #2, the landlord has claimed \$78.75 for power washing and confirmed that she did not submit a receipt in support of this portion of her claim.

Regarding item #3, the landlord has claimed \$300.00 to clean the house which the landlord testified the tenant left dirty at the end of the tenancy. The landlord stated that she performed the cleaning herself and performed 15 hours of cleaning and is charging \$20.00 per hour for her time to clean the rental unit. The landlord referred to several photos submitted in evidence in support of the condition of the rental unit at the end of the tenancy. The landlord presented photos which appear to show dirty cabinets, dirty flooring, a dirty stove, a dirty dishwasher, dirty bathroom and dirty windows. The landlord confirmed that a receipt was not available for this portion of her claim as she completed the cleaning herself.

Regarding item #4, the landlord has claimed \$219.00 for cat damage to the front door. The landlord confirmed that there was no photo of the front door at the start of the tenancy to support the condition of the front door at the start of the tenancy.

Regarding item #5, the landlord has claimed \$27.53 for cleaning supplies related to the cleaning of the house. The landlord confirmed that this amount does not include cleaning time, it includes only cleaning supplies purchased to clean the rental unit after the tenant vacated the rental unit without cleaning. The landlord presented two receipts submitted in evidence which total the amount being claimed, \$27.53, for this portion of the landlord's claim.

Regarding item #6, the landlord has claimed \$28.44 for the cost of replacing burned out light bulbs. The landlord provided a receipt and photos which support that light bulbs were left burned out at the end of the tenancy and not replaced by the tenant as required which total \$28.44.

Regarding item #7, the landlord has claimed \$45.00 to repair a patio door screen which the landlord stated was actually \$89.60 to repair; however, the landlord was using the amount of \$45.00 as an estimate when she filed her application. The landlord confirmed that she did not submit a receipt in support of this portion of her claim.

Regarding item #8, the landlord has claimed \$504.72 for the cost of the house paint required to repaint the house after the tenant damaged the walls and attempted to repaint some of the walls using the wrong paint colour. The landlord submitted several colour photos in support of this portion of her claim. The landlord clarified that she was willing to consider accepting half of the paint cost as half of the house had paint that

was 15 years old, while the other half of the house had paint that was only nine months old at the start of the tenancy. The landlord presented photos which the landlord stated showed the tenant's attempt to patch some wall damage and showed a gouge out of another wall left by the tenant. The landlord also presented photos which show the condition of the walls at the start of the tenancy, which appear to show the walls in good condition.

Regarding item #9, the landlord has claimed \$800.00 for the cost of labour to repaint the rental unit. The landlord stated that the amount of \$800.00 is comprised of 40 hours at \$20.00 per hour and that there was no receipt as the landlord provided the labour herself as she did the painting.

Regarding item #10, the landlord has claimed \$120.00 to repair a railing that the landlord stated the tenant's cat and children damaged. The landlord presented a photo which appears to show cat scratches and a drawing gouged into the railing. The landlord also presented a photo which shows the railing undamaged which the landlord stated was taken at the start of the tenancy. The landlord testified that the amount of \$120.00 is comprised of 6 hours at \$20.00 per hour to sand, prepare and repaint the damaged railing and that she performed the work herself and as a result no receipt was submitted.

Analysis

Based on documentary evidence of the landlord and the undisputed 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 to minimize the damage or loss.

Item 1 – The landlord has claimed \$334.06 for carpet cleaning; however failed to submit a receipt, invoice or other supporting document to support the amount being claimed. As a result, I find the landlord has failed to meet the burden of proof in proving part three of the test for damages or loss described above. Therefore, **I dismiss** this portion of the landlord's claim **without leave to reapply**, due to insufficient evidence.

Item 2 – The landlord has claimed \$78.75 for patio power washing; however failed to submit a receipt, invoice or other supporting document to support the amount being claimed. As a result, I find the landlord has failed to meet the burden of proof in proving part three of the test for damages or loss described above. Therefore, **I dismiss** this portion of the landlord's claim **without leave to reapply**, due to insufficient evidence.

Item 3 – The landlord has claimed \$300.00 for house cleaning. Section 37 of the *Act* applies and states:

Leaving the rental unit at the end of a tenancy

37 (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 she performed the cleaning herself and performed 15 hours of cleaning and is charging \$20.00 per hour for her time to clean the rental unit. I find the photos submitted in evidence by the landlord do support this portion of the landlord's claim. I find the tenant breached section 37 of the *Act* by failing to leave the rental unit in reasonably clean condition at the end of the tenancy. Given the above, I find the landlord has met the burden of proof in proving this portion of their claim. Therefore, **I grant** the landlord **\$300.00** for cleaning costs as claimed.

Item 4 – The landlord has claimed \$219.00 for damage to the front door caused by the tenant's cat; however failed to submit any photos of the front door supporting the condition of the front door at the start of the tenancy. I also note that the landlord failed to complete an incoming and outgoing condition inspection report as required by the

Act. As a result, I find the landlord has failed to meet the burden of proof in proving part one and part two of the test for damages or loss described above. Therefore, **I dismiss** this portion of the landlord's claim **without leave to reapply**, due to insufficient evidence

Item 5 – The landlord has claimed \$27.53 for the cost of house cleaning supplies. Consistent with my finding regarding item 3 above, in which I have granted the landlord the cost of house cleaning due to the tenant failing to comply with section 37 of the *Act*, I find the landlord has met the burden of proof for this portion of their claim. The landlord submitted receipts which total \$27.53. Therefore, **I grant** the landlord **\$27.53** for the cost of cleaning supplies as claimed.

Item 6 – The landlord has claimed \$28.44 for the cost of light bulbs that were burned out and not replaced by the tenant at the end of the tenancy. Residential Tenancy Branch Policy Guideline #1 indicates that tenants are responsible for replacing light bulbs during the tenancy, which I find the tenant failed to do based on the evidence before me. I find the landlord's photos and receipt support this portion of their claim and that the landlord has met the burden of proof as a result. Therefore, **I grant** the landlord **\$28.44** for the cost of light bulbs.

Item 7 – The landlord has claimed \$45.00 for the cost to repair a patio door screen. Although the landlord stated that the amount to repair the patio screen door was actually \$89.60, the landlord stated that she used the amount of \$45.00 as an estimate when she filed her application. The landlord confirmed that she did not submit a receipt in support of this portion of her claim. As the landlord failed to submit a receipt, invoice or other supporting document to support the amount being claimed, I find the landlord has failed to meet the burden of proof in proving part three of the test for damages or loss described above. Therefore, **I dismiss** this portion of the landlord's claim **without leave to reapply**, due to insufficient evidence.

Item 8 – The landlord has claimed \$504.72 for the cost of house paint due to damage caused by the tenant during the tenancy. The landlord submitted a receipt in support of this portion of her claim. While I find that the landlord has met the burden of proof by submitting before and after photos which support that the rental unit was damaged beyond reasonable wear and tear, I note that half of the rental unit, based on the testimony of the landlord, had interior paint that well exceeded the useful life of interior paint which is four years. Residential Tenancy Branch Policy Guideline #40 describes the useful lifespan of building elements. As half of the interior paint in the rental unit was 15 years old, and half of the rental unit was only nine months old and which I consider to be in new condition based on the photos submitted in evidence and having

considered the useful lifespan of interior paint is 4 years, I find that the landlord is only entitled to $\frac{1}{2}$ of the amount being claimed as a result, after factoring in depreciation. Therefore, I find the landlord is entitled to $\frac{1}{2}$ of \$504.72 amount being claimed, which totals \$252.36. Given the above, **I grant** the landlord **\$252.36** for the cost of paint as claimed.

Item 9 – The landlord has claimed \$800.00 as the cost of labour to repaint the rental unit. The landlord stated that the amount of \$800.00 is comprised of 40 hours at \$20.00 per hour and that there was no receipt as the landlord provided the labour herself as she did the painting. Consistent with my finding described in item #8 above, I find that the landlord is also entitled to $\frac{1}{2}$ of the cost for this portion of her claim after factoring in depreciation on the half of the rental unit which had interior paint that was 15 years old. Therefore, I find the landlord is entitled to $\frac{1}{2}$ of \$800.00 amount being claimed, which totals \$400.00. Given the above, **I grant** the landlord **\$400.00** for the cost of the landlord's labour to repaint as claimed.

Item 10 – The landlord has claimed \$120.00 for the cost to repair damage to a railing which the landlord stated was caused by the tenant's cat and children. I find the photos submitted in evidence support that the railing was in good condition at the start of the tenancy and that the damage to the railing at the end of the tenancy is consistent with cat scratch damage and someone who has gouged a design in the railing. As a result, I accept the landlord's testimony in which the landlord testified that she repaired the damage herself by spending 6 hours at \$20.00 per hour to sand, prepare and repaint the damaged railing. Based on the above, I find the landlord has met the burden of proof to support this portion of her claim. Therefore, **I grant** the landlord **\$120.00** for the cost to repair the damaged railing which I find was damaged by the tenant, and/or the tenant's cat, and/or the tenant's children.

As the landlord's application had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

I find the landlord has established a total monetary claim in the amount of **\$1,178.33**, comprised of \$300.00 for cleaning costs, \$27.53 for the cost of house cleaning supplies, \$28.44 for the cost of light bulbs, \$252.36 for the cost of half of the paint to repaint the rental unit, \$400.00 for the cost of half of the labour to repaint the rental unit, \$120.00 for the cost to repair the railing, and the \$50.00 for the recovery of the cost of the filing fee. The landlord continues to hold the tenant's security deposit of \$700.00, which has not accrued interest since the start of the tenancy.

I ORDER the landlord to retain the tenant's full security deposit of \$700.00 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 **\$478.33**. 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

The landlord has established a total monetary claim of \$1,178.33. The landlord has been ordered to retain the tenant's full security deposit of \$700.00 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 \$478.33. 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.

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 10, 2014

Residential Tenancy Branch

