



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MND MNSD MNDC FF

For the tenants: MNDC MNSD FF

Introduction

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

The landlord applied 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, for authorization to retain all or part of the tenants’ security deposit and pet damage deposit, and to recover the cost of the filing fee.

The tenants applied for the return of double their security deposit and pet damage deposit under the *Act*, for the return of an overpayment of utilities in the amount of \$268.75, and to recover the cost of their filing fee.

The tenants and the landlord attended the teleconference on August 6, 2014 and the reconvened teleconference hearing on October 8, 2014. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter 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.

Regarding documentary evidence, the original teleconference hearing was adjourned due to issues relating to the service of documentary evidence. At the reconvened teleconference hearing, the parties were satisfied that they had received the documentary evidence from the other party and had the opportunity to serve rebuttal evidence and to review that evidence prior to the reconvened hearing. As a result of the above, I find the parties were sufficiently served in accordance with the *Act*.

I have reviewed all oral and documentary evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?

Background and Evidence

The parties agreed that a written tenancy agreement was created although not submitted as part of the documentary evidence. The parties agreed that a periodic, month to month tenancy agreement began on October 15, 2012 and ended on March 25, 2014 when the tenants vacated the rental unit. Monthly rent in the amount of \$1,095.00 was due on the first day of each month during the tenancy. The tenants paid a security deposit of \$547.50 and a pet damage deposit of \$350.00 at the start of the tenancy which the landlord continues to hold.

The tenants have claimed for the return of double their security deposit and pet damage deposit, for \$268.75 as compensation from the landlord for that amount of overpaid utilities during the tenancy, plus the recovery of their filing fee.

The landlord has claimed \$1,640.44 comprised of the following:

Item Description	Amount
1. <i>Replace missing smoke detector (resolved by way of a mutually settled agreement described below)</i>	\$60.00
2. Repair to back fence	\$60.00
3. Rental unit cleaning	\$350.00
4. Repairs for excessive nail holes	\$100.00
5. Cleaning moss and mould off of vinyl sundeck and stairs	\$262.50
6. Removal of yard garbage including dump fee	\$250.00
7. Reversal of March rent reimbursement	\$211.94
8. Storage cost of tenants' property for 4 days in April	\$146.00
9. Repairs to cabinet hinge, surface scratches, burned kitchen counter and cutting board	\$150.00
10. Recovery of filing fee	\$50.00
TOTAL	\$1,640.44

Settlement Agreement

During the hearing, the parties reached a mutually settled agreement regarding two items; item 1 of the landlord's claim described above as "replace missing smoke detector" in the amount of \$60.00 to be paid by the tenants, and the tenants' claim for reimbursement of overpaid utilities in the amount of \$268.75 to be paid by the landlord. As a result, the corresponding items

described will not be included in the analysis section of this Decision as all matters which form part of the settlement agreement were agreed upon by the parties, pursuant to section 63 of the *Act*, and form a final and binding agreement between the parties as mutually resolved matters related to this tenancy.

Tenants' claim

Regarding the tenant's claim, there is no dispute that the tenants vacated the rental unit on March 25, 2014 and according to the tenants' documentary evidence, the tenants provided their written forwarding address to the landlord on April 10, 2014. The landlord filed her application claiming towards the tenants' security deposit and pet damage deposit on April 9, 2014, which is within the 15 day timeline as provided for under section 38 of the *Act*.

Landlord's claim

Regarding item 2, the landlord has claimed \$60.00 to repair damage to the back fence which the landlord alleges was caused by the tenants. The tenants denied damaging the back fence. The landlord confirmed that she failed to complete an incoming and outgoing condition inspection report as required by sections 23 and 35 of the *Act*, respectively. The landlord did not submit any photos of the condition of the fence at the start of the tenancy.

Regarding item 3, the landlord has claimed \$350.00 to clean the rental unit. The tenants agreed that the fireplace was not cleaned; however dispute the remainder of this portion of the landlord's claim. The tenants stated that the rental unit was dirty at the start of the tenancy. The landlord reduced this portion of her claim during the hearing to \$175.00 as the landlord testified that the original amount of \$350.00 was an estimate and the actual total ended up being less, at \$175.00. The tenants confirmed that the photos of the rental unit submitted by the landlord looked accurate which were taken at the end of the tenancy. The parties disputed the age of the house with the tenants claiming the house was over 100 years old, while the landlord was unsure of the actual age of the house; however felt it was approximately 50 years old.

The landlord presented several photos which appear to show hair in a drain, a dirty bathroom, dirty carpets and floors at the end of the tenancy. A copy of the cleaning receipt for \$175.00 was submitted in evidence and is dated May 31, 2014 and indicates that two people spent 3.5 hours to clean the rental unit, which is \$25.00 per hour, per person.

Regarding item 4, the landlord has claimed \$100.00 to repair excessive nail holes in the rental unit. The tenants denied that they made excessive nail holes and claim to have made about six holes in the room which the landlord alleges they made about 35 alone in one room. The tenants agreed that the photo presented by the landlord was how the room in question appeared during the tenancy. The landlord was asked how she arrived at the amount of \$100.00 being claimed, to which the landlord testified that she is charging \$50.00 per hour for

two hours that she claimed it took to repair the damage herself. The landlord confirmed that she did not submit a receipt for the spackle used repair the wall damage.

Regarding item 5, the landlord has claimed \$262.50 to clean moss and mould off a vinyl sundeck and stairs. The landlord testified that she had no receipt to support this portion of her claim and that although she paid cash, failed to receive a receipt for cash paid. The tenants did not agree with this portion of the landlord's claim.

Regarding item 6, the landlord has claimed \$250.00 to remove yard garbage and to dump the garbage. The landlord stated that it took one trip to the dump to dump the garbage; however, the landlord confirmed that no photos were submitted to show the condition of the yard at the start of the tenancy. The landlord testified that she is charging \$50.00 per hour for a total of five hours to clean the yard. The tenants did not agree with this portion of the landlord's claim.

Regarding item 7, the landlord has claimed \$211.94 to have the rent reimbursement that the landlord returned to the tenants, returned back to the landlord. The landlord testified that she reimbursed the tenants \$211.94 for March 2014 rent before the landlord had checked the condition of the rental unit. The tenants did not agree with this portion of the landlord's claim.

Regarding item 8, the landlord has claimed \$146.00 for storage costs for storing the tenants' personal items for four days in April 2014. The landlord testified that she did not suffer a loss as she did not pay any money out of pocket to store the tenants' personal items for four days. The tenants did not agree with this portion of the landlord's claim.

Regarding item 9, the landlord has claimed \$150.00 to repair a cabinet hinge, surface scratches, and a burned kitchen counter and cutting board. The tenants claimed that all of the damages claimed for this portion of the landlord's claim were in that condition when they moved into the rental unit. The landlord confirmed that she did not submit any photos of the condition of the items at the start of the tenancy, in relation to this portion of the landlord's claim. The tenants did not agree with this portion of the landlord's claim.

Item 10 relates to the filing fee which will be discussed later in this Decision.

Analysis

Based on the documentary evidence, the testimony of the parties, 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.

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 their claim fails.

Tenants' claim

The landlord continues to hold the tenants' security deposit of \$547.50 and pet damage deposit of \$350.00, which have accrued \$0.00 in interest since the start of the tenancy. Section 38 of the *Act* applies and states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[my emphasis added]

The landlord applied for dispute resolution claiming towards the tenants' security deposit and pet damage deposit on April 9, 2014, which is within 15 days of March 25, 2014, the date the tenants vacated the rental unit and is one day before the tenants confirm in writing as the date their written forwarding address was provided to the landlord. Based on the above, **I find** the landlord did not breach section 38 of the *Act* as they claimed towards the security deposit and pet damage deposit in accordance with section 38 of the *Act*. Based on the above, **I find** the tenants are **not entitled** to the return of double their security deposit or pet damage deposit.

As described above, the tenants are entitled to **\$268.75**, which is the amount the parties agreed that the landlord was overpaid for utilities, which was resolved by way of a mutually settled agreement between the parties and is binding pursuant to section 63 of the *Act*.

The remainder of the tenants' security deposit and pet damage deposit will be addressed below.

Landlord's claim

Item 1 – As described above, the landlord is entitled to **\$60.00**, which is the amount the parties agreed that the tenants owe the landlord for the missing smoke detector, which was resolved by way of a mutually settled agreement between the parties and is binding pursuant to section 63 of the *Act*.

Item 2 – The landlord has claimed \$60.00 to repair damage to the back fence which the landlord alleges was caused by the tenants. The tenants denied damaging the back fence. As the landlord confirmed that she failed to complete an incoming and outgoing condition inspection report and taking into account that the landlord failed to submit any photos of the condition of the fence at the start of the tenancy, I find the landlord has failed to meet the burden of proof for this portion of her claim. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Item 3 – The landlord originally claimed \$350.00 to clean the rental unit and then reduced that amount to \$175.00 during the hearing as the total for cleaning ended up being less than originally estimated. The tenants agreed that the fireplace was not cleaned; however disputes the remainder of this portion of the landlord's claim. The tenants stated that the rental unit was dirty at the start of the tenancy. The tenants confirmed that the photos of the rental unit submitted by the landlord looked accurate which were taken at the end of the tenancy. A copy of the cleaning receipt for \$175.00 was submitted in evidence and is dated May 31, 2014 and indicates that two people spent 3.5 hours to clean the rental unit, which is \$25.00 per hour, per person. Section 37 of the *Act* applies and 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]

Based on the above, and taking into account the photos presented in evidence, I find the tenants breached section 37 of the *Act* by failing to leave the rental unit in a reasonably clean condition at the end of the tenancy. Therefore, I find the landlord has met the burden of proof for this portion of her claim and is entitled to compensation in the amount of **\$175.00** as claimed.

Item 4 – The landlord has claimed \$100.00 to repair excessive nail holes in the rental unit. The tenants denied that they made excessive nail holes and claim to have made about six holes in the room which the landlord alleges they made about 35 alone in one room. The tenants agreed that the photo presented by the landlord was how the room in question appeared during the tenancy. The landlord was asked how she arrived at the amount of \$100.00 being claimed, to which the landlord testified that she is charging \$50.00 per hour for two hours that she claimed it took to repair the damage herself. The landlord confirmed that she did not submit a receipt for the spackle used repair the wall damage.

I find the amount being claimed by the landlord to be unreasonable and excessive. Furthermore, I find the landlord has provided insufficient evidence to support that repairing the alleged nail holes as claimed would cost \$50.00 per hour and in reaching this decision have taken into account that the landlord failed to produce any receipts such as receipts for spackle. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Item 5 – The landlord has claimed \$262.50 to clean moss and mould off a vinyl sundeck and stairs. The landlord testified that she had no receipt to support this portion of her claim and that although she paid cash, failed to receive a receipt in return. The tenants did not agree with this portion of the landlord's claim. I find the landlord has failed to meet part three of the test for damages or loss described above as the landlord failed to submit a receipt, invoice or other supporting document to support that the landlord suffered a loss of \$262.50. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Item 6 – The landlord has claimed \$250.00 to remove yard garbage and to dump the garbage. The landlord stated that it took one trip to the dump to dump the garbage; however, the landlord confirmed that no photos were submitted to show the condition of the yard at the start of the tenancy. The landlord testified that she is charging \$50.00 per hour for a total of five hours to clean the yard. The tenants did not agree with this portion of the landlord's claim. I find the landlord has failed to meet the burden of proof by proving parts one and two of the test for damages or loss as described above. In reaching this finding I have considered that the landlord failed to produce photos or other evidence to prove what the condition of the yard was in at the start of the tenancy. Furthermore, I find the amount being claimed to be excessive and not

reasonable. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Item 7 – The landlord has claimed \$211.94 to have the rent reimbursement that the landlord returned to the tenants, returned back to the landlord. The landlord testified that she reimbursed the tenants \$211.94 for March 2014 rent before the landlord had checked the condition of the rental unit. The tenants did not agree with this portion of the landlord's claim. I find the landlord has failed to meet the burden of proof by proving parts one and two of the test for damages or loss as described above. In reaching this finding I have considered the fact that the landlord granted the tenants a reimbursement for a portion of March 2014 rent prematurely. I find that the landlord's failure to attend the rental unit to confirm the condition of the rental unit is not the fault of the tenants and as a result, the remedy for the landlord would have been to confirm the condition of the rental unit prior to issuing the tenants a rent reimbursement. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Item 8 – The landlord has claimed \$146.00 for storage costs for storing the tenants' personal items for four days in April 2014. The landlord testified that she did not suffer a loss as she did not pay any money out of pocket to store the tenants' personal items for four days. The tenants did not agree with this portion of the landlord's claim. I find the landlord has failed to meet the burden of proof for parts one, two and three of the test for damages and loss described above. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Item 9 - The landlord has claimed \$150.00 to repair a cabinet hinge, surface scratches, and a burned kitchen counter and cutting board. The tenants claimed that all of the damages claimed for this portion of the landlord's claim were in that condition when they moved into the rental unit. The landlord confirmed that she did not submit any photos of the condition of the items at the start of the tenancy, in relation to this portion of the landlord's claim. The tenants did not agree with this portion of the landlord's claim. In the absence of an incoming condition inspection report and taking into account that the landlord failed to submit any photos of the condition of these items at the start of the tenancy, I find the landlord has failed to meet the burden of proof for this portion of her claim. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

As the applications of both parties had some merit, **I grant** both the landlord and the tenants the recovery of their filing fee of \$50.00; however, as both amounts offset each other, I find the balance owing by each party to be \$0.00 in relation to the filing fees.

The tenants have established a total monetary claim in the amount of \$268.75, while the landlord has established a total monetary claim in the amount of \$235.00. In addition, the landlord continues to hold the tenants' security deposit of \$547.50 and pet damage deposit of \$350.00. Based on the above, and as the tenants have the larger monetary claim I find the landlord owes the tenants as follows:

Tenants' security deposit held by landlord	\$547.50
Tenants' pet damage deposit held by landlord	\$350.00
Tenants' monetary claim amount proven	\$268.75
Subtotal of amount owing to tenants	\$1,166.25
<i>Less landlord's monetary claim amount proven</i>	<i>-\$235.00</i>
TOTAL BALANCE OWING BY LANDLORD TO TENANTS	\$931.25

Based on the above, I **grant** the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$931.25**. 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.

The landlord is reminded to comply with sections 23 and 35 of the *Act* in the future, which requires that both an incoming and outgoing condition inspection report be completed in accordance with the *Act*.

Conclusion

I have offset the landlord's monetary claim of \$235.00 from the tenants' total monetary claim of \$1,166.25. The tenants have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenants in the amount of \$931.25. 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

