



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing her to retain the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began June 15, 2014 at which time the tenant paid a \$600.00 security deposit and a \$600.00 pet deposit. The tenant vacated the unit on August 31, 2014 and removed additional belongings from the residential property as late as September 5, 2014.

The *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and
4. (if applicable) Proof that the applicant took reasonable steps to minimize the loss.

I address the landlord's claims and my findings around each as follows:

Door latch repair: The landlord seeks to recover \$70.00 as the cost of repairing the latch to the door at the end of the tenancy and an additional \$105.00 for replacing the latch. The landlord testified that the front door, which was new at the beginning of the tenancy, did not close properly at the end of tenancy, so she hired a locksmith to repair the latch. The repair was ineffective, so approximately 2 weeks later, she had the locksmith replace the door latch.

The landlord provided a copy of invoices showing that she paid \$70.00 for the first visit and \$105.00 for the second visit. The tenant agreed that the latch was broken at the end of the tenancy and said she did not know how it had broken.

I find it more likely than not that the actions of the tenant or her guests caused the door latch to break and I find the tenant should be held responsible for the cost of replacing the lock as she was responsible under the Act to leave the rental unit reasonably clean and in undamaged condition except for reasonable wear and tear. I find that the broken latch goes beyond what may be characterized as reasonable wear and tear. However, I find that the tenant should not be held responsible for the ineffective repair undertaken initially. The landlord said the lock had to be replaced because it could not be repaired and I find that the landlord had the obligation to minimize her loss by ensuring that a competent assessment of the condition of the lock was undertaken from the outset. I therefore dismiss the claim for the first lock repair and I award the landlord \$105.00 for the cost of replacing the lock.

Deck railing: The landlord seeks to recover \$210.00 as the cost of replacing the railing on the deck at the end of the tenancy. The parties agreed that the tenant left a large candle burning while leaning against the deck railing and that it burned the railing. The landlord provided a copy of an invoice showing that she paid \$210.00 to replace the railing and also provided a photograph of the railing. I find that the tenant damaged the railing and that this damage goes beyond what may be characterized as reasonable wear and tear. The landlord did not claim that the deck railing could not be used in the condition in which it was left and the photograph shows that the damage was primarily cosmetic. The landlord chose to replace the entire railing but I find that as it was still useful for its intended purpose, the railing did not need to be replaced. I find it appropriate to grant the landlord an award which reflects the diminished value of the original railing as I find it would be unfair to force the tenant to pay for the replacement of the entire railing. I find that an award of \$50.00 will adequately compensate the landlord and I award her that sum.

Garbage removal: The landlord seeks to recover \$150.00 as the cost of removing the tenant's discarded belongings, including garbage and furniture, from the yard at the end of the tenancy. The landlord provided photographs of the items left behind as well as an invoice showing what was paid for the removal. The tenant testified that a police officer who was present near the end of the tenancy told her she could leave her belongings at the curb and they would be removed by the city. Despite what she was told, it is clear that the city did not remove the abandoned belongings. I find that the tenant failed to leave the yard in reasonably clean condition and I find that this violates s. 37(2)(a) of the Act. I find that the landlord had to pay \$150.00 to remove the discarded items and I find that the tenant should be liable for that amount. I award the landlord \$150.00.

Replacement of missing and damaged items: The landlord seeks to recover a total of \$138.57 as the cost of replacing 2 window blinds, a hose, a tarp and Rubbermaid totes which were missing at the end of the tenancy. The landlord originally claimed for the cost of replacing 2 hoses, but withdrew the claim for one of the hoses at the hearing. The landlord testified that

the blinds were bent and damaged at the end of the tenancy. The tenant acknowledged having damaged one of the blinds but testified that she has no knowledge of a second blind having been damaged. The parties agreed that at the beginning of the tenancy there were 2 hoses at the rental unit and at the end there was just one. The landlord testified that her neighbour had a tarp in the back yard which was missing at the end of the tenancy and which she had to pay to replace and that she had a number of Rubbermaid totes in the yard which were also missing. The tenant denied having taken the tarp and testified that she had no knowledge of totes in the yard. The landlord provided receipts showing the cost of the items she replaced as well as a photograph of the window blinds.

The landlord's photographs show 5 windows and at least 2 have damaged blinds. I find it more likely than not that the tenant caused the damage and I find that this damage goes beyond what may be characterized as reasonable wear and tear. I find that the tenant should be responsible for the replacement cost of the blinds. I further find that the tenant caused one of the hoses at the rental unit to go missing and I find she should be responsible for the replacement cost.

Because the tenant denied having taken the tarp and the Rubbermaid totes, because the landlord does not have evidence that they were on the residential property and because the items were apparently stored outside where they were accessible by anyone, I find that the landlord has not proven that the tenant was responsible for those losses and I therefore dismiss that part of the claim. I award the landlord \$93.77 as the cost of replacing the blinds and hose.

Occupational rent: The landlord seeks an award of \$200.00 because the tenant did not remove her belongings from the front yard until September 5. The landlord acknowledged that the rental unit was empty on August 31, the date on which the tenant was to vacate the rental unit, but stated that the unit was in a condition that rendered it unsuitable for showing to prospective tenants, so she could not advertise the unit until the tenant had moved. The landlord provided no photographs of the unit showing that it was unsuitable to be shown and I am unable to find that the landlord acted reasonably to mitigate her losses as is required under section 7(2) of the Act. For this reason, I dismiss this claim.

Screens: The landlord seeks to recover the cost of replacing screens which were damaged by the tenant. The landlord testified that 5 screens were damaged in that the screen had disengaged from the frame and provided an invoice showing that she paid \$148.96 to repair the screens. She testified that the windows and screens were new at the beginning of the tenancy. The tenant acknowledged that the screens were damaged but argued that they could have been repaired. The landlord testified that she asked about having the screens repaired but was told that it wasn't possible because the borders were bent and the screens had pulled away.

As the tenant acknowledged the damage and did not speak with a repairperson who could support her claim that the screens could be repaired, I find that the screens required replacement. I find that the damage goes beyond what may be characterized as reasonable wear and tear and I find that the tenant must be held liable for the cost of repair. I grant the landlord an award of \$148.96.

As the landlord has been only partially successful in her claim, I find she should recover one half of the filing fee from the tenant and I award her \$25.00.

The landlord has been successful as follows:

Lock replacement	\$105.00
Deck railing	\$ 50.00
Garbage removal	\$150.00
Missing and damaged items	\$ 93.77
Screens	\$148.96
Filing fee	\$ 25.00
Total:	\$572.73

The landlord has been awarded \$572.73. I order her to retain this amount from the \$1,200.00 in deposits which she currently holds and I order her to return the balance of \$627.27 to the tenant forthwith. I grant the tenant a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord will retain \$572.73 from the security deposit and is ordered to return the balance of \$627.27 to the tenant. The tenant is granted a monetary order for \$627.27.

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: April 16, 2015

Residential Tenancy Branch

