



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNSD, O, FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the *Act*"). The landlords applied for:

- a monetary order for damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. While the exact dates of service were in controversy, both parties agreed that they received the Application for Dispute Resolution by registered mail from the other party. Based on all of the testimony, I find both parties sufficiently served with the materials for this hearing. Both parties also testified that they had an opportunity to review the other party's materials to their satisfaction.

Preliminary Issue: Evidence submitted to meet the requirements of the Act

Both parties submitted documentary evidence for this hearing. The tenants submitted approximately 100 pages of documents while the landlord submitted over 20 pages of documents. During the course of this 55 minute hearing, both the tenants and the landlords provided testimony that was inconsistent and often unverified by the documentary evidence submitted. The tenants' photographs submitted were indecipherable and documentary submissions by the landlord were disorganized.

Section 64 of the *Act*, regarding Dispute resolution proceedings generally

64 (3) Subject to the rules of procedure established under section 9

(3) [*director's powers and duties*], the director may

- (a) deal with any procedural issue that arises,
- (b) make interim or temporary orders, and
- (c) amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Neither the tenant nor the landlord had numbered the pages of their papers within their documentary evidence packages. The photographs submitted by the tenant were unclear, mostly black, appearing to be photocopies of actual photographs. The tenant indicated, in her application that she was seeking \$4539.44 however, her handwritten materials refer to a reduction in rent of \$750.00 for 12 months totalling \$9000.00 and an additional amounts for days without heat and the cost of air-conditioning for a total of \$9625.00. The tenant also included reference to a hydro bill that she believed the landlord should pay. Most documents submitted by the tenant were very unclear in their purpose and in their relevance.

While the landlord had completed a monetary order worksheet with a clear listing of amounts totalling \$3779.54, the landlord's materials did not accurately reflect that amount. The landlord conceded that some items had been estimated, some items were not supported by receipts in the materials and some receipts did not clearly describe the items purchased.

Dispute Resolution Rules of Procedure Rule 3.7 provides that,

To ensure fairness and efficiency, an Arbitrator has the discretion to not consider evidence if the Arbitrator determines it is not readily identifiable, organized, clear and legible.

The parties at this hearing were provided with a full opportunity to explain their materials to the best of their ability. I will consider evidence that has been referenced in this hearing and explained by the party submitting that evidence. However, I find that there is documentary and photographic evidence within both materials that I am unable to consider as that evidence lacks any organization or clarity.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage or loss?

Are the landlords entitled to retain all or a portion of the tenants' security deposit?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to a monetary order for compensation for damage or loss?

Are the tenants entitled to return of all or a portion of the security deposit?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This month to month tenancy began August 1, 2010 and continued until the tenants vacated the rental unit on October 31, 2014. Both parties agreed that the rent remained \$1500.00 (payable on the first of the month) throughout the tenancy. Both parties agreed that the tenants paid \$750.00 for a security deposit with respect to this tenancy at the beginning of the tenancy.

The tenants submitted that their entire security deposit should be returned and they should be awarded a further amount for loss as a result of this tenancy. The total sought by the tenants was \$4539.44. The landlord sought to retain the security deposit towards a monetary order in the amount of \$3779.54.

Tenant MD testified that the tenants provided their forwarding address to the landlord on September 30, 2015. The landlord acknowledged that the forwarding address had been provided by the tenants verbally on September 30, 2015. The landlord testified that she did not take action with respect to the tenants' security deposit as the tenants did not fulfil the requirements of the *Act* by providing the forwarding address in writing.

The tenants submitted documentary evidence illustrating the issues that arose over the course of their tenancy. The documents submitted included a plumbing estimate for repairs and analysis of an issue with the kitchen sink dated 2013. Tenant MD testified that there had been a sewage back-up on the property. Tenant MD testified that there was a smell in the walls of the rental unit after that back-up that remained. The tenants

provided undisputed evidence in the form of witness letters confirming their testimony at this hearing that the basement was not in a useable condition; it had a smell and required maintenance and repair in this area of the home, according to those witness statements. Both tenants testified that there was a crack in the foundation at the residence and that pipes had burst resulting in flooding. Both tenants testified that the unit was flooded, to varying degrees, on at least four occasions.

Landlord JZ testified that a condition inspection was not completed until November 9, 2015 and that the tenants did not return the keys until November 10, 2014. Landlord JZ testified that items that required repair at the end of tenancy included; repainting as the tenant had done "specialty painting" in certain rooms; yard work; damage to the bricks in the exterior of the home. Digital evidence, while difficult to view, demonstrated that the rental unit appeared to be neat and clean with patched walls and some marks remaining on the walls and floors as well as the "specialty painting" (ie: clouds in children's room, bright colours).

Many of the items claimed by the landlord were noted on the move-out condition inspection report. While the tenants did not sign the report, they acknowledged they were present during its creation. The landlord testified that a copy of the report was provided to each tenant. Included in the items noted for repair on the move-out condition inspection report;

- damaged hand rail to downstairs broken and bricks on fireplace;
- mudded holes in kitchen and other areas of home;
- kitchen floor and bedroom and living room carpet not cleaned;
- missing light bulbs;
- broken electrical outlets;
- bedroom door knob broken and screen at back door;
- garbage left in utility room;
- no yard maintenance/pruning/garbage .. ;
- no cleaning in house;...and
- bedrooms not painted back to neutral.

The conclusion of the report is not signed at move-out by either tenants. Tenant KB testified that he did not agreed to the condition of the unit as reflected on the report or to the retention of his security deposit. The last note on the report indicates, "refused to sign. Nov 9/14"

The landlords submitted an invoice for \$367.50 for tree trimming, garden clean-up, tree removal, clean-up of shed and filling holes. The landlords submitted that this work was required after the dogs owned by the tenants caused extensive damage to the yard. The landlords submitted a copy of the rental agreement with an addendum indicating that “the renter has agreed that trees on the property are to be maintained by the renter including spraying and pruning” and that the lawn was to be maintained by the renter.

The landlord submitted an invoice from a repair service that indicated the following work; painting the bedroom; replacing a door; re-secure hand railing; fix holes in fireplace. That invoice totalled \$1025.00 + GST with \$325.00 in materials and \$700.00 in labour. This invoice is an estimate, or quote from the company, of the cost of repairs. The landlord did not submit an invoice to show that these repairs had been completed. The tenants disputed that these repairs were necessary or that they were a result of their tenancy. This invoice lists the items for repair but does not provide an itemized accounting of the cost for each of the six repairs.

The landlord submitted several receipts from hardware and general stores. Some of them itemized a purchase, including light bulbs while others did not clarify what they were for. Some receipts listed lamps however the landlord did not clarify why these purchases were the responsibility of the tenants. One receipt included the purchase of a blind. The landlord testified the blind was damaged over the course of the tenancy.

In support of their application for move-out cleaning after the tenants vacated the rental unit the landlords submitted an invoice for six hours of cleaning at \$80.00 plus the cost of carpet cleaning by the same company at \$60.00. The total of this invoice was \$564.00 including tax. The tenants disputed that the rental unit required extensive cleaning after they vacated the rental unit. Further, Tenant MD noted that this invoice was by way of a quote and that no final receipt was submitted by the landlords with respect to cleaning.

In submitting their application for dispute resolution, the tenants were instructed in writing to “submit the breakdown” of their claim. The tenants did not submit a monetary worksheet or a clear breakdown of the amounts that they are seeking. Based on the testimony at hearing and the documentary submissions, the tenants seek some or all of the following items:

Item	Amount
Furniture wrecked in floods (bed, sofas, etc.)	\$2500.00

1 year without use of basement	9000.00
Cost of Air conditioner	525.00
2 days without heat	100.00
Return of Security Deposit	750.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	750.00
Recovery of Filing Fee for this Application	50.00
Total order sought by tenants	\$13,675.00

The landlord did not dispute that there had been flooding within the rental unit. The tenants provided little evidence in testimony or otherwise to support a claim for the cost of air conditioning to the rental unit in the amount of \$525.00. The landlords did not dispute the tenant's testimony that the furnace was broken for 2 days. The landlord testified that the repairs were made as quickly as possible. The tenants noted that this breakdown occurred in January when it was colder weather.

Analysis

Landlord's Application: The landlord has made an application pursuant to section 67 of the *Act* to be compensated for cleaning at move-out; landscaping and yard work; repair and replacement as a result of damages by the tenants to the rental unit; and one month's rent to reflect a lack of notice to vacate the unit by the tenants.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord submitted evidence that they had incurred expenses relating to yard maintenance and repair at the end of this tenancy. They provided receipts to reflect the work done and that it occurred shortly after the tenancy ended. The landlord provided evidence within the tenancy agreement that confirmed the tenants' responsibility with respect to yard maintenance. Given the evidence submitted by the landlord and the testimony of the landlord, I accept that some yard maintenance was required at the end

of this tenancy. Given that the invoice of \$367.50 has provided an itemized list of seven types of work done but has not provided the cost for each item, I find the landlord is entitled to recover a portion of this invoice. I find that the landlord is entitled to recover costs for pruning two trees, cleaning the yard, repairing the holes from the dog and some clean-up of the shed. I find the landlord is entitled to 65% of the costs of the yard work totalling \$238.87.

Tenant MD acknowledged that the hand railing required repairs but testified that all holes were patched and painting completed by the tenants before they vacated the residence. The tenants did not dispute the photographic evidence or the testimony that some rooms had been altered, painted into designs that would have to be repainted at the end of the tenancy. I find the landlord is entitled to recover the cost of repair to the hand railing and the cost to return the rooms to neutral paint. Therefore, I find the landlord is entitled to 33% of the estimate provided totalling \$338.25.

The landlord submitted several receipts from hardware and general stores however the landlord did not clarify or explain why these purchases were the responsibility of the tenants. Some of the receipts itemized what had been purchased and some did not. One receipt showed the purchase of a blind for the residence. The landlord testified that blinds were damaged at the end of the tenancy. The tenants did not dispute this testimony. Tenant MD merely indicated that they were unaware of any damage to the blind. In all of the circumstances, I find that the landlord has shown on a balance of probabilities that the blind was damaged over the course of the tenancy. Therefore, I find the landlord is entitled to compensation in the amount of \$46.98 for blind replacement.

I find, based on the documentation in the condition inspection report that the landlord is entitled to recover the cost of carpet cleaning in the amount of \$60.00. I accept the tenants' testimony that efforts were made to clean and repair the residence. I also acknowledge the tenants' submission that the landlord relies on a quote for cleaning and does not have a receipt to show out of pocket costs incurred. The tenants testified that this cleaning would have taken place by now and that the receipt should have been included as the best evidence. The tenant submitted photographs that illustrated a reasonably neat and tidy residence at the end of their tenancy. As the landlord did not provide a sufficient response to this argument by the tenants, I find that the landlord is not entitled to the estimated cost of cleaning in the amount of \$120.00 but only to the \$60.00 for carpet cleaning.

In considering the landlord's claim, I have taken into account that some of the claims made, including the cost of cleaning and the costs for painting and repairs have not

been established to a certainty as out-of-pocket losses. These claims are based on estimates of work to be done at the rental unit. Therefore, I have awarded losses to the landlord in consideration of the evidence that support the landlord's claim that repairs are required at the end of this tenancy and the approximate cost of those repairs in the form of estimates. I also note that some required repairs have been acknowledged by the tenants. Finally, I have also taken into account the provision of a condition inspection report into evidence for this hearing.

While the condition inspection report is not signed at the end of tenancy, the landlord completed the condition inspection report in compliance with the *Act*. The tenants dispute the contents of the condition inspection report but they do not dispute that it was prepared contemporaneously with the start and end of this tenancy. The landlord has provided sworn testimony and some documentary and photographic evidence in support of the report.

Section 21 of the *Act* indicates that the evidentiary weight of a condition inspection report is considered a reasonable reflection of the condition of the rental unit unless one party can prove otherwise.

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The party seeking compensation for loss bears the burden to show that the loss has been incurred. I find that, with the inclusion of the condition inspection report and acknowledgment of repairs required by the tenants, the landlord has shown on a balance of probabilities that certain repairs and clean-up work were required at the end of this tenancy as a result of the tenancy. I find that the tenant has not provided sufficient evidence to the contrary but for with respect to the cost of cleaning. I find the landlord is entitled to a monetary award including the following;

Item	Amount
Yard Work	\$238.87
Repairs	338.25
Blind replacement	46.98
Cleaning carpet	60.00
Monetary Order to Landlords	\$684.10

Tenant's Application: The tenants submitted that their entire security deposit should be returned and they should be awarded a further amount for loss as a result of this tenancy. The total sought by the tenants was \$4539.44.

The tenants did not submit a monetary worksheet or a clear breakdown of the amounts that they are seeking. Based on the testimony at hearing and the documentary submissions, the tenants sought approximately \$13,675.00, a much different amount than the amount indicated in their application for dispute resolution.

In order to claim for damage or loss under section 67 of the *Act*, the tenants bear the burden of proving their damage or loss. The tenants' testimony that the basement in the rental unit had flooded was not disputed by the landlords. However, the tenants did not provide evidence to support their position that their furniture was destroyed as a result of the floods in the basement. The photographs submitted by the tenants did not show furniture located in the basement before or after the flood. The tenants did not provide receipts of original purchase or replacement purchase. The tenants provided minimal testimony with respect to this aspect of their claim. Based on the tenants' failure to meet the burden of proof to show damage or loss with respect to furniture in the basement, I do not find the tenants are entitled to compensation with respect to this aspect of their claim

The tenants did provide witness statements that indicated there was a smell as a result of at least one of the floods and that the condition of the basement caused a level of discomfort for the tenants' in their home. Based on the undisputed evidence of the occurrence of more than one flood as well as the tenants' supported testimony regarding the smell and other inconveniences of the flood in the basement, I find that the tenants are entitled to a deduction in their rent that reflects their established loss as a result of this tenancy. I find that the tenants are entitled to a 5% deduction in their rent over the course of one year. With a rental amount of \$1500.00, the deduction totals \$75.00 per month for 12 months. I find the tenants are entitled to \$900.00 in compensation for the basement flood issues during their tenancy.

The tenants provided insufficient evidence to support a claim for the cost of air conditioning for the rental unit in the amount of \$525.00. As the tenants have not met the standard required to show that the cost of an air conditioner was in fact a loss to them, that the landlords are responsible for the tenants incurring that cost and as the tenants have not provided any proof documenting the cost of the air conditioning, I find the tenants are not entitled to recover this cost as part of their application.

The landlords did not dispute the tenant's testimony that the furnace was broken for 2 days but testified that the repairs were made as quickly as possible. The tenants noted that this breakdown occurred in January. The tenants sought \$100.00 as compensation for this loss of facility during the course of their tenancy. Given that the landlords did not deny the tenants' claim but that the landlords acted in a reasonable time to make repairs, I find the tenant is not entitled to an award for lack of services over the course of two days. I find that the landlords acted within reason in making the repairs requested.

With respect to the tenants' **security deposit**, section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, I accept the testimony of both tenants that they provided their forwarding address on September 30, 2015. The landlord filed an Application for Dispute Resolution on November 24, 2015: approximately 55 days after the tenants provided their forwarding address to the landlord. In applying for dispute resolution, the landlord sent materials to the tenants at the address they had provided.

In accordance with section 38 of the *Act*, I find that the triggering event (the provision of the forwarding address in writing in this matter) has not yet occurred. Therefore, the landlord is within her purview to apply for the retention of the security deposit at this time. An amount equivalent to the original value of the security deposit (section 38(6) of the *Act*) is not appropriate to award to the tenants in these circumstances.

I issue a monetary award in favour of the tenants as follows;

Item	Amount
Loss 12 months use of basement (T)	\$900.00
Less Security Deposit held by Landlord (T)	750.00
Yard Work – costs to landlord (LL)	-238.87
Repairs – costs to landlord (LL)	-338.25
Blind replacement – cost to landlord (LL)	-46.98
Carpet cleaning – cost to landlord (LL)	-60.00

Monetary Order to Tenants	\$965.90
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As both the landlords and the tenants have been successful in part of their applications, I find that the parties shall bear their own **filing fee** costs.

Conclusion

I issue a monetary Order in favour of the tenants in the amount of \$965.90.

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlords fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: June 19, 2015

Residential Tenancy Branch

