



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, MNR, MNDC, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of cleaning, changing the locks, painting, water bill and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony. Both parties provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

At the outset of the hearing, the tenant pointed out that the landlord was bringing this application beyond the latest time of two years that an application for dispute resolution can be made.

Section 60 of the *Residential Tenancy Act* speaks to the latest time that an application for dispute resolution can be made. Section 60(1) states that an application for dispute resolution must be filed within two years of the date that the tenancy ended. If an application is not made within the two year period, a claim arising under this *Act* or the tenancy agreement in relation to the tenancy ceases to exist.

Even though the tenant moved out on October 13, 2012, the tenancy ended on October 31, 2012 and rent for October 2012 was awarded in full to the landlord at a previous hearing. The landlord made this application on October 31, 2014 and is therefore within the legislated time of two years.

Issues to be decided

Has the landlord established a claim for the cost of cleaning, changing the locks, painting, water bill and for the recovery of the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on November 01, 2011 and ended on October 13, 2012. Prior to moving in, the tenant paid a security deposit of \$547.50. The landlord lives away from the rental unit and occasionally visits. During her visits she occupies the lower suite which remains vacant for the time she is away. The tenant occupies the upper suite.

The landlord stated that the cost of utilities was not included in the rent and filed a copy of the tenancy agreement to support her testimony. The tenant agreed that she was required to pay utilities and requested that the accounts be transferred into her name. The tenant paid the garbage and water bill for the first half of the tenancy.

Despite the tenant's request, the landlord did not transfer the utility bills to the tenant and the tenant stopped paying them after the first half of the tenancy. The tenant occupied the upper level of the home but had paid the entire bill for the first half of the tenancy. The landlord claimed \$325.66 but upon reviewing the bills filed into evidence an adjustment was made and the landlord agreed to lower her claim to \$180.00.

The landlord stated that the tenant did not take care of the yard as she was supposed to and a blue spruce tree and the grass died. The tenant argued that the lawn was already in poor shape at the start of the tenancy and the landlord had given her lawn seed to restore the damaged areas of the lawn. The tenant refused to take responsibility for the poor condition of the blue spruce tree or the grass.

The landlord stated that the tenant did not clean the rental unit and she hired a professional cleaner to complete the cleaning. The landlord filed photographs of the appliances that were not cleaned by the tenant. The landlord did not file any other photographs of the interior of the house. The tenant agreed that she did not clean the appliances but argued that she cleaned the rest of the rental unit. The landlord also filed photographs of the yard. The tenant agreed that she left some unwanted items behind. The landlord is claiming the cost of removing these items.

The landlord also stated that there was mould on the windows and hired a mould cleaning service during the tenancy. The tenant pointed out that mould was noted in the move in inspection report. The landlord has made a claim for carpet cleaning. The tenant stated that she rented a rug doctor and had the carpets washed. The landlord stated that after the tenants moved out she had some repair work done inside the unit and upon completion of the work, she had the carpets professionally cleaned on November 01, 2012, just before the new tenants moved in.

The tenant stated that she had changed the colour of the living room and master bedroom but had done so with the permission of the property manager. The landlord stated that she painted the living room back to its original colour and is claiming the cost of doing so but was not claiming the cost of repainting the master bedroom. The landlord's claim includes the cost of painting the other two bedrooms. The tenant pointed out that the walls in these bedrooms were damaged at the start of tenancy as noted in the move in inspection report. The landlord is also claiming the cost of painting the windows and trim due to mould discoloration.

The landlord testified that visiting the rental unit, she found that the tenant had cut a key to the landlord's suite and had entered without permission. The tenant's key was still in the lock at the time the landlord visited her suite. The parties had some disagreements and for her safety, the landlord decided not to occupy the lower suite during her visit. The landlord checked into a hotel and is claiming the cost of the hotel bill. The landlord is claiming the cost of changing the lock. The landlord also stated that she plans to hire a handy man to repair a sliding door and windows and has filed a quotation for the cost.

The landlord is claiming the following:

1.	Utilities (adjusted)	\$180.00
2.	Tree Service	\$974.40
3.	House cleaning	\$279.50
4.	Yard cleaning	\$100.00
5.	Mould cleaning	\$300.00
6.	Carpet cleaning	\$140.00
7.	Painting	\$1,400.00
8.	Change locks	\$88.48
9.	Hotel stay	\$593.21
10.	Handyman	\$388.23
11.	Filing fee	\$50.00
	Total	\$4,493.82

Analysis

1. Utilities (adjusted) - \$180.00

Based on the tenancy agreement, I find that utilities were not included in the rent. However since the tenant only occupied the upper level of the home, the landlord adjusted her claim from \$325.66 to \$180.00. I find that the tenant is responsible for the cost of utilities in this amount.

2. Tree Service - \$974.40

Both parties agreed that the yard was in poor condition at the start of tenancy. The landlord stated that the tenant did not water the tree and therefore it died. The landlord has provided an estimate for the cost of removing the tree. Based on the testimony of both parties, I find that the tenant is not responsible for the demise of the tree as it was in poor condition at the start of tenancy. In addition, the landlord has not incurred this expense yet. For the above reasons, I dismiss the landlord's claim.

3. House cleaning - \$279.50

The landlord filed photographs showing that the appliances were not cleaned by the tenant. The tenant agreed that she did not clean the appliances but stated that she had cleaned the remainder of the rental unit. The landlord did not file any photographs other than those of the appliances and accordingly, I find that the tenant is only responsible for the cost of cleaning the appliances. Since the invoice filed by the landlord is not itemized, I find it appropriate to award the landlord \$50.00 for cleaning the appliances.

4. Yard cleaning - \$100.00

The tenant agreed that she had left some of her belongings behind in the yard. The landlord filed photographs and a receipt to support her claim. I find that the landlord is entitled to the cost of cleaning the yard.

5. Mould cleaning - \$300.00

The move in inspection indicates that there was mould present on the kitchen windows. Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. Accordingly, I find that the landlord is responsible for the cost of cleaning the mould.

6. Carpet cleaning - \$140.00

The tenant stated that she hired a rug doctor and had the carpets washed prior to moving out. The landlord stated that the carpets were vacuumed but not washed. After the tenant moved out on October 13, 2013, the landlord carried out some repair and painting work inside the unit. Upon completion of the work the landlord had the carpets professionally cleaned on November 01, 2013.

I accept the tenant's testimony that she washed the carpets. I further find that the landlord had the carpets professionally cleaned after carrying out work in the rental unit.

In addition the landlord did not file any photographs to show that the tenant left the carpet in a dirty condition. The only photograph that the landlord filed was of a blue stain that she believes was put there by the tenant. Based on the above I find that the landlord is responsible for cleaning the carpet.

7. Painting - \$1,400.00

The landlord stated she restored the colour of the living room and master bedroom to its original colour after the tenant had painted, but is only claiming the cost of re painting the living room. Based on the testimony of both parties, I find that the landlord is entitled to the cost of repainting the living room.

I will use Section 40 of the *Residential Tenancy Policy* to assess the remainder of the useful life of the painting. As per this policy, the useful life of interior painting is four years. The landlord painted the unit in February 2011 and therefore by the end of the tenancy, the painting had one year and four months of useful life left. Since the invoice is not itemized, I can only make an approximate calculation of the portion of the painting costs that the tenant is responsible for. I find that the cost to paint the living room is approximately a quarter of the entire bill which works out to \$350.00. Based on the useful life left, I find that the tenant's portion of the cost is \$116.66.

Since the walls in the bedrooms were damaged at the start of tenancy as noted in the move in inspection report, I find that the landlord must bear the cost of painting the bedrooms. The landlord is also responsible for the cost of painting the mould discoloration on the windows and trim.

8. Change locks - \$88.48

The landlord chose to replace a lock that was fully functional. At the end of tenancy, the landlord must change locks at the request of a new tenant and bear the cost of doing so. Accordingly I dismiss the landlord's claim.

9. Hotel stay - \$593.21

The landlord stated that the tenant had left her some threatening messages and that she feared for her safety if she stayed in the suite below. The tenant stated that she told the landlord not to enter the upper level of the home which she occupied.

The landlord chooses to live away from the rental unit and therefore she is responsible for the cost of her accommodation during her visit to the city in which the rental unit is located. The landlord stated that the tenant left her a threatening message and has filed a recording of the message.

Since neither party has reported any prior incidents involving jeopardizing the safety of each other, I find that the landlord has not proven that her safety was in danger if she occupied the lower suite and accordingly must bear the cost of her accommodation.

10. Handyman - \$388.23

The landlord has not incurred this cost yet and has not proven that the damage to the sliding door and window was a result of negligence on the part of the tenant. Accordingly I dismiss this claim.

11. Filing fee - \$100.00

The landlord has proven most of her claim and therefore is entitled to the recovery of the filing fee.

Overall the landlord has established the following claim:

1.	Utilities (adjusted)	\$180.00
2.	Tree Service	\$0.00
3.	House cleaning	\$50.00
4.	Yard cleaning	\$100.00
5.	Mould cleaning	\$0.00
6.	Carpet cleaning	\$0.00
7.	Painting	\$116.66
8.	Change locks	\$0.00
9.	Hotel stay	\$0.00
10.	Handyman	\$0.00
11.	Filing fee	\$50.00
	Total	\$496.66

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs and contains the following provision:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of her monetary claim. The landlord currently holds a security deposit of \$547.50. Because the landlord has established a claim of \$496.66, it is appropriate that I order the return of the balance of the tenant's security deposit.

Accordingly, I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$50.84. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$50.84**.

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 04, 2015

Residential Tenancy Branch

