



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*") for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to keep all or part of a security deposit, and to recover the cost of the filing fee.

Tenant M.S. (hereinafter referred to as the "tenant"), the landlord, and an agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. The tenant indicated that she was representing both tenants at the hearing.

Both parties stated that they received the documentary evidence package from the other party prior to the hearing and that they had an opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the *Act*.

Issues to be Decided

- Should the landlord be granted a monetary order for money owed or compensation under the *Act*, regulation or tenancy agreement, and if so, in what amount?
- Should the landlord be permitted to retain all or part of the tenants' security deposit?
- Should the landlord recover the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on April 1, 2011 and after March 31, 2012, reverted to a month to month tenancy. Monthly rent was due on the first day of each month in the amount of \$1,300. The parties agree the tenants vacated the rental unit on November 30, 2014. The tenants paid a \$650 security deposit at the start of the tenancy, which the landlord continues to hold.

Although the landlord listed her monetary claim as \$3,029.25 on her application, the tenant confirmed that when the items were reviewed during the hearing that the actual total being claimed was \$3,247.65. The tenant confirmed that she understood the landlord's claim to be \$3,247.65 comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Lawnmower repair	\$99.40
2. Carpet cleaning (2 cleanings comprised of the first @ \$150 and the second @ \$100)	\$250
3. Repainting	\$2,400
4. GST for renovation/repairs from invoice	\$144.25
5. Labour to clean windows and trim before repainting	\$50
6. Repair holes	\$50
7. General house cleaning	\$150
8. Clean dryer hose/pipe	\$25
9. Clean outside garage and back room	\$60
10. Dump fee	\$19
11. Pictures for hearing	\$97.91
12. Photo sheets for hearing	\$31.28
13. Compensation for landlord's time to prepare for hearing	\$200
14. Return of the free month of rent given to tenants pursuant to the 2 Month Notice re: allegation that tenants had breached no pet condition of tenancy agreement	\$1,400

Item #1 – The landlord has claimed \$99.40 to have the lawnmower repaired that was not working after the tenants vacated the rental unit. The parties agreed that the tenancy agreement or addendum to the tenancy agreement did not reference the lawnmower in dispute. The tenant claimed that the lawnmower was not working at the start of the tenancy in 2011. The tenant then changed her testimony by stating that the tenants repaired the lawnmower and that it stopped working later in 2013. The tenant

confirmed that she did not submit any documentary evidence to support that the tenants had the lawnmower repaired at the start of the tenancy, such as a repair receipt, in support of her testimony. The landlord testified that the lawnmower was working at the start of the tenancy and was not working at the end of the tenancy, which is why the landlord has claimed for the repair bill of \$99.40 submitted in evidence.

The landlord referenced a photo from a popular social media site dated June 9, 2013 which the tenant confirmed was from the profile of the male tenant which shows the male tenant with the landlord's lawnmower and reads in part:

...Bahah...after the pic i hit a rock. Hes on rough shape!....no mower wasnt event going i was walkin it back to shed and he ran up beside me...

[reproduced as written]

The tenant also confirmed that the lawnmower in the photo was the lawnmower left at the rental unit by the landlord. I note that on the condition inspection report, it reads in part in relation to the lawnmower:

...lawnmower + yard tools in garage for tenants..."

[reproduced as written]

Item #2 – The landlord has claimed \$150 for the first carpet cleaning which the landlord referred to an invoice dated December 7, 2014 in support of her claim. The landlord then testified that a second carpet cleaning was required as the carpets did not come clean the first time, so another \$100 was paid to have the carpets cleaned, and an invoice dated December 17, 2014 was submitted in the amount of \$100 in support of the landlord's testimony.

The condition inspection reports supports that the carpets were not dirty at the start of the tenancy and were stained and dirty at the end of the tenancy. The tenant claimed that they did not sign the outgoing condition inspection report as they did not agree with it. The tenant later testified in the hearing that the outgoing condition inspection report wasn't done with the tenants, and then later in the hearing, testified that an agent for the landlord was there.

The tenant did confirm during the hearing that the tenants did not have the carpets cleaned before vacating the rental unit.

Item #3 – The landlord has claimed \$2,400 for repainting the rental unit. The landlord testified that the rental unit was last painted in December 2008 before the tenancy

began on April 1, 2011. The tenant claims the rental unit was not live-in ready. The landlord referred to photos 89, 90 and 91 to show the condition of the rental unit at the start of the tenancy. The condition inspection report indicates that the entrance, master bedroom and the second bedroom walls had “brand new paint” at the start of the tenancy and none of the walls were described as dirty. The landlord referred to photo 21 which showed paint on the ceiling which the tenant confirmed had been done by the tenants.

The landlord testified that the amount being claimed, \$2,400 included the cost of the paint to re-paint the rental unit due to a poor painting job by the tenants where there was paint on the ceilings (photo 21) and paint on the baseboards (photo 24). The tenant admitted that the tenants had paint overspill when they painted in the rental unit.

Item #4 – The landlord testified that this item relates to \$144.25 in GST charged for the full renovation/repair job by the renovation company referred to on the invoice submitted in evidence. According to invoice submitted by a renovation company, the renovation/repair amount before GST was \$2,885 which including \$144.25 in GST resulted in a total of \$3029.29. The invoice reads in part:

- Fix holes in kitchen, child bedroom, living room, ceiling
- Clean windows inside and trim before painting
- Paint house interior 2 coats including ceiling and
- fix bedroom door
- Clean dryer – filter full never cleaned
- Clean entire house including kitchen, stove, fridge, bathroom
- Carpet cleaning and still unable to remove stains
- Clean outside around garage and back room

[reproduced as written]

Item #5 – The landlord has claimed \$50 for labour to clean windows and trim before repainting. The landlord referred to photos 37 and 38 submitted in evidence in support of this portion of her claim. The tenant did not dispute the photos presented by the landlord.

Item #6 – The landlord has claimed \$50 in labour to repair holes in the rental unit. While the tenant did not agree to the amount of \$50 being claimed, the tenant did confirm that the patch in the wall shown in photo 19 was completed by the tenants. The landlord testified that the tenants patch work needed to be redone as the patch was of poor quality. The condition inspection report refers to holes, patches and paint issues. The

landlord referred to the invoice described in item #4 above in relation to this portion of her claim.

Item #7 – The landlord has claimed \$150 for general house cleaning. The tenant claims that she cleaned for five hours before the outgoing condition inspection, yet earlier in the hearing, stated that there was no outgoing condition inspection report completed. The tenant then added that “or when it was supposed to be but it never happened” and then later testified that an agent was there and that the argument between the landlord and tenants were about the condition of the rental unit. The tenant confirmed that she did not take any photos of the cleaning she alleged to have completed. The landlord referred to several photos for this portion of her claim. The tenant’s response was that it looked like that when they moved in. The landlord explained that this portion of her claim is for six hours of cleaning at \$25 per hour for a total of \$150.

Item #8 – The landlord has claimed \$25 to clean the dryer vent pipe/hose of the dryer in the rental unit and stated that it took an hour just to clean the dryer vent pipe as it was full of lint which was a fire hazard. The landlord stated that she is charging \$25 per hour to for cleaning of the dryer vent pipe/hose for this portion of her claim.

Item #9 – The landlord has claimed \$60 to clean the outside garage and back room of the rental unit. The landlord referred to two photos in evidence. The tenant claims the hoses and rope in the photos belonged to the landlord which the landlord denied. The condition inspection report indicates at the start of the tenancy that it “needs some work”. The landlord stated that she did not have any photos of the garage and back room at the start of the tenancy.

Item #10 – The landlord has claimed \$19 for a dump fee to dispose of the garbage left behind by the tenants. The landlord submitted a transfer station receipt in the amount of \$19 in evidence in support of this portion of her claim.

Items #11, #12 and #13 – The landlord has claimed \$97.91 for item 11 for photo finishing costs related to the photos in the landlord’s documentary evidence, \$31.28 for photo sheets related to the landlord’s document evidence, and \$200 for the landlord’s time to prepare for the hearing. The *Act* does not provide for a remedy for the landlord’s time in making an application for dispute resolution under the *Act* or for the photo costs related to the documentary evidence submitted by a party. Given the above, **I dismiss** these items of the landlord’s claim.

Item #14 – The landlord has claimed \$1,400 as compensation for the return of the free month of rent given to tenants pursuant to the 2 Month Notice related to the landlord’s allegation that tenants had breached no pet condition of tenancy agreement. **I dismiss**

this portion of the landlord's claim as the landlord did issue a 2 Month Notice dated September 29, 2014 and cannot unilaterally rescind a 2 Month Notice once it is issued for such a reason as indicated above.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

While the landlord and the tenant disputed almost all of each other's testimony during the hearing, I prefer the testimony of the landlord over that of the tenant as the tenant's testimony was inconsistent and/or conflicting during the hearing, while the landlord's testimony was consistent. Some examples of the tenant's inconsistent and/or conflicting testimony include the following:

- Regarding the lawnmower, the tenant originally stated that the lawnmower was not working at the start of the tenancy in 2011. The tenant then changed her testimony by stating that the tenants repaired the lawnmower and that it stopped working later in 2013.
- Regarding the outgoing condition inspection report, the tenant originally stated that the tenants did not sign the outgoing condition inspection report as they did not agree with it. The tenant later testified in the hearing that the outgoing condition inspection report wasn't done with the tenants, and then later in the hearing, testified that an agent for the landlord was there.
- Also regarding the outgoing condition inspection report, the tenant stated later in the hearing that she cleaned for five hours before the outgoing condition inspection, yet earlier in the hearing, stated that there was no outgoing condition inspection report completed. I find the tenant then realized her inconsistency and changed her testimony to "or when it was supposed to be but it never happened".

Based on the above, I do not find the tenant to be credible as her responses lacked substantiating evidence, such as photographic evidence and was inconsistent. An example of this is when the general cleaning portion of the claim was being discussed, the tenant alleged that it was like that when they moved in, yet had no supporting photographic evidence or witness testimony.

Item 1 – The landlord has claimed \$99.40 to have the lawnmower repaired that was not working after the tenants vacated the rental unit. Based on the evidence before me with the photo from the popular social media site which indicates that the male tenant hit a rock after the picture was taken and without any supporting evidence to prove that the

tenants had the lawnmower repaired, I find the tenants actions resulted in damage to the lawnmower. I find that the use of the lawnmower was clearly indicated as part of the tenancy on the incoming condition inspection report and that the parties did agree was provided for the tenants' use during the tenancy. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$99.40** for the cost of the lawnmower repair as claimed.

Item #2 – Residential Tenancy Branch Policy Guideline #1 indicates that at the end of the tenancy, tenants will be held responsible for steam cleaning or shampooing of carpets after a tenancy of one year. This tenancy started on April 1, 2011 and ended on November 30, 2014 which well exceeds one year. As the tenant confirmed during the hearing that the carpets were not cleaned prior to the tenants vacating the rental unit, I find the tenants are responsible for the carpet cleaning costs as claimed and I grant the landlord the full amount of **\$250** as claimed as a result. The landlord provided receipts in support of this portion of her claim.

Item #3 – The landlord has claimed \$2,400 for repainting the rental unit. The landlord testified that the rental unit was last painted in December 2008 before the tenancy began on April 1, 2011. The condition inspection report indicates that the entrance, master bedroom and the second bedroom walls had “brand new paint” at the start of the tenancy and none of the walls were described as dirty. The landlord referred to a photo which showed paint on the ceiling which the tenant confirmed had been done by the tenants.

Residential Tenancy Branch Policy Guideline 40 – Useful Life of Building Elements indicates that interior paint has a useful life of four years. While I find that some of the rental unit interior paint would have exceeded the useful lifespan of four years as it was last painted in December of 2008 and the tenancy ended on November 30, 2014, some of the paint was indicated as “brand new paint” on the incoming condition inspection report signed by the parties. I find, however, that the tenants poor painting job resulted in damage by painting parts of the rental unit ceiling and baseboards. Therefore, I find a reasonable amount to repair the painting damage caused by the tenants is ½ of the total painting claims of \$2,400 for a total claim of **\$1,200**. In other words, I find the tenants breached the *Act* by damaging the rental unit paint by providing a sloppy paint job that needed to be repaired by the landlord after the tenants vacated the rental unit.

Item #4 – The landlord testified that this item relates to \$144.25 in GST charged for the full renovation/repair job by the renovation company referred to on the invoice submitted in evidence. According to invoice submitted by a renovation company, the renovation/repair amount before GST was \$2,885 which including \$144.25 in GST resulted in a total of \$3029.29. As the landlord was not successful with all of the items

as claimed that made up this portion of the claim for \$144.25 in GST, I find that with the GST calculated at 5%, I will grant 5% on to the only those portions that the landlord has successfully proven, that were included on the original invoice which totalled \$3,029.29. I will provide this calculation later in this decision once all items have been considered.

Item #5 – The landlord has claimed \$50 for labour to clean windows and trim before repainting. The landlord referred to two photos submitted in evidence in support of this portion of her claim. The tenant did not dispute the photos presented by the landlord. I find the landlord has met the burden of proof for this portion of her claim and I grant **\$50** to the landlord as a result.

Item #6 – The landlord has claimed \$50 in labour to repair holes in the rental unit. While the tenant did not agree to the amount of \$50 being claimed, the tenant did confirm that the patch in the wall shown in a photo was completed by the tenants. The landlord testified that the tenants patch work needed to be redone as the patch was of poor quality and I find that the condition inspection report supports this portion of the landlord's claim. I find the landlord has met the burden of proof for this portion of her claim and I grant **\$50** to the landlord as a result.

Item #7 – The landlord has claimed \$150 for general house cleaning. Section 37 of the *Act* 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]

The tenant confirmed that she did not take any photos of the cleaning she alleged to have completed. The landlord referred to several photos for this portion of her claim which I find supports that the rental unit was not left in a reasonably clean condition at the end of the tenancy. I find the tenants breached section 37 of the *Act* by failing to leave the rental unit in reasonably clean condition at the end of the tenancy. Therefore, I

find landlord has met the burden of proof for this portion of her claim and I grant **\$150** to the landlord as a result, as claimed.

Item #8 – The landlord has claimed \$25 to clean the dryer vent pipe/hose of the dryer in the rental unit and stated that it took an hour just to clean the dryer vent pipe as it was full of lint which was a fire hazard. Further to item #7 above, I find the tenants breached section 37 of the *Act* by failing to clean the dryer vent/hose. I find the landlord has met the burden of proof for this portion of her claim and I grant **\$25** to the landlord as a result, as claimed.

Item #9 – The landlord has claimed \$60 to clean the outside garage and back room of the rental unit. The landlord referred to two photos in evidence. While the tenant claims the hoses and rope in the photos belonged to the landlord, which the landlord denied, I find that based on the balance of probabilities and as described above, I prefer the evidence of the landlord and find that the landlord has met the burden of proof for this portion of her claim. Accordingly, I grant the landlord **\$60** for this portion of her claim.

Item #10 – The landlord has claimed \$19 for a dump fee to dispose of the garbage left behind by the tenants. The landlord submitted a transfer station receipt in the amount of \$19 in evidence in support of this portion of her claim. I find the landlord has met the burden of proof for this portion of her claim and I grant **\$19** to the landlord as a result, as claimed.

Items #11, #12, #13, and #14 – These items were dismissed without leave to reapply for the reasons stated above.

I will now deal with the GST as described in item #4 above. The following are the items that the landlord has been successful with where GST was charged for in the invoice referred to in item #4 above:

Item Number	Amount	5% GST
Item 2. Carpet cleaning (\$150 portion only as the \$100 portion was a separate receipt from a different company)	\$150 only	\$7.50
3. Repainting	\$1,200	\$60
5. Labour to clean windows and trim before repainting	\$50	\$2.50
6. Repair holes	\$50	\$2.50
7. General house cleaning	\$150	\$7.50

8. Clean dryer hose/pipe	\$25	\$1.25
9. Clean outside garage and back room	\$60	\$3
10. Dump fee	\$19	\$0.95
TOTAL GST FOR ITEM #4		\$85.20

Based on the above, I find the landlord is entitled to \$85.20 in GST for item #4 above as the landlord was successful with portions of the landlord's monetary claim.

As the landlord's application had merit, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$50**.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
1. Lawnmower repair	\$99.40
2. Carpet cleaning (2 cleanings comprised of the first @ \$150 and the second @ \$100)	\$250
3. Repainting	\$1,200
4. GST for renovation/repairs from invoice	\$85.20
5. Labour to clean windows and trim before repainting	\$50
6. Repair holes	\$50
7. General house cleaning	\$150
8. Clean dryer hose/pipe	\$25
9. Clean outside garage and back room	\$60
10. Dump fee	\$19
Filing fee	\$50
TOTAL	\$2,038.60

I find that the landlord has established a total monetary claim of **\$2,038.60** as indicated above. **I ORDER** that the landlord retain the tenants' full security deposit of \$650 in partial satisfaction of the landlord's monetary claim and I grant the landlord a monetary order under section 67 for the balance due by the tenants to the landlord in the amount of **\$1,388.60**.

Conclusion

The landlord's application has merit.

The landlord has established a total monetary claim of \$2,038.60. The landlord has been ordered to retain the tenants' full security deposit of \$650 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order under section 67 for the balance due by the tenants to the landlord in the amount of \$1,388.60. This order must be served on the tenants 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: July 28, 2015

Residential Tenancy Branch

