



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ESI MARKETING LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the *Act*; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The tenants confirmed receiving the landlord's notice of hearing package and submitted documentary evidence. The landlord confirmed receiving the tenants' notice of hearing package and submitted documentary evidence. I accept the undisputed affirmed testimony of both parties and find that each party has been properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the *Act*.

At the outset it was clarified with both parties that the landlord's monetary claim of \$1,475.00 was amended to \$1,343.00 based upon the submitted monetary worksheet as this total is based upon the actual invoices paid. Neither tenant made any objections.

It was also noted during the hearing that the landlord's submission for labour of \$523.61 was a typographic error and that the monetary claim for this portion of the application would be for the amount of \$524.15 based upon the paid invoice.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security and/or pet damage deposits?

Are the tenants entitled to a monetary order for the return of all or part of their security and/or pet damage deposits and recovery of their filing fee?

Background and Evidence

This tenancy began on May 1, 2015 on a fixed term tenancy of 6 months ending on October 30, 2015 as shown by the submitted copy of the signed tenancy agreement dated April 29, 2015. The monthly rent was \$980.00 payable on the 1st day of each month and a security deposit of \$490.00 and a pet damage deposit of \$490.00 were paid at the beginning of the tenancy. A condition inspection report for the move-in was completed by both parties on April 27, 2015. No condition inspection report for the move-out was completed.

The landlord seeks a monetary claim of \$1,343.13 which consists of:

Laminate Flooring	\$302.08
Light Fixture	\$368.48
Light socket & cover	\$148.96
Labour for all work	\$524.15

The landlord relies upon the submitted invoices of:

E.H. Home Product	\$302.08
V's Construction	\$368.48
24/7 S. Cleaning and Maintenance	\$148.96
T.P. Management	\$524.15

The landlord stated that on May 31, 2015 during the condition inspection report for the move-out, the landlord found damage/altered items in the rental premises consisting of:

- Laminate floor in living room/dining room area was warped (the landlord submitted 6 photographs showing the gaps in the laminate flooring).
- Chandelier in dining room area was missing and replaced with track lighting (the landlord submitted 1 photographs showing track lighting).
- Damaged stovetop light socket (photographs showing wires cut and exposed).
- Missing shelving board from kitchen cabinet (photograph showing a missing shelf).
- Damaged kitchen cabinets above stovetop and countertop (photographs showing black glue and long strips of torn siding).
- Rental unit was re-painted without permission in 3 different colors.
- Damaged showerhead (photograph showing showerhead held together with tape).
- Closet shelving was reconfigured without permission (photographs showing drywall damage).
- Returned incorrect lock key for mailbox requiring strata to rekey mailbox
- Dirty/Damaged washing machine (photograph showing dirty machine).

The landlord has also provided photographs of the rental unit at the end of the prior tenancy and an email from the current tenant detailing the condition of the rental unit at the beginning of her tenancy.

The landlord stated that the tenants participated in the condition inspection report for the move-out on June 2, 2015, but after the landlord noted all of the damage the tenants refused to sign to agree or disagree with the completed report.

The tenants disputed the landlord's claims and argued that the flooring damage was in fact due to poor installation. The tenants maintained that the flooring was exactly the same at the end of the tenancy as when they moved in. The tenant, W.C., stated that he was a professional contractor with experience with wood. Tenant W.C., noticed the poor installation quality and the noted gaps in the flooring at the beginning of the tenancy. He stated that he was the one who signed off in agreement on the condition inspection report for the move-in and did not bring up or notify the landlord of these flooring issues.

The tenants disputed the landlord's claims noting that the condition inspection report for the move-out was not completed. The tenants both confirmed in their direct testimony that they participated in the condition inspection report for the move-out but that they disagreed with the landlord's notations on damage to the rental premises.

The tenants disputed that the chandelier was replaced. The tenants maintained that the lights in the rental premises were the same as when they moved in. The landlord argued against this stating that the chandelier was present during the previous tenancy which ended on April 17, 2015. The landlord has submitted a photograph of the rental unit during that condition inspection report for the move-out in support of their claim.

The tenants argued that the premises were re-painted at the end of their tenancy to the original colors as it was at the beginning of the tenancy. The landlord disputed this stating that the rental premises were painted without permission. The landlord stated that the bathroom was not returned to the original color. Tenant W.C. confirmed that no permission was granted by the landlord to re-paint the rental premises during the tenancy.

The tenants seek a monetary claim of \$1,475.00. The tenant, C.AF. gave direct testimony that this was an arbitrary amount to match the landlord's claim. The tenants stated that they sought the return of:

Original Security Deposit	\$490.00
Original Pet Damage Deposit	\$490.00
FOB Deposit	\$75.00
FOB Deposit	\$150.00
Total	\$1,205.00

The landlord confirmed that the landlord currently holds the combined deposits of \$1,205.00 as listed by the tenants. This is confirmed on the notation of the condition inspection report for the move-in under keys and control.

Analysis

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear.

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. The landlord has provided sufficient evidence in the form of photographs showing the rental premises on April 17, 2015 prior to the start of the tenancy, a completed condition inspection report for the move-in dated April 27, 2015 which notes "OK" for the entire rental unit with no notations on the condition of the rental unit. The landlord has provided copies of all of their invoices for the items claimed. This is further supported by the submitted copy of an email from the current tenant who moved-in directly following the tenants. On this basis, I find that the landlord has established a monetary claim for each of the claimed items totalling \$1,343.00.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing.

Both parties confirmed that the landlord received the tenants' forwarding address in writing on June 2, 2015. The landlord applied for dispute resolution to dispute the return of the \$490.00 security and \$490.00 pet damage deposits on June 15, 2015.

Section 38 (7) of the *Act* states, if a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

In this case the landlord has not provided any details of pet damage that would require the retention of the pet damage deposit. As such, I find that the tenants are entitled to the return of the original \$490.00 pet damage deposit.

As the landlord has failed to comply with section 38 (1) in returning the pet damage deposit within the allowed 15 day timeframe and has failed to provide any details of any damage caused by a pet, I find that the landlord is liable under section 38 (6) of the Act for an amount equal to the \$490.00 pet damage deposit.

The tenants are entitled to:

Original Security Deposit	\$490.00
Original Pet Damage Deposit	\$490.00
Compensation, Failure to Comply with S.38	\$490.00
FOB Deposit	\$75.00
FOB Deposit	\$150.00
Total	\$1,695.00

The landlord has established a total monetary claim of \$1,343.00. The tenants have established a total monetary claim of \$1,695.00. As both parties have been successful in their applications, I decline to make any orders regarding the filing fee for both.

In offsetting these claims, I find that the landlord may apply the owed \$1,343.00 against the \$1,695.00. The tenants are granted a monetary order for the return of the difference of \$352.00.

Conclusion

I issue a monetary order in the tenants' favour under the following terms which allows the tenants a monetary award which includes the equivalent to the value of their pet damage deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act:

Item	Amount
Landlord's Monetary Entitlement	\$1,343.00
Return of Security Deposit	-\$490.00
Return of Pet Deposit	-\$490.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	-\$490.00
Return of Combined FOB Deposits	-\$225.00
Tenants' Total Monetary Order	(\$352.00)

The tenants are provided with this order in the above terms and the landlord(s) must be served with a copy of this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order 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: November 27, 2015

Residential Tenancy Branch

