



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF; MNDC, MNSD, O, FF

Introduction

This hearing dealt with the landlord's application against both tenants, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("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 the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with the tenant KAM's ("tenant") cross-application pursuant to the *Act* for:

- a monetary order for money owed or 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;
- other unspecified remedies; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The "tenant MD," the other tenant named only in the landlord's application, did not appear at this hearing and the tenant confirmed that she did not have authority to speak on his behalf at this hearing. "Witness AM," the tenant's sister, testified on behalf of the tenant at this hearing. This hearing lasted approximately 111 minutes in order to allow both parties to fully present their submissions.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package, with the exception of an article regarding ants and nine pages of evidence including black and white photographs, text messages and typewritten information. The landlord confirmed that she did not serve the nine-page written evidence package on the tenant, just the Residential Tenancy Branch ("RTB"). In accordance with Rule 3.1 of the RTB *Rules of Procedure*, I advised the landlord during the hearing that I could not consider her nine-page written evidence package. I also advised the landlord that the article regarding ants was not helpful to this matter and that I would not be considering it in my decision. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and tenant MD was deemed served with the landlord's application, with the exception of the documents as noted above.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package, with the exception of the notations made by the tenant on the landlord's terminator bill and the tenant's storage receipt for \$167.95. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was duly served with the tenant's written evidence package, with the exception of the documents noted above. I find that the tenant failed to provide witness or documentary evidence indicating that the landlord was served with this evidence in accordance with the *Act* and I did not consider this evidence at the hearing or in my decision.

The tenant requested an amendment to the tenant's application, to correct the spelling of the landlord's first name. The landlord consented to this amendment. In accordance with section 64(3)(c) of the *Act*, I amend the tenant's application and the change is now correctly reflected in the style of cause on the front page of this decision.

The landlord requested an amendment to her application to increase the monetary claim sought from \$3,787.10 to \$8,731.73. The tenant confirmed that she had notice of the landlord's monetary claims to be made at this hearing, which included the increased amount sought. In accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to increase the monetary claim to \$8,731.73 total.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy?

Is either party entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the tenant entitled to a monetary award for the return of a portion of the security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties and witness AM, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings around each are set out below.

The landlord testified that the tenants received the rental unit keys on November 11, 2014 and moved in on November 12, 2014. The tenant confirmed that she received the keys on November 12, 2014 and moved in on November 14, 2014. The landlord stated that the tenants vacated the rental unit on May 2, 2015, while the tenant noted that she vacated on May 1, 2015. Monthly rent in the amount of \$900.00, plus an additional \$100.00 for laundry, was due on the first day of each month. A security deposit of \$500.00 was paid by the tenants and the landlord continues to retain this deposit. The tenants occupied the basement of a house, while the landlord occupied the main floor of the same house. A written tenancy agreement governs this tenancy but a copy was not provided for this hearing.

The landlord confirmed that no move-in or move-out condition inspection reports were completed for this tenancy. The landlord stated that she did not receive written permission from the tenants to retain any amounts from their security deposit. The landlord indicated that she received a written forwarding address from the tenant on May 1, 2015 and she filed an application on May 13, 2015 to retain the tenants' security deposit.

The tenant seeks the return of the security deposit of \$500.00 from the landlord. The tenant claimed that she cleaned the rental unit with her mother and witness AM, prior to vacating. She confirmed that she disposed of any remaining garbage in the rental unit before leaving. Witness AM testified that she cleaned the rental unit with her mother, described the detailed cleaning done, and confirmed that her mother disposed of the garbage such that she did not observe any garbage when the tenant vacated. The tenant produced a receipt for \$17.00 for dumping costs. The landlord produced

photographs of items left behind by the tenant in the rental unit after vacating, as well as a note from the new tenant, stating that \$75.00 was paid for dumping the tenant's garbage from the rental unit. The landlord seeks \$75.00 from the tenants for dumping costs.

The landlord seeks \$237.50 from the tenants for cleaning that she claimed the new tenant performed in lieu of paying rent, for one week after moving in the rental unit. The landlord stated that the new tenant moved in on May 23, 2015, and did not pay rent from May 23 to 31, 2015, for performing cleaning due to the tenant's failure to clean before leaving. The landlord provided a note from the new tenant confirming that he cleaned and did not pay rent for his first week of tenancy.

The landlord seeks \$44.80 for two damaged window screens. The landlord stated that the screens are dented and popping out. The landlord provided an estimate for this cost, claiming that she had not yet replaced them. The landlord provided photographs of the damaged screens. The tenant confirmed that she did not have any problems with the screens while living in the rental unit and Witness AM confirmed that she did not notice them when she was cleaning the rental unit.

The landlord seeks \$1,847.94 to replace the dishwasher in the rental unit. The landlord provided an estimate for this cost, claiming that she had not yet replaced it. The landlord claimed that the dishwasher smelled bad, she had difficulty turning it on, and it was not draining water. The landlord provided a photograph of the accumulated water in the dishwasher and a note from the new tenant saying that the dishwasher did not work. The landlord confirmed that the dishwasher is only two years old and she was told it was easier to replace rather than repair it. The tenant claimed that she only used the dishwasher three to four times during her tenancy and it worked fine. Witness AM stated that she was aware that the dishwasher had leaked a little.

The landlord seeks \$3,023.99 for the replacement of a stove and oven. The landlord provided an estimate for this cost, as she had not yet replaced it. The landlord stated that the stove top was excessively scratched by the tenants and the small oven was not working. The landlord stated that she was told it would be cheaper to replace both items than try to repair it because the cost of repairing would be at least \$2,000.00. The landlord provided photographs of both appliances and a note from the new tenant saying that the top of the stove was all scratched. The tenant disputes these costs, stating that she did not use the small oven, just the big one, where there were no problems. The tenant claimed that the stove top was already scratched when she moved in to the rental unit.

The landlord seeks \$2,240.00 for painting and repairing mouldings in the rental unit. The landlord did not have this work done yet and provided an estimate for this cost, as well as photographs of the damage. The landlord claimed that the unit was last painted in 2013 when she bought the house. The tenant disputes these costs, stating that fresh painting was not done when she moved in, and the baseboards and crown mouldings were not flush with the floor, had missing pieces and needed paint when she moved in.

The tenant seeks \$150.00 for a storage unit rental and \$35.00 for a moving truck rental. The tenant produced a receipt for the moving truck rental. As mentioned earlier, I could not consider the tenant's receipt for the storage unit rental because of service issues. The landlord disputes the tenant's claims. The tenant stated that she had to leave the rental unit earlier than expected because the landlord failed to adequately deal with the ant problem in the rental unit. The tenant claimed that the landlord only sprayed the unit once for ants and no further action was taken, despite the tenant's repeated complaints. Witness AM testified that she saw ants in the rental unit and advised the tenant to vacate, due to the ants. Witness AM confirmed that while cleaning the rental unit prior to the tenant vacating, she noticed approximately 1000 ants, saw them bringing up dirt from the soil and coming out of the baseboards, due to the house being old.

The landlord stated that there were no ants in the rental unit and if there were, it was due to the tenants' actions. The landlord claimed that the tenants left the doors and windows open, left food outside, failed to remove garbage and failed to move furniture before spraying, causing ants to enter and multiply in the rental unit. The landlord testified that she sprayed the unit once on March 18, 2015 and produced an invoice of \$262.50 for the spraying. The landlord seeks reimbursement of this amount from the tenants because she said there were no ants in the unit and the tenants caused her to incur this cost. The landlord stated that her new tenant, who moved into the rental unit after the tenants vacated, did not see any ants in the rental unit. The tenant produced photographs of the ants, which the landlord disputes, claiming that it was dirt, rather than ants, depicted in the photographs. The landlord confirmed that the tenants also failed to mitigate their losses, by refusing entry for a pest control representative to complete spraying on April 28, 2015, despite the landlord reminding the tenant about this on April 27, 2015.

The landlord seeks one month's rental loss of \$1,000.00, stating that she was unable to re-rent the unit until May 23, 2015, due to the tenants' failure to give one month's notice to vacate. The tenant stated that the landlord breached a material term of the tenancy agreement by failing to rectify the ant problem and she was forced to move quickly and without one month's notice. The tenant stated that she provided notice by way of text message to the landlord approximately two weeks prior to vacating. The landlord

confirmed that she received a text message from the tenant on April 21, 2015, indicating that the tenant would vacate on June 1, 2015, but that the tenants instead left on May 2, 2015. The landlord stated that the new tenant did not pay rent from May 23 to 31, 2015, as he performed cleaning instead, and that she is seeking both the cleaning cost of \$237.50, as well as the one month's rental loss of \$1,000.00. The landlord indicated that the new tenant now pays \$950.00 rather than \$1,000.00 for rent each month.

Analysis

Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenant seeks the return of the security deposit of \$500.00. However, I find that the tenant is entitled to double the value of her security deposit, totaling \$1,000.00.

Although the tenant did not apply for double the value, she did not specifically waive her right to double and is therefore entitled to the above amount. The landlord filed her application within 15 days of the end of tenancy and receiving the tenants' forwarding address in writing. However, the landlord's right to apply against the deposit was already extinguished. The landlord did not complete any condition inspection reports for this tenancy, violating sections 24 and 36 of the *Act*. Therefore, RTB Policy Guideline 17 requires me to double the value of the tenants' security deposit because the landlord's right to claim against the deposit was already extinguished.

Loss of Rent

Section 45(1) of the *Act* requires the tenants to provide one month's written notice to the landlord to end their tenancy. However, an exception to this notice period exists in section 45(3), which states that if the landlord has breached a material term of the tenancy agreement and failed to correct it within a reasonable period after the tenants give written notice of the failure, the tenants may end the tenancy effective on a date

after the date the landlord receives the notice. I find that the landlord did not breach a material term of the tenancy agreement, causing the tenants to vacate early. While I accept that there were ants in the rental unit, as the tenant produced photographs as well as witness testimony from Witness AM about the ants, I find that the landlord performed spraying once and that further spraying did not occur because the tenants refused entry. I also find that other factors, including the protection of food and cleanliness, which are within the tenants' control, may have contributed to the prolonged existence of the ants in the rental unit.

Therefore, the tenants were required to give one month's written notice to vacate the rental unit, as per section 45(1) of the *Act*. The notice is effective on the day before rent is due, as per the tenancy agreement. In this case, rent is due on the first day of the month. Therefore, the tenants' notice to end the tenancy would have been due on March 31, 2015, in order to end the tenancy on April 30, 2015 or on April 30, 2015 to end the tenancy on May 31, 2015. I find that the tenants failed to provide one month's notice that they were vacating. They did not provide any written notice, in accordance with section 88 of the *Act*. The tenant only provided notice by way of text message, which is not permitted by section 88 of the *Act*. The landlord found a new tenant as of May 23, 2015, shortly after the tenants' tenancy ended, and the new tenant did not pay rent to the landlord during this time. Accordingly, I find that the landlord is entitled to \$900.00 for one month's rental loss for May 2015. I find that the landlord is not entitled to the additional \$100.00 for laundry costs, as it was separate from rent, even though it was paid at the same time as rent. In any event, the tenants did not use the laundry facilities after vacating the rental unit and they are not responsible for this amount.

Damages

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish a claim, in accordance with section 67 of the *Act*. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenant's claims for \$150.00 for the storage unit rental and \$35.00 for the moving truck rental, without leave to reapply. I find that the tenant would have incurred these costs in any event, when moving to another unit. As noted above, I found that the landlord did not breach a material term of the tenancy agreement, which would have caused the tenants to leave the rental unit early without notice.

I dismiss the landlord's claim for \$262.50 for spraying the rental unit for ants. I find that the tenant sufficiently demonstrated that there were ants in the rental unit, as noted above, requiring action to be taken by the landlord. It is the landlord's responsibility to deal with the ants in the rental unit. It is irrelevant that the new tenant provided a note stating there were no ants in the rental unit, as this was after the tenants had already vacated the unit.

I dismiss the landlord's claim for \$237.50 for cleaning and \$75.00 for dumping costs, without leave to reapply. The tenant provided photographs showing she cleaned the rental unit, as well as a receipt for dumping costs. Witness AM testified in detail regarding the cleaning and dumping of garbage that was done by herself and her mother. I find that the landlord's photographs do not adequately demonstrate that the rental unit was left in a dirty state beyond reasonable wear and tear or that appropriate garbage removal was not done by the tenants. The tenant denied that items that the landlord claimed the tenant left behind were hers, as per the landlord's photographs.

I dismiss the landlord's claims for \$1,847.94 for replacing the dishwasher and \$3,023.99 for replacing the stove and oven, without leave to reapply. The tenant disputed the landlord's claims, stating that she did not notice any problems with the appliances while she was residing at the rental unit. Witness AM noticed a leaking dishwasher but it is not clear when the leaking began and how it occurred. The tenant claimed that the stove top was already scratched when she moved in. Although the landlord provided a note from the new tenant about the condition of the stove and dishwasher after the tenancy was over, the landlord did not provide a move-in condition inspection report or photographs to show the condition of any of these appliances when the tenants moved in. The landlord did not provide estimates from appliance repair technicians, indicating the specific problems with the appliances and the fact that repairs or replacements were required for certain reasons. The landlord did not provide sufficient evidence to meet part 2 of the above damages test, showing that the tenants caused the breakdown and damage of the dishwasher, stove and oven. The landlord would be responsible for repairing these appliances, unless she can show that the damage or breakdown was caused by the tenants' negligence.

I award the landlord \$44.80 for replacing the two window screens in the rental unit. The landlord provided an estimate for \$20.00 for each screen plus taxes. The landlord provided photographs of both damaged screens and the damage is beyond reasonable wear and tear. While the tenant confirmed that she did not have any problems with the screens in the unit, she did not specifically comment about the damage to the screens as demonstrated by the landlord. I find that the tenants are responsible for these costs.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

I award the landlord a nominal award of \$200.00 for painting and repairing mouldings in the rental unit. The landlord provided photographs of the damage which show that it was beyond reasonable wear and tear. There were nail holes, marks and cracks in the walls, paint missing on the baseboards and damage to the baseboards. As per RTB Policy Guideline 1, the tenants are responsible for painting and repair if it is beyond reasonable wear and tear. The landlord provided an email estimate of \$2,000.00 plus GST taxes based on the landlord's inquiry for "painting the walls and replacing damaged mouldings for our 850 sq. ft. basement suite." The quote is based on an email rather than a professional assessing the damage in person at the rental unit. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the landlord nominal damages of \$200.00.

As both parties were only partially successful in their applications, I find that neither party is entitled to recover the \$50.00 filing fee paid for each of their applications. Each party must bear their own costs for their filing fees.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$144.80 against the tenants as follows:

Item	Amount
Loss of Rent for May 2015	\$900.00
Damage to Window Screens	44.80
Painting and Repairing Mouldings	200.00
Return of Double Security Deposit to Tenants as per section 38 of the <i>Act</i> (\$500.00 x 2 = \$1,000.00)	-1,000.00
Total Monetary Award	\$144.80

The landlord is provided with a monetary order in the amount of \$144.80 in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(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 03, 2015

Residential Tenancy Branch

