



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, MNR, MND, FF.

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for unpaid rent, cost of repairs and cleaning, for the filing fee and to retain the security deposit in satisfaction of her claim.

The tenant applied for a monetary order for the return of double the security deposit, compensation for the loss of quiet enjoyment and wrongful eviction and for the filing fee.

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.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent, cost of repairs and cleaning, and the filing fee and to retain the security deposit in satisfaction of her claim? Is the tenant entitled to the return of double the security deposit, compensation and the recovery of the filing fee?

Background and Evidence

The tenancy started on May 17, 2015 and ended on August 25, 2015. The monthly rent was \$1,100.00 payable on the 17th of each month. Prior to moving in the tenant paid a security deposit of \$550.00.

The tenant stated that during the tenancy there were multiple problems and that right at the start of tenancy the main entry door lock broke. The landlord changed the lock and gave the tenant a set of keys which he returned to the landlord at the end of the tenancy. The landlord agreed that she had received the keys. The landlord is claiming the cost of replacing the lock.

The tenant also stated that the landlord and her guests played Mahjong on weekends and created a lot of noise disturbances, late at night.

The tenant stated that the stove and the washing machine were not in good working order and despite multiple requests to the landlord to repair the appliances, the landlord failed to do so. The tenant denied any negligence with regard to the breakdown of the appliances. The landlord is claiming the cost of repairs.

The landlord stated that she purchased the home in January 2014. It was built in 1970 and she was not sure of the age of the appliances. She estimated that the appliances were probably about 20 years old.

On July 19, 2015, the landlord served the tenant with a 30 day notice to end tenancy for cause. The reason for the notice was that the tenant had engaged in illegal activity that had adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. The effective date of the notice was September 16, 2015.

The landlord attached a letter to the notice that informed the tenant that since the start of tenancy, the tenant had broken the door lock, the stove and the washing machine. The landlord stated that the tenant also creates unreasonable noise disturbances after 11:00pm. The letter does not refer to any illegal activity.

The tenant denied any illegal activity and late night noise disturbances. He stated that the reason for the eviction notice was that the landlord had informed him on July 03, 2015 that she wanted to rent the unit to three students. The tenant stated that renting to three students would be financially more beneficial for the landlord.

The tenant stated in his written submission that the landlord "*threatened that if we do not obey, they will evict us with any methods*". The tenant also stated that he was not familiar with the tenancy Act and did not know how "*to argue*" with the landlord and therefore the tenant did not dispute the notice and moved out on August 25, 2015.

The tenant testified that on August 18, 2015, he attempted to pay rent that was due on August 17, 2015 in the amount of \$1,100.00. Since he did not recognise the landlord's agent who approached him for the rent, the tenant offered other alternatives to pay rent. The agent declined to accompany the tenant to the bank. The tenant agreed that in the end, rent that was due on August 17, 2015, was not paid.

Both parties agreed that on August 26, 2015, the tenant gave the landlord his forwarding address in writing. The landlord made this application on September 02, 2015 which is within 15 days of receipt of the forwarding address.

The landlord stated that the tenant left the unit in a dirty condition and filed photographs to support her testimony.

The landlord is claiming the following:

1.	Unpaid rent	\$1,100.00
2.	Stove Repair	\$895.00
3.	Washing machine repair	\$350.00
4.	Lock repair	\$48.00
5.	Replace laminate	\$895.00
6.	Cleaning	\$300.00
7.	Filing Fee	\$50.00
	Total	\$3,638.00

Analysis

Landlord's application:

1. Unpaid rent - \$1,100.00

The Residential Tenancy Act is designed in part to address a power imbalance between parties, clearly defining the rights of landlords and tenants and preventing one party from taking advantage of another.

Based on the documents filed into evidence and on the testimony of both parties, I accept the testimony of the tenant with regard to the notice to end tenancy. I find that the landlord alleged that the tenant was engaged in illegal activity but was unable to provide testimony regarding this alleged activity.

I further find that the tenant felt threatened when the landlord stated that she would evict the tenant '*with any method*'.

Based on the above, I find that a power imbalance was created between the two parties and the landlord took advantage of the tenant by giving him a notice to end tenancy for alleged illegal activity. I find on a balance of probabilities that it is more likely than not that the tenant did not engage in any illegal activity. Since this is the reason for the notice to end tenancy, I find that the landlord had no reason to serve the tenant with a notice to end tenancy for cause.

I also accept the testimony of the tenant that the landlord threatened to end the tenancy "*by any method*" and I find that the landlord intimidated the tenant who as a result felt that moving out was the only solution.

The tenant agreed that he did not pay rent that was due on August 17, 2015. Since the tenant moved out on August 25, 2015 and for the above reasons, I find that the landlord is entitled to rent only for the days that the unit was occupied by the tenant. Accordingly I award the landlord prorated rent for the nine days that the tenant occupied the unit in the amount of \$319.35.

2. Stove repair - \$895.00
3. Washing machine repair - \$350.00
4. Lock repair - \$48.00

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 and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant.

The landlord alleged that the tenant had used the appliances in a negligent manner and had caused them to break down. The landlord also testified that the appliances in the rental unit were approximately 20 years old. It is the landlord's responsibility to provide appliances that are in good working order.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the appliances. As per this policy, the useful life of appliances is 15 years. The landlord testified that the appliances are approximately 20 years old and therefore I find that the appliances had already outlived their useful lives prior to the start of tenancy.

As per the tenancy agreement, the landlord was obligated to provide the tenant with a stove and washing machine that were in good working order. Since the landlord provided the tenant with appliances that were 20 years old and had outlived their useful lives, I dismiss the landlord's claim for the cost of repairing the stove and washing machine.

The landlord is required to provide functional locks to the tenant and therefore the landlord's claim to replace the locks during the tenancy is also dismissed.

5. Replace laminate - \$895.00

The landlord testified that she had not replaced the laminate and therefore has not incurred this expense. I make no finding regarding the validity of the landlord's claim and I dismiss the landlord's claim for \$895.00, with leave to reapply.

6. Cleaning - \$300.00

The landlord filed photographs that indicate that the unit was not fully cleaned at the end of tenancy. The tenant stated that he cleaned the unit and denies having caused the stains on the carpet. The tenant stated that he requested the male landlord to inspect the unit on the day the tenant moved out, but he declined to do so. The landlord has not filed adequate proof of the expense she is claiming for the cost of cleaning.

Based on the photographs, I find that the washrooms, kitchen sink and the carpets were not cleaned and therefore I award the landlord her claim for the cost of cleaning.

7. Filing fee - \$50.00

The landlord has proven a portion of her application and therefore she is entitled to the recovery of the filing fee of \$50.00

Overall the landlord has established a claim as follows:

1.	Unpaid rent	\$319.35
2.	Stove Repair	\$0.00
3.	Washing machine repair	\$0.00
4.	Lock repair	\$0.00
5.	Replace laminate	\$0.00
6.	Cleaning	\$300.00
7.	Filing Fee	\$50.00
	Total	\$669.35

Tenant's application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

In this case, the tenancy ended on August 25, 2015 and the tenant provided the landlord with his forwarding address in writing on August 26, 2015. The landlord filed her application on September 02, 2015 which is within the legislated time frame of 15 days. Therefore the tenant is not entitled to the return of double the security deposit. However the tenant is entitled to the return of the base amount of the deposit.

The tenant has applied for compensation in the amount of \$9,900.00 for wrongful eviction, loss of quiet enjoyment, harassment, threats, an assault, late night disturbances on weekends and poor living conditions due to broken down appliances.

Based on the testimony and documents filed by both parties, I find that the landlord served the tenant with a notice to end tenancy for illegal activity. The tenant denied the allegation and the landlord's testimony regarding the reason for the notice to end tenancy did not support the allegation of illegal activity. I further find that the landlord used threats of eviction by "*any method*" which resulted in the tenant moving out quickly for fear of the safety of his family. Based on the testimony of both parties, I find that the landlord issued a notice to end tenancy without adequate reason and then forced the tenant out by using threats of eviction by "*any method*"

In addition, the landlord refused to repair the appliances which were by her own admission about 20 years old. The tenant did not have the full use of the appliances during the tenancy, which in turn reduced the value of the tenancy.

Section 16 of the *Residential Tenancy Policy Guideline* describes types of damages that an Arbitrator may award that are permitted by the Legislation and states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

I find it appropriate to award the tenant \$1,000.00 towards his claim for compensation for the loss of quiet enjoyment and for distress and inconvenience caused by the landlord's unproven allegations of illegal activity and the threat of eviction by "*any method*".

Since the tenant has proven his case, he is entitled to the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim as follows:

1.	Return of deposit	\$550.00
2.	Compensation	\$1,000.00
3.	Filing Fee	\$100.00
	Total	\$1,650.00

The landlord has established a claim of \$669.35 and the tenant has established a claim of \$1,650.00. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$980.65 which consists of the difference between the established entitlements of both parties.

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for the amount of \$980.65. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$980.65**.

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: February 03, 2016

Residential Tenancy Branch

