



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) by the landlords under the *Residential Tenancy Act* (the “Act”) for a monetary order for damage to the unit, site or property, for authority to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, and to recover the cost of the filing fee.

One of the landlords, K.K. (the “landlord”) an agent for the landlord (the “agent”) and one of the two tenants, R.N. (the “tenant”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed that the tenants received the landlords’ documentary evidence and had the opportunity to review that evidence prior to the hearing. The tenant also confirmed that the tenants did not submit any documentary evidence in response to the landlords’ Application.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants’ security deposit under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the written tenancy agreement was submitted in evidence which indicates that a month to month tenancy began on May 1, 2013. The tenants vacated the rental unit on October 31, 2015. Monthly rent during the tenancy was \$875.00 was due on the first day of each month. A security deposit of \$437.50 was paid by the tenants at the start of the tenancy which the landlords continue to hold.

The landlords have applied for a monetary claim in the amount of \$397.00 comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Carpet cleaning	\$105.00
2. 6 hours of suite cleaning @ \$21.00 per hour	\$126.00
3. Replace deadbolt	\$50.00
4. Drywall repair	\$21.00
5. Window screens	\$55.00
6. Bedroom door	\$40.00
TOTAL	\$397.00

The landlords submitted a copy of the condition inspection report in evidence. For ease of reference, each item will be referred to by their associated item number described above.

Item 1

The parties reached a mutual agreement in the amount of \$105.00 during the hearing. As a result, item 1 will not be considered further given that the parties reached a mutually settled agreement on item 1 in the amount of \$105.00.

Item 2

Regarding this item, the landlords have claimed \$126.00 for suite cleaning comprised of 6 hours at \$21.00 per hour. The landlord confirmed that no photos were submitted in support of this portion of their claim. The landlords testified that all items listed on the condition inspection report that do not have comments associated with them are "satisfactory". The landlord stated that they did not have a receipt or invoice to support this portion of their claim. The tenant confirmed that two chairs were left in the rental unit and a cover for the kitchen light(s). The landlord testified that the cleaning performed by the tenant was "not up to par" and that the balcony contained soil and pots, some garbage, and the kitchen still had kitchen items left in it. The agent testified that walls, shelves, and the inside of cabinets inside the kitchen required additional cleaning.

The tenant disputed that the rental unit required additional cleaning and testified that she did not agree with the condition inspection report which is supported by the tenant writing “disagree” throughout the report. The tenant did not write “disagree” next to two items which are listed as “2nd bdrm small patch” and “3rd bdrm no screen”.

Item 3

The landlords have claimed \$50.00 for this portion of their claim. The landlords submitted an invoice in the amount of \$58.76 in support of this portion of their claim. The landlord and agent also referred to the condition inspection report which indicates that a deadbolt of \$50.00 was required. The tenant denied changing the deadbolt during the tenancy. The landlord and agents testified that it is the policy of the building that all deadbolts must be keyed to the master key in case of an emergency and stated that the tenant’s deadbolt did not match the master key which supports that she changed the lock.

Item 4

For this portion of the landlords’ claim, they are claiming \$21.00 to repair damage to drywall which required small drywall patches. The landlord confirmed that there were no photos or receipts submitted in support of this portion of their claim. The condition inspection report submitted makes reference to a “3 inch puncture”, a “2nd bdrm small patch” and “2 insert holes”.

Item 5

The landlords have claimed \$55.00 for windows screens for which an invoice of \$196.00 was submitted in evidence. The landlord and agent referred to the condition inspection report which supports that at least one window screen was missing and that at the start of the tenancy the window coverings and screens were marked as “good” condition.

Item 6

The landlords have claimed \$40.00 for a master bathroom door that the landlord confirmed was missed when completing the condition inspection report. The tenant denied this portion of the landlords' claim.

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1

As mentioned above, the parties reached a mutually settled agreement regarding this item. The tenants agree to compensate the landlords the amount of **\$105.00** for the cost of carpet cleaning. As a result, I **order** the parties to comply with their agreement pursuant to section 63 of the *Act*.

Item 2

For this item the landlords have claimed \$126.00 for suite cleaning comprised of 6 hours at \$21.00 per hour. Although the landlords have claimed that the tenants' cleaning was "not up to par" section 37 of the *Act* allows for and expects reasonable wear and tear as part of every tenancy. The tenant; however, testified that two chairs were left and I find the tenant breached section 37 of the *Act* as a result. Section 37 of the *Act* states:

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]

I find that leaving two chairs behind inside the rental unit is not leaving the rental unit reasonably clean and therefore, I prefer the evidence of the landlord and agent over that of the tenant for this item as a result. Therefore, I also accept that the landlords also cleaned up soil and pots from the balcony and garbage from the balcony. As a result, I find the landlords have met the burden of proof and are entitled to **\$126.00** for 6 hours of extra cleaning as claimed.

Item 3

The landlords have claimed \$50.00 for this portion of their claim. I find the landlords have met the burden of proof as they submitted an invoice in the amount of \$58.76 in support of this portion of their claim. Furthermore, the condition inspection report reflect the deadbolt issue and I find the explanation of the landlord that all deadbolts in the building are keyed to a master key yet the tenant's key did not fit the deadbolt. Therefore, I also prefer the testimony of the landlord and agent over that of the tenant as I find the landlord's testimony to be reasonable and the tenant's version to be unreasonable. Based on the above, I find the landlords are entitled to the full **\$50.00** as claimed for this portion of their claim.

Item 4

For this portion of the landlords' claim, they are claiming \$21.00 to repair damage to drywall which required small drywall patches. The condition inspection report submitted makes reference to a "3 inch puncture", a "2nd bdrm small patch" and "2 insert holes". Consistent with my findings regarding items 2 and 3, I prefer the testimony of the landlords over that of the

tenant. In reaching this finding, I have considered that although the tenant wrote “disagree” next to most items on the condition inspection report, the tenants did not write “disagree” next to “2nd bdrm small patch” and as a result, I find it more likely than not that the tenants did cause damage to the drywall that required patching. Therefore, I find the landlords met the burden of proof and are granted **\$21.00** as claimed.

Item 5

The landlords have claimed \$55.00 for windows screens for which an invoice of \$196.00 was submitted in evidence. I find the condition inspection report which supports that at least one window screen was missing and that at the start of the tenancy the window coverings and screens were marked as “good” condition. Therefore, I find the landlords have met the burden of proof for this portion of their claim and are granted **\$55.00** as claimed.

Item 6

This portion of the landlords’ claim is **dismissed without leave to reapply** due to insufficient evidence which the landlord was advised of verbally during the hearing. In reaching this finding, I considered that the landlords failed to note that a master bedroom door was missing in the condition inspection report and the tenants have the right to rely on the condition inspection report as a record of the condition of the rental unit both at the start and at the end of the tenancy.

As the landlords were successful with the majority of their claim, **I grant** the landlords the recovery of the cost of the filing fee in the amount of **\$50.00**. The landlords continue to hold the tenants’ security deposit of \$437.50 which has accrued \$0.00 in interest to date. The landlords applied on time against the tenants’ security deposit pursuant to section 38 of the *Act* as the tenants provided their written forwarding address on the outgoing condition section report dated October 31, 2015 and the landlords claimed towards the tenants’ security deposit on November 5, 2015.

Monetary Order – I find that the landlords have established a total monetary claim in the amount of **\$407.00** comprised of \$357.00 for items 1 through 5, plus the recovery of the cost of the \$50.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants’ security deposit of \$437.50. **I authorize** the landlords to retain **\$407.00** of the tenants’ security deposit in full satisfaction of the landlords’ monetary claim. **I grant** the tenants a monetary order under section 67 for the balance due for their remaining security deposit in the amount of **\$30.50**. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlords' application has merit.

The landlord has established a total monetary claim in the amount of \$407.00. The landlords have been authorized to retain \$407.00 of the tenants' security deposit in full satisfaction of the landlords' monetary claim. The tenants have been granted a monetary order under section 67 for the balance due by the landlords to the tenants for their remaining security deposit in the amount of \$30.50. This order must be served on the landlords 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: June 13, 2016

Residential Tenancy Branch