



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC MNSD FF
For the landlord: MND MNSD MNDC FF

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The tenant applied for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of double her security deposit, to recover the cost of the filing fee and other unspecified relief. The landlord applied for a monetary order for damage to the unit, site or property, 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.

The landlord and tenant attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is either party entitled to a monetary order under the Act, and if so, in what amount?

- What should happen to the tenant's security deposit under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on August 1, 2015 and was scheduled to expire on July 30, 2016. Monthly rent in the amount of \$1,075.00 was due on the first day of each month. The tenant paid a security deposit of \$525.00 at the start of the tenancy which has accrued no interest to date and which the landlord continues to hold.

Landlord's claim

Regarding the landlord's claim, the landlord has claimed a total amount of \$2,292.82 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Carpet cleaning	\$53.00
2. Painting	\$1,314.82
3. Landlord's time (calculated at 3 hour at \$100.00 per hour)	\$300.00
4. 2 weeks loss of rent	\$625.00
TOTAL	\$2,292.82

Regarding item 1, the landlord testified that when the tenant moved into the rental unit the interior paint was four to five years old already. As the useful lifespan of interior paint is four years, this portion of the tenant's claim is dismissed as the interior paint had already been used past the useful lifespan set out in Residential Tenancy Branch Policy Guideline 40. In other words, the interior paint would have reached 100% depreciated value after four years of use which is why the landlord's claim for item one is dismissed in full. In addition, the landlord confirmed that a condition inspection report was not completed by the landlord during the tenancy.

Regarding item 2, the landlord is seeking \$53.00 for the cost of carpet cleaning. A receipt was submitted in evidence in support of this portion of the landlord's claim. The landlord's receipt is dated May 11, 2016 which is within 10 days of the end of tenancy and before the new renters occupied the rental unit on May 15, 2016.

Regarding item 3, the landlord is seeking reimbursement of \$300.00 calculated at \$100.00 per hour multiplied by three hours for what the landlord described as going to get paint and opening the rental unit door for example.

Regarding item 4, the landlord is seeking \$625.00 for 2 weeks of lost rent. During the hearing the landlord testified that on March 29, 2016, the tenant texted the landlord indicating that she found a new place to live as of May 1, 2016. The tenant confirmed that she did not provide written notice to end the tenancy in accordance with the Act. The landlord testified that he was able to minimize his loss by re-renting the rental unit effective May 15, 2016 and received \$625.00 from the new renters for May 15-31, 2016. As a result, the loss of rent to the landlord was only \$450.00 as \$1,075 less \$625.00 is \$450.00.

Tenant's claim

Regarding the tenant's claim, the tenant has claimed a total amount of \$2,273.35 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Double return of security deposit (tenant wrote \$512.50 X 2)	\$1,025.00
2. Moving costs	\$1,040.00
3. Carpet cleaning	\$154.36
4. Stove burners	\$42.00
5. Toilet seat	\$11.99
TOTAL	\$2,273.35

Regarding item 1, the tenant testified that she posted her written forwarding address on May 1, 2016 and the landlord filed his Application for Dispute Resolution claiming against the tenant's security deposit on May 12, 2016. The parties agreed during the hearing that the amount of the tenant's security deposit was \$525.00 and not the \$512.50 amount listed in the tenant's Application for Dispute Resolution.

Regarding item 2, this portion related to moving costs was dismissed during the hearing as the tenant ended the tenancy by giving notice to the landlord. The landlord denied that he requested the tenant to end the tenancy early. As a result, I find the tenancy is

not entitled to moving costs when the tenant provided notice to end the tenancy. Therefore, I dismiss this portion of the tenant's claim without leave to reapply.

Regarding item 3, this portion was dismissed during the hearing as the receipt was dated in October 2015 and carpet cleaning must be done at the end of the tenancy in accordance with Residential Tenancy Branch Policy Guideline (the "Policy Guideline")

1. As a result, this portion was dismissed without leave to reapply.

Regarding items 4 and 5, these portions were dismissed during the hearing as the tenant attempted to claim for items that she claimed were replaced during the tenancy however there was no evidence before me that the tenant had advised the landlord in writing during the tenancy to repair either item. As a result, I do not find the tenant has met the burden of proof which will be discussed further below.

Analysis

Based on the documentary evidence and the oral 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 applicant 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 respondent. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant 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.

Landlord's claim

Item 1 – As the tenant's receipt for carpet cleaning was not at the end of the tenancy, I find the landlord's receipt to be both reasonable and consistent with the timing of the end of tenancy. As a result, and consistent with Policy Guideline 1, I find the landlord has met the burden of proof and is entitled to **\$53.00** for carpet cleaning as claimed.

Item 2 – As indicated above, the useful life of interior paint is four years as indicated in Policy Guideline 40. Therefore, as indicated above, this portion of the landlord's claim is **dismissed without leave to reapply** as the interior paint had exceeded its useful life by the time the tenancy began.

Item 3 – This portion of the landlord's claim is **dismissed without leave to reapply** as I find both the amount and the details of the landlord's claim to be unreasonable. Given the above, I find the landlord has failed to meet all four parts of the test for damages or loss.

Item 4 – I find the tenant ended the tenancy in a manner that does not comply with section 45 of the *Act*. Section 45 of the *Act* applies and states:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) **is not earlier than one month** after the date the landlord receives the notice,

(b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**

(c) **is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

[my emphasis added]

Based on the above, I find the tenant breached section 45 of the *Act* by texting the landlord on March 29, 2016 that she found a new place to live starting May 1, 2016. I find that the landlord complied with section 7 of the *Act* that requires that the landlord do what is reasonable under the *Act* to minimize his loss which I find he did as the landlord secured new renters who paid \$625.00 from May 15, 2016 to May 31, 2016. I find that the landlord suffered a loss of **\$450.00** as a result, and that the tenant breached section 26 of the *Act* that requires that rent is due on the first day of each month in the matter before me. Therefore, I find the landlord has met the burden of proof and is entitled to loss of rent of **\$450.00** for the time period of May 1, 2016 to May 14, 2016. I note that the landlord is not entitled to more rent for May 2016 than he would normally be entitled under the original tenancy agreement which was \$1,075.00 per month.

As the landlord's claim had merit, I grant the landlord the recovery of the filing fee in the amount of **\$100.00**.

Tenant's claim

Item 1- After considering the testimony of the parties, I find that the landlord filed his Application for Dispute Resolution within the 15 day timeline as provided under section 38 of the *Act*. Therefore, I find the tenant is not entitled to double the return of her security deposit under the *Act*. As a result, I will deduct the tenant's security deposit of \$525.00 from any amount owed to the landlord which will be described further below.

Items 2, 3 and 4 – As described above, items 2, 3, 4 and 5 are all **dismissed without leave to reapply** due to insufficient evidence.

As the tenant's claim had no merit, I do not grant the tenant the recovery of the cost of the filing fee.

I find that the landlord has established a total monetary claim of **\$603.00** comprised of \$53.00 for carpet cleaning, \$450.00 for loss of a portion of May 2016 rent, plus the recovery of the \$100.00 filing fee. I authorize the landlord to retain the tenant's full security deposit of \$525.00 in partial satisfaction of the landlord's monetary claim pursuant to section 72 of the *Act*. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$78.00**.

Conclusion

The landlord's application was partially successful.

The tenant's application is unsuccessful.

The landlord has established a total monetary claim of \$603.00 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$525.00 in partial satisfaction of the landlord's monetary claim pursuant to section 72 of the *Act*. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$78.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant is cautioned to comply with sections 26 and 45 of the *Act* in the future.

The landlord is cautioned to comply with sections 23 and 35 of the *Act* in the future.

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: November 28, 2016

Residential Tenancy Branch