



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

The Landlords applied requesting a monetary order for damage to the unit; a monetary order for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement; to keep all or part of a pet damage deposit or security deposit, and to recover the cost of the application fee.

The Tenants applied for the return of the security deposit and to recover the cost of the filing fee.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence before me.

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.

Preliminary and Procedural Matters

The Tenant provided documentary evidence on November 7, 2016. Rule 3.3 of the Residential Tenancy Branch Rules of Procedure states that evidence must be received by the other party and the Residential Tenancy branch not less than 14 days before the hearing. Accordingly, the document the Tenant provided will not be considered in this decision.

Issues to be Decided

- Is the Landlord entitled to compensation due to damage to the rental unit?
- Are the Tenants entitled to the return of the security deposit?
- Can the Landlord retain the security deposit in partial satisfaction of his claim?
- Are the parties entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy commenced on December 1, 2014. Rent in the amount of \$1,475.00 was due on the first day of each month. The Tenants paid a security deposit of \$737.50 to the Landlord.

The Tenants testified that they moved out of the rental unit on April 30, 2016.

Tenant's Application

Security Deposit

The Tenants are seeking the return of their deposits in the amount of \$1,475.00. The Tenants paid the Landlord \$737.50 for a security deposit and \$737.50 for a pet damage deposit.

The Tenants testified that when they moved into the rental unit they did a quick walk through of the rental unit with the Landlord. The Tenants testified that the Landlord did not provide them with a copy of any inspection report following the walk through. The Tenants testified that they moved out of the rental unit on April 30, 2016. The Tenants testified that they participated in a walk through with the Landlords at the end of the tenancy but they were not asked to sign a condition inspection report. The Tenants submitted that the Landlords completed the condition inspection report by themselves.

The Tenants submitted that many of the items on the condition inspection report submitted by the Landlord are inaccurate. The Tenants submit that the Landlord has recorded the condition of the rental unit and appliances to be "new" when they were not "new".

The Tenants submitted that the Landlord gave them an invoice that listed costs for damages and attempted to deduct the costs from the deposits and pay the remainder. The tenants submitted that they received a cheque in the amount of \$1,106.91 from the Landlord but they have not cashed it. The Tenants submitted that they did not have an agreement with the Landlord to deduct any amount from the deposits. The Tenants submitted that they provided their forwarding address in writing to the Landlord prior to moving out of the rental unit.

In response the Landlord testified that at the end of the tenancy, the Tenants could not stay for the entire walk through. The Landlord testified that he did record the items within the condition inspection report to be “new” and he testified that some of the items were not “new”.

The Landlord testified that he received the Tenants written forwarding address on March 25, 2016. The Landlord testified that he asked the Tenants if he could send them a cheque for the security deposit, less the deductions for damage, and the Tenants agreed. The Landlord did not provide any written agreement for the Landlord to retain an amount from the security deposit.

Landlord's Application

The Landlord's Application indicates the Landlord is claiming \$2,464.96 for cleaning costs and damage to the rental unit. The Landlord is requesting a monetary order for the following items, and is asking to retain the security deposit and pet damage deposit in partial satisfaction of his claim.

Bounced rent cheque and late fees	\$195.00
Dump fee for fridge disposal	\$31.50
Washing machine part	\$156.80
Washing machine labour	\$357.50
New Fridge quote	\$649.59
Labour on old fridge	\$130.00
Carpet cleaner rental	\$43.09
Labour to clean carpet	\$320.00
Miscellaneous labour	\$97.50
Key replacement	\$40.00
Cleaning	\$40.00
Removal of garden box estimate	\$160.00
Mold remediation estimate	\$127.30
total	2,348.28

Bounced rent cheque and late fees

The Landlord testified that there is term in the tenancy agreement that the Tenants must pay a \$25.00 fee for late payments. The Landlord also testified that the Tenants must pay a bank fee of \$45.00 for any returned cheques.

The Landlord testified that the Tenants were late paying the rent on six occasions and bounced one rent cheque. The Landlord provided a copy of the tenancy agreement.

The Landlord provided a copy of a cheque that was returned from the bank as dishonored. The Landlord provided a bank ledger of payments received into his account. The ledger shows the date the Landlord deposited funds into his account. The Landlord is requesting compensation in the amount of \$195.00. The Landlord testified that he never asked the Tenants to pay the late fees during the tenancy.

In response to the Landlord's testimony the Tenants testified that they paid rent by cheque that they were required to bring to the Landlord's each month. The Tenants testified that the Landlord's were never home when they went to pay the rent. On occasions that the Landlords were not at home the Tenants came the next day to pay the Landlords. The Tenant's testified that the Landlords never raised an issue about late payments during the tenancy.

The Landlord responded by testifying that the Tenants did come to his home to pay the rent, and there may have been occasions where the Landlord was not at home. The Landlord testified that he never reached out to the Tenants about the issue, he just ignored it.

Washing machine part

The Landlord is claiming compensation in the amount of \$156.80 for a washing machine part. The Landlord testified that a rubber was torn and needed to be replaced. The Landlords submitted that a few days after new tenants moved in the they reported a problem with the washing machine. The Landlord testified that he purchased the washing machine used approximately 3 or 4 months prior to the Tenants moving in. The Landlord provided an invoice for \$156.80 dated May 16, 2016.

In response to the Landlord's testimony the Tenants testified that they were having issues with leaks and they reported the problem to the Landlord who would come and take a look.

Washing machine labour

The Landlord is claiming \$357.50 for the cost of his labour for disassembling and reassembling the washing machine. The Landlord testified that he is charging the amount of \$65.00 per hour for his time.

In response to the Landlord's testimony the Tenants testified that the Landlord must have done this labour after the Tenants moved out. The Tenants submitted that the Landlord should have hired a technician to complete the repair. The Tenants testified they were having problems with the washer leaking during the tenancy.

Labour for fridge

The Landlord is claiming \$130.00 for the cost of his labour for cleaning the fridge before he decided to take it to the dump. The Landlord provided an invoice dated August 12, 2016, as the date he disposed of the fridge.

In response to the Landlord's testimony, the Tenants testified it was a used fridge and it failed. The Tenants testified that the Landlord left the fridge in the unit for 2 weeks without removing it. The Tenant testified that any mold in the fridge was due to the Landlord leaving the fridge in the unit for two weeks and leaving the fridge in the Landlord's garage for an extended time before he disposed of it.

Dump fee

The Landlord is requesting compensation in the amount of \$31.50 for the cost of a dump fee for disposal of a fridge. He testified the refrigerant had to be drained. The Landlord provided an invoice dated August 12, 2016, in the amount of \$31.50.

In response to the Landlord's testimony the Tenants testified that the Landlord left the fridge in the unit for 2 weeks without removing it. The Tenant testified that any mold in the fridge was due to the Landlord leaving the fridge in his garage for an extended time before he disposed of it.

New Fridge

The Landlord is requesting compensation of \$649.59 for the purchase cost of a new fridge. The Landlord testified that he has not purchased a new fridge. The Landlord testified that the original fridge was purchased used from a hotel that was renovating. The Landlord testified that he has a different used fridge in the rental unit now but he wants a new fridge. The Landlord submitted that when he disassembled the refrigerator he found the thermostat destroyed.

In response to the Landlord's testimony, the Tenants testified that the fridge died on them. The Landlord told them to unplug it and see if it would fix itself. The Tenants testified that the fridge was not a new fridge so they question why they are responsible to replace it with a new fridge.

Carpet cleaner rental

The Landlord is seeking \$43.09 for the cost of renting a carpet cleaner.

The Tenants did not testify in response to the Landlords claim for the carpet cleaner rental.

Labour to clean carpets

The Landlord is seeking \$320.00 for the cost of his labour to steam clean the carpets. The Landlord testified that the rental unit is 1000 square feet. The Landlord testified that he is charging \$65.00 per hour for 5.5 hours.

The Landlord provided photographs of the carpet.

In response to the Landlord's testimony the Tenants testified that other carpet cleaning companies charge less than what the Landlord is charging. The Tenant testified that the Landlord had a company come out and clean the carpets in October 2016. for \$100.00. The Tenant testified that the Landlord should have been diligent and not try to make money on doing the work himself.

The Tenant testified that he cleaned the carpets at the end of the tenancy using a carpet cleaner he borrowed from his parents.

Miscellaneous labour

The Landlord is requesting \$97.50 for the cost of his labour to pick dirt out of a rock walkway. The Landlord testified that the Tenants spilled dirt on the walkway. The Landlord testified that he is charging \$65.00 per hour for 1.5 hours to remove the dirt.

In response to the Landlord's testimony the Tenants testified that while they were removing part of the garden, some dirt spilled onto the walkway.

Key replacement

The Landlord testified that the Tenants only returned three out of four house keys. The Landlord is seeking \$40.00.

In response to the Landlord's testimony, the Tenants testified that they were only given three keys. The Tenants testified that they gave the Landlord all three keys at the end of the tenancy.

Cleaning

The Landlord is requesting compensation in the amount of \$40.00 for cleaning the oven. The Landlord testified that he believes had a cleaning person do the cleaning but he is not sure. The Landlord refers to the move out inspection as evidence that the suite was left dirty. He testified that he is seeking \$20.00 per hour for 2 hours.

In response to the Landlord's testimony the Tenants testified that they cleaned the rental unit prior to moving out. They testified that they spent all day April 30, 2016, cleaning. The Tenants testified that they spent two hours cleaning the oven.

Removal of garden box

The Landlord is seeking \$160.00 for the removal of a garden box that the Tenants built and left behind. The Landlord testified that he has an estimate to remove the garden box. The Landlord is charging \$40.00 per hour for 4 hours. The Landlord provided photographs of the garden box.

In response to the Landlord's testimony the Tenants testified that they did put the garden box in and failed to remove it at the end of the tenancy. The Tenant testified that the Landlord told him he could leave it, but has apparently changed his mind. The Tenant stated that the Landlord did not provide a quote for the cost of removing the garden.

The Landlord replied that he does not have a quote.

Mold Remediation

The Landlord is seeking \$127.30 for compensation for mold remediation. The Landlord testified that the Tenants left a window open which caused condensation behind the ceiling tiles resulting in mold above the ceiling tiles. The Landlord is requesting \$65.00 per hour for 1.5 hours for the remediation. The Landlord provided photographs showing a floor joist and discoloured insulation beneath ceiling tiles.

In response to the Landlord's testimony the Tenants testified that the room was the spare room. The Tenants testified that the Landlord had control of the heat and it would get so hot in the winter that they had to leave the window open.

The Tenant testified that the Landlord's claim does not make any sense that there would be mold above the ceiling tiles but no mold on the windows or sill.

The Landlord replied that the water pipes above the ceiling tiles are sealed and that the condensation was above the ceiling tiles. He stated that the insulation shows black mold.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Tenants Claims

The Tenants are seeking the return of their pet damage deposit and security deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

The Guideline also states that the right of a Landlord to obtain the Tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required; and/or*
- *having made an inspection does not complete the condition inspection report, in the form required by the Regulation, **or provide the tenant with a copy of it.***
[my emphasis]

The tenancy ended on April 30, 2016. The Landlord applied for dispute resolution on October 31, 2016. I find that the Landlords failed to repay the security deposit to the Tenants, or make an application for dispute resolution against the security deposit, within 15 days of the date the tenancy ended.

The Landlord also failed to provide the Tenants with a copy of the condition inspection report as required under section 24(1) of the Act. I find that there was no written agreement that the Landlord could retain all or part of the security deposit.

Consequently, the Landlord's right to claim against the security deposit is extinguished. Pursuant to section 38 (6) of the Act, the Landlords must pay the Tenants double the amount of the security deposit and pet damage deposit. I award the Tenants \$2,950.00 which is double the amount of the security deposit and pet damage deposit.

The Tenants are directed to destroy the cheque they received from the Landlord in the amount of \$1,106.91.

Landlord's Claims

While the Landlord lost the right to claim against the security deposit for damage, the Landlord retains the right to claim for damages arising out of the tenancy, including damage to the rental unit.

Bounced rent cheque and late fees

Section 7 of the Act states if a Landlord or Tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results. A Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Residential Tenancy Policy Guideline #2 Duty to Minimize Loss provides information to Landlords and Tenants on the duty to mitigate.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation. If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved. The landlord or tenant entitled to contract for repairs as a result of a breach by the other party, may choose to pay a service charge that exceeds what one would reasonably be required to pay for the service in the circumstances. In that case, the arbitrator may award a reduced claim based on the reasonable cost of the service.

I find that the tenancy agreement allows a late rental payment charge of \$25.00 per month, and a returned cheque charge of \$45.00. I find that the Tenants were late paying the rent on six occasions.

I find that the Landlord did not enforce this term of the tenancy agreement by raising the issue with the Tenants when the rent cheques were not received on time. The Landlord testified that there may have been times that he was not at home to receive payment.

The Landlord ignored the issue but now seeks compensation. I find that the Tenants were not made aware by the Landlord that the arrangement for paying the rent was a problem. I find that the Landlord made no effort to reduce or prevent the loss claimed.

I award the Landlord \$45.00 for the bank charge, and I adjust the Landlords claim to two late charges for failure to mitigate. The Landlord is granted a total of \$95.00

Washing machine part and Washing machine labour

The Residential Tenancy Policy Guideline #1 Responsibility for Residential Premises provides clarification of the responsibilities of the Landlord and Tenant regarding maintenance, cleaning, and repairs of residential property. The Guideline states that the Landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the Tenant. A Tenant is not responsible for reasonable wear and tear to the rental unit or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

The Landlord testified that he purchased the used washer approximately 3 or 4 months prior to the Tenants moving in. The Tenants testified that they were having issues with leaks and they reported the problem to the Landlord. I find that there is insufficient evidence from the Landlord to prove that the repairs to the washer were due to deliberate actions or neglect by the Tenants. The Landlords claim for compensation for the washing machine part and labour are dismissed.

Labour for Fridge; Dump Fee; New Fridge

The Landlord testified that the original fridge was purchased used from a hotel that was renovating. The Landlord testified that he now has a different used fridge in the rental unit. The Tenants testified that the fridge died on them and the Landlord told them to unplug it and see if it would fix itself. I find that there is insufficient evidence from the Landlord to prove that the problems with the fridge were due to deliberate actions or neglect by the Tenants. I do not find the Tenants are responsible for the damaged thermostat. The Landlords claim for replacement of the fridge is dismissed.

The Tenants also testified that the unclean condition of the fridge was due to the Landlord leaving it unplugged for two weeks then storing it in his garage. The Landlord's receipt for disposal of the fridge is dated August 12, 2016. The Tenants moved out on April 30, 2016. I prefer the evidence of the Tenants and find that the fridge was in storage for many months before disposal. The Landlords claim for labour and disposal of the fridge are dismissed.

Carpet Cleaner Rental and Labour to Clean Carpets

The Residential Tenancy Policy Guideline #1 Responsibility for Residential Premises states that a Tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the Tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

I find that the duration of the tenancy was more than 1 year and the Tenants were required to steam clean the carpets. I am not satisfied that the carpet machine the Tenants borrowed was sufficient to clean the carpet in the approximately 1000 square foot unit.

The Tenant submitted that the Landlord could have had the carpets cleaned for less money than he is claiming. The Tenant testified that a company could have cleaned the carpets for \$100.00 and that the Landlord should not try to make money on doing the work himself.

I award the Landlord the cost of the carpet cleaner rental in the amount of \$43.09. I find that the 5.5 hours of time the Landlord is claiming to clean the carpets is reasonable; however, I find the hourly rate of \$65.00 per hour that the Landlord is charging to be unreasonable. The Landlord is seeking \$320.00 to clean the carpets. I find the Landlord's claim exceeds what one would reasonably be required to pay for the service. I reduce the Landlord's claim for compensation to \$30.00 per hour. I award the Landlord \$165.00 for the Landlord's time and effort to clean the carpets.

Miscellaneous labour

I find that the Tenants are responsible for spilling dirt onto the walkway. I find the Landlord's hourly rate to pick the dirt out to be unreasonable. The Landlord is claiming \$65.00 per hour for 1.5 hours. I find the Landlord's claim exceeds what one would reasonably expect to pay for the work. I reduce the Landlord's claim for compensation to \$30.00 per hour. I award the Landlord \$45.00 for the Landlord's time and effort to remove the dirt.

Key replacement

The Landlord is seeking \$40.00. for a key replacement. The Landlord testified that the Tenant had four keys but only returned three keys at the end of the tenancy. The Tenants testified they only had three keys and they returned three keys.

The burden of proof is on the Landlords to prove their claim on a balance of probabilities. When two parties give opposing but equally believable testimony, the burden of proof is on the Applicant.

There is insufficient evidence from the Landlord to prove that the Tenants were given four keys at the start of the tenancy.

The Landlord's claim for \$40.00 is dismissed.

Cleaning

I dismiss the Landlord's claim for cleaning the stove/ oven. The Landlord stated he was not sure who did the cleaning. The Landlord did not provide any photographic evidence of the oven. I find that the condition inspection report is not reliable evidence for determining the condition of the oven. The Landlord testified that on the condition inspection report he marked items "new" when they were not "new". In addition, the condition inspection report was not signed by the Tenants. The Tenants testified they spent two hours cleaning the oven. There is insufficient evidence from the Landlord to support the claim.

Removal of Garden box

I find that the Tenants are responsible for building the garden box on the property and are responsible for the cost of the removing it.

The Landlord is charging \$40.00 per hour for 4 hours of effort to remove the garden box. I grant the Landlord \$160.00 for this claim.

Mold Remediation

I find that there is no evidence of the condition of the floor joist or insulation at the start of the tenancy. There is insufficient evidence before me that the discoloration of the insulation is caused by mold. I find that the discoloration is not evidence of mould. I have also considered that the photographs show no mold on the ceiling tiles or the T-bar tracks. There is also no discoloration caused by moisture on the ceiling tiles surrounding the area. The Tenant disputes that mold was present. The Landlord's claim for compensation for mold remediation is dismissed.

Section 64 of the Act states that the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

Set Off of Claims

The Landlord is awarded a total amount of \$465.00.

The Tenants are awarded a monetary claim in the amount of \$2,950.00 for the return of double the security deposit.

After setting off the amounts of the awards, I grant the Tenants a monetary order in the amount of \$2,485.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord and Tenants had success in their applications, I decline to order either party to pay the other for the cost of the filing fee for this hearing.

Conclusion

After setting off the amounts owed by each party, I grant the Tenants a monetary order in the amount of \$2,485.00 on their claim for the return of double the security deposit. This order must be served on the Landlords and may be enforced in Provincial 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: December 15, 2016

Residential Tenancy Branch