



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MND FF
For the tenant: 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*, and to recover the cost of the filing fee. The landlord applied for a monetary order for damage to the unit, site or property, and to recover the cost of the filing fee.

The landlord, the tenant and a witness for the tenant who did not testify 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.

The hearing commenced on September 29, 2016 and after 61 minutes was adjourned to allow additional time for the parties to present their evidence. An Interim Decision dated October 3, 2016 was issued which should be read in conjunction with this decision. On November 25, 2016, the hearing reconvened and after 32 additional minutes, the hearing concluded.

Neither party raised any concerns regarding the service of documentary evidence and both parties confirmed being aware of the applications of both parties.

Issue to be Decided

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

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on September 1, 2007, and on November 20, 2015 the landlord purchased the building and assumed the tenancy. Monthly rent in the amount of \$1,000.00 was due on the first day of each month and did not increase during the tenancy. A security deposit of \$500.00 was paid by the tenant at the start of the tenancy which the landlord continues to hold.

The landlord has claimed a total of \$250.00 comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
Item 1. Fridge cleaning at 1.5 hours	\$30.00
Item 2. Stove cleaning at 2 hours	\$40.00
Item 3. Bathrooms cleaning at 2 hours	\$40.00
Item 4. Laundry cleaning at 1 hour	\$20.00
Item 5. Kitchen grease cleaning at 3 hours	\$60.00
Item 6. Window cleaning at 2 hours	\$40.00
Item 7. Garbage at 1 hour	\$20.00
TOTAL	\$250.00

Settlement Agreement

During the hearing, the parties mutually agreed to settle on landlord item 6 above in the following amount:

Description of item resolved by way of a mutually settled agreement	Amount agreed upon by parties
Item 6. Window cleaning at 2 hours	\$40.00
TOTAL	\$40.00

Based on the above, item 6 will not be analyzed further in this decision. The agreed upon amount owing by the tenant to the landlord of \$40.00 as noted above, will be accounted for later in this decision.

Evidence related to the Landlord's claim

Regarding item 1, the landlord referred to a photo submitted in evidence of the fridge and testified that it took 1.5 hours at \$20.00 per hour to clean the fridge. The parties acknowledged that the landlord did not complete a condition inspection report as required by the *Act*. The tenant referred to Residential Tenancy Branch Policy Guideline 1 which indicates the following under Major Appliances:

“2. If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.”

[reproduced as written with my emphasis added]

The tenant testified that the fridge was not on rollers and that the landlord did not advise who to move the appliance without injuring the tenant or damaging the floors and as a result, he was not responsible for cleaning behind or under the fridge. The tenant also raised an issue of the fridge being brought outside after and was not used by the landlord which the landlord disputed by stating that the photo provided by the tenant was of a different fridge.

Regarding item 2, the landlord has claimed \$40.00 for two hours of cleaning time to clean the stove. The landlord referred to several photos in evidence of what the landlord described was a dirty stove. The tenant testified that the stove was not on rollers and that the landlord did not advise who to move the appliance without injuring the tenant or damaging the floors and as a result, he was not responsible for cleaning behind or under the stove.

Regarding item 3, the landlord has claimed \$40.00 for two hours to clean the bathrooms. The landlord testified that there were three bathrooms, two 2-piece bathrooms and one 3-piece bathroom. The landlord did not supply any photos of the condition of the bathrooms. The tenant did not agree with any portion of the landlord's claim except for item 6 described above.

Regarding item 4, the landlord has claimed \$20.00 for one hour to clean the laundry room. The landlord referred to a photo submitted in evidence which the landlord stated

showed 10 years of baked on lint. The tenant stated that he cleaned the lint trap several times and that the dryer pipe was not connected properly and was not fixed by the previous landlord.

Regarding item 5, the landlord has claimed \$60.00 for three hours to clean the grease in the kitchen left behind by the tenant. The landlord referred to a photo submitted in evidence in support of this portion of his claim. The tenant did confirm there was some grease on one wall and on the ceiling but not a significant amount. The landlord stated that there was kitchen grease on the stove, over top of the stove, on the ceiling and on the walls surrounding the stove. The tenant claims he “cleaned about 50% of the stove or so”.

Regarding item 7, the landlord has claimed \$20.00 for one hour to deal with what the landlord describes as extra garbage the tenant placed in the large garbage bin outside the building. The landlord stated that he pays \$150.00 per month for garbage removal of the large bin and that he calculated the amount of the tenant’s garbage to account for \$20.00 of that amount. The tenant referred to the tenancy agreement which indicates that garbage collection is included in the monthly rent. The landlord also agreed that the blinds thrown out by the tenant was agreed between the parties. The landlord stated that he was not aware of the garbage collection being included in the monthly rent as he did not have a copy of the tenancy agreements for tenants in the building when he purchased the building.

Evidence related to Tenant’s claim

The tenant has claimed for compensation of two month’s rent pursuant to section 51(2) of the *Act* as the tenant has claimed that the landlord failed to use the rental unit pursuant to the reason specified on the 2 Month Notice to End Tenancy for Landlord’s Use of Property dated November 22, 2015 (the “2 Month Notice”).

A copy of the 2 Month Notice was submitted in evidence and indicates the reason on the 2 Month Notice as:

“The rental unit will be occupied by the landlord or the landlord’s spouse or a close family member (father, mother, or child) or the landlord or the landlord’s spouse.”

[reproduced as written]

The landlord confirmed that he served the 2 Month Notice on the tenant and that the tenant did not dispute the notice and moved out of the rental unit based on the effective date listed on the 2 Month Notice.

The landlord testified that he re-rented the rental unit effective March 15, 2016 as he changed his mind regarding his original plans on which rental unit he would occupy as he served more than one 2 Month Notice to tenants in the building after he purchased the building in November 2015.

Analysis

Based on the documentary evidence and the testimony of the parties, 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.

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 – Firstly, as the landlord failed to complete a condition inspection report, that fact has been considered throughout each portion of the landlord's claim as the landlord must complete a condition inspection report pursuant to sections 23 and 35 of the *Act*. For this portion of the landlord's claim, I find the photographic evidence supports that the tenant failed to clean the inside of the fridge sufficiently as required by section 37 of the *Act* which states in part:

“Leaving the rental unit at the end of a tenancy

37 (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.”

[reproduced as written with my emphasis added]

Based on the above, I find the tenant breached section 37 by failing to sufficiently clean the fridge. I also find the amount claimed, one hour at \$20.00 to be a reasonable amount and that the fact that the fridge may not have been on rollers not to factor into the amount of one hour as claimed. Therefore, I find the landlord has met the burden of proof for this portion of his claim and I grant the landlord **\$20.00** as claimed.

Item 2 – Consistent with my finding regarding item 1 above, I have considered the photographic evidence submitted and find the tenant breached section 37 of the *Act* by failing to sufficiently clean the stove. I also find that two hours claimed is reasonable based on the evidence before me and that whether or not the stove was on rollers does not impact my decision given the condition of the stove which find to be dirty in the photos submitted in evidence. Therefore, I find the landlord has met the burden of proof for this portion of his claim and I grant the landlord **\$40.00** as claimed.

Item 3 – This portion of the landlord’s claim must fail as the landlord failed to submit any photographic evidence and the condition inspection report was not completed and as a result, I find the landlord has not met the burden of proof. Therefore, this portion of the landlord’s claim is **dismissed** due to insufficient evidence, **without leave to reapply**.

Item 4 – I am satisfied based on the photographic evidence and the tenant’s testimony that the lint trap was not cleaned on a regular basis during the tenancy. The tenant should have cleaned the lint trap after each load and not simply “several times during the tenancy” as he testified to during the tenancy as the tenancy dates back to 2007 and did not end until 2016. As a result, I find the landlord has met the burden of proof for this portion of his claim and that the landlord is entitled to **\$20.00** as claimed.

Item 5 - The landlord has claimed \$60.00 for three hours to clean the grease in the kitchen left behind by the tenant. Based on the photographic evidence from the landlord and the testimony of the tenant that some grease was still left behind, I am satisfied that

the landlord has met the burden of proof as the tenant admitted to cleaning “50 %” of the stove and I find the amount claimed by the landlord to be reasonable. Given the above, I find the landlord is entitled to **\$60.00** for this portion of his claim.

Item 6 – As indicated above, the parties resolved this portion of the landlord’s claim way of a mutually settled agreement in the amount of **\$40.00** pursuant to section 63 of the *Act*. As a result, I find the landlord is entitled to **\$40.00** as agreed upon between the parties for this portion of the landlord’s monetary claim.

Item 7 – I am not satisfied that the landlord met the burden of proof for this portion of the claim as the tenancy agreement indicates that garbage collection is included as part of the monthly rent and the landlord confirmed that he agreed to have the tenant throw out the blinds that were in the garbage. As a result, this portion of the landlord’s claim is **dismissed** due to insufficient evidence, **without leave to reapply**.

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

Tenant’s claim

Based on the evidence before me and the testimony of the landlord who confirmed that his plans changed after he served the tenant with the 2 Month Notice, I find that the tenant is entitled to two months of compensation pursuant to section 51(2) of the *Act* which states:

Tenant’s compensation: section 49 notice

51 (2) In addition to the amount payable under subsection (1), if

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) **the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,**

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[my emphasis added]

Based on the above, I find the landlord failed to comply with the reason as stated on the 2 Month Notice for at least six months after the effective date of the 2 Month Notice as the landlord re-rented the rental unit less than two months after the effective date of the 2 Month Notice. Therefore, I find the tenant has met the burden of proof to prove their claim and I grant the tenant **\$2,000.00** which is double the monthly rent amount of \$1,000.00 per month.

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

Based on the above, I **find** that the parties have established monetary claims as follows:

Item Description	Amount
Amount of tenant's monetary claim including recovery of filing fee	\$2,100.00
Amount of tenant's security deposit which landlord continues to hold including interest (\$500.00 plus \$10.04 in interest since Sept 1, 2007)	\$510.04
Subtotal of tenant's monetary claim including security deposit owed plus interest	\$2,610.04
<i>Less amount of landlord's monetary claim owing by tenant including recovery of filing fee</i>	<i>-\$280.00</i>
TOTAL BALANCE OWING BY LANDLORD TO TENANT	\$2,330.04

Given the above, I **grant** the tenant a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenant in the amount of **\$2,330.04**.

Conclusion

The tenant has been successful with his application. The landlord has been successful with a portion of his application. The tenant is granted a monetary order for the balance owing by the landlord to the tenant in the amount of \$2,330.04 which includes the return of the security deposit which I have the authority to offset from the amount owing pursuant to section 72 of the *Act*. This order must be served on the landlord 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: December 12, 2016

Residential Tenancy Branch