



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 the cost of repairs and cleaning, for unpaid rent, loss of income and for the filing fee. The tenant applied for a monetary order for compensation for the loss of use of the driveway, loss of quiet enjoyment, loss of the use of the pool and storage shed, for the return of the pet deposit and for the recovery of 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.

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in the making of this decision but I have not necessarily alluded to all the evidence and testimony in this decision.

These parties have attended multiple hearings prior to this one and both parties referred to prior decisions in their evidence and in their testimony. A hearing took place on October 28, 2015 and was adjourned to January 20, 2016. Both parties had made application. During that hearing the tenant withdrew his application for reduced rent.

In a decision dated February 20, 2016, the Arbitrator found that the landlord was entitled to unpaid rent for December 2015, loss of income for half a month of January 2016, unpaid utilities, late fees and the filing fee. The landlord was also entitled to retain the security deposit of \$1,137.50. The Arbitrator found that the landlord established a total claim of \$4,107.58 but granted the landlord a monetary order in the amount of his original application (\$2,064.10) because his amended application was not served on the tenant within the appropriate timelines.

Since the issues related to unpaid rent for December 2015, loss of income for January 2016, utilities and late fees were dealt with and decided upon in the decision dated February 20, 2016, I will not be addressing those same issues again. The landlord's entitlement for unpaid rent for December and loss of income for January was established per the decision dated February 20, 2016. However since the landlord was not awarded his entire claim due to a late amendment, he made a subsequent application for the remainder of his entitlement. The landlord also added a claim for the cost of maintaining the driveway, pool, patio and other outdoor areas.

The most recent application by the tenant prior to this application was heard on October 28, 2016. The tenant had made an application for a monetary order. This application was dismissed with leave to reapply. Since the application of the tenant was not heard and was dismissed with leave to reapply, I will address the tenant's application for a monetary order as per this application, which is scheduled to be heard on this date.

The landlord made this application that is the subject of today's hearing on June 30, 2016. On January 05, 2017, the landlord sent in an amendment to his application. The amendment consists of his monetary claim on the original application made on June 30, 2016 plus additional claims related to utilities.

The matters before me are complex and the evidence submitted is extensive. This hearing went on for 108 minutes and there was insufficient time to discuss the additional claims made by the landlord in his amendment. Therefore I dismiss the landlord's claims for utilities, administrative charges and NSF charges with leave to reapply.

The tenant has applied for the return of a portion of the utilities due to a broken front door, missing weather strips and a faulty thermostat. Due to time constraints I find it appropriate to dismiss this portion of the tenant's claim with leave to reapply.

In summary all the claims related to utilities, administrative charges and NSF charges by the landlord in his amendment dated January 05, 2017 and by the tenant in his application dated December 20, 2016 are dismissed with leave to reapply. It must be noted that the landlord has already been awarded \$670.58 for utilities plus \$75.00 in late/NSF fees as per a decision dated February 20, 2016.

Issues to be decided

Is the landlord entitled to a monetary order for the cost of repairs and cleaning, and the filing fee? Is the tenant entitled to the return of the pet deposit, compensation and the recovery of the filing fee?

Background and Evidence

The tenancy started on May 01, 2015 and ended on December 31, 2016. The monthly rent was \$2,275.00 payable on the 1st of each month. Prior to moving in the tenant paid a security deposit and a pet deposit in the total amount of \$1,737.50. The security deposit in the amount of \$1,137.50 was deducted off the landlord's entitlement in the decision dated February 20, 2016. Accordingly, the landlord is currently holding a pet deposit of \$600.00.

There was some discussion on the amount of the outstanding pet deposit. The landlord stated in his written submission that the pet deposit was \$300.00. However the tenant filed a copy of a cashed cheque issued to the landlord on April 05, 2015. The memo on the cheque states "*deposit and pets*". The amount of the cheque is \$1,737.50. Accordingly, I find that the tenant paid a security deposit of \$1,137.50 which was dealt with in the previous hearing and the landlord was allowed to retain the deposit. The tenant also paid a pet deposit of \$600.00 which the landlord is currently holding.

During the hearing on October 28, 2015, the parties agreed to end the tenancy effective January 31, 2016. In a letter dated November 28, 2015 and received by the landlord on December 02, 2015, the tenant informed the landlord that he would be moving out on December 31, 2015.

As stated above, the hearing on October 28, 2015, was adjourned and the parties reconvened on January 20, 2016. During the reconvened hearing the landlord's claim for unpaid rent for December and loss of income for January 2016 in the amount of half a month's rent, were discussed and the Arbitrator ruled that the landlord was entitled to collect both from the tenant.

The landlord is now claiming the rent for the full month of January as loss of income. However the reconvened hearing took place on January 20, 2016 and the landlord could have requested the balance of loss of income during that hearing. The tenant stated in his written submission that during the hearing on January 20, 2016, the Arbitrator assisted the parties in coming to an agreement and the landlord agreed to accept half a month's rent as loss of income.

Accordingly the end result was that a ruling was made by the Arbitrator and recorded in a decision dated February 20, 2016, that the landlord was entitled to loss of income for the month of January in the amount of half a month's rent. The landlord was also awarded the cost of utilities, late/NSF charges and the filing fee.

The landlord stated that the tenant failed to maintain the front and back gardens and clean the walkways, pool area and driveway. The tenant denied the allegations and filed digital evidence to show the condition of these areas.

The landlord has made the following claim:

1.	Maintenance of gardens and driveway	\$1,237.50
2.	Pressure wash out door areas	\$300.00
3.	Rent for December 2015	\$2,275.00
4.	Loss of income for January	\$2,275.00
5.	Filing fee	\$100.00
	Total	\$6,187.50

As stated above the additional claims of the landlord in the amendment he filed on January 05, 2017 have been dismissed with leave to reapply. Accordingly, the table above does not show claims by the landlord for utilities, administrative charges and NSF charges.

The tenant stated that the landlord would come by the house almost every day to work on the outside or walk his dog. The tenant alleged that the landlord made unwelcome comments to his children and by visiting the rental unit multiple times, he denied the tenant his right to quiet enjoyment of the property. The tenant filed copies of email correspondence that document the deteriorating relationship between the two parties. The tenant is making a claim for compensation for the loss of quiet enjoyment and for harassment by the landlord.

The tenant filed a copy of a list of repairs that the landlord promised to carry out. The list is dated May 28, 2015 and was provided to the tenant by the landlord during the first month of the tenancy. The list also names the person responsible for each repair and the date that it would be completed.

One of the items on the list was a storage shed which the landlord agreed to provide the tenant with, by June 08, 2015. The tenant stated it was never completed and the tenant was forced to rent space from a storage facility. The tenant has filed a copy of the cost of doing so in the amount of \$924.00 for the period of July 15, 2015 to December 30, 2015.

The list of repairs included the replacement of a damaged glass panel in the double front door which was to be replaced immediately by the landlord. The landlord stated that he finished the door at the end of August.

The tenant stated that the landlord was working on the driveway prior to the start of tenancy and he had limited use while the work was in progress. The tenant also stated that the landlord placed sand on the driveway that was tracked by the tenants into the house and resulted in additional cleaning. The landlord stated that the portion of the driveway that was impacted by the work was for the use of the other resident of the rental property.

The tenant filed copies of emails between the two parties and the landlord agreed that the driveway was completed on August 08, 2015. The tenant is applying for compensation for the loss of use of the driveway for the period of May 01- August 08, 2015.

The tenant stated that the pool was out of service for about four months. The landlord agreed that the tenant has assisted him with repairs of the pool and that the tenant had purchased a part for \$34.26 in July 2015. The tenant is claiming compensation in the amount of \$952.70 for the loss of use of the pool.

The tenant is also claiming for the cost of yard maintenance that he performed which was above the requirement of general maintenance. The tenant agreed that there was no formal agreement between the parties authorizing the tenant to carry out additional yard maintenance for compensation.

The tenant stated that the rental property had wasps and ants and he informed the landlord about the problem. In an email dated July 23, 2015, the landlord agreed to cover the cost of treatment. The tenant filed copies of the invoices for the cost of the sprays that he purchased.

The tenant provided a list of plants and bushes that he had planted in the front and back yards. The tenant is claiming \$200.00 towards the cost of these plants. The tenant stated that he was unable to remove the plants at the time he moved out because it was winter and the ground was frozen.

The tenant is also making a claim for a phone line but has not provided adequate information to support his claim. The parties discussed the return of the cable box. The landlord stated that he returned it to the cable company. The tenant can obtain his deposit directly from the cable company.

The tenant stated that the actions and interactions between the landlord and the tenant during the tenancy caused his wife a great deal of stress and resulted in her having to get medical care. The tenant filed a copy of a doctor's note dated November 16, 2016 and states that the female tenant was found to be under a lot of stress related to issues with the landlord. The tenant is applying for compensation in the amount of \$3,000.00 as compensation for the stress the female tenant experienced in her interactions with the landlord..

The tenant is claiming the following:

1.	Loss of quiet enjoyment	\$1,400.00
2.	Harassment	\$1,650.00
3.	Storage costs	\$924.00
4.	Loss of use of driveway	\$700.00
5.	Loss of use of pool	\$952.70
6.	Yard maintenance	\$1,890.00
7.	Pest control	\$125.00
8.	Pet deposit	\$600.00
9.	Plants	\$200.00
10.	Home phone	\$120.00
11.	Cable Box	\$89.00
12.	Stress	\$3,000.00
13.	Filing fee	\$100.00
	Total	\$11,750.70

The tenant has also claimed various amounts towards utilities. Due to the complex nature of this file and the extended amount of time taken to discuss the claims of both parties, I am dismissing the utility related claims of both parties with leave to reapply. Accordingly this portion of the tenant's claim related to utilities is not shown in the above table.

Analysis

Landlord's application:

1. Maintenance of gardens and driveway

The landlord stated that the tenant failed to maintain the front and back gardens and did not do any weeding, watering and edging and disposal of green waste.

Residential Tenancy Policy Guideline# 1 addresses:

Landlord & Tenant – Responsibility for Residential Premises

3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

At the landlord's request I viewed the photographs that the landlord had filed with his prior application. Some of the photographs were taken prior to the end of tenancy. I also viewed the digital evidence filed by the tenant. Upon viewing both sets of evidence, I find that the tenant maintained the outside areas in a reasonable condition. Pursuant to the policy guideline, the tenant is responsible for a reasonable amount of weeding and I find that the tenant fulfilled his obligation to keep the yards and flower beds in a reasonably tidy condition. Accordingly I dismiss the landlord's claim.

2. Pressure wash out door areas - \$300.00

Again upon viewing the tenant's digital evidence, I find that the tenant left the driveway in a reasonably clean condition. I dismiss the landlord's claim.

3. Rent for December 2015 - \$2,275.00

4. Loss of income for January 2017 - \$2,275.00

As explained above, the landlord had made this claim at the prior hearing. The Arbitrator ruled that the landlord was entitled to rent for December 2015 (\$2,275.00) and loss of income for January 2017 (\$1,137.50).

The landlord established a total claim of 4,107.58 which included the rent, loss of income, cost of utilities and late/NSF fees. However the Arbitrator limited the claim to the amount of the landlord's original claim prior to the amendment he made. The landlord was awarded \$2,064.10 which left a balance of \$2,043.48. After granting the landlord the recovery of the filing fee and allowing the landlord to retain the security deposit the Arbitrator granted the landlord a monetary order in the net amount of \$976.60.

Since the landlord's entitlement as per the decision dated February 20, 2016 was not fully granted to the landlord, I award the landlord the balance owed to him in the amount of \$2,043.48 towards his application for items #3 and #4

5. Filing fee - \$100.00

The landlord has proven a portion of his claim and therefore is entitled the filing fee.

The landlord has established a claim as follows:

1.	Maintenance of gardens and driveway	\$0.00
2.	Pressure wash out door areas	\$0.00
3.	Rent for December 2015/ January	\$2,043.48
5.	Filing fee	\$100.00
	Total	\$2,143.48

Tenant's application:

1. Loss of quiet enjoyment - \$1,400.00
2. Harassment - \$1,650.00

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment.

Every tenancy agreement contains an implied covenant of quiet enjoyment. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

In regard to the tenant's monetary claim for compensation for the loss of quiet enjoyment, I have reviewed the submissions of both parties and I find that the tenancy was very stressful on both parties for different reasons. It is my determination that the parties found themselves in a situation which had progressively evolved and for which each had made some contribution to its unfolding.

Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support his claim of compensation for harassment, loss of quiet enjoyment and stress and therefore the tenant's claim for compensation is dismissed.

3. Storage cost - \$924.00

The landlord had included the use of a storage shed in the rent and informed the tenant that the shed would be ready by June 08, 2015. The tenant stated that the shed was not provided at all during the tenancy and therefore he incurred additional costs for storage. The tenant filed an invoice to support his claim. I find that the tenant is entitled to his claim.

4. Loss of use of driveway - \$700.00

Based on the testimony and documentary evidence of both parties, I find that the tenant did not have the full use of his driveway from the start of tenancy on May 01, 2015 up to August 08, 2015.

Residential Tenancy Policy Guideline #16 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.

Since the tenant was deprived of the full use of his driveway for about 13 weeks, I find it appropriate to award the tenant a minimal award of \$300.00.

5. Loss of use of pool - \$952.70

Based on the testimony of both parties and the copies of emails and digital evidence of the tenant, I find that the tenant did not have full use of the pool in the summer months. The landlord agreed that the tenant purchased a part and assisted the landlord in carrying out the repairs of the pool.

Again based on *Residential Tenancy Policy Guideline#16*, I award the tenant \$500.00 towards the loss of the use of the pool.

6. Yard Maintenance - \$1,890.00

The tenant stated that he maintained the yard beyond the requirement of a tenant and is claiming compensation for his efforts.

The tenant agreed that there is no agreement between the parties for the tenant to be compensated for yard maintenance. Accordingly I dismiss the tenant's claim.

7. Pest control - \$125.00

As per an email dated July 23, 2015, the landlord agreed to cover the cost of treatment of pests. Accordingly I award the tenant his claim.

8. Pet deposit - \$600.00

Based on the documents filed into evidence, I find that the tenant has proven his entitlement to the pet deposit of \$600.00.

9. Plants - \$200.00

The tenant agreed that the landlord had not asked him to install plants and therefore there was no agreement for the landlord to compensate the tenant.

10. Home phone - \$120.00

The tenant did not file adequate documents to support his claim and therefore it is dismissed.

11. Cable box - \$89.00

The landlord stated that he returned the box to the cable provider and the tenant may receive his deposit directly from the cable provider. If the landlord has not returned the box to the cable provider and the tenant is unable to collect his deposit, then the landlord must pay the tenant \$89.00. However in the event that the tenant is unable to collect, the tenant is at liberty to file an application to recover the deposit.

12. Stress - \$3,000.00

As stated above regarding items #1 and #2, I find that the tenant has not proven that the stress experienced by the tenant's spouse was solely as a result of the landlord's actions. Accordingly, I dismiss this claim.

13. Pool patch - \$34.26

The tenant has provided sufficient evidence to prove his claim.

14. Filing fee - \$100.00

The tenant has proven a portion of his claim and therefore I award him the recovery of the filing fee.

Overall the tenant has established the following claim:

1.	Loss of quiet enjoyment	\$0.00
2.	Harassment	\$0.00
3.	Storage costs	\$924.00
4.	Loss of use of driveway	\$300.00
5.	Loss of use of pool	\$500.00
6.	Yard maintenance	\$0.00
7.	Pest control	\$125.00
8.	Pet deposit	\$600.00
9.	Plants	\$0.00
10.	Home phone	\$0.00
11.	Cable Box	\$0.00
12.	Stress	\$0.00
13.	Pool patch	\$34.26
14.	Filing fee	\$100.00
	Total	\$2,583.26

Overall the established claims of the landlord and tenant are \$2,143.48 and \$2,583.26 respectively. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$439.78 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 \$439.78. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$439.78**

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 21, 2017

Residential Tenancy Branch

