



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) 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, for unpaid rent or utilities, and to recover the cost of the filing fee.

The landlord and tenant Z.F. (the “tenant”) attended the start of the teleconference hearing and gave affirmed testimony on January 31, 2017. The parties were given the opportunity to ask questions about the hearing process. After 53 minutes, the hearing was adjourned to allow additional time to hear further evidence from the parties. In Interim Decision dated January 31, 2017 was issued which should be read in conjunction with this decision.

On March 7, 2017, the parties reconvened and after an additional 117 minutes, the hearing concluded. On March 7, 2017 the landlord brought an agent who provided affirmed testimony (the “agent”) and the female tenant X.F. attended for a few minutes before stating that she objected to the hearing and then disconnected from the hearing leaving only the male tenant on the line. A summary of the testimony and documentary evidence presented is provided below and includes only that which is relevant to the matters before me.

Regarding documentary evidence, the tenant did not dispute that the tenants refused the registered mail packages from the landlord which was confirmed as “refused” according to the online registered mail tracking information. The registered mail tracking numbers, one mailed to each tenant, has been included on the cover page of this decision for ease of reference. As the landlord’s registered mail packages were mailed on August 4, 2016, and section 90 of the *Act* states that documents sent by registered mail are deemed served five days after they are mailed, I deem both tenants sufficiently served with the Notice of a Dispute Resolution Hearing, Application for Dispute Resolution and the landlord’s documentary evidence as of August 9, 2016. Respondents cannot avoid service by refusing to pick up registered mail and I note that refusal to pick up registered mail does not constitute a ground for a Review Consideration under the *Act*.

Issue to be Decided

- Is the landlord 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 fixed term tenancy began on May 1, 2015 and ended on September 30, 2015 based on a previous decision of an arbitrator, the decision file number of which has been included on the cover page of this decision for ease of reference (the “previous decision”). In that previous decision the arbitrator had already awarded the tenants double the amount of their security deposit.

The landlord has applied for a monetary claim in the amount of \$13,270.16 comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Oil pipe/rewire furnace	\$3,024.00
2. Fix damage to rental unit caused by tenants	\$3,046.18
3. Screens of 15 windows/labour	\$1,000.00
4. Estimate of damage to 15 blinds	\$700.00
5. Lawn mower	\$100.00
6. Utility bill and late payment fee	\$599.98
7. Rental loss October 2015	\$2,400.00
8. Rental loss of 8 months with new tenant (\$300.00 X 8 months)	\$2,400.00
TOTAL	\$13,270.16

Item 1

The landlord referred to a photo submitted in evidence of what the landlord claimed was a sheared off oil pipe by the base of the oil tank. While the photo was blurry and unclear, the tenant confirmed that the oil pipe was sheared off which is why the tenant called the fire department and had them attend to make sure there was not an oil leak or other unsafe situation. The landlord alleged the tenants purposely damaged the pipe to the oil tank which the tenant denied vehemently. The landlord referred to a receipt in the amount of \$93.45 from a heating company that reads in part “oil line + wiring was cut intentionally to tank”. The report from the fire department submitted in evidence indicates the oil leak was small and suggested that the home owner contact a furnace repair company. The tenant denies that the furnace was working at all and that the tenants had several electric heaters in the rental unit for heating due to the furnace not working and that they eventually ended the tenancy due to a lack of proper heat in the rental unit. The landlord claims the oil furnace always worked. There is no mention of the oil tank or furnace on the incoming condition inspection report and the landlord confirmed that she did not complete an outgoing condition inspection report.

Regarding the age of the oil tank, the landlord stated the oil tank was 15 years old whereas the tenant claimed that it was 50 years old. The landlord affirmed that the home was built in 1904 but denies that the oil tank was the original tank. The landlord did not submit documentary evidence to support the age of the oil tank. The landlord referred to an insurance document in evidence that states "approved heating" but the landlord confirmed that the same document did not specify oil as the primary heating source. In fact, the landlord confirmed that there was baseboard heating in the home also and that in 2012 a larger electrical panel was installed in the home. The landlord referred to an oil bill dated sometime in 2009 while the second bill was not dated and was unclear. The landlord stated that she purchased the home in 2008 and that the tenancy did not start until May 1, 2015.

The tenant testified that it was not until September 2015 that they began to use the heat as they did not require the heat over the summer. The tenant testified that the furnace did not work so they used the electric baseboards in the living room and master bedroom and supplemented where needed with electric heaters that could be plugged in.

The landlord was asked how she arrived at the amount claimed for item 1 which was \$3,024.00. The landlord testified that she first received a verbal quote of \$5,000.00 to replace the oil tank. The landlord presented the same invoice dated one year previous from the heating company with additional information on the bottom that read in part:

"...TANK + LINE ARE DAMAGED.

1 TO REPLACE OIL TANK WITH 200 GALLON GRANBY ECHO GUARD OIL TANK AS
OIL LINE AND TANK NOT SAFE = 2200.00

2 FIX WIRE AND PRIMARY RELAY ON FURNACE APPROX 300.00 TO 500.00"

[Reproduced as written]

The landlord confirmed that there was not a separate quote and the addition to the receipt dated one year earlier is not dated and did not have a name attached to the addition added to the receipt one year later.

Item 2

The landlord is claiming \$3,046.18 for what the landlord describes is damage to the rental unit caused by the tenants. The tenant stated that an outgoing condition inspection report was not completed which was confirmed by the landlord.

The landlord submitted a list of 38 sub-items which total the amount claimed for item 2 in the amount of \$3,046.18 as follows which I find actually totals \$3,016.18 due an error on receipt for item 20 described below:

ITEM NUMBER & DESCRIPTION	AMOUNT CLAIMED
1. 2 hours of cleaning (2 hours at \$12.50 per hour) – receipt included	\$25.00
2. 8 hours of cleaning (8 hours at \$15.00 per hour) – receipt included	\$120.00
3. Fix up electric - receipt included	\$35.00
4. Furnace inspection/service call – receipt included	\$93.45
5. Light fixture – receipt included	\$26.78
6. Hole plugs and bit driver – receipt included	\$9.72
7. Door repair – receipt included	\$50.40
8. Rental van to carry supplies for repairs – receipt included	\$55.54
9. Fix up repair – receipt included	\$250.00
10. Install and repair doors – receipt included	\$100.00
11. Fix up – receipt included	\$60.00
12. Cleaning - receipt included	\$72.00
13. Fix up – receipt included	\$78.00
14. Painting – receipt included	\$90.00
15. Painting and dumping – receipt included	\$120.00
16. Plaster/drywall fix up – receipt included	\$160.00
17. Cutting lawn – receipt included	\$82.50
18. Fixed and install broken ceiling lighting – receipt included	\$140.00
19. Cleaning and painting – receipt included	\$120.00
20. Switch (receipt shows \$2.45 with \$30.00 change to landlord and not \$32.45 as originally claimed by landlord so the amount for this item was changed to \$2.45 to match the receipt total) – receipt included of \$2.45	\$2.45
21. Gas for van – receipt included	\$61.78
22. Handle set and privacy lock– receipt included	\$114.18
23. Holder– receipt included	\$2.74
24. Smoke alarm– receipt included	\$22.33
25. Kitchen recycling pail– receipt included	\$11.19
26. Rental unit keys X 6– receipt included	\$20.16
27. Floor grille– receipt included	\$88.42
28. Mini guard– receipt included	\$12.29
29. Paint supplies– receipt included	\$58.84
30. Dump fees– receipt included	\$138.92
31. Paint supplies– receipt included	\$177.11
32. Shower arm and supplies– receipt included	\$33.10
33. Door– receipt included	\$41.29
34. Stopper and electrical supplies– receipt included	\$105.51
35. Gas– receipt included	\$8.53
36. Door and supplies– receipt included	\$50.11

37. Door guard– receipt included	\$18.84
38. Labour for oil tank (removal) – receipt included	\$360.00
TOTAL	\$3,016.18

Landlord's evidence for item 2

The landlord presented the incoming condition report. The tenants signed off on the incoming condition inspection report. There is some damage noted in the incoming inspection including:

- broken cracks on the entry floor tiles,
- cooking burn on one spot on the countertop
- one burn spot on the floor
- cracks on stain window
- scratch damage on floor close to front door

The landlord referred to many black and white photocopied photos submitted in evidence all of which are dated Oct 2, 2015. The landlord shows several photos which according to the landlord showed a dirty rental unit, a broken light fixture and a messy rental unit at the end of the tenancy based on the dated photos. A corner desk is shown in the rental unit that the landlord stated was left behind by the tenants and had to be thrown out with all of the other garbage left behind by the tenants. One of the photos shows a large hole in the drywall of what the landlord describes as a second floor bedroom. Other photos show a broken toilet paper holder, sticker holders that had pulled off portions of the drywall, missing cabinet doors, a missing showerhead, stains in bathtub, scratches and holes on many walls, broken doors, damaged locks, and damaged doorknobs. The landlord claims that the tenants damaged all doors in the rental unit.

The landlord went through the receipts described above for the 38 items as claimed for item 2. As the tenants refused their registered mail package, they did not have their evidence before them which I find is not the fault of the landlord and which I find was entirely in the control of the tenants by refusing the registered mail package.

Tenants' evidence for item 2

The tenant claims they cleaned the rental unit but failed to provide any photo evidence in support of his testimony. The tenant also denies leaving any furniture behind or garbage in the rental unit which is not consistent with the photo evidence. The tenant claims that the landlord caused the damages herself.

Item 3

The landlord has claimed \$1,000.00 for the replacement of 15 window screens. The landlord failed to provide any receipts or quotes in evidence to support the amount being claimed for this portion of her monetary claim.

Item 4

The landlord has claimed \$700.00 for damages to the 15 window blinds. The landlord stated that all blinds had been removed from the windows without permission and that the brackets were missing and some were damaged resulting in the blinds not being able to be used again as she was unable to find matching brackets for the blinds. The landlord failed to provide any receipts or quotes in evidence to support the amount being claimed for this portion of her monetary claim. The tenant stated that he had permission from the landlord to remove the blinds but confirmed that the permission was not in writing. The landlord denies that any permission was given to remove the window blinds.

Item 5

The landlord has claimed \$100.00 for the cost of a lawn mower which she affirmed was working at the start of the tenancy but claims was not working at the end of the tenancy and was damaged by the tenants. The tenant stated that the lawnmower "may have been there but can't recall." The tenant also stated that there is not really a lawn there and was mostly weeds and that he did not cut the grass and didn't use the lawnmower.

Item 6

The landlord has claimed \$599.98 for unpaid utilities and a late fee applied by the utility company for the payment not being received on time. The landlord stated that although utilities were not included in the tenancy, the tenants failed to pay the amount of \$599.98 and submitted the receipt in invoice to be reimbursed through the tenants. The utility bill did have the name of the female tenant on it and is in the amount of \$599.98 and was for a billing period during the tenancy. The tenant claims that he was not given the utility bill but also confirmed that he has refused a number of packages from the landlord.

Items 7 and 8

These two items were dismissed during the hearing as both have been addressed in a previous decision, the file number of which has been included on the cover page of this decision. Item 7 was for \$2,400.00 for loss of October 2015 rent while item 8 was for \$2,400.00 for a rental loss of eight months for rent differential with a new tenant of \$300.00 per month for the remaining eight months of the original fixed term tenancy. Items 7 and 8 will be discussed further below.

Analysis

Based on the documentary evidence before me and the 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 landlord 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 landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord 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 – After carefully considering the evidence before me, I find the landlord has provided insufficient evidence to support that the tenants damaged the oil pipe and as a result, **I dismiss** this portion of the landlord's claim due to insufficient evidence **without leave to reapply**. While the oil tank and furnace may have previously been working during a previous tenancy, I find the landlord has provided insufficient evidence to support that it was working during the tenancy in dispute before me. I also find the insurance document provided by the landlord does not indicate the type of heating system in the home and I have evidence before me confirmed by the landlord and tenant that the electrical system was upgraded and that baseboard heating was a heat source in the rental unit. In addition, I find the landlord has provided insufficient evidence of the amount claimed and I find that waiting one year and having writing added to an invoice from a year previous is not reasonable or reliable and I afford no weight to that evidence as a result.

Item 2 – I have carefully reviewed all 38 sub-items that make up the \$3,016.18 claim for item 2. Consistent with my findings in item 1 above, I dismiss sub-item 4 for \$93.45, and sub-item 38 for

\$360.00 as both items relate to item 1 which has been dismissed. The sub-items are described by number above earlier in this decision.

In terms of the testimony provided for all of item 2, I prefer the testimony of the landlord over that of the tenant as I find the tenant's testimony to be vague and inconsistent and not as credible as a result. For example, when asked if there was a lawn mower in the rental unit the tenant could not recall if there was one but later confirmed he had never used the lawn mower as he had never cut the lawn. Furthermore, the tenant claims that he cleaned the rental unit which is contrary to the photo evidence and went so far as to blame the landlord for purposely damaging her own home so that she could make a claim against the tenants which I find to be both unreasonable and highly unlikely.

Given the above, I am satisfied that all sub-items other than 4 and 38 mentioned above, are valid and reasonable costs based on what I find to be a rental unit left in a dirty condition at the end of the tenancy. Therefore, I find that the tenants breached section 37 of the *Act* as a result, and that all of the damage is beyond reasonable wear and tear. Section 37 of the *Act* states:

Leaving the rental unit at the end of a tenancy

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 it is not necessary to consider each sub-item separately as I have confirmed that the corresponding receipts were provided in evidence by the landlord and that the photo evidence supports this portion of the landlord's claim. Accordingly, I find the landlord has established a total of **\$2,562.73** for item 2.

Item 3 - The landlord has claimed \$1,000.00 for the replacement of 15 window screens. I **dismiss** this portion of the landlord's claim as the landlord failed to provide any receipts or quotes in evidence to support the amount being claimed for this portion of her monetary claim. Therefore, I find the landlord has failed to meet part three of the test for damages or loss described above.

Item 4 - The landlord has claimed \$700.00 for the replacement of 15 window blinds. While I find the landlord has provided insufficient evidence to support the value of the blinds due to submitting no receipts or invoices, I find the tenants removed the blinds without permission

based on the testimony provided and that damage did occur based on the photo evidence before me. Therefore, to acknowledge the damage to the blinds that I find has occurred due to the negligence of the tenants, I award the landlord a nominal amount of **\$100.00** for item 4 pursuant to section 67 of the *Act*.

Item 5 - The landlord has claimed \$100.00 for the cost of a lawn mower which the landlord affirmed was working at the start of the tenancy but claims was not working at the end of the tenancy and was damaged by the tenants. **I dismiss** this portion of the landlord's claim as the landlord failed to provide any receipts or quotes in evidence to support the amount being claimed for this portion of her monetary claim. Therefore, I find the landlord has failed to meet part three of the test for damages or loss described above.

Item 6 - The landlord has claimed \$599.98 for unpaid utilities and a late fee applied by the utility company for the payment not being received on time. I have considered the testimony and the documentary evidence submitted which supports this portion of the landlord's claim. As utilities were not included in the tenancy agreement, I find the tenants owe the full amount of **\$599.98** as claimed by the landlord and I award the landlord that amount accordingly.

Items 7 and 8 - These two items were dismissed during the hearing as both have been addressed in a previous decision, the file number of which has been included on the cover page of this decision. Item 7 was for \$2,400.00 for loss of October 2015 rent while item 8 was for \$2,400.00 for a rental loss of eight months for rent differential with a new tenant. Item 7 was already ordered returned to the tenants in the previous decision and therefore I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim. With respect to *res judicata*, the courts have found that:

“...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamache v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with

approval the above passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

Based on the above, item 7 is dismissed as the matter has already been decided upon and res judicata applies. In addition, item 8 is also dismissed as a previous arbitrator made a finding that the parties agreed that the tenancy ended on September 30, 2015 and as a result, I find the landlord is not entitled to loss of rent for a rent differential for a subsequent tenancy as this tenancy had ended as of September 30, 2015.

Regarding the recovery of the cost of the filing fee, as the landlord was only partially successful with their total monetary claim, I grant the landlord half of the cost of the filing fee in the amount of **\$50.00** pursuant to section 72 of the *Act*.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$3,312.71** comprised of \$2,562.73 for item two, \$100.00 for item four, \$599.98 for item 6, plus recovery of \$50.00 of the cost of the filing fee. I grant the landlord a monetary order under section 67 for the balance due by the tenants to the landlord in the amount of **\$3,312.71**.

Conclusion

The landlord's application is partially successful as described above.

The landlord has established a total monetary claim in the amount of \$3,312.71 as described above. The landlord has been granted a monetary order under section 67 in the amount of \$3,312.71. This order must be served on the tenants 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: April 3, 2017

Residential Tenancy Branch