



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, SS, FF; MNDC, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order to be allowed to serve documents or evidence in a different way than required by the *Act* pursuant to section 71; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlords attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Substituted Service

Although the landlords applied for an order to be allowed to serve documents or evidence in a different way than required by the *Act*, I find based on the landlords' testimony, that they served all documents as required by the *Act*. Accordingly, I dismiss this portion of the landlords' claim.

Preliminary Issue – Amendment of Landlords' Application

During the hearing, the landlords testified that they had increased their monetary application from \$4,906.21 to \$5,814.78 to account for additional damage that became apparent after they filed their original application for dispute resolution. Pursuant to Rule 4.1 of the Residential Tenancy Branch Rules of Procedure, an applicant may amend a claim by completing an Amendment to an Application for Dispute Resolution Form ("amendment form") and filing the completed amendment form with supporting evidence to the Residential Tenancy Branch. In the absence of a completed amendment form, I deny the landlords request to amend their application to increase their monetary claim to \$5,814.78. The landlords' monetary claim remains at \$4,906.21 as stated in their original application.

Issue(s) to be Decided

Is either party entitled to a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the tenant authorized to obtain a return of all or a portion of the security deposit?

Is either party authorized to recover the filing fee for this application?

Background and Evidence

As per the submitted tenancy agreements and testimony of the parties, the tenancy originally began on February 1, 2012 on a fixed term until January 31, 2014 at which time the tenancy was renewed. The tenancy was renewed for subsequent fixed terms with the last term set to end January 31, 2016. Rent in the amount of \$1,500.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$750.00 and pet deposit in the amount of \$750.00 at the start of the tenancy. The

landlords continue to hold both of these deposits. The tenant vacated the rental unit March 31, 2016.

The parties provided conflicting testimony in relation to the move-in condition inspection report. The landlords testified that a move-in condition inspection report was completed in February of 2012 with the tenant's now ex-wife who was provided with the only copy whereas the tenant testified he was unaware of any move-in condition inspection report and understood because the house was new no such report was completed. Neither party provided a copy of a move-in condition inspection report.

The parties agree the landlord conducted a move-out inspection report with the tenant on March 31, 2016. The parties provided a copy of the move-out inspection report as part of their documentary evidence for his hearing. In the report, the tenant authorized the landlords to retain \$150.00 of the security deposit for damage sustained to the stairwell chandelier and \$140.00 for the fridge crispers. The tenant provided his forwarding address on the move-out inspection report.

On April 4, 2016, the tenant received a letter from the landlords. The letter listed a variety of damages to the rental unit and subsequent deductions from the security deposit. In total the landlords listed \$3,651.21 in deductions. The landlords did not return any portion of the security deposit to the tenant. The tenant filed for the return of his security and pet deposits on September 29, 2016.

On February 23, 2017, the landlords applied for a monetary order in the amount of \$4,906.21 for the following;

Number	Item	Amount
1	10% of garage door replacement	\$124.03
2	stairwell chandelier	\$150.00
3	installation of stairwell chandelier	\$130.50
4	carpet cleaning	\$76.00
5	new carpet in two rooms and stairwell plus installation	\$2,257.82
6	fridge crispers replacement	\$140.00
7	new toilet seat	\$29.95
8	downstairs bedroom door knob	\$18.98

9	rectangular bathroom mirror	\$155.00
10	oval bathroom mirror	\$59.97
11	cleaning	\$340.00
12	shrub	\$33.96
13	lightbulbs x 17	\$51.00
14	handyman repairs	\$84.00
15	lamineate flooring and underlay installation	\$1,050.00
16	kitchen cabinet hinges x 6	\$100.00
17	bathroom light switch	\$30.00
18	kitchen sink hose	\$75.00
	Total Monetary Claim	\$4,906.21

The landlords provided a copy of a garage door estimate, installation of light fixture estimate, carpet cleaning invoice, carpet installation estimate, repair receipt, move-out condition inspection report, letters, floor plans, tenancy agreements, original advertisement, photographs and city water, sewer and garbage bills.

In reply, the tenant testified that the remaining damage the landlord is now claiming is the result of wear and tear, not deliberate damage. He testified that he cleaned the unit and shampooed the carpets before vacating.

The tenant applied for a monetary order in the amount of \$5,350.00 for the following;

Number	Item	Amount
1	security deposit	\$750.00
2	double security deposit	\$750.00
3	pet deposit	\$750.00
4	double pet deposit	\$750.00
5	utilities \$50.00 x 45 months	\$2,250.00
6	filing fee	\$100.00
	Total Monetary Claim	\$5,350.00

It is the tenant's position that although he authorized the landlord to retain a total of \$290.00 from his security deposit, the landlord's failure to return any portion of his security deposit or pet deposit within fifteen days of receipt of his forwarding address, entitles him to the return of double his entire security deposit and pet deposit, in the total amount of \$3,000.00.

The tenant seeks reimbursement for the overpayment in electricity. Specifically, the tenant seeks compensation in the amount of \$50.00 per month from June 2012 to February 2016. The tenant testified that as the upper tenant, he paid 60% of the electricity whereas the lower occupant paid 40%. The tenant contends that it was not until the end of his tenancy that he became aware that the hot water tank contained in his unit heated the water for the entire two level unit. The tenant concludes that he unknowingly paid to heat the lower occupant's water and therefore seeks reimbursement.

In an effort to support his position the tenant provided a copy of the move-out condition inspection report, letter from the landlord, garage door estimate, installation of light fixture estimate, carpet cleaning invoice, carpet installation estimate, repair receipt, text message and tenancy agreement.

Analysis

When disputes arise as to the changes in condition between the start and end of a tenancy, typically joint move-in and move-out condition inspection reports are compared. In this case, because the move-in condition inspection report was not submitted a comparison of reports cannot be made. Based on the parties' admission that the unit was new at the start of tenancy, I find based on the balance of probabilities that any damage found at the end of tenancy is the result of this tenancy.

Although the tenant only agreed to specific deductions from his security deposit, this does not negate the landlords' ability to recover compensation for damages that the tenant does not agree to.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

In this case, the onus is on each applicant to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37 of the *Act*, establishes that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline #1 “Landlord & Tenant – Responsibility for Residential Premises,” defines reasonable wear and tear as the natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Analysis – Landlords’ Claims

1. Garage Door. Although I am satisfied the garage door sustained some damage during this tenancy, I find the landlords have provided insufficient evidence to prove the tenant deliberately or negligently damaged the garage door. Rather, I find the garage door damage occurred as a result of the tenant using the premises in a reasonable fashion. Accordingly I attribute any garage door damage to wear and tear and dismiss this portion of the landlords’ claim.

2. & 3. Replacement and Installation of Stairwell Chandelier. Based on the written condition inspection report, I find the tenant waived his right to the return of \$150.00 of his security deposit to allow the landlord to repair the damaged stairwell chandelier.

The landlord did not submit a receipt to substantiate the chandelier replacement cost of \$150.00. The landlord only submitted an estimate in the amount of \$130.50 for the installation of the chandelier. For this reason, I find the landlord is not entitled to \$150.00 replacement cost plus \$130.50 installation but rather I find the landlord is only entitled to the \$150.00 as agreed to by the tenant.

4. Carpet Cleaning. Residential Tenancy Policy Guideline #1 establishes that after a year of tenancy, a tenant is responsible for shampooing the carpets. In the absence of a receipt from the tenant indicating this was done, I find the landlord is entitled to the receipt amount of \$76.00 for carpet shampooing.

5. Carpet Replacement and Installation. Based on the tenant’s admission, the condition inspection report and photographs before me, I am satisfied the carpets sustained damage beyond wear and tear as a result of this tenancy. I find the landlords mitigated their loss by at least attempting to remove the stains through carpet cleaning

Residential Tenancy Policy Guideline # 40 defines the useful life of carpet as 10 years. In the absence of either party providing documentary evidence of the age of the carpet, I find it probable that the carpet was four years, congruent with the length of tenancy which started when the house was new. Based on this, I find the landlord is entitled to recover the depreciated value of 60 percent of the total estimated cost of \$2,257.82. I find the landlord is entitled to compensation in the depreciated amount of \$1,354.69 for carpet replacement and installation.

6. Fridge Crispers. Based on the written condition inspection report, I find the tenant waived his right to the return of \$140.00 of his security deposit to allow the landlord to repair the damaged fridge crispers. I find the landlord is entitled to the \$140.00 as agreed to by the tenant.

7. Toilet Seat. Although I am satisfied the toilet seat was damaged as a result of this tenancy, I find in the absence of a receipt, the landlord has provided insufficient evidence of the actual amount required to repair the damage. For this reason I dismiss this portion of the landlords claim.

8. Door Knob. Based on the condition inspection report I am satisfied the door knob was dented and loose at the end of tenancy. The landlord submitted a photograph of a new doorknob at a local hardware store with a price tag of \$18.98. I find this is insufficient evidence of the actual amount required to repair the damage and therefore dismiss this portion of the landlords claim.

9. & 10. Mirrors. Although I am satisfied the mirrors sustained some damage during this tenancy, I find the landlords have provided insufficient evidence to prove the tenant deliberately or negligently damaged the mirrors. Rather, I find the damage occurred as a result of the tenant using the premises in a reasonable fashion. Accordingly I attribute any mirror damage to wear and tear and dismiss this portion of the landlords' claim.

11. Cleaning. I find the tenant breached the *Act*, when he failed to clean the rental unit in its entirety. The signed move-out condition inspection report supports the landlords' claim that the tenant left some portions of the rental unit dirty. The landlords submitted a photograph of an estimate from a professional cleaner in the amount of \$340.00, yet acknowledged they did not use this cleaner but instead cleaned the unit themselves. I award the landlord a nominal award in the amount \$120.00 for cleaning (\$15.00 per hr x 8 hrs).

12. Shrub. In the absence of a clause in the tenancy agreement obligating the tenant to maintain the yard, I find the landlords are not entitled to compensation for a dead shrub.

13. Lightbulbs. The Residential Tenancy Policy Guideline # 1 sets out that a tenant is responsible for replacing light bulbs in the rental unit during the tenancy. Based on the condition inspection report I find the tenant failed to replace all lightbulbs. In the absence of a receipt, I find the landlord has provided insufficient evidence of the actual amount required to replace the lightbulbs. For this reason I dismiss the landlords' monetary claim for lightbulb replacement.

14. Handyman Repairs. I find that because the "handyman" receipt does not itemize the repairs done, I cannot find the repairs made were necessary or a result of damage inflicted by the tenant. For this reason, I dismiss this portion of the landlords claim.

15. Laminate Flooring, Underlay and Installation. 16. Kitchen Cabinet Hinges. 17. Bathroom Light Switch. 18. Kitchen Sink Hose. In the absence of a professional estimate, quote or receipt for laminate flooring, underlay and installation, kitchen cabinet hinges, bathroom light switch and kitchen sink hose, I find the landlords have not met their onus in proving the actual amount required to make these repairs. For this reason, I dismiss these portions of the landlords claim.

Analysis Tenant's Claims

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing to file an arbitration application claiming against the security and pet deposit, or return the deposit. The tenant may waive their right to the return of the security and pet deposit and through written authorization to the landlord. In the absence of written authorization from the tenant, the landlord must return the security and pet deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security and pet deposit.

The landlords acknowledged they received the tenant's forwarding address on March 31, 2016. The landlords did not file an arbitration application to retain the security and pet damage deposit within 15 days. The landlords only received written authorization to retain \$240.00 of the security deposit and the landlords did not return any portion of the deposits. Based on this, I find the tenant is entitled to double the value of his security deposit in the amount of \$1,500.00 ($\$750.00 \times 2 = \$1,500.00$) and double the value of his pet deposit in the amount of \$1,500.00 ($\$750.00 \times 2 = \$1,500.00$) for a total of \$3,000.00.

I dismiss the tenant's monetary claim for the overpayment of utilities. I find the tenant knew or ought to have known that a single family home would have one hot water tank and that any concerns such as this should have been brought forward at the time the parties entered into an agreement pertaining to utilities.

As both parties were partially successful in their applications, I make no order with respect to their applications to recover the filing fees for their applications for dispute resolution.

The landlord has established a \$1,840.69 monetary claim. Therefore in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$1,840.69 of the tenant's entitlement to \$3,000.00 from the landlords' failure to return the security and pet damage deposits in full satisfaction of the monetary award. The tenant is entitled to the remaining \$1,159.31 security and pet damage deposit balance.

Conclusion

I issue a monetary Order in the amount of \$1,159.31 in the tenant's favour under the following terms, which allows the landlords monetary award for damage arising out of the tenancy, and which allows the tenant recovery of double the value of his security and pet damage deposits arising out of the landlords' contravention of section 38 of the *Act*:

Item #	Item	Amount
2	stairwell chandelier	\$150.00
4	carpet cleaning	\$76.00
5	new carpet in two rooms and stairwell plus installation	\$1,354.69
6	fridge crispers replacement	\$140.00
11	cleaning	\$120.00
Return of Double Security Deposit as per section 38 of the Act ($\$750.00 + \$750.00 \times 2 = \$3,000.00$)		-\$3,000.00
Total Monetary Order		\$1,159.31

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that 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: May 16, 2017

Residential Tenancy Branch