



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code(s): MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was set to hear monetary applications filed by each party. The landlord applied for a Monetary Order for unpaid rent; damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant applied a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, return of the security deposit.

Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The hearing was held over three hearing dates and Interim Decisions were issued after the first and second hearing date. The Interim Decisions should be read in conjunction with this decision. By the end of the third hearing date, both parties had been provided the opportunity to be fully heard with respect to both applications before me.

Issue(s) to be Decided:

1. Has the landlord established an entitlement to compensation for the amounts claimed against the tenant for unpaid rent, cleaning, damage and junk removal?
2. Has the tenant established an entitlement to compensation for the amount claimed against the landlord for damages and losses associated to mould?

Background and Evidence

The one year fixed tenancy started on September 1, 2012 and continued on a month to month basis after the fixed term expired. The tenant paid a security deposit of \$625.00 and the landlord continues to hold the security deposit pending the outcome of this proceeding. The tenant's monthly rent was originally set at \$1,250.00 but had been increased twice, with the last rent increase bringing the monthly rent obligation to \$1,318.00 effective May 1, 2016.

The tenant gave the landlord notice to end the tenancy in writing that was to be effective May 31, 2016. The tenant subsequently requested and the landlord agreed to give the tenant an extension to June 2, 2016.

A move-in inspection report was prepared at the start of the tenancy and the move-in inspection report was provided as evidence.

On June 2, 2016 the parties started to inspect the rental unit together but the tenant left before the inspection was complete as she had to pick up her son. The tenant told the landlord she would return at 4:00 p.m. that same day to finish the move-out inspection but the tenant did not return and the landlord finished the move-out inspection without the tenant. The tenant stated that she tried to phone the landlord's office at 4:30 p.m. to say she was running late but the office was closed. The move-out inspection report completed by the landlord was provided as evidence.

Landlord's Application

The landlord filed an Application for Dispute Resolution seeking to recover \$1,221.65 from the tenant. Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

1. Pro-rated rent to June 2, 2016 -- \$82.65

The landlord requested and the tenant agreed to pay pro-rated rent for the additional two days she had possession of the rental unit in the amount of \$82.65.

2. Carpet cleaning -- \$250.00

The landlord submitted that the carpeting was very dirty and smelled of pet urine at the end of the tenancy. The landlord proceeded to have the carpeting cleaned twice, and sanitized and deodorized, to see if that would rectify the condition of the carpeting and spent \$252.00 in doing so. Ultimately, the carpeting was replaced because the carpet cleaning did not remove the smell of dog urine.

The tenant acknowledged that she is responsible to pay for carpet cleaning but was of the position that \$250.00 is too much. The tenant is of the view that the carpeting could have been cleaned at a cost of approximately \$110.00 as she had them done in December 2015 for \$99.00 plus tax and the landlord also informed her that carpet cleaning would cost \$110.00 so she did not clean them expecting to pay the landlord \$110.00. The tenant also denied that the carpeting was damaged by dog urine, claimed that the dog was not allowed to go upstairs.

3. Blind replacement -- \$250.00

The landlord submitted that at the end of the tenancy several blinds were either broken or missing panels. The living room had three blinds that required replacement, along with one in the master bedroom and one in the small bedroom.

The damaged blinds were vinyl vertical blinds and the landlord did not know how old they were but claimed they were in excellent shape at the start of the tenancy. The landlord replaced the damaged blinds with a similar type of blind. A receipt for the purchase of new blinds was not provided.

The tenant stated that at the move-in inspection the blinds were closed and she did not look at them closely. At the end of the tenancy the tenant acknowledged that one blind was cracked near the patio door. The tenant does not agree to pay for new blinds for the rental unit.

4. Cleaning and cleaning materials -- \$384.00

The landlord submitted that at the end of the tenancy it was estimated that 8 hours of cleaning would be required but 13.5 hours were actually performed. The cleaning was done over multiple dates and not invoiced until June 30, 2016. The cleaner provided a detailed listing of tasks performed over 13.5 hours.

The tenant was of the position that 8 hours of cleaning is excessive. The tenant testified that she vacuumed and mopped the floors. She also noted that the invoice included cutting grass and pruning plants, which was not her responsibility, and that the cleaner did not need to move items that were to be disposed of.

5. Hole repair -- \$70.00

The landlord seeks to recover \$70.00 to repair a hole in the downstairs bathroom door. The tenant agreed to compensate the landlord for this repair.

6. Garbage and mattress removal -- \$165.00

The landlord seeks to recover the cost of \$165.00 to dispose of garbage and abandoned property. The tenant agreed to compensate the landlord for this.

7. Burned out light bulbs -- \$20.00

The landlord seeks to recover the cost to replace five burned out light bulbs in the kitchen ceiling light fixture.

The tenant did not agree that bulbs were burned out. Rather, the tenant stated that squirrels had chewed through wiring which is why the light fixture was not working properly.

Tenant's Application

The tenant seeks compensation of \$2,500.00 from the landlord due to “black mould growing in the upstairs bathroom”. The tenant submitted that this mould caused the residents of the rental unit to suffer illness, including hospitalization, loss of the ability to go to school or work due to illness, and the need to take medications. The tenant submitted that after filing her claim she determined that she suffered financial losses greater than \$2,500.00 but limited her claim to \$2,500.00 as this is the amount she requested by way of her Application for Dispute Resolution. The tenant submitted that her financial losses, due to mould in the rental unit, are as follows:

Lost wages (\$949.47 + \$1,775.31)	\$2,724.78
Moving expenses	\$592.25
Doctor's note	\$25.00
BC Ambulance service	\$80.00

Documentation provided by the tenant to support the financial losses included the following:

- A letter from one employer dated July 14, 2016 indicating “due to illness related to her living environment [the tenant] was forced to cancel her shifts March 1 – 5, 2016. This was a wage benefit loss totalling \$949.47”.
- A payroll report for another employer showing the tenant took vacation days on March 2, 3 and 4, 2016 which the tenant submits were actually sick days converted to vacation days as she was out of sick time; and, the tenant reported as being sick January 27 and 28, 2016, March 1, 2016, April 7, 2016, May 2, 2016, June 3, 2016 and June 16, 2016. The tenant writes on the report that her hourly rate was \$25.50 and was sick for a total of 69.62 hours over these dates.
- A credit card statement showing the tenant paid a moving company \$592.25 on June 3, 2016.
- An invoice for BC Ambulance service provided March 1, 2016.
- An invoice dated July 5, 2016 for a doctor's note in the amount of \$25.00.

The tenant also submitted a number of letters purportedly written by friends and family attesting to seeing black mould in the bathroom and feeling ill after spending time in the rental unit; however, the tenant did not call any of these people to testify during the hearing and their statements were not subject to further examination.

The tenant provided some photographs of the bathtub surround, including a soap dish on the wall that she says subsequently fell off. The tenant testified that the soap dish fell off the bathtub surround in January 2016 and the wall behind it was rotten but that she did not realize it was a health issue at that time.

The tenant's hospital records from her hospital visit on March 1, 2016 show the tenant was diagnosed with pneumonia. The tenant explained that she did not associate her respiratory problems with the mould until her cleaning lady refused to clean the bathroom due to the mould, which is what lead to the tenant calling a restoration company to view the bathroom in the

month of March 2016. The tenant testified that a restoration company came in to provide a free estimate for repairing the bathroom in April 2016. After the restoration company representative viewed the bathroom the tenant claims to have connected her health issues with the mould in the bathroom and she proceeded to notify the landlord of the issue by way of an oral conversation. The tenant claims the landlord's response was that the landlord would deal with it after the tenant moved out. Approximately two weeks later the tenant gave written notice to vacate the rental unit.

The restoration company representative who purportedly inspected the bathroom in April 2016 provided an undated type-written letter that is not on company letterhead despite the tenant's assertion that he works for a well-known restoration company. In the letter, the author indicates that he had worked for several restoration companies in the past and that he observed "lots of black mold everywhere" and was of the opinion that the whole bathroom should be redone and should be done as soon as possible since black mold is "poisoning". The letter-writer proceeds to describe information about "toxic black mold" gathered from the internet. There is no estimated price for repairing or renovating the bathroom indicated in the letter.

The tenant's notice to end tenancy was provided as evidence. It is dated April 29, 2016 and in it the tenant writes: "It saddens me to leave, but my children have grown up and are moving out so I no longer need the space." I explored with the tenant the composition of her family as she referred to it in her notice to end tenancy. The tenant explained that her older daughter moved out of the house to live with her fiancé, her younger daughter moved in with her father, her other two children had already moved out of the house, leaving the tenant with her one young son in a three bedroom, 1.5 bathroom home.

As to the reason the tenant did not mention anything about mould or repairs in her notice to end tenancy the tenant explained that she had given up on the landlord making sufficient and timely repairs and stated that she did not want any "problems". As to what "problems" she was referring, the tenant stated that problems would include the landlord coming into the rental unit, and bringing people in to inspect the unit and make repairs; but, the tenant just wanted to be left alone and move out.

The tenant went to a medical doctor on July 5, 2016 and was provided a doctor's note. In the doctor's note the doctor writes that the tenant is "concerned about the risk associated with being exposed to black mold which is growing on her bathroom walls. This letter is to confirm that being exposed to mold could have potential health side effects to both her and her son if continued exposure occurs". The tenant was of the position that this note proves that her previous diagnosis and treatment by other doctors were incorrect and that mould was the cause of her illness.

It should be noted that the tenant referred to pages in her evidence package that were not in the package provided to me or the landlord. The tenant's evidence package was missing pages 20 through 25 and 81 and 82. Considering the tenant had already been given the opportunity to re-

submit an organized evidence package I did not further consider adjourning or permitting the tenant to submit additional pages of evidence and the missing pages have not been considered further.

The landlord responded by stating that the first time she received a complaint from the tenant with respect to mould in the rental unit was by way of the tenant's Application for Dispute Resolution that was received in July 2016. The landlord denied that the tenant orally told her about mould in April 2016 or at any other time. Rather, the landlord pointed out that the tenant communicated with the landlord, via email, in April 2016 to enquire about how she must notice to end tenancy and there was no mention of mould in the email. The landlord also pointed out that the tenant's notice to end tenancy does not mention mould or repairs and the tenant's reason for ending the tenancy was because most of the tenant's children has moved away.

The landlord was of the position that the bathroom was not contaminated with black toxic mould but surface mould or mildew was present in the bathroom due to lack of housekeeping on the tenant's part. The landlord pointed to the move-out inspection report and the landlord's photographs taken at the end of the tenancy. The landlord acknowledged that the bathroom was renovated after the tenancy ended but explained that this is the landlord's practice to update rental units after a tenancy ends.

The landlord also pointed to a number of discrepancies in the tenant's oral and written submissions. For instance the tenant had made inconsistent submissions that she had notified the landlord of mould in March 2016 and then it was her testimony that it was in mid-April 2016. As another example, the tenant testified that the soap dish fell off in January 2016 but she had made a written submission that it fell off in July 2015 and in another submission claims it happened in December 2015. Further, the landlord pointed to the letter written by the restoration company representative where the author indicates he advised the tenant that the issue should be addressed as soon as possible yet the tenant did not report it to the landlord. Also, in the tenant's own written submission she claims that several people who were in her house had warned her of dangers of mould exposure, yet the tenant did not report it to the landlord.

The landlord called its health and safety manager to testify. The health and safety manager had provided a detailed written submission that I have considered but not reproduced here with a view to brevity. Below, I have summarized the key points submitted by the health and safety manager:

- Most moulds are black in colour but most are not toxic.
- To determine a mould is toxic would require evidence from swabs, cultures, spore counts and/or an air quality assessment which were not done.
- The medical evidence presented by the tenant points to a bacterial infection and other ailments but there is insufficient evidence that mould is the reason for the tenant's ailments.

- A representative working for the well-known restoration company would have described his findings and estimate on company letter head and it appears that the author is more likely a friend of the tenant.
- The pictures of mildew on the bathtub surround is indicative of grime that forms on the grout lines which is a housekeeping issue and resolved by using an appropriate cleanser and/or bleach and scrubbing. Further, the small quantity of mildew that may form on the grime would not result in the health issues reported by the tenant.
- If the tenant was of the position she was ill because of mould in the rental unit it should have been reported to the landlord so that the landlord may respond to the issue and the tenant was remiss in failing to report her concerns to the landlord.
- In summary, the tenant's position that mould caused her illness is far-reaching and not support by a quantifiable measurement and analysis of the mould that would be required to show causation.

The tenant claimed that the landlord merely covered up the mould in the bathroom after her tenancy ended by installing new tiles. The tenant stated that she viewed the rental unit after her tenancy ended and she took pictures of the bathtub surround to show the mould problem recurred. The landlord denied that there is a mould problem in the bathroom.

Analysis

Upon consideration of everything before me, I provided the following findings and reasons with respect to each of application.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 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 whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. It is important to note that 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 Application

The landlord sought compensation and the tenant agreed to compensate the landlord for certain portions of the landlord's claim. The claims that were agreed upon are as follows: pro-rated rent of \$82.65; hole repair for \$70.00; and, garbage removal for \$165.00. Accordingly, I award the landlord compensation as agreed between the parties and I do not analyze these claims further.

Below, I provide analysis of the claims the tenant was not in agreement with.

Carpet cleaning:

The tenant was agreeable to paying for carpet cleaning, but only to the amount indicated to her by the landlord of \$110.00. I note that prior to the move out date the landlord provided the tenant with a written "cleaning list". On that list it indicates the carpets must be steam cleaned but a hand written notation was added that states: "we can do it steam cleaning and we'll charge your dd \$110.00".

The invoice for carpeting cleaning shows that there was a charge of \$105.00, plus tax for the first carpet cleaning session; however, a second carpet cleaning session was done on June 16, 2016 at a cost of \$65.00 plus tax; and, sanitizer and deodorizer applied for \$70.00 plus tax. The carpet cleaner notes on the invoice that the carpet still smelled of dog urine and recommended changing the carpeting upstairs.

Although the tenant stated he dog was "not allowed" upstairs, I find the evidence before demonstrates that it was likely the dog went upstairs. The carpet cleaner's invoice describes dog urine in the upstairs carpeting and the move-out inspection report reflects "dog pee" as being in the bedroom carpeting.

As far as the evidentiary weight of the move-out inspection report, section 16 of the Residential Tenancy Regulations provides that a condition inspection report is the best evidence as to the condition of a rental unit unless there is a preponderance of the evidence to the contrary. The landlord tried to accommodate the tenant so that she could participate in the move-out inspection and she did not fulfill her obligation to complete the inspection or return by the agreed upon time. Therefore, I accept the evidence as reflected on the move-out inspection report as being the best evidence as to the condition of the unit at the end of the tenancy.

In light of the above, I accept that the carpets were stained by dog urine. There is nothing in the evidence before me that would suggest the landlord was aware of dog urine when the cleaning list was prepared. Accordingly, I am of the view that when the cleaning list was prepared the amount of \$110.00 represents the charge for a standard cleaning. In this case, I find the evidence shows that more extreme cleaning techniques were determined necessary at the end of the tenancy and required in an effort to rid the rental unit of dog urine odour. I am satisfied that the dog urine was such that it amounted to damage for which the landlord is entitled to

recover from the tenant. Therefore, I grant the landlord's request to recover \$250.00 from the tenant for carpet cleaning and damage.

Blind replacement:

Upon review of the move-out inspection report and the landlord's photographs, I am satisfied that there were some broken or damaged slats in the vertical blinds. However, I find the landlord did not satisfy me that the loss is \$250.00 as claimed. I was not provided a receipt for the purchase of replacement blinds and I question the age of the blinds as well as whether the individual slats could have been replaced. Further, the landlord testified during the hearing that the unit was renovated and updated after the tenancy ended. All these things considered, I find the landlord did not satisfy me that the landlord suffered a loss of \$250.00 with respect to the broken blinds and I dismiss this portion of the landlord's claim.

Cleaning:

The move-out inspection report shows that most areas of the rental unit were dirty and required additional cleaning. Upon review of the landlord's photographs, I see dirty window sills, fridge, stove, toilet, bathtub, and flooring.

The landlord claimed \$384.00 which was calculated as an estimate of 8 hours at \$40.00 per hour, plus 20% for cleaning materials. The invoice for the cleaning person shows the cleaner billed the landlord \$648.00 for 13.5 hours at \$40.00 per hour, plus 20% cleaning materials.

The tenant objected to being charged for vacuuming, mopping, grass cutting, pruning and moving of things in the back yard as detailed in the cleaner's listing of tasks performed. From the photographs provided to me, it would appear that the carpets were in need of vacuuming; however, I also accept that yard maintenance was not the tenant responsibility. Further, the cleaner's list of tasks performed does not indicate the dates the various tasks were performed and having heard the unit was renovated after the tenancy ended, I have reservations that the cleaning tasks may include cleaning after construction. Therefore, I limit the tenant's responsibility for cleaning to 8 hours as originally estimated by the landlord.

As for the amount paid to the cleaner of \$40.00 per hour, I find that amount exceeds what a reasonable person would expect to pay a cleaning person. If the landlord chooses to pay a cleaner such a rate, I find the tenant's obligation is to pay a reasonable hourly rate based on the task performed. Accordingly, I limit the hourly rate for the cleaner to \$20.00 per hour.

In light of the above, I award the landlord the sum of \$192.00 for cleaning, calculated as: 8 hours x \$20.00 per hour plus 20% cleaning materials.

Light bulbs:

It was undisputed that some of the florescent light bulbs in the kitchen ceiling were not working at the end of the tenancy. However, the parties provided different reasons for the lights not working with the tenant indicating that the bulbs were not burned out. I note the landlord did not provide a receipt to show the purchase of new bulbs. Also of consideration is that the landlord acknowledged renovating the unit after the tenancy ended and the kitchen being recorded as being old and worn on the move-out inspection.

In light of the above, I find I am not satisfied that the landlord incurred a loss of \$20.00 with respect to the kitchen light fixture bulbs and I deny this portion of the landlord's claim.

Filing fee:

As the landlord's application had merit, I award the landlord recovery of the \$100.00 filing fee in addition to the awards provided above.

Security Deposit:

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord above.

Tenant's Application

The tenant has provided evidence that shows she was suffering from a significant respiratory illness in March 2016; however, I find the tenant's evidence that points to the cause of the illness as being mould in the rental unit is not sufficient and too inconsistent to be relied upon. Also of consideration is the tenant's lack of efforts to mitigate any damages.

Where a rental unit is in need of repairs and the tenant seeks compensation for lack of repairs the tenant has an obligation to take reasonable action to mitigate damages. I find it reasonable to expect that a tenant who has observed water damage and mould in the rental unit would report it to the landlord in a timely manner. The tenant claims to have notified the landlord orally of the water damage/mould in March or April 2016. The landlord denied this to be true. I find I prefer the landlord's version of events considering the tenant's email communication to the landlord in April 2016 and the tenant's notice to end tenancy make no mention of repair issues or mould. Also of consideration is that the tenant's submissions as to when she reported the missing soap dish and water damage/mould varied.

Also, I note that the tenant provided inconsistent submissions with respect to the landlord's repair efforts. At one point the tenant submitted that landlord had been slow and/or inadequate in responding to repair issues she raised in the past yet the tenant explained that she did not report the mould in her notice to end tenancy because it would result in the landlord inspecting and repairing the rental unit.

Upon review of the photographs provided as evidence, I see a small amount of mould or mildew growing on the grout lines or caulking of the bathtub surround and on the toilet bowl rim. The landlord's health and safety officer attributed this to lack of sufficient housecleaning; whereas the tenant attributed it to airborne mould. I find the disputed explanation in the absence of scientific evidence, such as: swabs or cultures, spore counts or an air quality assessment is insufficient to satisfy me that the relatively small amount of visible mould resulted in the health problems of the tenant or other occupants of the rental unit.

As far as the doctor's note, I have given it little evidentiary weight. The note is dated more than a month after the tenancy ended, the doctor refers to the tenant having a concern about mould "growing" in the tenant's environment which implies the tenant may have mould where she currently resides not the rental unit; and, the doctor does not indicate that she attended the environment to view or take samples of the mould.

As for the letter written by the restoration company representative, I find it lacks veracity considering: it is not on letterhead of a restoration company; it is undated; it does not provide a description of the proposed work to be performed or price that one would ordinarily expect to see on an estimate from a restoration company; and, it gives information on "black toxic mould" without describing how the person determined the mould was toxic.

As for the several letters purportedly written by friends, family or acquaintances of the tenant I find these letters inadequate proof in the absence of examination of these witnesses and some scientific evidence for me to conclude the rental unit contained toxic mould that resulted in illnesses as described by the tenant. The letter writers were not called to testify as witnesses or subject to examination. The letter writers do not indicate they ran any scientific tests or have qualifications that would qualify them to conclude the rental unit had toxic mould that resulted in illnesses.

In light of the above, I dismiss the tenant's claim for compensation from the landlord.

Monetary Order

Taking into account all of the findings I have made in this decision, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Pro-rated rent	\$ 82.65
Hole repair	70.00
Garbage removal	165.00
Carpet cleaning	250.00
Cleaning	192.00
Filing fee	<u>100.00</u>
Total award	\$859.65
Less: security deposit	<u>(625.00)</u>

Monetary Order

\$234.65

To enforce the Monetary Order the landlord must serve it upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The landlord has been awarded compensation totalling \$859.65. The landlord has been authorized to retain the tenant's \$625.00 security deposit in partial satisfaction of this amount and has been provided a Monetary Order for the balance of \$234.65 to serve and enforce upon the tenant.

The tenant's claim against the landlord has been dismissed in its entirety.

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