



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNSD, MNDC, FF

Introduction

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with the landlord’s application for compensation for damage or loss under the Act, regulation, or tenancy agreement, authorization to retain the tenant’s security deposit, and recovery of the application filing fee.

Both of the tenants attended the hearing, with an agent. The landlord and his wife also attended. Both parties were given a full opportunity to be heard, to present documentary evidence, to make submissions, and to respond to the submissions of the other party.

Service of the landlord’s application and notice of hearing was not at issue. The tenants each received a copy of these materials in mid-February. The tenants also acknowledged receipt of the landlord’s evidence. However, the tenants had not filed any responsive evidence, and stated that this was because they had received the landlord’s evidence approximately 10 days before the scheduled hearing, and did not understand that they could file responsive evidence within the applicable time limits.

Preliminary issue: Adjournment of hearing

The tenants requested an adjournment to allow them to file responsive evidence. The landlord opposed an adjournment. After considering the issue, I decline an adjournment for several reasons. The landlord was correct that the tenants had notice of the landlord’s claims in mid-February, as those claims are particularized in the landlord’s application. Accordingly, although they did not have the landlord’s invoices and quotes for repairs until shortly before the hearing, the tenants could have obtained their own quotes for the same repairs without the landlord’s evidence. Additionally, Rules 3.15 and 3.17 of the Residential Tenancy Branch Rules of Procedure make clear that while responsive evidence should be submitted not less than seven days before the hearing, it can still be admitted at the arbitrator’s discretion. The tenants could have submitted responsive evidence after receiving the landlord’s evidence and asked that it be admitted. Lastly, submission of responsive evidence would go only to the dollar amount of the landlord’s monetary award, and only with respect to one particular claim. The dollar value at issue was not high and any prejudice to the tenants in refusing an adjournment is thus minimal.

Issues to be Decided

Is the landlord entitled to compensation?

If so, is the landlord entitled to retain the security deposit toward the compensation owing?

Is the landlord entitled to recover the application filing fee?

Background and Evidence

This tenancy began on February 1, 2015 and ended on January 31, 2017. A copy of the tenancy agreement was in evidence. Rent of \$1,500.00 was due on the first of each month. A security deposit of \$750.00 was paid by the tenants and remains in the landlord's possession.

Condition inspection reports were completed at move-in and move-out. The tenants signed both, and indicated that they agreed that the move-out report fairly represented the condition of the rental unit at move-out. However, the tenants maintained that they did not understand that they had accepted any responsibility for the damages acknowledged on in that move-out report because nothing had been inserted in the section titled "damage to rental unit . . . for which tenant is responsible." The tenants provided the landlord with their forwarding address on the move-out report, which is dated January 31, 2016.

The landlord claims for the following:

1. Repair to door bedroom door frame: \$462.00

The landlord provided photographs of damage to the door frame. The tenants did not dispute having caused this damage. The landlord also provided an invoice in support of the amount claimed.

The tenants voiced concern about the lack of detail in the invoice, which describes only "[r]epair to door frame, this includes the materials and labor." One of the tenants stated that he was in the contracting business, and that a new door could be purchased for substantially less. The landlord testified that the repairs required a new frame, new moulding, a new striker, and that the door be puttied and glued.

2. Repair to exterior wall and interior wall and frame: \$525.00

This damage was noted in the move-out inspection report as follows: "rear stucco damage and interior wall damage." The landlord provided photographs of the damage to both the interior and exterior wall as well as photographs of the repaired wall. He also provided an invoice in support of the amount claimed. This invoice was more detailed than the other.

The tenants admitted having caused some damage when they backed a car into the wall, but do not believe that the impact of the car could have damaged the interior frame. Their agent who has a background in construction also gave testimony to this effect. The tenants also said that at the move-out inspection the landlord said that the wall had pre-existing damage.

The landlord in response clarified his remark about the pre-existing damage, saying that he meant that an area below the damage at issue had been damaged prior. The landlord also said that as the rental property was his family's prior home he was very aware of the extent of pre-existing damage. Audio recording of the condition inspection at move-out was provided by the landlord but I have not considered it on this issue or any other as I was unable to access it.

The tenants were aware that the landlord was seeking a quote for repair of this wall. At the hearing they said that the repair could have been done for less money. The landlord wondered why the tenants did not attend to it themselves when they were still residing in the rental unit, especially in light of their construction background.

3. Repair to window screen, patio door screen, and window locks: \$280.00

The landlord provided photographs of the two damaged screens. The damage to the window screen was noted in the move-out report. The damage to the patio door was not noted in the move-out report. The landlord's quote for \$280.00 inclusive of tax does not separate out the amounts for the supply and installation of one window screen, one patio screen, and three locks.

The tenants accepted responsibility for the damage to the window screen but not to the patio screen.

4. Replacement of curtain/drapes and hardware: \$22.38 and \$1.72

This damage was noted in the move-out inspection report. Receipts for these items were included in the landlord's evidence. The tenants admitted responsibility for this cost.

5. Towel bar and vanity \$47.50

This damage was also noted in the move-out inspection report. Receipts for these items were included in the landlord's evidence. The tenants did not object to this claim.

6. Mouse deterrent device: \$30.00

The landlord provided a photograph of the damaged device. The tenants admitted damaging it. The \$30.00 claimed is an estimate.

7. Additional

The landlord also claimed for postage, but was advised that that cost is not recoverable under the Act.

Analysis

Section 21 of the Residential Tenancy Branch Regulation provides that a condition inspection report is evidence of the state of repair of the rental unit subject to substantial evidence to the contrary. Although the tenants did not acknowledge financial responsibility on the move-out report for the damage noted in the report, I find that the tenants are responsible for the damage as recorded in the report and set out below. In most cases the tenants accepted responsibility for the damage at the hearing in any event.

Section 32(3) of the Act requires tenants to repair any damage to the rental unit that they have caused. The tenants had the opportunity to make the repairs before they vacated the property. Any concerns with the amounts claimed by the landlord for the repairs carry less weight in light of the fact that the tenants chose not to carry out those repairs themselves when they could have done so. Additionally, as set out above, the tenants could have filed and served evidence on the value of repairs as early as mid-February, when they received the landlord's application which sets out the damage for which he claims compensation in detail.

1. Repair to door bedroom door frame: \$462.00

I accept that the tenants damaged the door and frame. The tenants are therefore responsible for the cost of repair. As they did not submit evidence to the contrary, I accept the landlord's invoice.

2. Repair to exterior wall and interior wall and frame: \$525.00

Based on the testimony of both parties and the audio recording of the move-out inspection, I find that the tenants are responsible for all of the damage. I also find that the invoice is reasonable, and award the landlord the amount claimed.

3. Repair to window screen, patio door screen, and window locks: \$280.00

The landlord's quote for \$280.00 inclusive of tax does not separate out the amounts for the supply and installation of one window screen, one patio screen, and three locks. Only one of the screens was noted as damaged at move-out, and the tenants did not acknowledge

responsibility for the other. As the landlord has not provided an itemized receipt for the different screens and locks, I decline to make an award here.

4. Replacement of curtain/drapes and hardware: \$22.38 and \$1.72

This damage was noted in the move-out inspection report. Receipts for these items were included in the landlord's evidence. The tenants admitted responsibility for this cost. I award the amount claimed.

5. Towel bar and vanity \$47.17

This damage was also noted in the move-out inspection report. Receipts for these items were included in the landlord's evidence. The tenants did not object to this claim. I award the amount claimed.

6. Mouse deterrent device: \$30.00

The landlord provided a photograph of the damaged device. The tenants admitted damaging it. I award the amount claimed.

As the landlord was successful in this application, I find that the landlord is also entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit of \$750.00. In accordance with the offsetting provisions of section 72 of the Act, I authorize and order the landlord to retain the tenant's security deposit of \$750.00 in partial satisfaction of the monetary claim.

Conclusion

I issue a monetary order for the landlord in the following terms, which allows the landlord to obtain the compensation to which I have found he is entitled and to retain the security deposit:

Item	Amount
Repair to door bedroom door frame	\$462.00
Repair to exterior wall and interior wall and frame	\$525.00
Repair to window screen, patio door screen, and window locks	\$0
Replacement of curtain/drapes and hardware	\$24.38
Towel bar and vanity	\$47.17
Mouse deterrent device	\$30.00
Filing fee	\$100.00
Less security deposit	-\$750.00

Total Monetary Order	\$438.27
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I issue a monetary order in the landlord's favour in the amount of **\$438.27**. The tenants must be served with this order as soon as possible. Should the tenants fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order 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 Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 28, 2017

Residential Tenancy Branch