



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNDS MNDC FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for damage to the unit, site or property, to retain the tenant's security deposit and pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord, an agent for the landlord (the "agent"), a witness for the landlord who disconnected from the hearing before providing testimony, the tenant and a tenant advocate (the "advocate") attended the teleconference hearing. The parties were affirmed and an opportunity to ask questions about the hearing process was provided to the parties. A summary of the testimony and documentary evidence presented is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed that she received the landlord's documentary evidence and that she had the opportunity to review that evidence prior to the hearing. The tenant also confirmed that she did not serve any rebuttal evidence in response to the landlord's application.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit and pet damage deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on March 1, 2015 and ended on November 29, 2016 when the tenant vacated the rental unit.

Monthly rent in the amount of \$950.00 was due on the first day of each month. The tenant paid a \$475.00 security deposit and a \$150.00 pet damage deposit at the start of the tenancy, both of which the landlord continues to hold in the total combined amount of \$625.00.

The landlord's monetary claim I note contains a mathematical error on the part of the landlord in that the total amount adds up to \$970.53 however the landlord has claimed \$950.53 which the landlord is limited to as the landlord did not amend her application for a higher amount and is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Paint	\$240.49
2. Painter	\$170.00
3. Clean	\$100.00
4. Repairs	\$250.00
5. Cat urine smell - treatment	\$60.00
6. Replacement of light fixture	\$97.28
7. Missing window screen	\$30.00
8. Missing patio screen	\$22.76
TOTAL	\$950.53* *total amount is actually \$970.53 however the landlord is limited to the \$950.53 amount claimed

Regarding the condition inspection report, the landlord admitted that she added her comments to the condition inspection report after it was completed and after the inspection had concluded which I find renders the condition inspection report invalid and of no weight in support of the landlord's claim as a result.

The tenant did not agree to any portion of the landlord's monetary claim.

Regarding items 1 and 2, the landlord has claimed \$240.49 for paint for item 1 and \$170.00 for a painter however did not provide photo evidence to support that painting was required after the tenant vacated the rental unit. As a result, items 1 and 2 were dismissed during the hearing due to insufficient evidence.

Regarding item 3, the landlord has claimed \$100.00 for cleaning costs and referred to many colour photos submitted in evidence in support of this portion of her monetary claim.

Regarding item 4, the landlord has claimed \$250.00 for repairs to the rental unit however as the landlord failed to provide both before and after photo evidence or a receipt in the amount of \$250.00 this portion of the landlord's claim was dismissed during the hearing due to insufficient evidence.

Regarding item 5, the landlord has claimed \$60.00 to treat cat urine that the landlord admitted was not caught during the inspection and did not submit a receipt in that amount in support of the amount claimed. As a result, this portion of the landlord's claim was dismissed during the hearing due to insufficient evidence.

Regarding item 6, the landlord has claimed \$97.28 for replace what the landlord described was a broken light fixture. The landlord admitted that the condition inspection report indicated at the end of the tenancy that the light fixture was in good condition which is contradictory and therefore, this portion of the landlord's claim was dismissed during the hearing due to contradictory evidence.

Regarding items 7 and 8, the landlord has claimed \$30.00 for a bedroom window screen for item 7 and \$22.76 for a patio screen for item 8. The landlord confirmed that there was no receipt or photos to support that there was ever a bedroom window screen and there was no photo of the patio screen to support that a patio screen existed at the start of the tenancy. As a result, items 7 and 8 were dismissed during the hearing due to insufficient evidence.

Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

As mentioned above, I find the condition inspection report is invalid and of no weight in supporting the landlord's claim as the landlord admitted to adding to the document without the tenant present after the inspection had been completed. As a result, I **caution** the landlord not to modify a condition inspection report once it has been completed in the future.

Items 1 and 2 – As described above, both of these items were dismissed during the hearing due to insufficient evidence without leave to reapply.

Item 3 – After carefully considering the evidence before me, I find the photographic evidence supports that the rental unit was not left reasonably clean at the end of the tenancy and that the tenant breached section 37(2)(a) of the *Act* as a result. Section 37(2) of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (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.

[Reproduced as written]

Given the above and having considered the amount claimed which I find to be reasonable, I find the landlord has met the burden of proof and is entitled to **\$100.00** as claimed for this portion of the landlord's monetary claim.

Items 4 and 5 – As described above, I find the landlord has provided insufficient evidence to support either of these items and as a result, both items are dismissed without leave to reapply due to insufficient evidence.

Item 6 – The landlord claimed \$97.28 for replace what the landlord described was a broken light fixture. As described above and due to the landlord admitting that the condition inspection report indicated at the end of the tenancy that the light fixture was in good condition I find that this portion of the landlord's monetary claim must fail due to contradictory evidence.

Items 7 and 8 - Regarding items 7 and 8, and as described above, both of these items have been dismissed in full without leave to reapply due to insufficient evidence. The landlord neglected to provide before photos to support that either screens were installed at the start of the tenancy.

As the landlord's application was partially successful, I grant the landlord the recovery of half of the cost of the filing fee for a total of **\$50.00**.

I find that the landlord has established a total monetary claim in the amount of **\$150.00** comprised of \$100.00 for item 3, plus \$50.00 of the cost of the filing fee.

As the landlord has claimed against the tenant's security deposit of \$475.00 and pet damage deposit of \$150.00 which as accrued no interest to date and pursuant to section 72 of the *Act*, I authorize the landlord to retain **\$150.00** of the tenant's security deposit in full satisfaction of the landlord's monetary claim. I also order that the landlord immediately return the \$475.00 remaining of the tenant's combined security deposit and pet damage deposit balance. Should the landlord fail to return the tenant's combined deposits balance of \$475.00 as ordered, the tenant is granted a monetary order under section 67 for the balance owing by landlord to the tenant in the amount of **\$475.00**.

Conclusion

The landlord's application is partially successful.

The landlord has established a total monetary claim in the amount of \$150.00. The landlord has been authorized to retain \$150.00 of the tenant's security deposit in full satisfaction of the landlord's monetary claim. The landlord has also been ordered to immediately return \$475.00 remaining of the tenant's combined security deposit and pet damage deposits which have accrued no interest. Should the landlord fail to return the tenant's combined deposits of \$475.00 as ordered, the tenant is granted a monetary order under section 67 for the balance owing by landlord to the tenant in the amount of \$475.00. If the tenants require enforcement of the monetary order, the monetary order must first be served on the landlord 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: June 30, 2017

Residential Tenancy Branch