



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. For a monetary order for damages;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For a monetary order for money owed or compensation for damage;
2. Return all or part of the security deposit; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

On October 22, 2015, the parties were at a dispute resolution hearing at the hearing the Arbitrator granted the landlord an order of possession effective October 31, 2015. The

On June 20, 2016, the parties were at a dispute resolution hearing based on an application filed by the landlord on November 13, 2015, for damages and to keep all or part of the security deposit. At the hearing the landlord withdrew their application.

On August 9, 2016, the landlord filed an application for dispute resolution which was scheduled for February 9, 2017. On February 6, 2017, the tenant filed an application for dispute resolution. The Arbitrator on February 9, 2017, joined their respective claims and adjourned it to be heard together on June 7, 2017. The June 7, 2017, hearing was adjourned by the Residential Tenancy Branch to today's date.

Preliminary and procedural matter

The tenant filed their application on February 6, 2017, seeking monetary compensation in the amount of \$8,000.00. The tenant did not provide a breakdown of their monetary claim or provided sufficient details in their application. On June 16, 2017, the tenant provided the monetary breakdown that amount is not consistent with the amount noted in their application and again details of the claim for the monetary worksheet were not provided.

I find the tenant did not comply with section 59 of the Act, as the tenant was required to provide full particulars of their claim when they filed their application, not 5 days prior to the hearing. I find it would be unfair and prejudicial to the landlord to allow the monetary claim to proceed. Therefore, I dismiss this portion of the tenants claim without leave to reapply. The tenant's claim for return of the security deposit is permitted to proceed at today's hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to monetary compensation for damages?
Are either party entitled to retain the security deposit?

Background and Evidence

The tenancy began on May 10, 2015. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$800.00 and a pet damage deposit of \$800.00 was paid by the tenant (the "Deposits"). The tenancy ended on October 31, 2015. The tenant overheld the premises to November 2, 2015.

The parties agreed a move-out condition inspection report (the "MOCIR") was completed. File in evidence is a copy of the MOCIR.

Landlord's application

The landlords claim as follows:

Hotel costs October 28 to November 3	\$ 410.58
Meals	\$ 408.00
Moving to and from storage unit, storage, fuel	\$1,371.56
Alarm force	\$ 280.00
Carpet cleaning	\$ 110.00
Cleaning	\$ 70.00
Mailbox lock change	\$ 30.45
Transformer	\$ 31.57
Paint and supplies	\$ 74.25
Garbage	\$ 6.27
Grass seed, grasses, cedar tree	\$ 85.04
Garden pots \$16.00 x20	\$ 316.40
Briefcase , wall geiko	\$ 149.67
Filing fee	\$ 100.00
Total claimed	\$ 3,443.79

Hotel costs October 28 to November 3

The landlord testified that they seek to recover the cost of the hotel from October 28, 2015, to November 3, 2015. The landlords seek to recover the cost of \$410.58. Filed in evidence is a receipt.

The tenant testified that they are not responsible for these costs.

Meals

The landlord testified that they seek to recover the cost of meals while they were in the hotel. The landlords seek to recover the amount of \$408.00.

The tenant testified that they are not responsible for these costs.

Moving to and from storage, fuel and storage fees

The landlord testified that they should be entitled to recover the cost of moving and removing their belongings from storage, storage costs and fuel. The landlords seek to recover the amount of \$1,471.56. Filed in evidence are receipts.

The tenant testified that they are not responsible for these costs.

Alarm force

The landlord testified that the tenant took the monitor for the alarm system. The landlords seek to recover the cost of \$280.00. Filed in evidence is an invoice.

The tenant testified that there was no alarm system only a sign outside. The tenant stated that they know nothing about any monitor for an alarm system. The tenant stated the invoice is a reminder of an unpaid invoice, not an invoice showing such monitor even existed.

Carpet cleaning

The landlord testified that they had to have the carpets cleaned. The landlords seek to recover the amount of \$110.00. Filed in evidence is a receipt.

The tenant testified that the carpets were cleaned thoroughly at the end of the tenancy. The tenant stated the landlord's receipt is dated prior to the tenancy ending and believes it was from their prior residence.

Cleaning

The landlord testified that the tenant did not clean the cupboards, and the walls in the bathroom were left dirty. The landlords seek to recover the amount of \$70.00. Filed in evidence is an invoice. The landlord refers to exhibit 9 – photographs.

The tenant testified that they left the rental unit clean spotless. The tenant stated the landlord took photographs while they were still living in the rental unit as you can see their belongings are still there, not at the end of the tenancy.

Mailbox lock change

The landlord testified that the tenant changed the locks to the mailbox and they had to have it rekey. The landlords seek to recover the cost to rekey the mailbox in the amount of \$30.45. Filed in evidence is a receipt.

The tenant testified that they had no choice to change the lock, as they were worried the landlord would take their mail.

Transformer

The landlord testified that the tenant took the transformer at the end of the tenancy. The landlords seek to recover the amount of \$31.57. Filed in evidence is an invoice.

The tenant testified that they did not take the transformer. The tenant stated that the male landlord who did the move-out inspection, knew it was under the deck.

Paint and supplies

The landlord testified that the tenant caused damage to the walls, which had they had to repair. The landlord seeks to recover the amount of \$74.25. Filed in evidence are receipts.

The tenant denied they caused any damage to the rental unit.

Garbage

The landlord testified that the tenant left garbage behind. The landlords seek to recover the amount of \$6.72. Filed in evidence is a photograph marked 9q.

The tenant testified that they left no garbage behind. The tenant stated that the landlord made them remove everything, including the garbage.

Grass seed, grasses, cedar tree

The landlord testified that the tenant has a sea can parked in the driveway from May 2015, to November 2015, and this caused damage to the lawn and cedar tree. The landlords seek to recover the amount of \$85.04.

The tenant denied they caused any damage to the lawn or cedar tree.

Garden pots \$16.00 x20

The landlord testified that there was 20 flowerpots provided to the tenant at the start of the tenancy and there were none at the end of the tenancy. The landlords seek to recover the cost of the garden pots in the amount of \$316.40.

The tenant testified that denied they took any pots that belonged to the landlord. The tenant stated they had they own pots that were removed.

Tenant's application for return of the security deposit

The tenant testified that the landlord received their forwarding address in the MOCIR. The tenant stated that the landlord did not return the Deposits.

The landlord acknowledged the tenants forwarding address was provided in the MOCIR.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

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.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlords reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Section 21 of the Act States a condition inspection report completed in accordance with this section is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Hotel costs October 28 to November 3

The tenancy did not end until October 31, 2015, any cost prior to that date is the landlords responsibility. The tenant in this matter did not vacate on October 31, 2015, I find the tenant breached the Act, when they failed to vacated the property. The tenant occupied the rental unit until November 2, 2015. I find the tenant overheld the property for 2 days and the landlords are entitled to recover the two days they had to be in the hotel because of the tenant breaching the Act. Therefore, I find the landlords are entitled to recover 2 nights at \$88.30 for a total amount of **\$176.76**.

Meals

The landlords are claiming meal from October 28, 2015. However, the tenancy did not end until October 31, 2015. I find it unreasonable that the landlords would seek compensation from the tenant. The tenant is not responsible for the cost of the landlords meals.

Further, even if the landlords incurred meals cost for the two days that the tenant overhired the unit, I am unable to determine if any costs are appropriate as no itemized receipts were provided for me to review or consider. Therefore, I dismiss this portion of the landlords claim.

Moving to and from storage, fuel and storage fees

In this case, I find the landlords are not entitled to moving cost for their items that were stored in storage. The evidence supports the landlords items were stored prior to the tenancy ending and it would be reasonable that they would incur removal costs as a result. I find it unreasonable that the landlords would seek compensation for storing their own belonging that was not a result of the tenant breaching the Act. Therefore, I find the landlords are not entitled to moving cost to or from the rental unit or fuel.

However, as I have found the tenant overhired the rental unit for two day, I find the landlords are entitled to recover two days of storage fees, in the amount of **\$20.00**.

Alarm force

The evidence of the landlord was the alarm monitor was missing. The evidence of the tenant was they do not know what monitor the landlord is referring too.

In this case, I have referred to the MOCIR, which was completed in accordance with the Act. The MOCIR is detailed and there is no comment that any monitor was missing. Further, I am not satisfied any monitor was provided to the tenant at the start of the tenancy. I find the landlords have failed to provide a preponderance amount of evidence to the contrary. I find the landlords have not met the burden of proof. Therefore, I dismiss this portion of the landlords' claim.

Carpet cleaning

The MOCIR support the carpets were cleaned by the tenant at the end of the tenancy, although they were still wet at the time of the inspection. I find the landlord has failed to provide a preponderance amount of evidence to the contrary. I find the landlords have not met the burden of proof. Therefore, I dismiss this portion of the landlords' claim.

Cleaning

The evidence of the landlord was that the rental unit was left dirty and the cupboards and bathroom wall had to be washed. The tenant denied they left the rental unit dirty.

The MOCIR shows the rental unit was left in a fair condition. There are no cleaning deficiencies in the MOCIR. While I accept the landlords have provided an invoice that is not a preponderance of evidence to the contrary. I am further not satisfied that the landlord pictures were taken when the rental unit was vacant. The evidence of the tenant was that some of the photographs were from during their tenancy. I find the landlords have failed to provide a preponderance amount of evidence to the contrary. I find the landlords have not met the burden of proof. Therefore, I dismiss this portion of the landlords' claim.

Mailbox lock change

The tenant change the lock without the consent of the landlord or an Arbitrator, I find the tenant did not have the authority to do so. As a result the landlord had the locks change; I find this is reasonable, as there was no way to determine if all access to the mailbox was returned. I find the tenant breached the Act, and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover the amount of **\$30.45**.

Transformer

The evidence of the landlord was the transformer was missing. The evidence of the tenant was the transformer was there and this was discussed with the male landlord.

In this case, the MOCIR does not support the landlord's version. Further, an invoice dated seven months after the tenancy end is not a preponderance of evidence to the contrary. I find the landlords have not met the burden of proof. Therefore, I dismiss this portion of the landlords' claim.

Paint and supplies

The evidence of the landlord was that tenant caused damage to the walls, which had to be repaired and painted. The tenant denied they caused damage.

In this case the MOCIR, shows that there were dents in the drywall in the entry way and a paint chip in the door. However, the landlord at the inspection said it was left in fair condition. I find this is more likely normal wear and tear, and that is why it was stated to be left in a fair condition. I find the landlords have failed to provide a preponderance amount of evidence to the contrary. I find the landlords have not met the burden of proof. Therefore, I dismiss this portion of the landlords' claim.

Garbage

The evidence of the landlord was the tenant left garbage behind. The tenant denies they left garbage. MOCIR does not support the landlord's eversion. Even, if I accept the garbage left in the photograph, the amount is so small this would not be

unreasonable. I find the landlords have failed to provide a preponderance amount of evidence to the contrary. I find the landlords have not met the burden of proof. Therefore, I dismiss this portion of the landlords' claim.

Grass seed, grasses, cedar tree

The evidence of the landlord was that the tenant caused damage to the lawn and a cedar tree die because of a sea can being placed on the driveway. I find the invoices the landlords have provided are an attempt to provide misleading evidence. First, the invoice is dated April 8, 2016; the invoices show multi- packs of perennials, four cedar treats, and fertilizer. The second invoice is dated April 7, 2016, is for five nursery grasses. This is not consistent with damage lawn or one dead cedar tree, which there was no evidence from an arborist to support the tree die due to action of the tenants. Therefore, I dismiss this portion of the landlord's claim.

Garden pots \$16.00 x20

The evidence of the landlord was the tenant was provided with 20 garden pots as the start of the tenancy. The evidence of the tenant was they were not. I find the landlords have failed to prove the tenant was provided 20 flowers pots at the start of the tenancy. Further, the MOCIR, does not show any such pots were missing. I find the landlords have failed to provide a preponderance amount of evidence to the contrary. I find the landlords have not met the burden of proof. Therefore, I dismiss this portion of the landlords' claim.

I find that the landlords have established a total monetary claim of **\$227.21** comprised of the above described amounts. As the landlords claim was largely inflated and unreasonable, I decline to award the filing fee.

Brief case, wall gecko

The landlords provided no evidence. Therefore, I dismiss this portion of their claim.

Tenant's application

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following:**

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, the landlord filed an application for dispute resolution on November 13, 2015, claiming against the security deposit. The landlord on June 20, 2016, withdrew their application. Withdrawing an application has the same effect as if the application was never made. The Arbitrator on June 20, 2016, granted the landlord leave to reapply. The Arbitrator did not extend the statutory deadline set out in the Act.

On August 9, 2016, the landlord reapplied for a monetary order and to keep the security deposit; however, this was past the statutory deadline. The statutory deadline was not extended on June 20, 2016. I find the landlords have breached section 38(1) of the Act.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of **\$3,200.00**, comprised of double the pet damage deposit (\$800.0) and security deposit (\$800.00) on the original amounts held.

Conclusion

As both parties have been granted a monetary award, I find it appropriate to offset these amounts. The landlord's monetary award of **\$227.21** will be deducted from the tenant's monetary award of **\$3,200.00**. Therefore, I find it appropriate to grant the tenant a formal order for the balance due of **\$2,972.79**.

This order may be filed in the Provincial Court (Small Claims) 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 *Residential Tenancy Act*.

Dated: July 10 2017

Residential Tenancy Branch