



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD 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, for authorization to keep all or part of the tenants' security 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.

On May 11, 2017 the hearing commenced with the landlord and tenants in attendance at the teleconference hearing. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and documentary evidence is provided below and includes only that which is relevant to the hearing. After 47 minutes, the hearing was adjourned to allow additional time for evidence to be re-served and for additional time to hearing testimony and review the documentary evidence presented by the parties. An Interim Decision dated May 11, 2017 was issued which should be read in conjunction with this decision. On June 22, 2017 the hearing reconvened and after an additional 85 minutes of testimony the hearing was concluded.

At the reconvened hearing, the parties confirmed that neither party had any concerns regarding the service of documentary evidence.

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 tenants' security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on June 1, 2014 and reverted to a month to month tenancy after June 1, 2015. The tenancy ended on October 31, 2016 when the tenants vacated the rental unit. Monthly rent \$3,100.00 was due on the first day of each month at the start of the tenancy. The tenants paid a security deposit of \$1,550.00 at the start of the tenancy which the landlord continues to hold and which has accrued no interest to date.

The landlord has claimed for \$3,623.16 however in error added the amount of the security deposit to her total claimed of \$2,073.16. Therefore, it was explained to the parties that the landlord's monetary claim was actually comprised of the following before the security deposit is offset:

ITEM DESCRIPTION	AMOUNT
1. Freezer drawer	\$625.06
2. Cleaning (fireplace)	\$135.45
3. Freezer drawer labour	\$130.00
4. Blinds repair	\$208.65
5. Wood window frame repair	\$75.00
6. Repair floor damage	\$787.35
7. Complete move out clean	\$111.65
TOTAL	\$2,073.16

Regarding items 1 and 3, these items have been combined as they both relate to the repair of a damaged freezer drawer according to the landlord. The tenants testified that the dent they acknowledge on the freezer drawer was normal wear and tear. The landlord disagreed and alleged that dropping a heavy object such as a jar causing a dent to a new fridge/freezer combination was neglect and not wear and tear. The landlord referred to a document which supports that the fridge/freezer combination was new at the start of the tenancy. The parties acknowledge that the freezer drawer was dented by the tenants however the parties disputed the size of the dent. The landlord claimed the dent was 3 inches in total whereas the tenants claim the dent itself was ½" to a ¾" in size. Several colour photos of the dent on the freezer drawer were submitted in evidence.

The landlord submitted two receipts which support the amount claimed for items 1 and 3. The landlord testified that in an effort to reduce the total cost to the tenants for the repair the landlord re-used the original handle which was not damaged.

Regarding item 2, the landlord has claimed \$135.45 for cleaning the fireplace. The landlord referred to policy guideline 1 in support of her claim that the tenants were responsible for cleaning the fireplace. The parties acknowledged that neither knew how to open the front of the gas fireplace to clean the glass window of the gas fireplace. There was no evidence presented that the landlord demonstrated to the tenants how to open the glass window of the gas fireplace to clean it. The landlord submitted an invoice dated November 1, 2016 in the amount claim for a fireplace service call. The invoice shows that in addition to cleaning the gas fireplace the fireplace service call also involved doing a thorough inspection of the fireplace and a recommendation to change the batteries on the wall yearly which is likely related to the thermostat controller.

Regarding item 4, the landlord has claimed \$208.65 for repair to the blinds. The landlord referred to a close up photo of the blind mechanism which the tenants testified was working at the end of the tenancy date of October 31, 2016. The tenants referred to the condition inspection report that included "all ok" for the bedrooms at the end of the tenancy. The tenants stated that any damage to the blinds after they vacated is not their responsibility. The landlord referred to an email sent to the tenants regarding the blinds after the tenancy ended and to the addendum to the tenancy agreement which reads in part that the tenants are responsible for the costs of have the blinds professionally repaired and cleaned at the end of the tenancy.

Regarding item 5, the landlord has claimed \$75.00 for damage to a wood window frame. The tenants referred to the condition inspection report that stated "all ok" for bedroom one and two. Several photos were reviewed during the hearing to which the tenants stated that the damage shown in a photo was not the same condition at the end of the tenancy and that likely the person who worked on the wood frame peeled off paint and some of the wood in preparing the frame for repainting. The photos are not dated. The landlord claims that the window frame was damaged from fluttering blinds left to flutter in the wind against the wooden frame.

Regarding item 6, the landlord has claimed \$787.35 for repairs to the wooden flooring. The landlord referred to the condition inspection report that indicated that the floors in the entry were "newly finished" and that "damages - scratches dents" were noted on the outgoing condition inspection report for the same area. For the kitchen and living room areas the landlord referred to the condition inspection report which indicates that the

floors were newly finished. On the outgoing condition inspection report the kitchen floors are described as “damages” and the living room floors are described as “dents”. The landlord testified that in 2001 the wood floors were refinished and then in 2014 the wood floors were refinished again. The landlord referred to an invoice in the amount of \$787.50 for a one coat refinish of the floors and that while most of the main floor had to be refinished, the landlord reduced the cost to the tenants upstairs but only doing the area at the top of the stairs only. The tenants’ response was that the floor was extremely soft repurposed softwood and was not a hardwood. The tenants presented many colour photos that demonstrated the amount of carpeting purchased for the rental unit at the request of the landlord to prevent any damages to the wood floors. The photos also show 2 chair floor protectors and receipts for over \$2,000.00 in purchased rugs to cover as many of the high traffic areas in the home as possible at the tenants’ expense. The tenants also stated that the nature of design of the flooring is antique repurposed flooring with blemishes and that it was certainly not “new” flooring that was hardwood.

Regarding item 7, the landlord has claimed \$111.65 for cleaning of the rental unit and referred to the backsplash area of the condition inspection report which indicates “dirty greasy”. In addition, the living room interior windows are described as “not cleaned”. The tenants response were that the landlord provided the name of the landlord’ cleaner as a personal recommendation from the landlord so they used that cleaner and paid that cleaner \$409.50 for a “move out clean” so we assumed that given that she knew the standards of the landlord and cleaned for the landlord herself, she would clean to the satisfaction of the landlord. The tenants’ invoice indicates that it took 13 hours to clean the rental unit. The tenants stated that two people spent 13 hours cleaning the rental unit and that the cleaning was an entire day of cleaning. The tenants also referred to a photo taken at the move out inspection which shows a clean window in the living room.

The tenants wrote on the outgoing condition inspection report that they did not agree with the landlord’s comments and that all damages were normal wear and tear. The landlord stated that she has been a landlord for 35 years and tried to resolve these issues prior to filing a claim for dispute resolution.

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what is reasonable to minimize the damage or losses that were incurred.

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.

Items 1 and 3 – I will deal with both of these items together as they both relate to the repair of a dented freezer drawer. I have carefully considered the photographic evidence and I find the tenants' testimony that the dent is reasonable wear and tear is not reasonable; I find that this type of damage exceeds normal wear and tear for a freezer that was new at the start of the tenancy. I find the tenants were negligent by dropping a heavy item that dented a new stainless steel fridge/freezer combination appliance and that the tenants are liable for that damage as a result. Regarding the size of the dent, I find that it is not ½" to ¾" as claimed by the tenants and that the dent, which I find includes an area that continues from the front of the freezer door to the top of the freezer door is closer to what the landlord described. As a result, I find the tenants breached section 37 of the *Act* which states:

Leaving the rental unit at the end of a tenancy

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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.**

[My emphasis added]

I find that the landlord complied with section 7 of the *Act* which requires that the applicant do what is reasonable to reduce the damage or loss when applying for compensation. I find that by using the original undamaged freezer handle, the landlord reduced the potential higher cost to the tenants to repair the freezer drawer. Given the above, I find the landlord has met the burden of proof and I award the landlord **\$625.06 and \$130.00** for items 1 and 3 respectively.

Item 2 - The landlord has claimed \$135.45 for cleaning the fireplace. The landlord referred to policy guideline 1 in support of her claim that the tenants were responsible for cleaning the fireplace which states in part:

“The tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it.”

[Reproduced as written]

I have considered both the policy guideline and the fact that both parties acknowledged that neither knew how to open the front of the gas fireplace to clean the glass window of the gas fireplace. As there was no evidence presented that the landlord demonstrated to the tenants how to open the glass window of the gas fireplace to clean it I find the landlord has not met the burden of proof and I am not applying the policy guideline as a result. At the very least, if the landlord wanted to rely on this portion of policy guideline 1, I would expect that the landlord would have demonstrated to the tenants on how to open the gas fireplace door to clean the inside of the door without damaging the fireplace window or the fireplace itself. Therefore, I dismiss this portion of the landlord's monetary claim due to insufficient evidence without leave to reapply. In reaching this decision I have also considered that the invoice described much more than cleaning the fireplace door and that the service call was for a full servicing of the fireplace which I find is the responsibility of the landlord and not the tenants and that only the cleaning

would have been the responsibility of the tenants had the landlord demonstrated how to open and clean the gas fireplace door.

Item 4 - The landlord has claimed \$208.65 for repair of the blinds. After carefully considering the condition inspection report, I find the landlord has provided contradictory evidence by indicating that the bedroom window coverings were “all ok” on the outgoing condition at the end of the tenancy and that by writing “blinds” in the living room that the landlord was too vague. As a result, I find the landlord has failed to meet the burden of proof for this portion of their claim and I dismiss this item without leave to reapply due to contradictory evidence.

Item 5 - The landlord has claimed \$75.00 for damage to a wood window frame and the tenants referred to the condition inspection report that stated “all ok” for bedroom one and two. While I have reviewed the photos submitted by the parties, I find that the damage is not consistent with blinds fluttering in the wind as claimed by the landlord. I prefer the tenants’ testimony for this item that the photos were undated and likely taken after the wooden frames were being prepped for repainting. Therefore, I find the landlord has not met the burden of proof and I dismiss this item without leave to reapply due to insufficient evidence.

Item 6 - The landlord has claimed \$787.35 for repairs to the wooden flooring. I have carefully reviewed the photos from the landlord and the tenants and I make several findings. Firstly, I find that the landlord requesting for the tenants to provide their own area rugs and carpet runners in high traffic area is unreasonable and is the responsibility of the landlord and not the tenants. Secondly, as the tenants proved that they purchased over \$2,000.00 in area rugs and carpet runners in high traffic areas, I find the tenants did what is reasonable to minimize any damage to the wood floors and that any resulting marks on the wood flooring are reasonable wear and tear and that the tenants have not breached section 37 of the *Act* regarding the wood flooring. Therefore, I find the landlord has failed to prove part one of the test for damages or loss and I dismiss this portion of the landlord’s claim due to insufficient evidence without leave to reapply.

Item 7 - The landlord has claimed \$111.65 for cleaning of the rental unit. I have reviewed the condition inspection report and the tenants’ receipt for cleaning and I find that given that the tenants paid \$409.50 for 13 hours for a “move out clean” using the cleaners referred to the tenants by the landlord, that the landlord’s standard of clean is not reasonable and exceeds what is required under section 37 of the *Act* which is “reasonably clean”. Therefore, I find the tenants’ left the rental unit in reasonably clean

condition and I dismiss this portion of the landlord's claim due to insufficient evidence without leave to reapply.

As the landlord's application had merit, I grant the landlord the recovery of filing fee in the amount of **\$100.00**.

The landlord continues to hold the tenants' security deposit of \$1,550.00 which has accrued \$0.00 in interest since the start of the tenancy.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$855.06** and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit as follows:

Item #	Description	Amount Granted
1	Freezer drawer	\$625.06
2	Cleaning (fireplace)	dismissed
3	Freezer drawer labour	\$130.00
4	Blinds repair	dismissed
5	Wood window frame repair	dismissed
6	Repair floor damage	dismissed
7	Complete move out clean	dismissed
8	Recovery of the cost of the filing fee	\$100.00
SUB-TOTAL		\$855.06
<i>(Less tenants' security deposit of \$1,550.00)</i>		<i>-\$1,550.00)</i>
SECURITY DEPOSIT BALANCE OWING BY LANDLORD TO TENANTS		-\$694.94)

Pursuant to section 72 of the *Act*, I authorize the landlord to retain \$855.06 of the tenants' security deposit of \$1,550.00 in full satisfaction of the landlord's monetary claim.

I ORDER the landlord to immediately return the tenants' remaining security deposit balance of **\$694.94**. Should the landlord fail to comply with my order, I grant the tenants a monetary order pursuant to section 67 of the *Act* for the balance owing by the landlord to the tenants in the amount of \$694.94.

Conclusion

The landlord's application is partially successful.

The landlord has established a total monetary claim of \$855.06. The landlord has been authorized to retain \$855.06 of the tenants' \$1,550.00 security deposit leaving a balance owing by the landlord to the tenants of \$694.94. The landlord has been ordered to immediately return that amount to the tenants. Should the landlord fail to comply with my order, the tenants have been granted a monetary order under section 67 for the balance due in the amount of \$694.94. Should the tenants require enforcement of this monetary order the tenants must first serve the landlord with the monetary order and the monetary order 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: July 7, 2017

Residential Tenancy Branch