



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 landlords' Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlords 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 landlords and tenant attended the start of the teleconference hearing and gave affirmed testimony on June 29, 2017. The parties were given the opportunity to ask questions about the hearing process. After 28 minutes, the hearing was adjourned due to documentary evidence service issues. Therefore, an Interim Decision dated June 30, 2017 was issued which should be read in conjunction with this decision. On September 13, 2017, the parties reconvened and after an additional 110 minutes, the hearing concluded

At the reconvened hearing, neither party raised any concerns about documentary evidence. I find the parties were sufficiently served under the *Act*.

Issues to be Decided

- Are the landlords 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

The landlords submitted a copy of the tenancy agreement in evidence. A fixed-term tenancy began on July 1, 2014 and reverted to a month to month tenancy after June 30, 2015. Monthly rent in the amount of \$3,100.00 was due on the first day of each month. The tenant paid a \$1,550.00 security deposit and a \$1,550.00 pet damage deposit at the start of the tenancy, which the landlord continues to hold. The parties agreed that the tenant vacated the rental unit as of December 31, 2016.

The landlords' monetary claim of \$7,400.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Home Depot receipt (blinds part one)	\$135.42
2. Paint receipt	\$366.83
3. Carpet receipt	\$589.40
4. Labour (re: repairs)	\$2,100.00
5. Waste transfer (February 2017)	\$59.00
6. Waste transfer (December 2016 – January 2017)	\$65.00
7. Home Depot (blinds part two)	\$476.39
8. Rona (purchase paint accessories)	\$52.47
9. D.M. painting receipt	\$1,254.75
10. Window cleaning	\$160.00
11. Drywall accessories receipt	\$25.75
12. Rental truck for disposal	\$76.90
13. Labour – repairs and clean-up (Jan 20, 2017 and February 20, 2017)	\$1,330.00
14. Labour – painting and repairs (Jan 1, 2017 and January 20, 2017)	\$2,296.58 (reduced from \$2,765.00)
15. Waste transfer (January 30, 2017)	\$28.00
16. Paint receipt	\$27.27
17. Carpet installation receipt	\$456.24
TOTAL	\$7,400.00

Firstly, during the hearing the landlords requested to withdraw two items, which were items 4 and 10 and as a result, I will not consider them further in this decision. In

addition, I find that the landlords withdrawing items 4 and 10 does not prejudice the tenant in any way.

Settlement Agreement

During the hearing, the parties agreed on a settlement agreement regarding some of the items being claimed by the landlord. The items which have been agreed upon by the parties have been organized into a table below for ease of reference. As a result, the corresponding item numbers will not be included in the analysis section of this decision as all matters which form part of the settlement agreement were agreed upon by the parties, pursuant to section 63 of the *Act*, and form a final and binding agreement between the parties as mutually resolved matters related to this tenancy.

Settlement Agreement Item Number	Agreed upon compensation to landlords by tenant
Item 1 – Home Depot (blinds part one)	\$135.42
Item 7 – Home Depot (blinds part two) – noting that 4 of the blinds were removed from the cost resulting in this portion decreasing by \$209.31 including taxes from \$476.39 to \$267.08.	\$267.08
Item 11 – drywall receipt	\$25.75
Item 12 – Rental truck for disposal	\$76.90
TOTAL	\$505.15

Evidence Regarding Remaining Items

Item 2

Regarding item 2, the landlords have claimed \$366.83 for wall paint and referred to a receipt submitted in evidence for the amount claimed. The landlords stated that after the tenant vacated the suite, almost the entire suite needed to be repainted except some ceilings and walls that were not damaged and that she has not charged for areas that were not repainted. The landlords referred to the incoming condition inspection report which indicated the paint as “new” and then showed photos of the condition of the walls at the end of the tenancy which showed damage. The tenant did not agree with this portion of the wall and said she was “unsure” of whether the hole in the wall showing in the after photos was there during the tenancy.

Item 3

The landlords have claimed \$589.40 for carpets which was reduced from the receipt total of \$2,035.49 as the landlords are not claiming for areas that were not damaged or carpeted before the tenancy began. The landlords testified that the carpets were 1 month old at the start of the tenancy and on the incoming condition inspection they are described as “new”. The landlords described the photo presented in evidence as support that the carpets were dirty. The landlords also presented an agreement between the parties dated December 31, 2016 (the “agreement”) in which the tenant signed the agreement and it reads in part:

“ – We agree that the carpets must be replaced but at a cost of no more than \$1.60 per square foot (small bedroom and large bedroom + stairs...”

[Reproduced as written]

The tenant’s response was that she did not agree to the cost of the underlay.

Item 4

This item was withdrawn by the landlords during the hearing and will be not discussed further as a result.

Items 5 and 6

These items have been joined together as they both relate to the landlords’ claim for waste transfer of drywall and other repair related items to be removed from the rental unit and disposed of. For item 5, the landlords are claiming for \$59.00 and for item 6, the landlord is claiming for \$65.00. The landlords submitted receipts for both items. The landlords also referred to photos of damage submitted in evidence. The landlords confirmed that she has deducted \$15.00 from the above amounts during the hearing as \$15.00 was related to item 4 which was withdrawn, leaving a reduced balance owing for items 5 and 6 of \$109.00 and not \$124.00 for the totals of items 5 and 6 combined. The tenant disputed the February 2017 date on one of the receipts.

Item 8

The landlords have claimed \$52.47 for item 8 which relates to paint accessories and more supplies to repair the damaged walls. The tenant asked if the painter didn’t have

his own supplies, to which the landlords responded that the painter did have supplies but that the landlord purchased some items for her contractor who did as much work and painting as he could and that the painter was only hired for the areas the contractor could not reach as the contractor was cheaper than the painter.

Item 9

The landlords have claimed \$1,254.75 to hire a painter as described above in item 8, and referred to the photo evidence in support of this portion of the landlords' claim which showed many walls in need of repainting after being repaired. The tenant stated that she does not agree as she finds the amount excessive.

Items 13 and 14

The landlords have claimed \$1,330.00 and \$2,296.58 for items 13 and 14 respectively. The landlords stated that both invoices related to her contractor who provided one receipt in January and a second receipt in February for additional work provided. The landlords described the contractor's invoices as being related to repairs, clean up related to repairs (but not house cleaning which was separate) and to ensure the walls were ready for painting that the contractor could not paint and of which the painter was required. The landlords also stated that the contractor removed the damaged blinds and re-installed the new blinds. The tenant asked the landlord why there were two receipts and that she felt the amounts were excessive. The landlords responded by stating that the contractor only charged for the damage related portions and that the tenant was not being charged for the cost to relay the new carpets. The landlords also stated that she was trying to mitigate some of the costs to the tenant by doing some work and that she has only charged the tenant for portions related to damage she caused.

Item 15

The landlords have claimed \$28.00 for waste transfer related to one additional load required to dispose of remaining items left over from the repairs to the rental unit. The tenant stated that she did not agree to the costs. The agreement of the parties referred to above also stated the following in part:

- cleaning is to be done but a charge of no more than 6 hours @ \$35.00 per hr.
- We agree that the doors (2) and closet door are to be replaced or repaired as needed
- Blinds to be replaced as needed with same as needed..."

[Reproduced as written]

Item 16

The landlords have claimed \$27.27 for one litre of trim paint which was purchased to avoid the labour costs for either the contractor or the painter to purchase the trim paint. The tenant's response was that the materials should have been broken down better by the landlord.

Item 17

The landlords originally claimed \$456.24 for this portion of their monetary claim however reduced this amount during the hearing to \$426.72 as she had made an error with the square foot used in her calculation and that that reduced amount equals the cost of the installation of the carpet plus underlay for a total amount of \$426.72. The tenant responded by stating that she only agreed to the carpet and not the underlay costs.

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, items 4 and 10 were withdrawn by the landlord during the hearing. Resolved by way of a mutually settled agreement were items 1, 7, 11 and 12 which are comprised as follows:

Settlement Agreement Item Number	Agreed upon compensation to landlords by tenant
Item 1 – Home Depot (blinds part one)	\$135.42
Item 7 – Home Depot (blinds part two) – noting that 4 of the blinds were removed from the cost resulting in this portion decreasing by \$209.31 including taxes from \$476.39 to \$267.08.	\$267.08
Item 11 – drywall receipt	\$25.75
Item 12 – Rental truck for disposal	\$76.90
TOTAL	\$505.15

Item 2 - The landlords have claimed \$366.83 for wall paint and supplied a receipt for the amount claimed. After carefully reviewing the photo evidence and the testimony of the parties, I am satisfied that the tenant damaged the walls and that the landlords have met the burden of proof as a result and is owed **\$366.83** as claimed for this item.

Item 3 - The landlords have claimed \$589.40 for carpets which was reduced from the receipt total of \$2,035.49 as the landlords are not claiming for areas that were not damaged or carpeted before the tenancy began. The landlords testified that the carpets were 1 month old at the start of the tenancy and on the incoming condition inspection they are described as “new”. After carefully considering the photo evidence and the agreement the parties made dated December 31, 2016 I find the landlords have met the burden of proof and that the tenant owes the landlords for **\$589.40** for item 3 as claimed. I find the tenant is also responsible for the underlay as it is not reasonable to lay carpet without underlay and that I find it reasonable that underlay be included in the costs owed by the tenant.

Items 5 and 6 - These items have been joined together as they both relate to the landlords’ claim for waste transfer of drywall and other repair related items to be removed from the rental unit and disposed of. For item 5, the landlords are claiming for \$59.00 and for item 6, the landlords are claiming for \$65.00. The landlords submitted receipts for both items. The landlords also referred to photos of damage submitted in evidence.

As noted above, the landlords confirmed that they have deducted \$15.00 from the above amounts during the hearing as \$15.00 was related to item 4 which was withdrawn, leaving a reduced balance owing for items 5 and 6 of \$109.00 and not \$124.00 for the totals of items 5 and 6 combined. The tenant disputed the February 2017 date on one of the receipts.

I find that it is reasonable and common to have different dates for multiple receipts as costs arise during repairs to a rental unit and that the tenant is responsible for the full **\$109.00** reduced costs for waste transfer. I find the tenant 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 the tenant damaged the rental unit beyond reasonable wear and tear and is responsible for the costs as a result.

Item 8 - The landlords have claimed \$52.47 for item 8 which relates to paint accessories and more supplies to repair the damaged walls. I accept the landlords' testimony that they tried to reduce the costs to the tenant by hiring a contractor who was less expensive than a painter. Section 7 of the *Act* also requires that an applicant attempt to minimize the costs to the other party when applying for compensation under the *Act* and I find the landlords did comply with section 7 of the *Act* as a result. Therefore, I find the landlords have met the burden of proof and are entitled to **\$52.47** as claimed for this portion of the landlords' monetary claim.

Item 9 - The landlords have claimed \$1,254.75 to hire a painter as described above in item 8, and referred to the photo evidence in support of this portion of the landlords' claim which I find showed many walls in need of repainting after being repaired. The tenant stated that she does not agree as she finds the amount excessive.

While the tenant may find the amount to be excessive I disagree. I find the amount to be reasonable and after reviewing the photo evidence, I grant the landlord **\$1,254.75** as claimed for item 9 as I find the landlords have met the burden of proof.

Items 13 and 14 – The landlords have claimed \$1,330.00 and \$2,296.58 for items 13 and 14 respectively. The landlords stated that both invoices relate to their contractor who provided one receipt in January and a second receipt in February for additional work provided. The landlords described the contractor's invoices as being related to repairs, clean up related to repairs (but not house cleaning which was separate) and to ensure the walls were ready for painting that the contractor could not paint and of which the painter was required. The landlords also stated that the contractor removed the damaged blinds and re-installed the new blinds. s

While the tenant asked the landlords why there were two receipts and that she felt the amounts were excessive, I find the more than one receipt is common, reasonable and

that the amounts claimed are also reasonable based on damage shown in the photo evidence. Therefore, I find the landlords have met the burden of proof and that the tenant owes the landlords **\$1,330.00** for item 13, and **\$2,296.58** for item 14.

Item 15 – Consistent with my findings for items 5 and 6 described above, I find the landlords have met the burden of proof for waste transfer in the amount of **\$28.00** for this portion of the landlords' claim.

Item 16 - The landlords have claimed \$27.27 for one litre of trim paint which was purchased to avoid the labour costs for either the contractor or the painter to purchase the trim paint. The tenant's response was that the materials should have been broken down better by the landlords. While I don't disagree with the tenant regarding materials are easier to comprehend when they are broken down better by the applicant, I find the amount to be reasonable and that the landlords have met the burden of proof and are owed **\$27.27** as I find the trim was damaged during the tenancy as shown in the photo evidence.

Item 17 - The landlords originally claimed \$456.24 for this portion of their monetary claim however reduced this amount during the hearing to \$426.72 as they had made an error with the square foot portion used in their calculation and that that reduced amount equals the cost of the installation of the carpet plus underlay for a total amount of \$426.72. The tenant responded by stating that she only agreed to the carpet and not the underlay costs. Consistent with my finding regarding item 3 above, I find that the tenant is also responsible for the cost and labour relating to the underlay and that the tenant owes the landlords **\$426.72** which is the reduced amount to install the carpet and underlay damaged by the tenant during the tenancy. In other words, I find the landlords have met the burden of proof for item 17.

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

I find that the landlords have established a total monetary claim of **\$6,996.17** as follows:

ITEM DESCRIPTION	AMOUNT AWARDED OR AGREED UPON BY MUTUAL AGREEMENT
1. Home Depot receipt (blinds part one)	\$135.42 (mutual)
2. Paint receipt	\$366.83
3. Carpet receipt	\$589.40
4. Labour (re: repairs)	withdrawn

5. Waste transfer (February 2017)	\$109.00
6. Waste transfer (December 2016 – January 2017)	
7. Home Depot (blinds part two)	\$267.08 (mutual)
8. Rona (purchase paint accessories)	\$52.47
9. D.M. painting receipt	\$1,254.75
10. Window cleaning	withdrawn
11. Drywall accessories receipt	\$25.75 (mutual)
12. Rental truck for disposal	\$76.90 (mutual)
13. Labour – repairs and clean-up (Jan 20, 2017 and February 20, 2017)	\$1,330.00
14. Labour – painting and repairs (Jan 1, 2017 and January 20, 2017)	\$2,296.58
15. Waste transfer (January 30, 2017)	\$28.00
16. Paint receipt	\$27.27
17. Carpet installation receipt	\$426.72
18. Recovery of the cost of the filing fee	\$100.00
TOTAL	\$6,996.17

As the landlords have claimed against the tenant's security deposit of \$1,550.00 and pet damage deposit of \$1,550.00 for a total of \$3,100.00 in combined deposits which have accrued no interest to date and pursuant to section 72 of the *Act*, I authorize the landlords to retain the tenant's full combined deposits of \$3,100.00 in partial satisfaction of the landlords' monetary claim. Given the above, I grant the landlords a monetary order under section 67 for the balance owing by the tenant to the landlords in the amount of **\$3,896.17**.

Conclusion

The landlords' application is mostly successful.

The landlords have established a total monetary claim in the amount of \$6,996.17. The landlords have been authorized to retain the tenant's full \$1,550.00 security deposit and full \$1,550.00 pet damage deposit in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlords in the amount of \$3,896.17. If

the landlords require enforcement of the monetary order, the monetary order must first be served on the tenant 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: October 10, 2017

Residential Tenancy Branch