



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNR, MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenants, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenants acknowledged receipt of evidence submitted by the landlord. The tenants did not submit any documentation for this hearing. Both parties gave affirmed testimony.

Issue to be Decided

Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on April 1, 2016 and ended on March 31, 2017. The tenants were obligated to pay \$1250.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$625.00 security deposit

and a \$625.00 pet deposit. The landlord holds both of those deposits at this time. The landlord testified that the tenants were responsible for 50% of the utilities as part of their tenancy agreement but did not pay for the months of February and March 2017. The landlord testified that the tenants removed the carbon dioxide detector and shower head. The landlord testified that the tenants also damaged a smoke detector. The landlord testified that the tenants left behind numerous bags of garbage, multiple chairs, mattresses and other debris requiring him to hire a company to remove them. The landlord testified that the tenants didn't return the keys to the unit requiring him to install new locks and cut new keys. The landlord testified that the tenants damaged the entrance door by twisting it out of its casing.

The landlord is applying for the following:

1.	Garbage Removal	\$175.35
2.	BC Hydro and Fortis	214.31
3.	Carbon Monoxide, Smoke Detector and Shower Head Replacement	116.91
4.	Lock and Key Replacement	79.69
5.	Fixing Entrance Door	168.00
6.	Filing fee	100.00
	Total	\$854.26

The tenants gave the following testimony. The tenants adamantly dispute the landlords claim. The tenants testified that many of the items the landlord is claiming were either damaged or missing at move in. The tenants testified that they should be given both of their deposits back in full.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the

damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party, the applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I address the landlords claim and my findings as follows.

Garbage Removal – The landlord is seeking \$175.35 for garbage removal. The tenants dispute this claim. The landlord testified that the tenants left numerous bags of garbage, debris and furniture behind. The tenants testified that they left a mattress and a bedframe that they intended to pick up several days after move out and advised the landlord as such. The landlord has not provided sufficient evidence to support his claim that the tenants left all of the items as alleged. Based on the insufficient evidence before me and the landlords' inability to satisfy all four grounds as listed above, I dismiss this portion of their claim.

Utilities – The landlord is seeking \$214.31. The landlord submitted a copy of the tenancy agreement that reflects that the tenants are responsible for 50% of the utilities costs and the unpaid bills to support his position. The tenants testified that they had an arrangement with the upstairs tenant but it was a verbal agreement and are unable to provide any documentation to support their position. Based on the documentation before me, I am satisfied that the landlord is entitled to the amount as claimed. The landlord is entitled to \$214.31

Replacement of Items - The landlord is seeking \$116.91 for the costs to replace a shower head, a carbon monoxide detector and a smoke alarm. The tenants dispute this claim. The tenants testified that the shower didn't have the shower head at move in but wasn't an issue for them as they preferred to use their own detachable model. The tenants testified that the carbon monoxide detector was constantly beeping and the landlord picked it up and advised the tenants he would get a new one, but never did. The tenants testified that they didn't touch the smoke detector and it was in the unit. The landlord alleges that the tenants removed the shower head and carbon monoxide detector and damaged the smoke detector. The landlord did not conduct written condition inspection reports at move in or move out. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the

changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

Locks and Key Replacement – The landlord is seeking \$79.69 for the replacement of locks and keys. The tenant acknowledges that he did not return the keys at move out. The tenant was of the belief that the landlord had to return the security deposit in cash on the day of move out. The tenant testified that he attempted to return the keys several days later, however the landlord advised that it was too late at that point as he had to change them for security purposes. Based on the testimony of the parties and the tenants own acknowledgement, I find that the landlord is entitled to this claim and grant him \$79.69.

Fixing Entrance Door – the landlord is seeking \$168.00. The landlord testified that the tenants damaged the door and that it cost him \$168.00 to repair. The tenants testified that the door had pre-existing damage and that they didn't cause any further damage. The tenants testified that the door had a "split" in it since they moved in. As noted above, the landlord did not conduct condition inspection reports. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not satisfied me that the tenants damaged the door. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

The landlord is entitled to the recovery of the \$100.00 filing fee as he has been partially successful in his claim.

Conclusion

In summary, the landlord has been successful in the following claims:

Utilities	\$214.31
Lock and Key Replacement	\$ 79.69
Filing Fee	\$100.00
	\$
	\$
	\$
Total:	\$394.00

The landlord has established a claim for \$394.00. I order that the landlord retain \$394.00 from the deposit in full satisfaction of the claim. The landlord is to return the remaining \$856.00 to the tenants. I grant the tenants an order under section 67 for the balance due of \$856.00. This order may be filed in the Small Claims 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 *Residential Tenancy Act*.

Dated: October 24, 2017

Residential Tenancy Branch