



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For a monetary order for loss or money owed;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For a monetary order for loss or money owed;
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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary order for loss or money owed?
 Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?
 Is the tenant entitled to a monetary order for loss or money owed?

Background and Evidence

The tenancy began on April 1, 2016. Rent in the amount of \$525.00 was payable on the first of each month. A security deposit and pet deposit of \$525.00 was paid by the tenant. The tenancy ended on May 31, 2017.

The parties agreed a move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Unpaid utilities	\$ 178.20
b.	NSF Fee	\$ 10.00
c.	Disposal fee	\$ 10.00
d.	Overholding	\$ 35.00
e.	Cleaning services	\$ 139.99
f.	Carpet cleaning	\$ 82.95
g.	Filing fee	\$ 100.00
	Total claimed	\$ 556.14

Items a, b, and c

At the outset of the hearing the tenant agreed that they are not disputing the landlord claim as outlined in a, b and c.

Overholding

The landlord testified that the tenant did not vacate until 3pm on May 31, 2017. The landlord stated the tenant was given two opportunities' to schedule a move-out condition. The landlord stated the tenant was given a final opportunity to attend the condition inspection; however, the tenant did not participate.

The tenant testified that they vacated the premises on May 31, 2017, and should not be responsible for overholding costs.

Cleaning services

The landlord testified that the tenant did not clean the rental unit at the end of the tenancy, which included the appliances. The landlord stated that they have not had the premises cleaned as they are currently in the middle of a renovation. The landlord seeks compensation for having to clean the rental unit in the estimated amount of \$139.99.

Carpet cleaning

The landlord testified that the tenant did not clean the carpets at the end of the tenancy and they were left dirty and stained. The landlord stated they have not had the carpets cleaned as they are waiting until the renovation is completed. The landlord seeks to recover the amount of \$82.95.

The tenant testified that they did not clean the carpets at the end of the tenancy. The tenant stated that the landlord did not clean the carpets at the end of the tenancy and they likely would have needed to be cleaned after the renovation was completed.

Tenant's application

The tenant claims as follows:

a.	Compensation pursuant to section 51 of the Act	\$525.00
b.	Filing fee	\$100.00
	Total claimed	\$625.00

At the outset of the hearing the landlord agreed that the tenant did not receive compensation as required by section 51 of the Act, and are not disputing this portion of the tenant's claim.

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 both parties have the burden of proof to prove their respective claim.

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-complying 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.

Landlord's application

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord 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.

Items a, b, and c

The tenant agreed that they are not disputing the landlord claim as outlined in a, b and c. Therefore, I find the landlord is entitled to recover the amount of **\$198.20**.

Overholding

In this case, the tenant vacated the premises on May 31, 2017 at 3:00 pm. While I accept the tenant was required to vacate under the Act, by 1:00 pm, I find there was no loss incurred by the landlord as rent was paid for that day.

Further, under the section 44(1) (d) the tenancy ends when the tenant vacates the premise. I find conducting a move-out condition on a date other than the day the tenant vacates the rental unit, does not mean the tenant is overholding the premises. I find the landlord has failed to prove the tenant was overholding the premise. Therefore, I dismiss this portion of the landlord's claim.

Cleaning services

The tenant acknowledged that they did not clean the rental unit. I find the tenant breached the Act. While the landlord has not cleaned the rental unit due to a renovation, I find the estimated cost for cleaning is reasonable. Therefore, I find the landlord is entitled to recover estimated cleaning costs in the amount of **\$139.99**.

Carpet cleaning

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant generally expected to lean the carpets if vacating after a tenancy of one year.

In this case, the tenant acknowledged that they did not clean the carpet as required. I find the tenant has breached section 37 of the Act, when they failed to clean the carpets. While the landlord has not cleaned the rental unit due to a renovation, I find the estimated cost for cleaning the carpets is reasonable. Therefore, I find the landlord is entitled to recover estimated cleaning costs in the amount of **\$82.95**

I find that the landlord has established a total monetary claim of **\$512.14** comprised of the above-described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit in full satisfaction of the claim. While there is a balancing remaining of \$12.86, I find the tenant did not participate in the move-out condition and the right of the return of the balance of the security deposit no longer exists.

Tenant's application

The landlord acknowledged that the tenant did not receive compensation equal to one month of rent as required by section 51 of the Act; I find the tenant is entitled to compensation in the amount of **\$525.00**.

I find that the tenant has established a total monetary claim of **\$625.00** comprised of the above described amount and the \$100.00 fee paid for this application. The tenant is granted a monetary order pursuant to section 67 of the Act.

Conclusion

The landlord is granted a monetary and may keep the security deposit in full satisfaction of the claim. The tenant is granted a monetary order in the above noted amount.

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: November 15, 2017

Residential Tenancy Branch