



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNDC MNSD FF

For the landlords: OPN OPB MND MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the cross-applications (“applications”) of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The tenants applied for a monetary order for the return of their security deposit, for costs relating to copies of police reports, Canada Post fees/forwarding mail costs, photo evidence and to recover the cost of the filing fee. The landlords applied for a monetary order for damage to the unit, site or property, to retain the tenants’ security deposit, and to recover the cost of the filing fee. The landlords applied for an order of possession based on the tenants’ notice to end tenancy and for breach of an agreement with the landlord or the tenancy agreement, for a monetary order for damages to the unit, site or property, for unpaid rent or utilities, for authorization to retain all or part of the security deposit and/or 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 tenants attended the teleconference hearing which began on September 21, 2017. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. After 40 minutes, the hearing was adjourned to allow time for the landlords to reserve their 63 colour photos in numbered format to the tenants and the Residential Tenancy Branch (“RTB”). The adjournment was also granted for additional time to hear evidence from the parties and to review the documentary evidence submitted in evidence and presented at the hearing. On September 21, 2017, an Interim Decision was issued which should be read in conjunction with this decision. In that decision, it was determined that an order of possession was not necessary as the tenants vacated the rental unit on March 29, 2017.

During the hearing, the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

At the reconvened hearing, the parties confirmed having received the numbered colour photos from the landlords as the landlords were directed to serve on the tenants and the RTB. Neither party had any concerns regarding the service of evidence at the reconvened portion of the hearing. I find the parties were sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator and confirmed that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is either party 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 December 1, 2016 and was scheduled to end and required vacant possession as of November 1, 2017. Instead, the tenants vacated early on March 29, 2017. The monthly rent during the tenancy was \$1,400.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$700.00 at the start of the tenancy which the landlords continue to hold.

Landlord's claim

The landlords have claimed a total amount of \$12,093.34 although the monetary order worksheet submitted in evidence actually totals \$13,425.84. The parties were advised that the landlords failed to amend their application to a higher amount prior to the hearing and that it would be prejudicial to the tenants to allow the claim to be increased

through the submission of documentary evidence. Therefore, and pursuant to the Rules of Procedure, I do not permit the landlords to increase their monetary claim through the submission of a monetary order worksheet and will instead limit their monetary claim to the original amount claimed of \$12,093.34.

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Move out house cleaning	\$347.75
2. Repairs to suite	\$1,525.00
3. Missing cutting board	\$150.00
4. Breaking lease (one year)	\$11,200.00
5. Water bill for January, February and March 2017	\$77.56
6. Gas bill for January 30-February 28, 2017	\$58.75
7. Gas bill for February 28-March 28, 2017	\$66.78
TOTAL	\$12,093.34*

*(*The total above in the table reads \$12,093.34 as I find that is the maximum monetary claim served on the tenants and do not allow the landlords to increase that amount).*

The landlords confirmed that a formal written incoming and outgoing condition inspection report was not completed which is required by sections 23 and 35 of the *Act* respectively. As a result, I will address the failure to complete a condition inspection report in writing later in this decision.

Regarding item 1, the landlords have claimed \$347.75 for the cost of cleaning the rental unit after the tenants vacated. The landlords clarified during the hearing that the actual amount claimed for item 1 is \$325.00 as the daughter of the landlords performed the cleaning and charged GST in error. The landlords referred to a letter dated March 29, 2017 signed by L.E. and the female landlord regarding the condition of the rental unit at the end of the tenancy. In that letter, it mentions that the rental unit is dirty throughout and some possible damage. The landlords referred to an after photo submitted in evidence of a dirty stove top with a burn mark when compared to two before photos submitted in evidence which do not show the dirty stove top or burn mark. The landlords also referred to seven after photos which the landlords state show the inside of a dirty oven at the end of the tenancy. The landlords also referred to photos showing dirt or stains under the kitchen sink and inside the dishwasher. The landlords stated that tenants were the first tenants in the rental unit and that the dishwasher was new at the start of the tenancy.

Other photos for item 1 referred to by the landlords include what the landlords referred to as a dirty floor in an after photo compared to a clean before photo, white marks showing on a cabinet in an after photo, compared to a before photo of clean cabinets. In addition, a before photo shows no damaged door sweep of the front entry door compared to an after photo showing a cracked/damaged door sweep. Regarding the drapes, there was a close up after photo of a stain according to the landlords which was compared to a before photo of the drapes which was not a close up and taken from far back and was difficult to compare as a result. Regarding the fridge, the landlords referred to several after photos showing the dirty inside of a fridge and although the landlords did not have interior after photos to refer to they indicated that the fridge was new at the start of the tenancy which was not disputed by the tenants. Regarding garbage, the landlords referred to two photos showing garbage in the rental unit versus one before photo which did not show garbage. The landlords referred to a few photos which were blurry and have not been described as a result as I afford blurry photos no weight. The landlords referred to a laundry ledge after photo showing a "green slime" described by the landlords and compared that photo to a before photo which showed a clean ledge. The landlords also referred to an after photo showing a dirty sink compared to a before photo which was not a clear view of the inside of the sink.

The tenants' response to item 1 was that garbage was left as they could not leave it outside due to animals. The landlords disputed that point by the tenants as the landlords testified that there were garbage bins for the tenants' garbage outside. The tenants questioned the before photos supplied by the landlords as they show a furnished unit and that the tenants did not rent a furnished rental unit. The tenants referred to their own photos submitted in evidence. The tenants referred to their stove top after photo which the tenants supports that some cleaning was done to the stove. The tenants also provided an after photo of the sink which the tenants stated show a clean sink. The tenants referred to a photo of the door sweep however the tenants did not dispute that the photo was taken from inside and that landlords' after photo showing a cracked door sweep was taken from outside. The tenants also referred to their own photo the fridge however only the front of the fridge was shown and not the inside of the fridge. In addition, the tenants referred showed two photos of the drapes that they claim showed clean drapes taken from a distance.

Regarding item 2, the landlords have claimed \$1,525.00 for repairs the rental unit. The landlords referred to the estimate submitted in evidence in the amount of \$1,525.00. The landlords also testified that while the document is an estimate all work has been completed. The landlords stated that the interior paint was 2.5 year old at the start of the tenancy. The landlords did not present any after photos for this portion of their claim.

The landlords claim that the home smelled like smoke and “meth” at the end of the tenancy. The tenants responding by stating that they were insulted by the landlords’ claim that they were “meth” users and that they do not smoke “meth” or cigarettes and that the estimate submitted is not a final bill, it is just an estimate. The tenants also stated that the company that provided the estimate is the male landlord’s company which was not disputed during the hearing. The tenants did not present their own photos for this portion of the landlord’s claim.

Regarding item 3, the landlords have claimed \$150.00 for the cost to replace a custom granite cutting board. The landlords testified that at the start of the tenancy, they included two granite cutting boards for the tenants and that only the cheaper cutting board was left at the end of the tenancy. The landlords referred to one photo which showed a distant view of what the landlords stated was the custom granite cutting board they are claiming for. The landlords confirmed during the hearing that they did not have a receipt to support the amount of \$150.00 being claimed. The tenants deny taking a cutting board from the rental unit and stated that they do not know what happened to the cutting board. The tenants referred to one of their own photos in evidence and claim that the darker cutting board is shown which the landlords disputed by stating that it showed the lighter cutting board which was not missing and is also the cutting the board they are not claiming for.

Regarding item 4, the landlords reduced this portion of their claim from \$11,200.00 to \$2,800.00 comprised of loss of rent of \$1,400.00 for the months of April 2017 and May 2017 inclusive. The landlords testified that the tenants breached the fixed term tenancy by vacating contrary to the *Act* on March 29, 2017 and did not give written notice, just an email received March 17, 2017. After the tenants vacated, the landlords stated they began to advertise the rental unit in mid-April once the rental unit was cleaning and damages repaired and was ready to re-rent. The landlords stated that they eventually secured new tenants who moved in June 5, 2017.

Regarding item 5, the landlords have claimed \$77.56 for the unpaid water bill for the months of January, February and March 2017. The amount of \$77.56 was reached, according to the landlords, by taking 40% of the water utility invoice of \$193.90 as submitted in evidence. The landlords also referred to the tenancy agreement which indicates that water is not included in the monthly rent.

Regarding item 6, the landlords have claimed \$58.75 for unpaid gas utilities from January 30, 2017 to February 28, 2017 inclusive. The landlords clarified during the hearing that as the tenants’ portion is 40% that the amount owed is \$30.40 for item 6

and not the original \$58.75 claimed. The tenants claimed they paid the bill on February 21, 2017; however the usage period did not conclude until February 28, 2017 which I will address later in this decision.

Regarding item 7, the landlords have claimed \$66.78 for unpaid gas utilities from February 28, 2017 to March 28, 2017 inclusive. The landlords submitted a receipt for \$166.95 and testified that \$66.78 is 40% of that total amount which is the tenants' portion that remains unpaid. The tenants did not have a response to item 7.

Tenants' claim

The tenants' claim of \$980.40 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Copy of police reports (x2)	\$90.00
2. Holding mail costs	\$21.00
3. Mail forwarding costs	\$70.93
4. Security deposit	\$700.00
5. Photo evidence 1	\$22.40
6. Photo evidence 2	\$76.07
TOTAL	\$980.40

Regarding items 1, 2 and 3, 5 and 6, these items were dismissed during the hearing as there is no remedy under the *Act* for items 1, 5 and 6, at any time; and when tenants end a tenancy in the manner the tenants did by vacating before the end of a fixed term tenancy, there is no remedy for items 2 and 3. The tenants ended a fixed term tenancy contrary to the *Act* which will be discussed further below. As a result, items 1, 2, 3, 5 and 6 are dismissed without leave to reapply due to insufficient evidence.

Regarding item 4, the tenants were advised that I would deal with their security deposit in my decision which I will describe later in this decision. The landlords applied for dispute resolution claiming towards the tenants' security deposit on April 12, 2017. There is no dispute that the landlords received an email from tenants with their forwarding address on March 29, 2017.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, 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 each applicant 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 respondent. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did what was 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.

Landlords' claim

Item 1 – The landlords claimed \$347.75 for the cost of cleaning the rental unit after the tenants vacated. That amount was reduced during the hearing as GST was added to the \$325.00 amount in error according to the landlords. Based on the evidence before me from both parties, I am satisfied that even without a condition inspection report being completed, that a rental unit must be left in a reasonably clean condition at the end of the tenancy as required by section 37 of the *Act*. I prefer the photo evidence of the landlords over that of the tenants as the tenants' photos mainly showed the outside of appliances and not the inside where the landlords allege most of the cleaning was

required. Furthermore, I find that the landlords' photos show a rental unit that was not left reasonably clean. Therefore, I find the tenants have 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]

Given the above, I find the landlords have met the burden of proof and are entitled to **\$325.00** for cleaning costs as claimed. I note that I do not accept the tenants' testimony that garbage bins were not available for them due to a lack of photo evidence to support such a claim. In addition, the tenants did not deny that garbage bins had been made available to them during the tenancy so I find it highly improbable that the landlords would remove garbage bins at the end of the tenancy.

Item 2 - The landlords have claimed \$1,525.00 for repairs the rental unit. The landlords referred to the estimate submitted in evidence in the amount of \$1,525.00. The landlords also testified that while the document is an estimate all work has been completed. The landlords stated that the interior paint was 2.5 years old at the start of the tenancy. As the landlords did not provide photo evidence to support this portion of their claim, I find the landlords have failed to meet the burden of proof. Therefore, item 2 is dismissed without leave to reapply due to insufficient evidence. In reaching this finding, I also note that the landlords failed to complete an incoming and outgoing inspection report which are required by sections 23 and 35 of the *Act*. Therefore, I **caution** the landlords to comply with section 23 and 35 of the *Act* in all future tenancies by fully completing in writing an incoming and outgoing condition inspection report as required by the *Act* and in accordance with the regulation.

Item 3 - The landlords have claimed \$150.00 for the cost to replace a custom granite cutting board. The landlords testified that at the start of the tenancy, they included two

granite cutting boards for the tenants and that only the cheaper cutting board was left at the end of the tenancy. As the landlords failed to include a receipt for the amount claimed, I find the landlords have failed to meet part three of the test for damages or loss. Therefore, I dismiss this portion of the landlords' claim due to insufficient evidence, without leave to reapply.

Item 4 – The landlords' reduced this portion of their claim from \$11,200.00 to \$2,800.00 comprised of loss of rent of \$1,400.00 for the months of April 2017 and May 2017 inclusive. I find the tenants breached section 45(2) and 45(3) of the *Act* which state:

Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) **is not earlier than one month after the date the landlord receives the notice,**

(b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**

(c) **is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[My emphasis added]

The tenants failed to provide any evidence that they complied with section 45(3) by giving the landlords written notice of a material breach and a reasonable time to address a material breach and I find the earliest time the tenants could have ended the tenancy without penalty was November 1, 2017 yet the tenants vacated March 29, 2017. I find the landlords complied with section 7 of the *Act* by making reasonable attempts to re-rent the rental unit after cleaning and getting the rental unit in a condition

to re-rent, and were able to secure new tenants for June 2017. Therefore, I find the landlords have met the burden of proof and I grant the landlords the full amount claimed for item 4 in the amount of **\$2,800.00** which is comprised of two months of loss of rent.

Item 5 - The landlords have claimed \$77.56 for the unpaid water bill for the months of January, February and March 2017. The amount of \$77.56 was reached, according to the landlords, by taking 40% of the water utility invoice of \$193.90 as submitted in evidence. The landlords also referred to the tenancy agreement which indicates that water is not included in the monthly rent. There is no dispute that the tenancy agreement indicates that monthly rent does not include water, heat or electricity. Therefore, I find the tenants have breached the tenancy agreement and owe **\$77.56** as claimed for item 5.

Item 6 - The landlords have claimed \$58.75 for unpaid gas utilities from January 30, 2017 to February 28, 2017 inclusive. The landlords clarified during the hearing that as the tenants' portion is 40% that the amount owed is \$30.40 for item 6 and not the original \$58.75 claimed. I find the tenants have failed to provide evidence of a payment being made for item 6 as I find that their version of events is highly improbable. In reaching this finding I have considered that the tenants' testimony they made a payment on February 21, 2017 however the amount owed would not have been made known until after the billing period which ended on February 28, 2017. Therefore, I do not find the tenants to be credible and prefer the documentary evidence and testimony of the landlords. I find the tenants breached the tenancy agreement and owe **\$30.40** as claimed for item 6 and that the landlords have met the burden of proof.

Item 7 - The landlords have claimed \$66.78 for unpaid gas utilities from February 28, 2017 to March 28, 2017 inclusive. The landlords submitted a receipt for \$166.95 and testified that \$66.78 is 40% of that total amount which is the tenants' portion that remains unpaid. The tenants did not have a response to item 7. Consistent with my findings for items 5 and 6 above, I find the landlords have met the burden of proof and I grant the landlords **\$66.78** as claimed for item 7.

As the landlords' claim had merit, I grant the landlords **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

Given the above, I find the landlords have established a total monetary claim of **\$3,399.74** comprised of \$325.00 for item 1, \$2,800.00 for item 4, \$77.56 for item 5, \$30.40 for item 6, \$66.78 for item 7, plus \$100.00 for the recovery of the cost of the filing fee.

Tenants' claim

While there is no service provision under the *Act* for service of a forwarding address by email, I do note that the landlords confirm they received the tenants' forwarding address on March 29, 2017. The landlords then filed their application for dispute resolution on April 12, 2017 claiming towards the tenants' security deposit. Section 38 of the *Act* states as follows:

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.

[My emphasis added]

Based on the above, I find the landlords complied with section 38 by making an application to claim against the tenants' security deposit within 15 days of March 29, 2017 which was the date the parties agreed to during the hearing that the landlords received the forwarding address from the tenants by email. The landlords filed their application on April 12, 2017. As a result, I dismiss the tenants' application in full as the landlords did not breach section 38 of the *Act* and the tenants have failed to prove part one of the test for damages or loss under the *Act* as a result.

As the tenants' claim did not have merit, I dismiss the tenants' request for the recovery of the cost of the filing fee.

I caution the tenants to comply with sections 37 and 45 of the *Act* in the future.

Pursuant to section 38 and 72 of the *Act*, I **authorize** the landlords to retain the tenants' full security deposit of **\$700.00** which has accrued \$0.00 in interest, in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlords in the amount of **\$2,699.74**.

Conclusion

The landlords' application is partially successful.

The tenants' application has no merit and is unsuccessful.

The landlords have established a total monetary claim of \$3,399.74 as described above. The landlords have been authorized to retain the tenants' full \$700.00 security deposit which has accrued \$0.00 in interest pursuant to sections 38 and 72 of the *Act*. The landlords have been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlords in the amount of \$2,699.74. The landlords must serve the tenants with the monetary order and if the landlords require enforcement of the monetary order, it 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: January 8, 2018

Residential Tenancy Branch