



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNDC, MNSD, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for unpaid rent, loss of income, unpaid utilities, loss of a microwave and a screen projector, cost of cleaning and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied for the return of double the security deposit and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Did the landlord suffer a loss of income? Is the landlord entitled to a monetary order for loss of income, unpaid rent, and utilities, cleaning and the filing fee? Did the landlord make application to retain all or part of the deposit in a timely manner?

Is the tenant entitled to the return of double her security and pet deposits and to the recovery of the filing fee?

Background and Evidence

The tenant was the previous owner of the rental property and sold the property to the landlord in early 2016. The house is a two level home and upon completion of the sale, the landlord moved into the lower level and the tenant continued to reside in the upper level of the home. The parties entered into a fixed term tenancy agreement with a start date of March 01, 2016 and an end date of July 01, 2016. The monthly rent was \$1,800.00 due on the first of each month and did not include utilities.

The tenant agreed that she was required to pay two thirds of the utility bills. The tenant paid a security deposit of \$900.00.

The tenancy continued beyond the end of the fixed term. On July 02, 2017, the landlord served the tenant with a 10 day notice to end tenancy for non-payment of rent in the amount of \$1,800.00 and made application for an order of possession. The application was heard on July 27, 2017. During that hearing the tenant testified that she had moved out on July 15, 2017. The Arbitrator ordered the landlord to retain \$100.00 from the deposit as recovery of the filing fee paid for an application for dispute resolution. The tenant agreed that the landlord was holding \$800.00 as security deposit.

On July 28, 2017, the tenant served the landlord with her forwarding address by registered mail. The landlord testified that she received the address on July 31, 2017 and made this application on August 15, 2017 which I find is within the legislated time frame of 15 days.

The landlord stated that the tenant left the unit in a condition that required a lot of cleaning and removal of unwanted items left behind by the tenant. The landlord also stated that the tenant removed the window coverings and took them with her along with a microwave oven and a projector screen.

The tenant denied having taken the blinds, drapes and projector screen. The tenant testified that she purchased the home in 2005 and the microwave oven was present at that time. Sometime during the tenancy the microwave oven broke down and she replaced it with one that she purchased. The tenant agreed that she had taken the microwave oven that she had purchased with her, at the end of tenancy.

The parties had a controversial discussion regarding the payment of rent for July 2017. The tenant stated that she informed the landlord that she had placed a rent cheque in the mail box. The landlord did not find it there and informed the tenant. The tenant confirmed that she had put the cheque in the mailbox and therefore had paid rent. The landlord stated that he contacted the tenant several times and suggested that she cancel the cheque that she had allegedly placed in the mailbox and issue another one.

The tenant testified that she contacted the bank and found that the cheque was not cashed. However the tenant also testified that did not cancel the cheque nor did she reissue a cheque to the landlord. The tenant added that she found out from her bank that the cheque was never cashed.

The landlord is claiming the following:

1.	Drapes and Blinds	\$5,838.56
2.	Carpet Cleaning	\$152.36
3.	Junk Removal	\$964.95
4.	Utility bill – Water	\$284.46
5.	Utility bill – Electricity	\$157.48
6.	Utility bill - Gas	\$61.27
7.	Paint	\$367.56
8.	Microwave Oven	\$200.00
9.	Projector Screen	\$98.99
10.	Unpaid Rent for July 2017	\$1,800.00
11.	Loss of Income for August 2017	\$1,800.00
	Total	\$11,725.63

The tenant has filed copies of invoices and photographs to support her monetary claim. The tenant is claiming the return of double the security deposit of \$800.00 plus the filing fee of \$100.00 for a total of \$1,700.00

Analysis

Landlord's application:

1. Drapes and Blinds - \$5,838.56

The tenant denied having taken the blinds and drapes and the landlord stated that he had not yet had them replaced. The landlord filed a copy of an estimate to replace the window coverings.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the blinds and drapes. As per this policy, the useful life of blinds and drapes is ten years.

The tenant testified that the window coverings were installed prior to the time she purchased the home in 2005. Therefore at the end of the tenancy these items were at least 12 years old. Even if I accept the tenant's testimony that she did not remove the window coverings, I find that these items had outlived their useful life and accordingly would have to be replaced by the landlord at his own cost. Therefore the landlord's claim for \$5,838.56 is dismissed.

2. Carpet Cleaning - \$152.36
3. Junk Removal - \$964.95

Based on the documents filed into evidence and the testimony of both parties, I find that the tenant left the carpet in a condition that needed cleaning and also left behind her unwanted items that the landlord has to dispose of. I grant the landlord's claim for the cost of carpet cleaning and junk removal.

4. Utility Bill – Water - \$284.46
5. Utility Bill – Electricity - \$157.48
6. Utility Bill – Gas - \$61.27

The landlord filed copies of the above utility bills. The tenant stated that she paid the utilities along with her rent for July that she had allegedly placed in the mailbox for pickup by the landlord. Based on the testimony of both parties, I accept that the landlord did not receive the cheque for July's rent and utilities and the tenant confirmed that the cheque was not cashed. Accordingly I find that the landlord is entitled to the cost of utilities.

7. Paint - \$367.56

The parties agreed that the unit was last painted in 2014. Based on section 40 of the *Residential Tenancy Act*, the useful life of interior painting is four years. The tenancy ended in 2017 and therefore by the end of tenancy the painting had one year of useful life left. Accordingly, I find that the landlord is entitled to \$91.89 which is the prorated value of the remainder of the useful life of the interior painting.

8. Microwave Oven - \$200.00
9. Projector Screen - \$98.99

The tenant testified that the microwave oven that was in the rental unit was old and broke down during the tenancy and therefore she purchased her own microwave oven which she took with her at the end of tenancy. Since the microwave oven was more than 10 years old, pursuant to Policy Guideline 40 of the *Residential Tenancy Policy Guideline*, it had outlived its useful life of 10 years. Therefore the landlord's claim for \$200.00 is dismissed.

The landlord did not provide sufficient evidence to support his claim for a projector screen and therefore I dismiss his claim.

10. Unpaid rent for July 2017 - \$1,800.00

Based on the testimony of both parties as described above in this decision, I find that the tenant obtained information from her bank that the rent cheque for July 2017, which she allegedly placed in the mailbox for pick up by the landlord, was never cashed. Since by her own admission, the tenant did not take steps to cancel or replace the cheque I find that the tenant owes rent for July in the amount of \$1,800.00.

11. Loss of Income for August 2017 - \$1,800.00

The tenant did not pay rent on July 01, 2017 and was served a notice to end tenancy. *Residential Tenancy Policy Guideline#3* refers to claims for loss of income. This guideline states that in a month to month tenancy, if the tenancy is ended by the landlord for nonpayment of rent, the landlord may recover any loss of rent suffered for the next month, as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

If the tenant files an application to dispute the notice, the landlord is not required to find a new tenant until the arbitration decision and order are received and the time limits for a review application has passed.

In this case, I find that a hearing was conducted on July 27, 2017 and the decision was received by the parties shortly after. The time limit for a review application would have ended no earlier than August 01, 2017. The landlord made efforts to find a tenant for August 01, but was unsuccessful and therefore suffered a loss of income. I find that the tenant is liable for this loss and accordingly I award the landlord his claim of \$1,800.00 for loss of income.

Overall the landlord has established a claim as follows:

1.	Drapes and Blinds	\$0.00
2.	Carpet Cleaning	\$152.36
3.	Junk Removal	\$964.95
4.	Utility bill – Water	\$284.46
5.	Utility bill – Electricity	\$157.48
6.	Utility bill - Gas	\$61.27
7.	Paint	\$91.89
8.	Microwave Oven	\$0.00
9.	Projector Screen	\$0.00
10.	Unpaid Rent for July 2017	\$1,800.00
11.	Loss of Income for August 2017	\$1,800.00
	Total	\$5,312.41

Tenant's application:

The tenant applied for the return of double the deposit and the filing fee. Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the amount of the deposit.

The tenancy ended on July 15, 2017 and the landlord is deemed to have received the tenant's forwarding address on July 31, 2017. The landlord made application to keep the deposit in partial satisfaction of his claim within a timely manner, on August 15, 2017. Therefore, I find that the tenant is not entitled to the return of double the deposit. However the tenant is entitled to the return of \$800.00 which is the amount of the security deposit that is held by the landlord. Since the tenant has not proven her claim, she must bear the cost of filing her application.

Overall the landlord has established a claim of \$5,312.41. I order that the landlord retain the security deposit of \$800.00 in partial satisfaction of his claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$4,512.41. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord may retain the security deposit. I grant the landlord a monetary order in the amount of **\$4,512.41**.

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: February 28, 2018

Residential Tenancy Branch