



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSD FF
For the landlord: MND MNSD MNDC

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (“applications”) under the *Residential Tenancy Act* (“Act”). The tenant applied for a monetary order for the return of their security deposit and to recover the cost of the filing fee. The landlord applied for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to retain the tenant’s security deposit.

The landlord, a landlord advocate (“advocate”) and the tenant attended the teleconference hearing as scheduled. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter 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 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.

Neither party raised any concerns regarding the service of documentary evidence and their respective applications.

Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding 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 tenant's security deposit under the *Act*?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties confirmed that a written tenancy agreement exists between the parties however was not submitted in evidence. The parties agreed that a fixed term tenancy began on August 1, 2016 and was scheduled to end on July 31, 2017.

During the tenancy, monthly rent was \$1,250.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$625.00 at the start of the tenancy which has accrued no interest. The landlord continues to hold the tenant's security deposit.

Landlord's claim

The landlord's monetary claim of \$1,180.93 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. 2 new toilets	\$296.00
2. Interior door knob	\$24.99
3. Primer and Paint	\$109.94
4. Carpet, underlay and installation	\$750.00
TOTAL	\$1,180.93

Regarding item 1, the landlord has claimed \$296.00 for the replacement of two toilets which was dismissed during the hearing as the landlord failed to complete an incoming and outgoing condition inspection report and no before photo evidence was provided by the landlord. As a result, the landlord was advised that they did not meet the four-part test for damages or loss under the *Act* which I will explain further below.

Regarding item 2, the landlord has claimed \$24.99 for the replacement of an interior door knob which was also dismissed during the hearing for the same reason as item 1 listed above.

Regarding item 3, the landlord has claimed \$109.94 for primer and paint due to what the landlord testified was damage to the interior walls of the rental unit. The tenant confirmed during the hearing that the photos provided by the landlord were similar to what the walls looked like at the end of the tenancy. The landlord testified that the photo showed scratches and gouge marks in the walls that required repair and that at the start of the tenancy the interior walls had been newly painted which the tenant did not deny during the hearing. The landlord submitted a copy of an online ad for paint and testified that it took a total of \$109.94 in paint to prime and repaint the damaged portions of the interior walls and that the landlord was not claiming for labour for repainting.

Regarding item 4, the landlord originally claimed \$750.00 for carpet replacement however clarified during the hearing that the amount was actually \$350.00 as the landlord performed the labour for the carpet squares replacement themselves and only suffered a loss of \$350.00 as a result. The landlord submitted photos submitted in evidence which the landlord stated showed pees stains throughout the basement carpet tiles. The tenant confirmed during the hearing that he had three dogs and two cats during the tenancy and that it "may have smelled like urine" at the end of the tenancy in the basement where the carpet was located. The tenant claims that he was not permitted to clean which was disputed by the landlord. The tenant later clarified that he agreed to costs for renting a carpet shampooer however a specific amount was not agreed to between the parties at the end of the tenancy. The landlord testified that her boyfriend rented a carpet shampooer but that the cost was not being claimed for by the landlord.

The landlord testified that the carpet squares continued to smell like urine after the cleaning and that replacement of the carpet squares was necessary. The landlord confirmed that a receipt was not submitted for the carpet squares but did refer to a quote for carpet and underlay replacement of \$750.00. The landlord stated that she did not submit the receipt for the carpet squares as she did not know that she could submit evidence after filing the application.

Tenant's claim

The landlord has claimed for the return of his \$625.00 security deposit which has not accrued interest since the start of the tenancy. The tenant testified that he provided his written forwarding address by placing it in the landlord's mailbox on August 1, 2017. The landlord testified that he received the written forwarding address from his mailbox on August 8, 2017 and filed a claim against the tenant's security deposit on August 16, 2017. The landlord's application is dated August 16, 2017 claiming against the tenant's security deposit.

Analysis

Based on the documentary evidence, testimony, 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 under the *Act* to minimize the damage or loss.

Landlord's claim

Items 1 and 2 – As described above, both items 1 and 2 were dismissed without leave to reapply during the hearing due to insufficient evidence. The landlord failed to complete a written incoming and outgoing condition inspection report as required by sections 23 and 35 of the *Act*. Therefore, the landlord is cautioned to comply with sections 23 and 35 of the *Act* in the future. I note that the landlord did not submit before photos of items 1 and 2 also which has been considered in my decision.

Item 3 – The landlord has claimed 109.94 for primer and paint due to what the landlord testified was damage to the interior walls of the rental unit. I have considered the

tenant's testimony which supports that the photo evidence represented the condition of the walls at the end of the tenancy. I have also considered the undisputed testimony of the landlord that the interior paint was new at the start of the tenancy. Section 37 of the *Act* applies and 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 have reviewed the photo evidence and find that the tenant caused gouges and scratches in many areas of the rental unit interior walls and that the damage exceeded reasonable wear and tear. As a result, I find the landlord has met the burden of proof and therefore, I grant the landlord **\$109.94** for item 3 as claimed. In reaching this decision, I have considered that the landlord has not applied for labour costs and have not applied depreciation to the amount claimed as a result.

Item 4 – Although the landlord originally claimed \$750.00 for carpet replacement, the landlord reduced that amount to \$350.00 during the hearing as the landlord confirmed that the carpet squares were replaced by the landlord and her boyfriend and that labour was not being charged as a result. I accept that the carpets requirement cleaning at the end of the tenancy as the tenant confirmed that he had verbally agreed to the cost to rent a carpet shampooer. I also note that the landlord has not claimed for the carpet shampooer costs and is only claiming the carpet square replacement cost. While I note that the landlord did not submit a receipt or invoice for the carpet squares, I am satisfied that based on the invoice submitted and the typical cost of a carpet shampooer rental that the landlord complied with section 7 of the *Act* which requires the landlord to minimize their damage or loss under the *Act*. I also find that the amount claimed of \$350.00 is reasonable and that the landlord has met the burden of proof as a result.

Therefore, I find the tenant breached section 37 by leaving the carpets in a dirty and soiled condition on the balance of probability given his three dogs and two cats and that the carpets “may have” smelled like urine at the end of the tenancy which I find compelling. Given the above, I grant the landlord **\$350.00** as claimed for this portion of the landlord’s claim.

Tenant’s claim

I find that the landlord applied towards the tenant’s security deposit within the 15 day timeline provided for under section 38 of the *Act*. Therefore, I dismiss the tenant’s claim as I find the tenant’s claim was not necessary as I would be dealing with the security deposit based on the landlord’s claim. I do not grant the recovery of the filing fee as a result.

The landlord continues to hold the tenant’s security deposit of \$625.00, which has accrued no interest since the start of the tenancy. I find that the landlord has established a total monetary claim of **\$459.94** comprised of \$109.94 for item 3, and \$350.00 for item 4. **I authorize** the landlord to retain **\$459.94** from the tenant’s \$625.00 security deposit in full satisfaction of the landlord’s monetary claim. I order the landlord to return the balance of the tenant’s security deposit in the amount of **\$165.06**. I grant the tenant a monetary order pursuant to section 67 of the *Act* accordingly in the amount of \$165.06.

Conclusion

The application of the tenant has been dismissed without leave to reapply as it was not necessary as the landlord applied against the tenant’s security deposit.

The application of the landlord is partially successful.

The landlord has established a total monetary claim of \$459.94 as described above. The landlord has been authorized to retain \$459.94 from the tenant’s \$625.00 security deposit in full satisfaction of the landlord’s monetary claim. The landlord has been ordered to return the balance of the tenant’s security deposit in the amount of \$165.06. The landlord has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$165.06. Should the landlord fail to pay the tenant \$165.06, the tenant must serve landlord with the monetary order and may also file the monetary order in the Provincial Court (Small Claims) to be enforced as an order of that court.

The landlord has been cautioned to comply with section 23 and 35 of the *Act* in the future.

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: March 2, 2018

Residential Tenancy Branch