



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD, FF, MND, MNDC, MNR

Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* ("Act")

The landlord applied 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; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

The tenant applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants were represented by SB's father. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

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

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

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to a monetary award for compensation for loss or damage as a result of this tenancy?

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

Background, Evidence

The parties agreed on the following. The tenancy began on September 1, 2015 and ended on August 31, 2017. The tenants were obligated to pay \$1200.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$600.00 security deposit that the landlord still holds. Written condition inspection reports were done at move in and move out.

The landlord gave the following testimony. The tenants have not paid their final utility bill as agreed upon as part of their tenancy agreement. The landlord testified that the tenants did not clean the laundry room, fridge and stove adequately and seeks the recovery of the cost to hire a cleaner. The landlord testified that the tenants caused excessive damage to the bathroom by having long hot showers and not opening the window to allow the steam to dissipate and allow airflow. The landlord testified that the tenants had numerous vehicles parked on the lawn that leaked oil onto the grass requiring remediation of the soil. The landlord testified that he had to replace a dryer that the tenants damaged. The landlord also seeks the cost of his filing fee.

The landlord testified that he doesn't know why the tenants spent a night in a hotel. The landlord testified that he was respectful and left the tenants' alone. The landlord testified that he requested that the tenants use the carpet cleaning company that he uses or one of their choice as long as the carpets were cleaned properly.

The landlord is applying for the following:

1.	Unpaid Utility bill	168.44
2.	Suite Cleaning	40.00
3.	Repair Bathroom for moisture and peeling paint	400.00
4.	Remediation of soil in front yard	280.00
5.	Repair Dryer	200.00
6.	Filing fee	\$100.00
	Total	\$1188.44

AB advised the tenants do not dispute the utility claim by the landlord.

SB testified that the suite was clean at move out and that the tenants were not given a further opportunity to clean it. AB submits that the washer and dryer are in the bathroom causing extensive humidity. AB submits that humidity along with the fact that there is no fan in the bathroom caused the mildew and the paint to peel should not be the responsibility of the tenants to repair or bear the cost.

SB testified that there was no oil seepage into the yard and that the landlord was unable to show what he was alleging during the move out inspection. The tenants testified that the landlord advised them that they could use the one left in the suite until it broke down but he wouldn't be replacing it and the tenants' would not be responsible for repairing it. SB testified that the dryer was not part of the tenancy agreement and that the tenant's bought their own dryer.

SB testified that the landlord was causing so much stress for them by attending the property at all times of the day near the end of the tenancy. SB testified that the landlord was constantly showing the unit and causing them to make a decision to leave a day early and rent a hotel to avoid the anxiety. SB testified that the landlord asked her to have the carpets professionally steam cleaned and now seeks to be reimbursed for that cost. SB testified that the landlord did not return the security deposit within fifteen days of giving her forwarding address and now seeks the return of double.

The tenants are applying for the following:

Double the Security Deposit	\$1200.00
Hotel Stay	91.38
Carpet Cleaning	163.85
Filing Fee	100.00
Total	\$1555.23

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 each party'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.

Firstly, I address the landlords claim and my findings as follows.

Utility Bill - \$168.44

The tenant's agree to this claim and take responsibility for it, accordingly; I find that the landlord is entitled to \$168.44.

Suite Cleaning - \$40.00.

AB stated that he "we kind of disagree with this claim but it's not the hill we want to die on". The landlord provided the condition inspection report, receipts and photos to support his claim. In addition, I do not accept the SB's argument that she was not given time to clean the unit as the parties had scheduled the inspection and she was fully aware of the impending deadline. The landlord has provided sufficient evidence to satisfy all four factors as listed above; accordingly, I find that the landlord is entitled to \$40.00.

Bathroom Repair - \$400.00

The landlord testified that the unit had been painted prior to the tenants moving in. The landlord testified that the washer and dryer were in the bathroom for the past 15 years and never had an issue with paint peeling, mildew or moisture. The landlord testified that the washer and dryer are in an enclosed area with bi-fold doors encasing it. The landlord testified that the dryer is fully vented and that the reason the paint peeled so quickly is that the tenants did not open the window to "air out" the bathroom after they had long hot showers. The landlord testified that the dryer had nothing to do with the paint peeling or mildew. AB submits that the area has poor ventilation lacks a fan to remove moisture and humidity.

I accept that the landlords' testimony that the excessive paint peeling and mildew was a result of the tenants' actions. The tenants did not advise the landlord of the mildew and moisture issue until the end of tenancy showing a degree of negligence. Based on the documentation before me and on a balance of probabilities, I find that the landlord has

proven that the tenants are responsible for this damage. However, the landlord is not entitled to the amount as claimed. Residential Tenancy Policy Guideline 40 outlines the “useful life” of building elements and notes that the useful life of paint is 4 years. The tenants lived in the unit for two years after the unit was freshly painted. Based on the guideline, I find that the landlord is entitled to a prorated amount of \$200.00 for the remaining 50% of useful life.

Remediation of Soil – \$280.00

The landlord testified that the tenants caused damage to the soil on the property by leaving derelict vehicles on the lawn. The landlord was unable to locate the damage during the move out inspection and only added the notation of it on the condition inspection report several days after the tenant’s had signed off and move out. The landlord has not provided sufficient documentation or evidence to satisfy all four factors as listed above and as required, accordingly, I dismiss this portion of his application.

Replace Dryer - \$200.00

The landlord advised that he did not have a receipt to support this claim. As the landlord does not have sufficient evidence to support the amount as claimed, I must dismiss this portion of his application.

As the landlord has been successful in portions of his application, he is entitled to the recovery of the \$100.00 filing fee.

I address the tenant’s claims and my findings as follows.

Hotel Stay \$91.38

It’s clear to me that the parties had an acrimonious end to their tenancy however, the tenants did not provide sufficient evidence that they were “forced” to leave a day early and that the landlord was the cause. Based on the insufficient evidence before me, I dismiss this portion of the tenants claim.

Carpet Cleaning - \$163.85

Residential Tenancy Policy Guideline 1 states that a tenant must shampoo the carpets at the end of a one year tenancy. The tenants’ resided in the unit for two years. The cost submitted by the tenant was something they were required to do. The tenants have not provided sufficient evidence to show that the landlord forced them to use this particular company or any company; accordingly, I dismiss this portion of the tenant’s application.

Return of Double the Security Deposit - \$1200.00

The tenant testified that they haven't received their deposit as of this hearing and now seek double. The tenant testified that she gave her forwarding address in writing to the landlord on August 31, 2017. The landlord filed an application on September 14, 2017 however he did not 'check off the box' indicating that he was seeking to retain the deposit.

Section 38 of the Act addresses this issue as follows:

Section 38 (1) says that 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.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Although the landlord did make an application within fifteen days, he did not indicate that he was seeking to retain it on his application as is required if seeking to make a claim for it. Based on the above, the tenant is entitled to the return of double the security deposit in the amount of \$1200.00.

As the tenants have been partially successful they are entitled to the recovery of the \$100.00 filing fee.

The landlords' total award is \$508.44. The tenant's total award is \$1300.00. Applying the landlords' award against the tenants' award leaves a balance owing of \$791.56 payable to the tenant.

Conclusion

The tenants are granted a monetary order. I grant the tenants an order under section 67 for the balance due of \$791.56. 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: April 03, 2018

Residential Tenancy Branch