



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the cost of repairs, for rent owed, for the cost of cutting the grass, for stolen tools, cost of photographs and for the recovery of the filing fee. The landlord also applied to retain the security deposit in satisfaction of her claim.

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.

Both parties provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Has the landlord established a claim against the security deposit and if so in what amount? Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The tenant moved into the rental unit on September 15, 2014. The tenancy agreement was for a fixed term which ended on July 01, 2015. The parties entered into a second tenancy agreement on July 28, 2015. The rent was \$3,629.50 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$1,750.00. Move in and move out inspections were conducted and copies of the reports were filed into evidence. Copies of the tenancy agreements were also filed into evidence. Both parties agreed that the second tenancy agreement did not contain an addendum.

On September 30, 2017, the tenant moved out. A move out inspection was conducted. The tenant stated he returned the keys to the landlord. The landlord stated that the tenant had master keys that he did not return. The issue of the return of the keys was discussed at length. In the end, the landlord agreed that the tenant was provided with 5 keys and returned six keys. However the landlord added that she changed the locks two days later and is claiming rent for two days that the rental property may not have been secure and may have been vulnerable to unauthorized entry.

The landlord stated that the tenant attempted to install a curtain rod and made some holes in the wall. The landlord filed photographs of the damage. The tenant agreed that his roommate made tiny holes in the walls to install a curtain rod. The landlord also referred to scuff marks on the walls from moving the refrigerator which the tenant agreed to. The landlord filed a photograph of a door which was removed from its hinges and left leaning against a wall. The tenant agreed to having removed it but stated that he was unable to rehang the door.

The landlord has provided a receipt to fix the above mentioned damage. The invoice states that the holes in the walls were plastered, the walls were painted and the door was reinstalled. The landlord is claiming the cost of doing so in the amount of \$787.50.

The landlord also referred to a knob on the shower faucet that was missing. The tenant denied having taken it out. The landlord provided a receipt for work done on the shower faucet during the tenancy and determined that \$98.20 of that bill could be attributed to the cost of replacing the knob on the shower faucet.

The landlord also filed photographs of fine cracks on some of the bathroom tiles. The photographs were magnified and the cracks appeared to be hairline. The landlord has filed a copy of an estimate of \$2,100.00 to replace the tile. The landlord agreed that as of the date of this hearing the tile has not been replaced.

The landlord stated that the addendum to the first tenancy agreement contained a clause that required the tenant to mow the lawn. However the parties agreed that the second tenancy agreement did not. The landlord is claiming \$300.00 for the cost of mowing the lawn during the term of the first tenancy and \$75.00 for the cost of mowing the lawn at the end of tenancy. Both parties provided photographs of the yard at the end of tenancy.

The landlord stated that her brother had stowed his tools inside the rental property and at the end of the tenancy, the tools were missing. The landlord is claiming \$307.22 to replace the tools. The tenant denied having taken any of the tools.

The landlord is also claiming \$36.06 for the cost of photographs and \$100.00 for the filing fee.

The landlord is making the following claim:

1.	Repairs to walls and rehang door	\$787.50
2.	Replace shower knob	\$98.20
3.	Replace cracked tile	\$2,100.00
4.	Rent shortfall	\$813.13
5.	2 days rent for insecure house	\$241.97
6.	Lawn care during first lease	\$360.00
7.	Grass cutting at end of tenancy	\$75.00
8.	Stolen tools	\$307.22
9.	Cost of photographs	\$36.06
10.	Filing fee	\$100.00
	Total	\$4,919.08

Analysis

1. Repairs to walls and rehang door - \$787.50

The landlord filed a copy of an invoice that provides details of the repair work done as follows:

Move out damage repairs, large nails screw holes, tears and scratches, paint chips plaster, sand, prime, paint and reinstall interior door going to the basement.

The photographs show holes in the wall that were created when the tenant installed a curtain rod and scuffs on the wall created when the tenant attempted to move a refrigerator. The tenant agreed to the above and also agreed to having removed the door to the basement.

Section 40 of the *Residential Tenancy Policy Guideline* addresses the useful life of an item. I will use this guideline to assess the remainder of the useful life of the painting of the walls. As per this policy, the useful life of interior painting is four years. The landlord stated that the unit was last painted in May 2011.

Therefore by the end of the tenancy on September 30, 2017; the painting was six years old and had outlived its useful life of four years. Accordingly, the landlord's claim for the cost of painting, plaster etc. is dismissed.

However, I find that the tenant is responsible for the cost of reinstalling the door. The invoice does not provide a breakdown of the charges for the individual items. I find that \$50.00 is sufficient for the cost of reinstalling the door and accordingly I award the landlord this amount.

2. Replace shower knob - \$98.20

The tenant denied having removed the shower knob. The landlord provided an invoice for work done during the tenancy and based on that invoice; the landlord arrived at a figure of \$98.20 to replace a shower knob. I find that this amount is unreasonable for the cost of a shower knob and I further find that the landlord has not provided an invoice for the cost that she says she incurred to replace the knob if indeed it was missing or broken. The landlord's claim is dismissed.

3. Replace cracked tile - \$2,100.00

The landlord alleged that the tenant caused multiple tiles in the bathroom to develop cracks and has filed close up photographs of the affected tiles. The tenant denied having caused damage to the tiles and stated that it was probably due to wear and tear. Upon review of the photographs filed by the landlord, I find that the photographs are close up and show hairline cracks in the tile.

I have now to determine whether the cracks resulted from negligence on the part of the tenant and/or whether the tenant caused deliberate damage to the tiles. I also have to consider damage from normal wear and tear.

The landlord stated that the tiles were installed in May 2011. Residential Tenancy Policy Guideline #1 addresses **Landlord & Tenant – Responsibility for Residential Premises**. In part, this guideline provides as follows:

The tenant is not responsible for reasonable wear and tear to the rental unit. Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

Based on the testimony of both parties and the photographs filed into evidence, I find on a balance of probabilities that it is more likely than not that the hairline cracks on the tile are a result of normal wear and tear.

The landlord has filed an estimate to have the tiles replaced and stated that she has not yet had the work done. Accordingly the landlord has not incurred any monetary loss. I further find that the landlord has not proven that the tenant deliberately damaged the tiles or caused damage due to negligence and accordingly the landlord's claim is dismissed.

4. Rent shortfall - \$813.13

The parties attended multiple hearings on various dates prior to a decision dated April 20, 2017. In this decision, the Arbitrator ordered the landlord to hire a third party property manager for the rental unit, no later than May 01, 2017 and in the event that the landlord failed to do so, the tenant was entitled to a 25% rent reduction. The landlord filed documents to prove that she did hire property manager effective May 01, 2017. Since the compensation awarded to the tenant in the decision dated April 20, 2017 was also being deducted off rent, I specifically asked the tenant whether the deduction of \$813.13 was made for the sole purpose of the landlord's non-compliance with the order to hire a property manager. The tenant replied in the affirmative. The tenant added that he was informed of the new property manager on May 16, 2017 and therefore made the deduction off rent.

I find that that the landlord has proven that she hired a property manager effective May 01, 2017 and therefore the tenant should not have made a deduction of \$813.13 off rent. I award the landlord her claim.

5. Over holding - 2 days rent for insecure house - \$241.97

The landlord went on at length about having noticed that the tenant had master keys to the house on his key ring when he moved out. After a long discussion, both parties agreed that the landlord provided the tenant with 5 keys and the tenant returned 6 keys. The landlord stated that it took her two days to get the locks changed and therefore the house was vulnerable to unauthorized entry during this period. The landlord is claiming \$241.97 as compensation for over holding.

Section 57 of the *Residential Tenancy Act* defines an over holding tenant as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. Based on this definition of an over holding tenant, the landlord's claim for two days of rent for an "insecure" rental property is dismissed.

6. Lawn care during the first lease - \$360.00

The first lease ended on July 31, 2016. The landlord is now claiming for the cost of lawn care during the first lease when she had multiple opportunities to make this claim during the multiple hearings that these parties attended during the tenancy.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the landlord's failure to claim the cost of lawn care in a timely fashion, or shortly after each of the occasions when it became due, pursuant to the doctrine of laches, I find that this aspect of the landlord's application must hereby be dismissed.

7. Grass cutting at the end of tenancy - \$75.00

Both parties filed photographs of the condition of the lawn at the end of tenancy. The front lawn appears to have been mowed. Photographs of the back yard show that the yard is full of weeds and appears untidy.

Residential Tenancy Policy Guideline #1 states that a tenant who lives in a single family dwelling is responsible for routine yard maintenance which includes cutting the grass. Based on the testimony of both parties and the documentary evidence I find that the tenant is responsible for mowing the grass. I also find on a balance of probabilities that it is more likely than not that the tenant mowed the grass but did not do it to the standards of the landlord. Based on the photographs, I find that the front yard is well mowed while the back yard is not. I find it appropriate to award the landlord half the cost she incurred for mowing the grass.

8. Stolen tools - \$307.22

The landlord stated that her brother stored his tools in the rental property and they were missing at the end of the tenancy. The tenant denied having taken them. In the absence of any documentation to support the allegation of theft, the landlord's claim is dismissed.

9. Cost of photographs - \$36.06

The legislation does not permit me to award any litigation related costs other than the filing fee. Accordingly the landlord's claim for the cost of photographs is dismissed.

10. Filing fee - \$100.00

The landlord has proven a portion of her claim and therefore I award her the recovery of the filing fee.

Overall the landlord has established a claim as follows:

1.	Repairs to walls and rehang door	\$50.00
2.	Replace shower knob	\$0.00
3.	Replace cracked tile	\$0.00
4.	Rent shortfall	\$813.13
5.	2 days rent for insecure house	\$0.00
6.	Lawn care during first lease	\$0.00
7.	Grass cutting at end of tenancy	\$37.50
8.	Stolen tools	\$0.00
9.	Cost of photographs	\$0.00
10.	Filing fee	\$100.00
	Total	\$1,000.63

The landlord has established a claim of \$1,000.63. . I order that the landlord retain this amount from the security deposit in full satisfaction of the claim and I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$749.37. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$749.37**.

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: May 14, 2018

Residential Tenancy Branch