



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for a monetary order for damage to the unit, site or property, for authorization to keep all or part of the security 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 landlord and tenant appeared at the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

On April 4, 2018 the hearing commenced and after 24 minutes, the hearing was adjourned and an Interim Decision was issued dated April 5, 2018, which should be read in conjunction with this decision. On June 8, 2018, this matter continued for another 41 minutes before it was concluded.

At the reconvened hearing, there were no evidence issues raised and all evidence presented was reviewed. I find the parties were sufficiently served as a result 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. 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 the landlord 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 landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A fixed term tenancy agreement began on March 1, 2014 and reverted to a month to month tenancy after March 1, 2016. The tenant paid a security deposit of \$800.00 at the start of the tenancy, which the landlord continues to hold and has accrued \$0.00 in interest to date. The parties agreed that the tenant vacated the rental unit on August 31, 2017.

A copy of the condition inspection report ("CIR") was submitted in evidence. A move-in CIR was completed on February 22, 2014 and a move-out CIR was completed on August 31, 2017. The landlord has claimed \$556.80 comprised of three items. Item one is a claim of \$331.80 to replace the lower portion of a damaged steel garage door. Item two is a claim of \$100.00 to recover the cost of the filing fee under the *Act*. Item three is a claim for the remaining amount of \$125.00 which the landlord stated during the hearing is for her time involved in filing the application which was dismissed during the hearing as the parties were advised that costs related to filing the application are not recoverable through the *Act*.

Regarding item one, the landlord has claimed \$331.80 for what the landlord describes is the tenant's negligence in allowing children and others to play hockey and damaging the lower portion of the steel garage door ("garage door"). The landlord affirmed that the garage door was new at the start of the tenancy and undamaged which was not disputed by the tenant during the hearing. The landlord referred to several photos submitted in evidence and the CIR which the landlord stated supports that 14 or 15 dents were made in the garage door and that being a steel garage door could not be repaired without replacing the lower portion of the garage door.

The landlord submitted a receipt in evidence in support of the amount claimed of \$331.80. The landlord stated that they reduced the cost to the tenant by not replacing the entire garage door and only replaced the damaged lower portion of the door.

The landlord explained that black chalk was placed around each of the dents to assist in showing them in the photographic evidence. The landlord also stated that one of the dents appears to be a slash as it was worse than the other smaller dents.

The tenant denies that there was any negligence involved with the garage door and that any marks should be considered "reasonable wear and tear" according to the tenant. The tenant denied damaging the garage door and that when he and his children and the children who would visit to play hockey used an oversized tennis ball to play hockey. The tenant submitted in evidence one short video that was 47 seconds in length. The video was reviewed during the hearing. The tenant can be heard saying when moving his finger over a mark on the garage door, in part:

"...I can at least feel that one, it's a little dent."

[Reproduced as stated by tenant in the tenant's video evidence]

The tenant denied damaging the garage door and that he was negligent in any way during the tenancy. The tenant did not state why he did not raise the garage door while he or his children or the neighbour children were playing hockey in the rental unit driveway in front of the white steel garage door.

In the photographic evidence, the dents are apparent in the photographs. I note that in the video which had different lighting, the device that was taking the video moved around quite quickly which did not provide time to focus on each of the alleged dents which were marked by the landlord by a black "x" on the white garage door. The landlord stated that her husband made the black "x" marks as the tenant denied that there was any damage to the garage door so they were pointed out to the tenant. The tenant also provided colour photos of the "x" marks which I find shows dents in the steel garage door.

The landlord stated that she would have brought in the garage door for inspection however the Rules of Procedure do not allow for the submission of physical evidence which is correct. The tenant denies that hard rubber pucks were never used when playing hockey. The tenant also stated that only oversized tennis balls were used that could not damage the garage door.

The landlord raised the issue of the two photos showing children playing hockey in the driveway and asked why the tenant did not provide photos of the adults playing hockey in the driveway as the landlord stated that adults had also played hockey in the driveway.

The tenant testified that his son was between two and a half and five years old during the tenancy and that he could not damage the door as shown in the photographic evidence. The tenant asked the landlord during the hearing why she allowed a child she knew to play hockey with the tenant and his child to which the landlord replied that it was the responsibility of the tenant to ensure there was no damage to the rental unit. The landlord also stated that the landlord's most certainly did not damage their own garage door as that would make no sense and that they treated the tenants like family. The landlord stated that the tenant should have "put the garage door up" when they were playing hockey but they did not and they were negligent and caused damage as a result. While the landlord stated she feels betrayed by the tenant, the tenant stated that this is a personal issue due to a strained relationship with the landlords.

Regarding item two which relates to the filing fee, I will deal with the filing fee later in this decision.

As indicated above, item three was dismissed during the hearing as there is no remedy under the *Act* to charge for an applicants' time involved in filing for dispute resolution under the *Act*.

Analysis

Based on the documentary and digital evidence, the testimony of the parties 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 the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Item 1 – Section 37 of the *Act* applies and states in part:

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,

[My emphasis added]

I have carefully considered the testimony of both parties and find that the tenant's testimony was inconsistent and prefer the testimony of the landlord as a result. In reaching this finding I have considered that the tenant affirmed that there was no damage to the garage door which the tenant contradicts himself in the video he provided in evidence. Specifically, the tenant admits that he can feel a dent and rubs his finger over the dent. I find there are many dents which I find are consistent with hockey sticks damaging the lower portion of the steel garage door. I find the landlord's testimony to be consistent with the evidence before me and was not contradictory during the hearing.

Therefore, regarding item 1, I find the landlord has met the burden of proof as I find the tenant was negligent by not raising the garage door while hockey was played in front of the garage door. I find the tenant damaged the garage door and that the damage is beyond reasonable wear and tear. I disagree with the tenant that the marks on the garage door are reasonable wear and tear. I also disagree with the tenant who claims he was not negligent. I find that it would have been reasonable for the tenant to have raised the garage door before playing hockey in front of the garage door.

In addition to the above, I find the landlord complied with section 7 of the *Act* which requires that an applicant seeking monetary compensation under the *Act* do what is reasonable to minimize the damage or loss. By only replacing the lower portion of the garage door I find the landlord did what is reasonable to minimize the cost to the

landlord. Therefore, I grant the landlord **\$331.80** as claimed for this portion of the landlord's claim.

Item 2 - As the landlord's application had merit, I grant the landlord **\$100.00** in full recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

Item 3 – As indicated above, this portion of the landlord's claim was dismissed without leave to reapply as I find that the time involved to file an application for dispute resolution is not recoverable under the *Act*. As noted above, the filing fee is a fee that is recoverable and has been granted in item 2.

The landlord continues to hold the tenants' security deposit \$800.00 which has accrued \$0.00 since the start of the tenancy.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$431.80** and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
1. Garage door repair as claimed	\$331.80
2. Filing fee	\$100.00
TOTAL	\$431.80

I authorize the landlord to retain **\$431.80** of the tenant's security deposit of \$800.00 in full satisfaction of the landlord's monetary claim. The landlord is ordered to return the remainder of the tenant's security deposit balance in the amount of \$368.20. As a result, I have granted the tenant a monetary order pursuant to section 67 of the *Act* for the security deposit balance owing by the landlord to the tenant in the amount of \$368.20.

Conclusion

The landlord's claim is mostly successful. The landlord has established a total monetary claim of \$431.80. The landlord has been authorized to retain \$431.80 of the tenant's security deposit of \$800.00 in full satisfaction of the landlord's monetary claim. The landlord is ordered to return the remainder of the tenant's security deposit balance in the amount of \$368.20. As a result, I have granted the tenant a monetary order pursuant to section 67 of the *Act* for the security deposit balance owing by the landlord

to the tenant in the amount of \$368.20. Should the landlord not return this amount to the tenant, the tenant must serve the monetary order on the landlord and the monetary order 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: June 15, 2018

Residential Tenancy Branch