



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) by the landlord under the *Residential Tenancy Act* (“Act”) for a monetary order for damage to the unit, site or property, for authorization to retain the tenant’s security deposit, and to recover the cost of the filing fee.

The landlord, an agent for the landlord (“agent”) and the tenant attended the teleconference hearing. The parties were given the opportunity to ask questions about the hearing process. A summary of the testimony and documentary evidence presented is provided below and includes only that which is relevant to the matters before me.

As the landlord testified that he could not open the contents of the disc served on him by the tenant, the digital evidence was excluded in full in accordance with the Rules of Procedure which indicate that the party serving digital evidence has confirmed before the hearing that the person being served is able to access the digital evidence. I note the tenant confirmed that they did not confirm with the landlord in advance of the hearing whether they could access the contents of the disc. I note that neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

By consent of the parties, the surname of the tenant was corrected at the outset of the hearing. This amendment was made in accordance with section 64(3) of the *Act*.

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 filing fee under the *Act*?

Background and Evidence

Although a copy of the tenancy agreement was not submitted in evidence by either party, the parties agreed that a month to month tenancy began on December 26, 2011 and ended on March 31, 2017 when the tenant vacated the rental unit based on an order of possession on a previous file number. The previous file number has been included on the cover page of this decision for ease of reference. The tenant paid a security deposit of \$600.00 at the start of the tenancy which the landlord continues to hold.

The landlord has applied for a monetary claim in the amount of \$21,111.60; however submitted a monetary order worksheet in the amount of \$22,702.12 comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Deck	\$5,300.00
2. Flooring tear out, install	\$7,215.00
3. Flooring A and B	A. \$3,421.91 B. \$1,053.23
4. Floor	\$382.23
5. Junk removal	\$494.75
6. Cleaners x 2	A. \$260.00 B. \$275.00
7. Painter	\$4,300.00
TOTAL	\$22,702.12

The parties were advised at the outset of the hearing that due to the landlord neglecting to amend his application in accordance with the Rules of Procedure ("rules") the landlord's claim was being limited to the original amount claimed of \$21,111.60. The parties confirmed their understanding of this during the hearing.

Settlement Agreement

During the hearing, the parties agreed on a settlement agreement regarding some of the items being claimed by the landlords. The items which have been agreed upon by the parties have been organized into a table below for ease of reference. As a result, the corresponding item

numbers will not be included in the analysis section of this decision as all matters which form part of the settlement agreement were agreed upon by the parties on a voluntary basis, pursuant to section 63 of the *Act*, and the parties agreed during the hearing that their mutual agreement on these items form a final and binding agreement between the parties as mutually resolved matters related to this tenancy.

Settlement Agreement Item Number	Agreed upon compensation to landlord by tenant
Item 5 – junk removal	\$494.75
Item 6 – cleaners	\$535.00
TOTAL	\$1,029.75

Evidence related to the remainder of the items

The parties confirmed that a condition inspection report (“CIR”) was not completed in writing and in accordance with the *Residential Tenancy Regulation* (“regulation”). In addition, the landlord confirmed that no before photos were taken in support of the landlord’s claim. The tenant did not agree to any portion of the landlord’s claim with the exception of items 5 and 6 indicated above.

Item 1

For item 1, the landlord has claimed \$5,300.00 for the cost to repair a deck that the landlord claims was damaged by the tenant. The landlord was advised that due to a lack of a CIR and without before photos that this portion of the landlord’s claim would not meet the burden of proof which I will discuss further below. Therefore, this portion of the landlord’s claim was dismissed without leave to reapply due to insufficient evidence.

Item 2

For item 2, the landlord has claimed \$7,215.00 for the cost to remove and reinstall flooring due to what the landlord claims was damaged carpet caused by the tenant. The landlord confirmed that the age of the carpet at the start of the tenancy was unknown and that no evidence to support the age of the carpet was submitted in evidence for my consideration. In addition, there were no photos of the carpet taken at the start of the tenancy submitted in evidence. The landlord was advised that due to a lack of a CIR and without before photos that this portion of the landlord’s claim would not meet the burden of proof which I will discuss further below. Therefore, this portion of the landlord’s claim was dismissed without leave to reapply due to insufficient evidence.

Items 3 and 4

Consistent with my finding in item 2 above, the landlord has claimed \$4,857.37 combined for items 3A, 3B and 4 which I find all relate to item 2 above. Items 3A, 3B and 4 were all dismissed during the hearing for the same reason as stated in item 2 above as the landlord failed to meet the burden of proof by failing to submit before photos and a CIR for my consideration.

Item 7

The landlord has claimed \$4,300.00 for the cost to repaint the interior of the rental unit which was dismissed in full as the parties were advised that since this was a six year tenancy and that the useful lifespan of interior paint was 4 years, that this portion of the landlord's claim was depreciated by 100% even if the landlord was successful and is moot as a result. Therefore, this portion of the landlord's claim fails to meet the burden of proof and is dismissed without leave to reapply.

Analysis

Based on the documentary evidence before me and the testimony provided during the hearing, 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 this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 – As indicated above, although the landlord has claimed \$5,300.00 for the cost to repair a deck that the landlord claims was damaged by the tenant, I find that without before photos and a CIR, the landlord has failed to meet the burden of proof for this portion of their claim. Consequently, I dismiss this portion of the landlord's claim without leave to reapply due to insufficient evidence.

Items 2, 3 and 4 - The landlord has claimed for the cost to remove flooring, reinstall flooring and for the cost of new flooring. I find that the landlord has failed to meet the burden of proof for these items due to the landlord failing to provide evidence in support of the age of the carpet, failing to submit any before photos in evidence and by failing to do a CIR as required by sections 23 and 35 of the *Act*. Consequently, these portions of the landlord's claim are dismissed without leave to reapply due to insufficient evidence.

Items 5 and 6 – As noted above, these items were agreed to by the parties by way of a mutual agreement pursuant to section 56 of the *Act*. As a result, the landlord is granted **\$1,029.75** which are items 5 and 6 combined and as indicated above. The parties were reminded that while reaching a mutual agreement was voluntary that once agreed during the hearing, the mutual agreement was final and binding on those matters.

Item 7 – The landlord has claimed \$4,300.00 for the cost to repaint the interior of the rental unit which was dismissed in full. According to Residential Tenancy Branch Policy Guideline 40 – Useful Life of Building Elements ("policy"), interior paint has a useful life of four years. Given that the tenancy was six years long, I find that even if the landlord was successful for this item, the amount would be depreciated by 100% given that the interior paint was six years old by the end of the tenancy. In other words, the interior paint has exceeded the useful life indicated in the policy. Therefore, I find this portion is dismissed due to insufficient evidence, without leave to reapply.

Regarding the filing fee, as the landlord's claim was partly successful, I grant the landlord **\$100.00** pursuant to section 72 of the *Act* for the recovery of the cost of the filing fee.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$1,129.75** comprised of \$1,029.75 for items 5 and 6, plus \$100.00 for the filing fee. I authorize the landlord to retain the tenant's full security deposit of \$600.00 which has accrued \$0.00 in interest since the start of the tenancy pursuant to section 38 of the *Act*. I grant the landlord a monetary order under section 67 for the amount owing by the tenant to the landlord in the amount of **\$529.75**.

Conclusion

The landlord's application is partially successful as described above. The parties are ordered to comply with the terms of their mutually settled agreement described above pursuant to section 63 of the *Act*.

The landlord has established a total monetary claim in the amount of \$1,129.75 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$600.00 and is granted a monetary order under section 67 in the amount of \$529.75. This order must be served on the tenant and 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: July 3, 2018

Residential Tenancy Branch