



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

On November 9, 2017, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent and damage and to keep the security deposit. The matter was set for a conference call hearing.

The Landlord and Tenants attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written 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.

Preliminary and Procedural Matters

The Landlord provided documentary evidence to the Residential Tenancy Branch (“the RTB”) on November 9, 2017, and May 21, 2018.

The Tenant testified that he received the Notice of Hearing and the Landlord’s documentary evidence in November 2017; however he stated that he did not receive the Landlord’s documentary evidence in May 2018.

The Landlord testified that on May 22, 2018, he attended the Tenant's residence to serve the documents. He testified that he knocked on the door and there was no answer, so he left the documents on the front step.

The Tenant provided documentary evidence to the RTB on June 20, 2018; the same day of the hearing. The Tenant submitted that he did not have an opportunity to submit his evidence to the Landlord within 7 days of the hearing and to proceed with the hearing would be unfair.

The Landlord submitted that he has not had a chance to review and respond to the Tenant's evidence and he does not agree that the Tenants evidence should be accepted and considered.

The Residential Tenancy Branch Rules of Procedure ("the ROP") was created with the objective to ensure a fair, efficient and consistent process for resolving disputes for Landlords and Tenants.

Rule 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

Rule 3.15 provides that the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above.

Section 88 of the Act permits documents to be served on a person by leaving a copy in the mailbox or mail slot at which the person resides.

The documentary evidence of the Landlord that was left on the Tenant's step is excluded from the hearing. The Tenant testified that he has not received the evidence and I find that the evidence was not served in accordance with section 88 of the Act.

The documentary evidence provided by the Tenant on the day of the hearing is excluded from the hearing. The Tenant failed to serve the Landlord and the RTB with

his evidence in accordance with rule 3.15 of the RTB rules of procedure. The Landlord has not had an opportunity to review and respond to the Tenant's evidence. The Tenant was given the opportunity to testify regarding the contents of his evidence orally at the hearing. I find that the Tenant had ample opportunity to respond to the Landlord's claim after service of the Notice of Dispute Resolution proceeding and evidence he received in November 2017.

The hearing proceeded based on the testimony of the parties and the documentary evidence served to the Tenant by the Landlord on November 9, 2017.

Issues to be Decided

- Is the Landlord entitled to compensation for a loss of rent?
- Is the Landlord entitled to compensation for damage to the rental unit?
- Is the Landlord entitled to compensation for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?
- Is the Landlord authorized to retain the security deposit?

Background and Evidence

The parties testified and agreed that the tenancy began on March 1, 2017, as a one year fixed term tenancy. Rent in the amount of \$2,500.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,250.00.

The Landlord and Tenant testified that the Tenant moved out of the rental unit on August 7, 2017.

The Landlord is seeking compensation in the amount of \$9,483.78 for the following items:

Loss of Rent (July, Aug, Sept)	\$7,500.00
Carpet Cleaning	\$262.50
Dishwasher repair	\$324.80
Labour/ gas	\$191.00
Junk Hauling labour costs	\$358.40
Bin Hauling	\$145.70
Mold report	\$682.50
Paperwork	\$89.43

Loss of Rent (July, Aug, Sept) \$7500.00

The Landlord testified that the Tenant moved out of the rental unit prior to the end of the fixed term tenancy. He testified that the Tenant texted him on July 2, 2017, and stated that he is broke. The Landlord testified that the Tenant moved out of the rental unit on August 7, 2017.

The Landlord testified that he was not able to rent the unit out to a new Tenant until October, 2017. The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for the months of July 2017, and August 2017. The Landlord testified that the Tenant left the rental unit in a poor condition which affected the Landlord ability to rent it out for the month of September 2017. The Landlord testified that he advertised the unit on a local website as of July 25, 2017, but did not find a new Tenant until October 1, 2017.

In reply, the Tenant acknowledged that he did not pay the rent for the months of July 2017, and August 2017. He testified that he left the rental unit in immaculate condition when he moved out. He testified that the Landlord's inability to rent the unit out for the month of September was due to garbage that a previous Tenant had left on the rental property.

Carpet Cleaning \$262.50

The Landlord submitted that the Tenant failed to clean the carpets at the end of the tenancy. The Landlord testified that the Tenant had a dog in the rental unit. The Landlord testified that he hired a carpet cleaning company at a cost of \$262.50. The Landlord testified that the carpets were cleaned on August 29, 2017. The Landlord provided a copy of a receipt dated August 29, 2017. The Landlord provided a copy of a condition inspection report completed at the start of the tenancy on March 1, 2017, that indicates the carpets were shampooed at the start of the tenancy. The condition inspection report at the end of the tenancy on August 7, 2017, indicates the carpet needs shampoo. The condition inspection report for the move out inspection was not signed by the Tenant.

In reply, the Tenant acknowledged that he had a dog in the unit. He testified that he cleaned the carpets on July 30, 2017, using his own shampoo machine. He submitted that the Landlord's invoice for the carpet cleaning is fraudulent because the font, date, and cost of the invoice are wrong. He submitted that he contacted the cleaning company and they provided him with a letter that states the Landlord's evidence is not

an official invoice. There is no documentary evidence before me from the Tenant in support of his submissions that he shampooed the carpet or that the Landlord's invoice is fraudulent.

Dishwasher \$324.80

The Landlord submitted that he found the dishwasher broken at the end of the tenancy. The dishwasher was purchased used and was approximately 5 -6 years old. He testified that he found a used dishwasher and is seeking to recover the cost of \$324.00. The Landlord provided a receipt.

In reply, the Tenant submitted that he had notified the Landlord that the dishwasher was broken when he moved into the unit. The Tenant testified that he never used the dishwasher. He testified that the dishwasher was very old.

Labour/ Gas \$191.00

The Landlord testified that he had to haul away all the junk that the Tenant left behind on the rental property. He is seeking \$150.00 for his labor and \$20.00 for gas using the Landlord's vehicle. He testified that a part on his trailer hook broke and he is seeking \$21.00 for the replacement cost. The Landlord provided photographs taken at the end of the tenancy showing a large amount of junk, debris, and miscellaneous car parts throughout the yard of the rental property. The Landlord provided information from an email he received from the Tenant on July 3 that states "*you said I could do whatever I wanted here, you said I could park these vehicles here...*"

In reply, the Tenant submitted that it was a previous Tenant's junk. He submitted that he is not responsible for disposal of their junk. He submitted he is not responsible for a part that broke on the Landlord's trailer.

Junk Hauling Labour Costs \$358.40

The Landlord submitted that he hired two people to assist with hauling garbage and junk to the recycling center. The Landlord submitted that he paid the laborers in cash. The Landlord is seeking \$358.40. The Landlord provided an invoice dated August 16, 2017. The invoice indicates the labourers were each paid \$20.00 per hour for 8 hours.

In reply, the Tenant questioned why the Landlord provided a receipt if he paid the laborers in cash.

The Landlord replied that he needed a receipt so he would have a record.

Bin Hauling \$145.70

The Landlord submitted that it cost \$145.70 for the dumping/ recycling fees. The Landlord provided multiple receipts that total \$145.70.

In reply, the Tenant submitted that it was not his junk that the Landlord was disposing. He testified that he left nothing behind other than five or six spray cans.

The Landlord submitted that the Tenant left car parts behind. The Landlord referred to his photographic evidence showing junk and car parts left on the property.

Mold Report \$682.50

The Landlord testified that the Tenant complained there was mold in the unit so the Landlord hired a company to check for the presence of mold. The Landlord submitted that the company did not find any mold. The Landlord is seeking to recover the cost of the mold inspection/ report.

In reply, the Tenant submitted that he was informed by his neighbours that there was a previous issue with mold in the rental unit. The Tenant submitted that he sent the Landlord a letter on May 1, 2017, outlining his concerns. The Tenant submitted that he sent the Landlord a letter on June 15, 2017, asking the Landlord to take action regarding the mold. The Tenant submitted that he received a letter from a previous Tenant that there was a mold issue and water damage in the back bedroom.

The Tenant testified that he developed throat and cough issues. The Tenant testified that he told the Landlord that if the Landlord fails to take action, the Tenant will not pay the July 2017, rent.

In reply, the Tenant submitted that he feels that the Landlord may have performed some renovation to the unit prior to having the company conduct a mold investigation. The Tenant did not provide any evidence to support this suggestion.

The Tenant testified that he did not pay the rent for July because the Landlord failed to take any steps regarding the mold.

The Landlord submitted that he did not receive any letters from the Tenant about concerns with a mold issue. He acknowledged that the Tenant had verbally mentioned the issue to him.

Paperwork \$89.43

The Landlord is seeking to recover the cost of photocopying and printing documents for the hearing.

The Landlord's claim for these costs was dismissed. The Act does not expressly allow for compensation for these costs and I find that they are a cost of doing business as a Landlord and not compensable against the Tenant.

Security Deposit

The Landlord is holding the security deposit in the amount of \$1,250.00 and is seeking to keep the deposit in partial satisfaction of his claims.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, and proof that the party took all reasonable measures to mitigate their loss.

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.

The Residential Tenancy Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides:

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner...

...

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

After considering the testimony of the Landlord and Tenant, and on balance of probabilities, I make the following findings:

Loss of Rent (July, Aug, Sept) \$7,500.00

I find that the Tenant failed to pay the rent for the months of July 2017, and August 2017. The Tenant sent the Landlord an email stating he was broke. I find that the Tenant did not have the right to withhold payment of rent due to his concern about mold in the rental property.

I find that the Tenant breached the lease by moving out early and is responsible to pay the rent until the Landlord found a new Tenant for the property. I find that the Landlord's efforts to find a new Tenant were affected by the condition and state of repair of the rental property at the end of the tenancy. The Landlord cleaned the unit, had the carpets cleaned, disposed of junk, and had a mold inspection throughout the month of August 2017.

I find that the Landlord attempted to minimize the loss by performing all the clean up during the remaining three weeks of August. I accept the Landlord's testimony that he advertised the unit, and was not able to find a replacement Tenant until October 2017. I find that the Tenant is responsible to pay for the loss of rent for September 2017.

I find the Tenant owes the Landlord \$7,500.00 for unpaid rent for the months of July 2017, August 2017, and September 2017.

Carpet Cleaning \$262.50

Based on the evidence before me and on a balance of probabilities, I find that the Tenant is responsible for the cost of having the carpets shampooed. A Tenant is responsible for having carpets shampooed at the end of a tenancy when they have a pet. There is insufficient evidence from the Tenant to establish that the Landlord's claim is fraudulent. The Landlord has provided the stronger evidence.

I find that Tenant owes the Landlord \$262.50.

Dishwasher Repair \$324.80

The Landlord's claim for the replacement cost of the dishwasher is dismissed. The dishwasher was old and purchased used. There is insufficient evidence from the Landlord that the Tenant is responsible for damaging the dishwasher deliberately or by neglect.

Labour/ Gas \$191.00

I find that the Landlord has provided the stronger evidence that the Tenant left junk, debris, and miscellaneous car parts throughout the yard of the rental property. The Tenant submitted that it was not his junk; however based on his email to the Landlord stating he was permitted to park vehicles on the property, and the Landlord's evidence showing car parts left on the property, I find it is more likely than not that the junk belonged to the Tenant.

I find that the Landlord's claim for his labor to assist with removal of the garbage left on the property and the cost of gas is reasonable; however, the Landlord's claim for \$21.00 for the replacement cost of the trailer hook is denied.

I find that Tenant owes the Landlord \$170.00.

Junk Hauling / Labour costs \$358.40

I find that the Tenant left junk, debris, and miscellaneous car parts throughout the yard of the rental property.

I find that the Landlords claim is reasonable for the cost of removing the junk and debris and hauling it for disposal. I find that the Tenant is responsible for the cost to remove the junk and debris.

I find that Tenant owes the Landlord \$358.40.

Bin Hauling \$145.70

I find that the Tenant is responsible for the costs to dispose of the junk left on the rental property. I accept the Landlord's receipts for the cost of disposing the junk.

I find that Tenant owes the Landlord \$145.70.

Mold Report \$682.50

The Landlord's claim for the cost of the mold report is denied. It's the Landlords responsibility to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. The Tenant reported a concern about mold and the Landlord decided to have mold inspection conducted.

I find that regardless of whether or not mold was found the Tenant is not responsible for the cost of the mold report.

Paperwork \$89.43

The Landlord's claim for the cost of preparing for the hearing is dismissed. The Act does not expressly allow for compensation for these costs and I find that they are a cost of doing business as a Landlord and not compensable against the Tenant.

Security Deposit \$1,250.00

I authorize the Landlord to keep the security deposit of \$1,250.00 in partial satisfaction of his claim for unpaid rent.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Monetary Awards

The Landlord is awarded the following amounts:

Loss of Rent (July, Aug, Sept)	\$7,500.00
Carpet Cleaning	\$262.50
Labour/ gas	\$170.00
Junk Hauling labour costs	\$358.40
Bin Hauling	\$145.70
Filing fee	\$100.00
total	\$8,536.60

After setting off the security deposit of \$1,250.00 towards the award of \$8,536.60, I grant the Landlord a monetary order in the amount of \$7,286.60. The order must be served on the Tenant and may be enforced in the Provincial Court.

Conclusion

The Landlord is awarded compensation in the amount of \$8,536.60.

After setting off the security deposit of \$1,250.00 towards the award of \$8,536.60, I grant the Landlord a monetary order in the amount of \$7,286.60. The order must be served on the Tenant and may be enforced in the Provincial 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: July 20, 2018

Residential Tenancy Branch