



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND MNDC MNSD FF

Introduction:

Both parties made applications and attended and gave sworn testimony. The parties confirmed they had been served with each other's applications personally or by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, and 67 for damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies for double of a portion of the security deposit pursuant to section 38 of the Act.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

Is the tenant entitled to double a portion of their security deposit?

Background and Evidence:

Both parties and a witness attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The following facts were undisputed:

1. The tenancy commenced July 10, 2015 in the brand new basement suite;
2. Rent was \$1250 plus \$150 in utilities. A security deposit of \$600 was paid.
3. The tenants vacated on April 1, 2018 and provided their forwarding address on April 4, 2018 to the landlord in writing.

4. They gave permission for the landlord to retain about \$100 for drywall repair and \$50 for cleaning (\$150 total).
5. No condition inspection report was done at move-in or move out. The landlord said they had a full house inspection of their new home in June 2015 just before the tenancy commenced.

The landlord claims as follows:

1. \$50 to clean oven – agreed previously
2. \$200 for repair and painting – tenant disagrees and had consented to \$100 retention from their deposit as they did not hang pictures with large nails. Their son did some damage in one bedroom only. The landlord paid \$950 total to repair and paint.
3. \$262.50 to fix smoke and other alarms. A video showed an electrician finding some wires were missing at move-out and some had green tape on them. The tenant said they are not responsible; he is not an electrician and would not touch it. He suggested a restoration company that attended after a flood may have altered them. The landlord said the company may have put on the green duct tape but did not alter the other alarms.
4. \$113.61 to replace keys. The tenant agreed he had lost one key but thought this was too expensive. The landlord said they keys had to be replaced for security as they did not know who might have them.
5. \$220.07 to replace a door gasket on a washing machine. It leaked water as soon as the new tenant used it. The tenant said the gasket had a split in it but they used it with no problem during the tenancy. He said such gaskets only have a useful life of 2 years according to his internet research on them.
6. \$80.30 for the remainder of the hydro bill. The tenant said he paid \$136 in March and paid \$236 at move-out in cash as the landlord said that was what was owed. He disagrees with paying additional now. The landlord provided in evidence a typewritten sheet showing \$2807.71 from February 20, 2018 to March 31, 2018. There are no original Hydro bills in evidence or record of amounts paid by the tenant.

The tenant claims: $\$600 - \$150 \text{ (allowed retained)} \times 2 = \900 .

Analysis

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 whatever was reasonable to minimize the damage or loss.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. The landlord provided receipts to prove her costs.

As there is no condition inspection report at move-in and move-out, the proof of damage being done by this tenant is more difficult. I find insufficient evidence to support the landlord's claim for \$262.50 for fixing alarms. I find it probable that wires were either not connected at the beginning of the tenancy or were altered by the restoration company so I find insufficient evidence that the tenant caused this damage.

I find the landlord entitled to recover \$113.61 as invoiced for key replacement. The tenant agreed he lost a key so he must bear the cost of having the home made secure with another key.

I find it most probable the washer gasket broke during the tenancy as it was new at the commencement of the tenancy and leaked immediately after the new tenants tried the washing machine. The Residential Tenancy Policy Guideline 40 assigns a useful life for items in rented premises which is designed to account for reasonable wear and tear. I find water sealers like gaskets are assigned a useful life of 5 years (60 months). I find this gasket was approximately 3 years old (36 months) so I find the landlord entitled to recover 40% of the cost of its replacement for a total of \$88.02.

I find insufficient evidence to support the landlord's claim for hydro. I find a typewritten list with no accounting for actual bills from hydro and payments by the tenant is not sufficient evidence. The tenant denies owing anything and quoted two payments he made before they left. I dismiss this portion of her claim.

As there was no condition inspection report done at move-in and move-out, I find insufficient evidence to support the landlord's claim for painting and repairs. From the description of the damage by the tenant, I find their offer of \$100 from their security deposit is sufficient. I dismiss this portion of the landlord's claim.

In respect to the tenant's claim, I find section 38 of the Act requires the landlord to either return the tenant's deposit or file an Application to claim against it within 15 days from

the later of them vacating and providing their forwarding address in writing. I find they vacated on April 1 and provided their forwarding address in writing on April 4, 2018. The landlord filed her application on May 9, 2018 which is well beyond the 15 days allowed. I find they authorized the landlord only to retain \$150 of the deposit for cleaning and wall repair. Therefore, I find the tenants are entitled to double the remainder of their deposit back. (600 deposit – 150 authorized retention = \$450 x 2 = \$900)

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit with interest to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Landlord: Keys	113.61
Gasket allowance	88.02
Filing fee	100.00
Tenant: Remaining Deposit x 2	-900.00
Filing fee	-100.00
Balance is monetary order to tenant	-698.37

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: July 12, 2018

Residential Tenancy Branch