



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”). The matter was set for a conference call hearing.

The Landlord applied requesting a monetary order for damage to the unit; and to keep all or part of a pet damage deposit or security deposit, and to recover the cost of the application fee.

The Tenants applied for the return of the security deposit **and pet damage deposit** and to recover the cost of the filing fee.

Both parties were present at the hearing. The Landlord was represented by his agent (“the Landlord”). 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. The parties confirmed that they exchanged the documentary evidence that I have before me. 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.

Issues to be Decided

- Is the Landlord entitled to compensation due to damage to the rental unit?
- Are the Tenants entitled to the return of the security deposit?
- Are the parties entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy commenced on July 1, 2013, on a month to month basis. Rent in the amount of \$1,760.00 was due on the first day of each month. The Tenants paid the Landlord a security deposit of \$850.00 **and a pet damage deposit of \$850.00.**

The Tenants testified that they moved out of the rental unit on November 30, 2017.

Landlord's Application

The Landlord is claiming \$750.00 for damage to the rental unit. The Landlord is requesting a monetary order for the following items, and is asking to retain the security deposit and pet damage deposit in partial satisfaction of his claim.

Chandelier	\$150.00
Light bar	\$100.00
French Door	\$150.00
Garage Door	\$110.00
Remote control	\$120.00
Sink faucet	\$50.00
Touch up paint.	\$70.00
Total	\$750.00

Chandelier \$150.00

The Landlord testified that there was a crack discovered in the chandelier at the end of the tenancy. The Landlord testified that the crack was not present at the start of the tenancy. The Landlord testified that the crack cannot be repaired and the Landlord is seeking \$150.00 for the replacement cost and installation of a replacement chandelier. The Landlord testified that the chandelier is approximately 34 years old. The Landlord has not provided a photograph of a crack in the chandelier. The Landlord has not purchased a replacement chandelier, and has not provided an estimate of costs.

In reply, the Tenant testified that they did not see any cracks; however, they testified that there was a small chip in the chandelier at the start of the tenancy.

The Tenants submitted that the Landlord failed to conduct a move in inspection and complete and provide a report at the start of the tenancy. The testified that the Landlord

was in a big rush and the house was not clean. They testified that they did not refuse to participate in a move in inspection.

In response, the Landlord testified that the Landlord tried to have an inspection but the Tenants refused to participate.

The Landlords application provides:

Landlord asked tenant to complete the form and tenant refused both on move in and move out. Tenant signed upon move in that they would provide photos / video of current damage. No evidence of damage ever submitted to Landlord.

Light Bar \$100.00

The Landlord testified that a couple heads from a light bar were removed by the Tenant and the Landlord is seeking compensation for the cost to repair and replace the light head. The Landlord did not provide an estimate. The Landlord provided four photographs taken of rooms at a distance which the Landlord submits shows fixtures.

The Tenants testified that one of the light heads was not working at the start of the tenancy so he changed the lamp. The Tenant testified that he did not damage the light fixture and put it back together at the end of the tenancy.

French Door \$150.00

The Landlord testified that a glass panel French door is cracked. The Landlord testified that the Tenants are responsible for the damaged glass. The Landlord is seeking \$150.00 for the repair of the glass. The Landlord did not provide a photograph of the damaged glass panel and did not provide an estimate for the repair of the door. The Landlord has not repaired the glass.

The Tenants testified that the house was in a deplorable condition at the start of the tenancy. The Tenants testified that the crack in the glass was present at the start of the tenancy. The Tenants provided a photograph of the cracked glass that they submit was taken at the start of the tenancy.

Garage Door \$110.00

The Landlord testified that the garage door was missing some fastener parts at the end of the tenancy.

The Landlord testified that the door was repaired by the Landlord and the Landlord is seeking \$110.00 for the cost of material and labour to repair the door. The Landlord did not provide a photograph of the door; a receipt for parts; or a breakdown of the claim.

In reply, the Tenants submitted that the garage door worked normally if it was opened and closed manually. They submitted that the garage door opener never worked at the start of the tenancy.

Remote Control \$120.00

The Landlord testified that the Tenants failed to return the garage door remote at the end of the tenancy. The Landlord is seeking \$120.00 for the replacement cost of the remote. The Landlord did not provide an estimate for the cost of the remote.

In reply, the Tenants testified that at the start of the tenancy the Landlord gave them the remote and told them to go buy a new battery for it. The Tenants testified that when they tried to use the remote it did not work. The Tenants testified that they found the remote control a couple of weeks prior to the hearing and they agreed to return it to the Landlord.

Sink Faucet \$50.00

The Landlord testified that the kitchen faucet was loose and the fitting underneath the sink was leaking. The Landlord repaired the sink and fitting and is seeking \$50.00 for the repair.

The Tenants submitted that the house is old and the water was squirting out of the side of the faucet and was leaking from the pipes under the sink. The Tenants testified that the Landlord replaced the faucet a couple of weeks before they moved out.

Touch up Paint. \$70.00

The Landlord is seeking compensation to complete touch up painting on the walls where pictures were hung. The Landlord testified that the touch up painting has not been completed yet. The Landlord testified that the rental unit has been re-rented. The Landlord did not provide photographs of the areas that require painting and did not provide an estimate for the cost to complete the touch up painting.

The Tenant testified that he completed touch up painting on the walls prior to moving out. He testified that the paint provided by the Landlord was very old. The Tenant testified that the interior of the house has not been painted for 12 years.

The Landlord did not know when the interior of the rental unit was last painted.

Tenant's Application

Security Deposit

The Tenants are seeking the return of the security deposit in the amount of \$850.00 **and the pet damage deposit of \$850.00.**

The Tenants are also seeking to recover the \$100.00 filing fee from a previous hearing with the Landlord.

Analysis

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 17 the Residential Tenancy Regulation provides that if the Tenant is not available at a time offered under subsection (1) the Landlord must propose a second opportunity, to the Tenant by providing the tenant with a notice in the approved form.

Section 14 of the Residential Tenancy Regulation provides that the Landlord and Tenant must complete a condition inspection described in section 23 or 35 of the Act [condition inspections] when the rental unit is empty of the Tenant's possessions, unless the parties agree on a different time.

Section 36 (2) of the Act provides that the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord fails to conduct an inspection or give the Tenant a copy of the inspection report in accordance with the regulations.

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

The 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 tenant is not responsible for reasonable wear and tear to the rental unit or site or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Landlord's Claims

I find that the Landlord extinguished the right to claim against the security deposit for damage when the Landlord failed to perform a condition inspection of the rental unit at the start of the tenancy when the rental unit was empty of the Tenants' possessions.

The Landlord cannot contract outside the Act by having the Tenants perform the inspection or just take photographs. If the Tenants were refusing to participate in an inspection, as alleged, the Landlord is required to serve the Tenants with the proper notice. There is no evidence from the Landlord that he issued the Tenants with a notice for a final opportunity to participate in an inspection.

The Landlord must return the security deposit of \$850.00 **and the pet damage deposit of \$850.00** to the Tenants.

I find that there is no condition inspection report before me to provide reliable evidence as to the condition and state of repair of the rental unit at the start of the tenancy.

Section 62 of the Act provides if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

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 for in sections 7 and 67 of the Act. 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 case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that the damage stemmed directly from a violation of the Act, regulation, or tenancy agreement by the Tenants. 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.

I find that the Landlord has failed to provide sufficient evidence to establish the existence of damage and proof that the Tenants are responsible for the damage or loss. In addition, the Landlord did not provide sufficient proof to verify the value of the loss or damage. The Landlord provided only four photographs which had no probative value. The Landlord failed to conduct an inspection which could have provided evidence of the condition and state of repair of the rental unit at the start of the tenancy.

The following claims of the Landlord are dismissed due to insufficient evidence to prove a violation, loss, and value of the loss.

Chandelier	\$150.00
Light Bar	\$100.00
French Door	\$150.00
Garage Door	\$110.00
Sink Faucet	\$50.00
Touch up paint.	\$70.00

Remote Control

During the hearing the parties agreed that the Tenants would return the remote control to the rental property within 24 hours after the completion of the hearing.

The Landlord's claim for compensation for the remote control is dismissed with leave to reapply if the Tenants fail to return the remote as noted above.

Tenants Claims

The Tenants are seeking the return of their pet damage deposit and security deposit.

The tenancy ended on November 30, 2017. The Landlord applied for dispute resolution on December 13, 2017. I find that the Landlord made an application for dispute resolution and claimed against the security deposit **and pet damage deposit**, within 15 days after the date the tenancy ended.

The Landlord was not successful with his claims against the Tenants.

I award the Tenants \$850.00 for the security deposit **and \$850.00 for the pet damage deposit**.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful with their application and the Landlord was not, I order the Landlord to pay the Tenants \$100.00 for the cost of the filing fee for this hearing.

I grant the Tenants a monetary order in the amount of ~~\$950.00~~ **\$1,800.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord was not successful with his claims for compensation due to damage or loss. The Landlord's claims are dismissed without leave to reapply.

The Landlord must return the security deposit **and pet damage deposit** to the Tenants. I award the Tenants ~~\$950.00~~ **\$1,800.00** for the security deposit **deposits** and the cost of the hearing.

I grant the Tenants a monetary order against the Landlord in the amount of ~~\$950.00~~ **\$1,800.00**.

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: August 16, 2018

Amended: October 9, 2018

Residential Tenancy Branch