



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL – S, MNDL – S, MNRL – S, FFL

Introduction

This hearing dealt with a landlord's application for monetary compensation for damage to the rental unit; unpaid rent and utilities; and, other damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenants' security deposit and pet damage deposit. The landlord appeared at the hearing; however, there was no appearance on part of the tenant.

The landlord served her Application and evidence she had at the time of filing to the tenant at his forwarding address by registered mail sent on March 17, 2018. The landlord had provided a copy of the letter the tenant wrote where he provided his forwarding address and the landlord orally provided the registered mail tracking number as proof of service. A search of the tracking number confirmed that registered mail was sent on March 17, 2018 and the tenant received the registered mail on April 6, 2018.

The landlord sent additional evidence to the tenant, including printed photographs, and a Monetary Order worksheet on September 21, 2018 via Canada Post priority courier. The landlord provided a tracking number as proof of service. A search of the tracking number showed the package was delivered on September 25, 2018.

I noted the landlord had not submitted an Amendment to an Application for Dispute Resolution along with the Monetary Order worksheet dated September 21, 2018. However, I permitted the landlord to amend her monetary claim to \$9,441.24 as indicated on the September 21, 2018 Monetary Order worksheet because her revised claim is less than the sum of \$9,885.85 that was claimed on her original Application and to amend the Application is beneficial to the tenant.

Issue(s) to be decided

1. Has the landlord established an entitlement to compensation for the amounts claimed, as amended?
2. Is the landlord authorized to retain the tenant's security deposit and pet damage deposit?

Background and Evidence

The parties executed a written tenancy agreement on March 19, 2015 for a three year fixed term tenancy set to commence on April 1, 2015 and expire on March 31, 2018. The tenant paid a security deposit and a pet damage deposit in the total sum of \$3,100.00. The tenant was required to pay monthly rent of \$3,100.00 in two installments of \$1,550.00 on the 1st and the 15th day of every month. The tenant was also required to pay the landlord 75% of the hydro and gas utilities for the property.

On February 9, 2018 the tenant gave the landlord a notice to end tenancy. The landlord communicated to the tenant that she was accepting the tenant's notice as being effective March 31, 2018. The tenant did not make the rent payment due on February 15, 2018. The landlord had a process server give the tenant a 10 Day Notice to End Tenancy for Unpaid Rent on February 18, 2018 with a stated effective date of February 28, 2018. The tenant did not pay the outstanding rent or dispute the 10 Day Notice but did vacate the rental unit by February 28, 2018.

The landlord did not prepare a move-in or move-out inspection report at the beginning or end of the tenancy.

Below, I have summarized the landlord's claims against the tenant.

Broken window

The landlord submitted the tenant's daughter threw something and it hit the living room window which caused a large crack. The landlord was of the belief the tenant was going to repair it but he did not. The landlord proceeded to make the repair after the tenancy ended as she was afraid the window would shatter and hurt someone. The landlord originally obtained an estimate but ultimately found another contractor who did the work for less. The landlord seeks to recover the actual lesser cost of \$592.81 from the tenant.

Replace door locks

The landlord replaced the door locks on the rental unit after the tenancy ended. The landlord acknowledged that the tenant had returned the keys to her but claims the tenant became hostile and threatening so she changed the locks for the security of her new tenants. The landlord seeks to recover the cost to install new locks from the tenant in the amount of \$421.05.

Kitchen light fixture

The landlord submitted that an occupant permitted on the property by the tenant, clogged the upstairs toilet, causing water to enter the bulkhead in the kitchen below. A light fixture over the kitchen sink that is in the bulk head shorted out because of the water. The landlord purchased a new light fixture at a cost of \$100.95. The former light fixture was approximately four years old. The landlord included a letter dated February 27, 2018 where the tenant acknowledged his child plugged the toilet and the kitchen light fixture was sparking as a result of the flood.

Landscape repair

The landlord submitted that the yard was damaged by people driving/parking on the grass and numerous dogs were permitted to defecate on the lawn and not picked up by the end of the tenancy. The landlord obtained an estimate to repair the lawn and seeks to recover from the tenant \$1,056.30, which is only one-half of the estimate, in recognition that there were also shaker beetles found in the lawn.

Unpaid utilities

With respect to the utility payments, the parties had a practice where the tenant would pay an extra \$75.00 with each semi-monthly rent payment and once per year the parties would reconcile the difference between the utilities paid by the tenant and 75% of the utility charges.

By way of this application, the landlord seeks to recover the utilities consumed by the tenant (75% of the utility charges) for which payment has not been received up to the end of the tenancy on March 31, 2018.

The landlord requested \$465.48 for the gas and hydro owed up to February 20 and 23, 2018, respectively; plus, \$253.40 owed for the period from February 20 and 23, 2018 to March 31, 2018.

In arriving at the amounts claimed, the landlord explained that she calculated 75% of the utility bill charges for the gas bills dated August 22, 2017 to the end of the tenancy; and 75% of the hydro bills from November 24, 2017 through to the end of the tenancy; and, deducted the payments the tenant made in calculating this claim.

The landlord had provided copies of the utility bills as evidence. I ordered the landlord to provide me with her detailed calculations to demonstrate how she arrived at the totals sought above. The landlord uploaded her detailed calculations shortly after the teleconference call ended.

Process Server

The landlord seeks to recover \$120.00 she paid to a process server to serve the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent.

Pest control

The landlord submitted that one of the tenant's lodgers stated there were bed bugs in the rental unit. The landlord had the rental unit inspected as a result of this information. No bed bugs were found but the pest control company. The landlord was charged \$131.25 for the inspection which the landlord seeks to recover from the tenant.

Missing power washer

The tenant was provided use of a power washer as part of their tenancy agreement. At the end of the tenancy it was missing from the shed. The landlord was of the position the depreciated value of the pressure washer is \$350.00 considering she purchased it for \$700.00 five years prior.

Missing shovels and rakes

The landlord submitted that two shovels and two rakes were missing from the shed at the end of the tenancy. The landlord explained that she believes the tenant took these items because when the tenant was moving out a piece of plywood was placed in front her son's suite which blocked his view of the shed. The landlord stated that the shovels

and rakes were of good quality and approximately six years old. The landlord estimated the depreciated value to be \$150.00 and she seeks this amount from the tenant.

Missing microwave

The tenant was provided a counter model microwave and at the end of the tenancy it was missing. The microwave cost \$299.00 and was new at the start of the tenancy. The landlord seeks to recover the depreciated cost of \$200.00 from the tenant.

Cleaning

The landlord submitted that the interior of the rental unit was left in a very dirty condition and it took two full days to clean the unit. In addition, the yard was left full of dog feces which also had to be picked up and disposed of. The landlord paid \$500.00 for someone to clean the interior and exterior of the property and seeks to recover this amount from the tenant.

Junk removal

An old fridge and trampoline were left at the property at the end of the tenancy. The landlord had these items disposed of at a cost of \$100.00 and she seeks to recover this amount from the tenant.

Drywall, moulding damage

The landlord submitted that the tenant, or persons permitted on the property by the tenant caused damage to the drywall and mouldings, including: a hole in the bedroom, several holes in the foyer from a coat rack, the warped bulkhead in the kitchen ceiling from the toilet overflow, and several holes left from locks installed on the bedroom doors. The landlord had other work, including repainting done, after the tenancy ended for much more than the \$350.00 claimed. The landlord estimated that \$350.00 is a fair approximation of the cost to repair the damage caused by the tenant.

Unpaid rent – February 2018

The tenant failed to pay rent of \$1,550.00 that was due on February 15, 2018 and the landlord seeks to recover this amount from the tenant.

Loss of rent – March 2018

The tenancy was set to end on March 31, 2018 pursuant to the fixed term tenancy agreement. The tenancy came to an end early because of the tenant's failure to pay rent. The unit was vacant for the month of March 2018 while the landlord made repairs and cleaned the property. The landlord seeks to recover loss of rent for March 2018 from the tenant in the amount of \$3,100.00.

Analysis

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 section 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.

Upon consideration of all of the undisputed evidence before me, I provide the following findings and reasons.

The landlord's claim included a number of items related to damage to the rental unit or residential property. For the damage claims, I refer to sections 32 and 37 of the Act which provide as follows. Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Broken window

I accept the undisputed evidence that the tenant's child or other occupant permitted on the property by the tenant caused a large crack in the living room window during the tenancy and I consider this to be damage for which the tenant is responsible to repair. Therefore, I grant the landlord's request to recover the cost to replace the window in the amount of \$592.81

Replace door locks

Section 37 of the Act requires a tenant to return all of the keys or means of access to the landlord. The landlord confirmed that the tenant did return all of the keys. As such, there was no violation of the Act on part of the tenant with respect to the door locks or keys.

The landlord submitted the reason for seeking compensation for new door locks from the tenant was so that the tenant may not re-enter the unit whilst new tenants are occupying the unit. Section 25 of the Act provides for rekeying of locks before new tenants take possession of a rental unit and it provides that costs to do so are that of the landlord. Accordingly, I consider the costs to re-key or change the locks in this case are a cost of doing business as a landlord and I do not order the tenant to pay this cost.

Kitchen light fixture

The landlord submitted evidence to show the kitchen light fixture was damaged electrically by the negligent actions of an occupant permitted on the property by the tenant. Although the broken light fixture was a few years old, I note the landlord did not add any costs for installation. Therefore, I find the landlord's request for the cost of a new light fixture to be within reason and I award the landlord \$100.95 as requested.

Landscape repair

The landlord provided photographic evidence to demonstrate vehicles had been driven and/or parked on the lawn a number of times and large amount of dog feces was left in the yard. The landlord provided a quote to remove and replace the damaged area of lawn. The landlord requested one-half of the quoted amount to reflect the presence of beetles that she acknowledges responsibility to eliminate and I find her request

reasonable in the absence of any argument to the contrary. Therefore, I award the landlord \$1,056.30 as requested.

Unpaid utilities

The tenancy agreement provides that the tenant was responsible to pay for 75% of the hydro and gas charges at the property. The tenant had made partial payments of \$75.00 semi-monthly up to the last rent payment which was on February 1, 2018.

Since the tenancy was set to end on March 31, 2018 pursuant to the fixed term tenancy and the rental unit was not re-rented during the month of March 2018 I find the tenant remained liable to pay for utilities up to March 31, 2018.

The landlord has provided utility bills and calculations to show the utilities that the tenant still owes after deducting his partial payments for the period up to March 31, 2018.

In light of the above, I find the landlord has established an entitlement to recover the utilities she seeks from the tenant in the amounts of \$465.48 for the gas and hydro bills up to February 20 and 23, 2018, respectively; plus, \$253.40 for hydro and gas bills for the period up to March 31, 2018.

Process Server

The Act does not provide for recovery of costs to serve documents upon the other party and I dismiss this portion of the landlord's claim.

Pest Control

Landlords are ordinarily responsible for pest control pursuant to a landlord's obligation to repair and maintain a property under section 32 of the Act. A tenant may be held responsible for pest control if unit becomes infested with pests due to the actions or neglect of the tenant. The landlord had the rental unit inspected for bed bugs but none were found. Since no pests were found, I find there is insufficient basis to hold the tenant responsible to pay for a pest inspection.

While the landlord decided it was prudent to inspect the unit for pests, I find the cost of that decision is more in keeping with a cost of doing business as a landlord. Accordingly, I dismiss this portion of the landlord's claim.

Missing power washer and garden tools

The tenancy agreement provides that the landlord would provide the tenant with use of a power washer and “any tool in the shed”. The landlord asserts there were two shovels and two rakes in the shed and I accept that those tools were there for the tenant to use. The landlord asserts that the power washer, shovels and rakes were missing at the end of the tenancy and I accept that to be the case in the absence of any evidence to the contrary. However, I also find the landlord provided insufficient evidence to support the amounts claimed for compensation. The landlord did not provide the receipt for its purchase or the make/model of the power washer or documentary evidence such as a print-out from a power washer supplier, to demonstrate its value when purchased (\$700.00 allegedly) or its current value (\$350.00 as claimed). Similarly, the landlord did not demonstrate that two used shovels and two used rakes have a value of \$150.00 as claimed. As such, I find the landlord has not satisfied me of the value of her loss. Nevertheless, in recognition of the tenant’s failure to leave the power washer and garden tools at the property at the end of the tenancy, I provide the landlord a nominal award of \$10.00 for each shovel and rake, or \$40.00, and \$50.00 for a missing power washer, for a total award of \$90.00.

Missing microwave

The tenancy agreement does not indicate a microwave was provided to the tenant as part of his tenancy. Nor, is it recorded on any condition inspection report. Also, the landlord did not provide the make/model of the microwave or documentary evidence to support the amount claimed. Therefore, I dismiss this portion of the landlord’s claim.

Cleaning

Section 37 of the Act requires that a tenant leave a rental unit “reasonably clean” at the end of the tenancy. Where a tenant fails to leave a rental unit reasonably clean the landlord may pursue to the tenant for costs associated to bring the rental unit up to a standard of reasonably clean.

The landlord provided photographic evidence to demonstrate to my satisfaction that the rental unit was not left reasonably clean and the yard was full of dog feces. I find the landlord’s request to recover \$500.00 to clean the house and yard to be within reason and I award the landlord that amount.

Junk removal

Section 37 of the Act provides that a tenant leave the rental unit vacant. This means a tenant is required to take all of their possessions at the end to the tenancy and if the tenant abandons possessions or leaves junk behind the landlord may recover the cost to remove those items from the tenant.

The landlord provided photographic evidence to demonstrate the tenant left garbage and abandoned property at the rental unit, including an old fridge and a rusty trampoline. I find the landlord's request for compensation to remove these items to be very reasonable and I award the landlord \$100.00 as requested.

Drywall, moulding damage

The landlord provided photographic evidence to demonstrate there were some large holes left in the drywall and moulding which I accept is damage. I find the landlord's request for \$350.00 in compensation for this damage to be within reason and I award the landlord that amount.

February 2018 and March 2018 rent

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances when a tenant may legally withhold rent from the landlord. One such basis is where a tenant makes emergency repairs, as defined in section 33 of the Act and presents the landlord the receipts for reimbursement.

The tenancy was set to end on March 31, 2018 pursuant to their fixed term tenancy agreement. It appears the tenants gave notice to end tenancy on February 9, 2018 which the landlord accepted as being notice to end tenancy effective on March 31, 2018. The tenants occupied the rental unit until the end of February 2018 but failed to pay rent that was due on February 15, 2018. Accordingly, I find the tenant is liable to pay \$1,550.00 that was due on February 15, 2018.

Interestingly, the tenant wrote a letter to the landlord on February 27, 2018 where he reports certain repair issues he considers to be emergency repairs and then states if the landlord does not reply by the end of that day the tenant would proceed to make the

repairs and invoice the landlord. However, the tenant did not make any such repairs or provide the landlord with receipts. Rather, the tenant proceeded to return possession of the rental unit the following day and did not pay rent for March 2018. I find there is insufficient evidence to demonstrate the tenant had the legal right to end the tenancy early or withhold rent otherwise due. Therefore, I further grant the landlord's request to recover unpaid and/or loss of rent of \$3,100.00 for March 2018.

Filing fee

The landlord requested recovery of the \$100.00 filing fee paid for this application. I find the landlord's claim had merit and I award the landlord recovery of the filing fee as requested.

Security deposit and pet damage deposit

I authorize the landlord to retain the tenant's security deposit and pet damage deposit in the sum of \$3,100.00 in partial satisfaction of the amounts awarded to the landlord with this decision.

Monetary Order

In keeping with all of my findings and awards provided above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Broken window	\$ 592.81
Damaged kitchen light fixture	100.95
Yard damage	1,056.30
Unpaid utilities (\$465.48 + \$253.40)	718.88
Missing power washer and yard tools	90.00
Cleaning	500.00
Junk removal	100.00
Drywall and moulding damage	350.00
Unpaid rent – February 2018	1,550.00
Loss of rent – March 2018	3,100.00
Filing fee	<u>100.00</u>
Total awarded	\$8,258.94
Less: security deposit & pet damage deposit	<u>(3,100.00)</u>
Monetary Order	<u><u>\$5,158.94</u></u>

Conclusion

The landlord is authorized to retain the tenant's security deposit and pet damage deposit and the landlord is provided a Monetary Order for the balance of \$5,158.94 to serve and enforce upon the tenant.

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: October 17, 2018

Residential Tenancy Branch