



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, 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.

On November 3, 2017, The Tenants applied for the return of double the amount of the security deposit.

On November 10, 2017, The Landlord applied requesting compensation for damage to the unit; to keep all or part of a security deposit, and to recover the cost of the application fee.

Both parties were present at 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 and my interim orders. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The original hearing was adjourned and the parties were ordered to re-serve their documentary evidence to each other.

During the first hearing the Landlord testified that while she received a Notice of Hearing from the Tenants in November 2017, she did not receive any additional documents from the Tenants.

The Tenants testified they did not have a physical address for contacting the Landlord. The tenancy agreement where the Landlord is required to provide an address for service of documents is blank. The Tenants contacted the Landlord using email to obtain a mailing address, and the Landlord replied by email providing them with a service address outside of the province. The Tenants testified that they sent their documents using registered mail to the Landlord at the address she provided; however, they submitted that the registered mail was returned to the Tenants as undelivered due to an incorrect address. The Tenants provided a copy of the email dated September 18, 2017, received from the Landlord and an express post mail receipt number and returned envelope as proof of where the mail was sent.

The Landlord confirmed that the mailing address the Tenants' used is the correct address. The Tenants attempted to serve their evidence in accordance with the Act; however the Landlord did not receive it. While the Landlord submits that the mail was sent using express post and not registered mail, I place little weight on that argument as a reason to dismiss the Tenants' application. I find that the Tenants were not at fault with respect to the unsuccessful attempt to serve their documentary evidence.

The Landlord applied for dispute resolution on November 10, 2017, and named five Tenants as respondents and used the same service address for all five Tenants. The Landlord testified that she used a forwarding address that she had on file when one of the Tenants left the tenancy early.

At the first hearing, three of the Tenants listed as respondents on the Landlord's application appeared at the hearing. The Tenants submitted that the Landlord failed to send the application to all the Tenants named in the application. It was unclear whether or not all the Tenants named in the Landlord's application received proper notice of the hearing or whether they had an opportunity to consider the Landlord's evidence.

Based on the testimony and evidence before me, I had concerns regarding the service of the Landlord's Notice of Dispute Resolution Proceeding; disclosure of evidence, and opportunity for the parties to respond.

A fundamental principle of administrative fairness is that the parties to a dispute receive full disclosure of the evidence that will be considered and that they have an opportunity

to consider the evidence and respond. I am not satisfied that the parties have fully shared the documentary evidence and have been given an opportunity to respond to the evidence before me.

I am not satisfied that two of the Tenants named in the Landlord's application were properly served. They did not appear at the hearing. I have amended the Landlord's application to exclude Mr. J.W. and Mr. H.B.

On June 11, 2017, the first hearing was adjourned and I ordered that the Landlord and Tenants re-serve their documentary evidence prior to the next hearing. The parties exchanged addresses that were to be used for service of each other's evidence using registered mail. Both parties were directed to keep a copy of the registered mail receipt.

The Landlord submitted additional documentary evidence to the Residential Tenancy Branch on August 5, 2018, and August 11, 2018.

For the adjourned hearings, only, Mr. R.M. appeared on behalf of the Tenants. Mr. R.M. testified that he received the Landlord's documentary evidence; however it was different from what the Landlord originally submitted.

The Tenants did not submit any additional evidence or make any additional written submissions. The Tenants provided proof of how they re-served their documentary evidence. The Tenants provided a copy of a Canada Post registered mail receipt dated August 1, 2018, addressed to the Landlord at the service address exchanged at the original hearing.

After considering the evidence and testimony of the parties and on a balance of probabilities, I am satisfied that the Tenants re-served their documentary evidence to the Landlord in accordance with sections 89 and 90 of the Act. Despite the Landlord's submission that she never received this mail, I find that the Landlord is deemed served with the evidence on August 6, 2018; the fifth day after it was mailed.

I am satisfied that the parties have exchanged documentary evidence in accordance with the requirements of the Act and my interim order.

At the first and second hearing the Landlord submitted that since the Tenants failed to deliver the evidence, their application should be dismissed. The Landlord submitted that the Landlord has complied with the Act and to allow the Tenants' evidence and

claims would be prejudicial and an infringement of their Charter rights. The Landlord submitted that the Tenants are getting an extra opportunity to provide evidence.

I find that the Tenants sent their evidence to the address provided by the Landlord and they were not at fault regarding the failed service of their documentary evidence. The Landlords have failed to explain what section of the Charter is breached and how my order that both parties re-serve their evidence is prejudicial or is a Charter violation. Since I have found concerns with service of documents on behalf of both parties; both parties were provided another opportunity to re-serve their evidence. The Landlord's submissions that my decision is prejudicial and constitutes a Charter rights breach is respectfully dismissed.

The hearing on August 20, 2018, was adjourned due to insufficient time to hear the matters. The Interim Decision dated August 22, 2018, ordered that the parties are not permitted to submit any further documentary evidence. Despite this, the Landlord submitted additional evidence that was received by the Residential Tenancy Branch on November 12 and November 26, 2018. The Landlord's additional documents and evidence are not accepted and will not be considered.

Interruptions and Inappropriate Behaviour

At the original hearing the Landlord, Ms. D.R. frequently interrupted the Tenants' testimony. In addition, on a few occasions, I found that the Landlord would not directly answer my questions and attempted to change the subject. I found the Landlord's behaviour to be obstructive because it appeared she was causing deliberate difficulties and delays. The Landlord was repeatedly cautioned about her behaviour.

The Landlord did not have a witness present at the original hearing and asked to delay the hearing until her witness could call into the hearing. The Landlord's request was denied. The Landlord was informed that it is her responsibility to have her witnesses present at the hearing. The Landlord was informed that if her witness appeared, he could present his testimony at that time. The Landlord's witness appeared 40 minutes after the hearing began.

At the start of the second hearing, both parties were cautioned about disruptive behaviour. The Residential Tenancy Branch Rules of Procedure 6.10 provides information about interruptions and inappropriate behaviour. Section 6.10 was read to the parties and they were asked if they understood that they are not to interrupt the Arbitrator, or the person providing testimony. The Landlord and Tenant indicated that

they understood. Despite my direction, the Landlord, Ms. D.R. continued to interrupt the Arbitrator and the other party. The Landlord was again cautioned. In addition, at one point, the Landlord refused to let one of her witnesses provide testimony. The hearing proceeded and I eventually received responses to my questions.

During the second hearing on August 20, 2018, the Landlord and some of her witnesses exited the hearing without any notice and called back later. At 9:52 am S.R. exited the hearing and did not call back in until 10:09 am. At 10:06 the Landlord D.R. exited the hearing and called back in at 10:08. No testimony was taken from the Tenant during the Landlords brief absences. The Landlord's behaviour caused further disruption and delay to the hearing.

Issues to be Decided

- Is the Landlord entitled to compensation due to damage to the rental unit?
- Can the Landlord retain the security deposit in partial satisfaction of her claim?
- Are the Tenants entitled to double the security deposit?
- Are the parties entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on October 8, 2016, on a fixed term basis until August 31, 2017. Rent in the amount of \$3,750.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid a security deposit of \$1,875.00 to the Landlord.

The Parties testified that the Tenants moved out of the rental unit on August 31, 2017.

Landlord's Application

The Landlord testified that the rental unit was left unclean and damaged at the end of the tenancy. The Landlord is seeking compensation for the following items:

Washing machine	\$265.00
Deck /stairs	\$350.00
Hardwood floors	\$125.00
Carpet Cleaning	\$75.00
Fridge Door	\$60.00
Furnace	\$60.00
Window Screens	\$150.00

Washing Machine \$265.00

The Landlord testified that the Tenants are responsible for overuse of a washing machine. The Landlord submitted that the Tenants were putting in heavy loads and admitted that they used it daily. The Landlord testified that the washer was 6 years old. The Landlord testified that she purchased a new washer at a cost of \$617.00. The Landlord is seeking to recover 50% of the purchase cost from the Tenants. The Landlord provided a receipt for the purchase cost of the washer.

In reply, the Tenants testified that a technician came to the rental unit to look at the washer and told them that the washer was old. The Tenants submitted that the technician could not determine why the washer broke down. The Tenant acknowledged that there were five persons using the washing machine. The Tenants submitted that they did not neglect the washer and that it only had normal wear and tear usage.

The Tenants provided a copy of an email dated July 30, 2017, from the technician that indicates the bearing issue and bent shaft could be due to heavy loads or aging that could cause worn out parts.

Deck/ Stairs and Railing \$350.00

The Landlord testified that there was damage to the back deck and stairs of the rental property. The Landlord testified that she had someone come to the property and repair the deck and stairs. The Landlord provided a receipt from the company. The Landlord testified that she paid Mr. H.S. the amount of \$350.00 for the completing the repairs. The Landlord provided photographs showing the damaged areas of the deck and stairs.

The Landlord provided a witness, Mr. H.S. who testified that the Landlord asked him to repair the damage.

In reply, the Tenant testified that the deck was damaged prior to the Tenants moving into the rental unit. The Tenant testified that a telephone technician stepped through the rotten deck.

Hardwood Floors \$125.00

The Landlord submitted that there was damage to a wood floor near the area where the washer was located. The Landlord submitted that scratches to the floor were made by the Tenant's bicycle. The Landlord submitted that the floor needs to be sanded. The

Landlord testified that the amount of the claim is an estimate because the work has not been done. The Landlord testified that the floors are original hardwood floors. The Landlord provided a photograph of a small mark or scrape on a wood floor.

The Landlord's witness, Mr. D.K. testified that he observed a small white patch on the floor about the length of a pen and an inch wide.

In reply, the Tenants testified that there was no condition inspection report and no photographs to show the condition of the floor at the start and end of the tenancy. The Tenant submitted that the Tenants put felt pads under the furniture.

Carpet Damage \$75.00

The Landlord testified that she discovered water damage on the carpet located over by the washing machine. The Landlord is seeking \$75.00 for the cost to rent a carpet cleaning machine. The Landlord testified that the claim is an estimate. The Landlord provided a photograph of a carpet with a white colored mark.

In reply, the Tenants testified that there was no condition inspection report and no photographs to show the condition of the carpet area at the start and end of the tenancy. The Tenant testified that Mr. D.K. stopped by the rental unit and commented that the carpet looked good.

When I asked Mr. D.K. to respond to the Tenants testimony, the Landlord objected to having Mr. D.K. provide any testimony in response. The witness did not provide testimony on this issue.

Fridge Door \$60.00

The Landlord testified that she is seeking the amount of \$60.00 to bring the fridge to its original condition. The Landlord did not provide testimony regarding what specifically was not in original condition. She testified that she has not paid any amount to repair the fridge. The Landlord testified that the fridge remains in the rental unit and is being used by new Tenants. The Landlord provided two photographs of the refrigerator. One photograph appears to show that the refrigerator was left unclean.

The Landlord's witness, Mr. D.K. testified that he noted damage to the fridge door which was mentioned by the new Tenants prior to them moving in. The Landlord's witness submitted that the damage he observed was a dent caused by opening the door against

a door stop. The Landlord's witness submitted that the door was undamaged at the start of the tenancy.

In reply, the Tenants testified that there was no condition inspection report and that an outgoing inspection was not completed with the Tenants. The Tenant submitted that the Tenants did not damage the fridge door and points out that the Landlord does not have any proof of the condition at the start and end of the tenancy.

Furnace \$60.00

The Landlord testified that the furnace would not start and a technician came to the unit to service the furnace. The Landlord submitted that the replacement cost of a thermocouple on the furnace is the Tenants' fault because the furnace was last used by the Tenants.

The Landlord provided a receipt dated October 31, 2017, in the amount of \$628.57 for the cost of a furnace / boiler tune up and parts.

In reply, the Tenants testified that the Landlord has not provided any evidence to support that the Tenants are responsible for damage to the furnace. The Tenant testified that it is a natural gas furnace. The Tenant acknowledged that the Tenants used the furnace during the tenancy.

Window Screens \$150.00

The Landlord testified that there are window screens missing from the upper floor bedroom and basement bedroom windows. The Landlord submitted that the screens were probably removed by the Tenants and not replaced. The Landlord testified that the screens are missing. The Landlord provided a quote dated April 17, 2018 for \$150.00 for the replacement cost of two screens.

In reply, the Tenants testified that there was never a screen on the upper window. The Tenant did not know whether or not there was a screen on the lower window. The Tenant submitted that there was no condition inspection report completed by the Landlord and there is no photographic evidence from the Landlord to prove there were screens on the windows.

In reply, the Landlord submitted that she has pictures that show the screens are missing.

Tenants' Application

The Tenants are seeking the return of double the amount of the \$1,875.00 security deposit.

The Tenant testified that the Landlord failed to conduct a move in inspection at the start of the tenancy. The Tenants provided a copy of an email dated October 24, 2016, asking if there would be an incoming inspection. The Landlord responded "yes" there would be an inspection.

In reply, the Landlord initially testified that the Tenants R.M. and C.G. and S.B. did not participate in a move in inspection. The Landlord's witness, Mr. H.S. testified that he met with the Tenants at the rental unit on October 5, 2016, and conducted an inspection in the presence of four Tenants. Mr. H.S. testified that he asked the Tenants to fill out the report and send it back to the Landlord.

The Landlord provided a written statement by Mr. D.K. that states that he and Mr. H.S. met with the Tenants for a viewing on October 5, 2018, and the parties agreed that the viewing would count as a pre-move in inspection. The written statement indicates that the Tenants were informed they could find the inspection form online and complete it and send it to the owner.

With respect to a move out inspection, the Landlord provided a written statement by Mr. D.K. that states that he and Mr. H.S. and his wife, attended the rental unit on August 31, 2017, and inspected the house for damage.

The Landlord provided a copy of an undated and unsigned Condition Inspection Report that was completed by the Landlord at some point after the tenancy ended.

The Tenant testified that he provided a forwarding address to the Landlord on September 21, 2017, sent to the Landlord using registered mail.

The Tenant testified that there was no agreement that the Landlord could keep any amount of the security deposit. The Tenant submitted that the Landlord has not returned any amount of the security deposit.

The Landlord testified that the only address she had was for the Tenant Mr. J.W. which was provided to her in March 2017, when Mr. J.W. moved out and sublet his room. The

Landlord submitted that the Tenants were under the impression that Mr. D.K. had received their forwarding address; however, she never received a forwarding address from them until November 2017.

The Landlord submitted that she sent emails to the Tenant outlining her claims for damage and the amount to be returned. Both parties provided documentary evidence of email conversations exchanged regarding the return of the security deposit.

The Tenants moved out of the rental unit on August 31, 2017. The Landlord applied for dispute resolution on November 10, 2017.

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. Each section also requires that the Landlord complete the condition inspection report; 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 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 having made an inspection with the Tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

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

Tenants Application

Security Deposit

I find that the move in inspection that the Landlord conducted with the Tenants on October 5, 2016, does not meet with the Landlords obligations pursuant to section 23 of the Act. The Landlord's agent(s) did not complete a condition inspection report and give the Tenants a copy in accordance with the regulations. The Landlord's documents related to the inspection do not comply with the requirements of a condition inspection report under section 20 of the Residential Tenancy Regulation.

Under section 24(2) of the Act, the Landlord's right to claim against the security deposit is extinguished.

I find that the Landlord made an application against the deposit on November 10, 2017. Despite the evidence that the parties were negotiating the return of the deposit in September 2017, I find that there is insufficient evidence from the Tenants to prove that they provided their forwarding address to the Landlord prior to November 2017. I find that the amount of the security deposit does not double as a penalty.

I grant the Tenants the return of the security deposit in the amount of \$1,875.00.

The Landlord retains the right to make claims for damage or loss.

Section 21 of the Residential Tenancy Regulation states:

in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find that the Landlord failed to perform a move in and move out inspection with the Tenants as required by the Act. The Landlord's documentary evidence of a condition inspection report that was completed by the Landlord after the tenancy ended will not be considered. The Landlord's claims for compensation for damage will be based on the strength of the evidence before me.

Landlord's Application

The party making a claim for compensation against another party bears the burden of proof. Section 7 of the Act provides that if a Landlord or Tenant does not comply with the Act, the regulations, or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.
3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

Overall, the Landlord has provided no evidence to establish the condition of the rental unit at the start of the tenancy either by way of documentary, such as the required condition inspection report or photographic evidence. Failing to establish the condition of the rental unit at the start of the tenancy significantly impacts the Landlord's ability to provide sufficient evidence to establish that the Tenants might be responsible for any damage to the rental unit as a result of their actions and/or neglect during the tenancy.

Washing Machine \$265.00

Residential Tenancy Branch Policy Guideline #1 Landlord & Tenant Responsibility For Residential Premises is intended to clarify the responsibilities of the Landlord and Tenant regarding maintenance, cleaning, and repairs of residential property. With respect to appliances, the Guideline provides that the Landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the Tenant.

I find that there is insufficient evidence from the Landlord that the Tenants deliberately damaged or neglected the washing machine. I find that the Landlord rented the unit out to five Tenants and the Landlord should have expected that the washing machine would get frequent use.

The Landlords claim for compensation of \$265.00 is dismissed.

Deck/ Stairs and Railing \$350.00

Residential Tenancy Branch Policy Guideline #1 provides that the Landlord is responsible for maintaining fences or other fixtures erected by him or her.

Section 32 of the Act states that a Landlord must provide and maintain residential property in a state of decoration and repair that:

- (a) complies with the health, safety and housing standards required by law, and*
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

I find that the photographic evidence of the deck shows that the wood decking material is old. The wood decking is in poor condition appears to be deteriorating. I find that it is more likely than not that the reported damage to the deck and railing is due to its poor condition. The Landlord failed to complete a Condition Inspection Report with the Tenants at the start of the tenancy which would show the age and condition of the wood decking material. I find that it is the Landlord's responsibility to maintain the deck and railing. The Landlord's claim to be compensated in the amount of \$350.00 is dismissed.

Hardwood Floors \$125.00

The Landlord failed to complete a Condition Inspection Report with the Tenants at the start of the tenancy which would show the condition and state of repair of the wood floor at the start of the tenancy. In addition, the Landlord has not performed the repair on the floor and new Tenants have since lived in the rental unit. I find that that the Landlord has failed to establish that the Tenants breached the Act by causing damage to the floor and that the Landlord has suffered a loss as a result.

The Landlord's claim for \$125.00 is dismissed.

Carpet Damage \$75.00

The Landlord failed to complete a Condition Inspection Report with the Tenants at the start of the tenancy which would show the condition and state of repair of the carpet at the start of the tenancy. In addition, the Landlord has not cleaned the carpet and new Tenants have since lived in the rental unit. I find that that the Landlord has failed to establish that the Tenants breached the Act by failing to clean the carpet and that the Landlord has suffered a loss as a result.

The Landlord's claim for \$75.00 is dismissed.

Fridge Door \$60.00

While I accept that the Landlord's photograph shows a dirty refrigerator, the Landlord did not specifically make a claim for cleaning costs. She testified that she wants to bring the fridge to its original condition and has not paid any amount for that purpose. The Landlord did not explain what the \$60.00 is for. The Landlord testified that new Tenants are using the refrigerator. I find that that the Landlord has failed to establish that the Tenants breached the Act by damaging the refrigerator and that the Landlord has suffered a loss as a result.

The Landlord's claim for \$60.00 is dismissed.

Furnace \$60.00

The Landlord is responsible to maintain the furnace. I find that there is insufficient evidence from the Landlord that the Tenants deliberately damaged or neglected the natural gas furnace. The Landlord did not provide any testimony on why the Tenants are responsible for the cost of a thermocouple.

The Landlords claim for compensation of \$265.00 is dismissed.

Window Screens \$150.00

The Landlord failed to complete a Condition Inspection Report with the Tenants at the start of the tenancy which would show the presence and condition of window screens at the start of the tenancy. Any photographs taken of the windows at the end of the tenancy do not establish the presence of the screens at the start of the tenancy.

In addition, it appears that the Landlord has not purchased replacement screens. The Landlord's quote is dated seven months after the tenancy ended. I find that that the Landlord has failed to establish that the Tenants breached the Act by taking or losing the two blinds and that the Landlord has suffered a loss as a result.

The Landlord's claim for \$150.00 is dismissed.

Set Off of Claims

The Landlord was not successful with her claims against the Tenants for compensation. The Landlords application is dismissed without leave to reapply.

The Landlord is ordered to return the security deposit to the Tenants. The Tenants are awarded a monetary claim in the amount of \$1,875.00 for the return of the security deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were partially successful with their application, I order the Landlord to pay the Tenants for the cost of the filing fee for this hearing.

I grant the Tenants a monetary order in the amount of \$1,975.00. For enforcement, 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 on her claims of compensation against the Tenants. The Landlord's application is dismissed without leave to reapply.

The Landlord is ordered to return the security deposit to the Tenants. The Tenants are awarded a monetary claim in the amount of \$1,975.00 for the return of the security deposit and the cost of the application.

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: December 31, 2018

Residential Tenancy Branch