



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, FF.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for the cost of carpet cleaning, painting and drywall repair and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim. The tenant applied for the return of the security deposit and for the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves. As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in the making of this decision. As this matter was conducted over 70 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Is the landlord entitled to a monetary order for the cost of cleaning, painting and drywall repair and for the filing fee? Is the tenant entitled to the return of the security deposit and the filing fee?

Background and Evidence

The tenancy started on April 01, 2018 and ended on July 31, 2018. The monthly rent was \$1,350.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$675.00.

The tenant testified that he provided the landlord with a forwarding address on June 24, 2018 and returned the keys to the landlord on July 31, 2018. The landlord made this application in a timely manner, on August 07, 2018.

The landlord stated that the rental unit was painted just prior to the start of the tenancy and that the tenant had caused damage to the walls by putting in multiple nails and screws. The tenant agreed that he had put screws into the wall for the purpose of shelving but stated that 80% of the damage was caused by the sticky hooks given to him by the landlord for the purpose of hanging items on the walls. The landlord agreed that she had given the tenant the sticky hooks that he was referring to.

The landlord's photographs depict some areas on the walls that are patched. The tenant stated that he had the holes filled but not to the satisfaction of the landlord. The tenant agreed that he had not painted over. The landlord filed photographs of the damage to the walls. The photographs confirm that the holes were filled and appeared white on the painted wall. The landlord stated that she hired a professional painter to paint the entire unit except for one bedroom which she intended to have done after this hearing. The landlord is claiming the cost of labor for painting and the estimated cost of painting the remainder of the unit.

The landlord stated that she negotiated a deal with the tenant for the cost of internet services provided to the tenant. The landlord stated that she offered to allow the tenant the free use of internet if he mowed the lawn. For the last month of tenancy the tenant stated that he mowed the lawn at the start of the month and moved out on July 15, 2018. The landlord stated that the tenant did not mow the lawn since the middle of June and has provided photographs that show the lawn is in need of maintenance. The landlord stated that the photographs are dated July 31, 2018. The landlord is claiming \$35.00 for the cost of internet service for the month of July 2018.

The landlord is also claiming for the cost of repairing the window blind. The tenant agreed that he broke the blind and was responsible for the cost of replacing the blind.

The landlord is also claiming for the cost of shampooing the carpet. The landlord agreed that the tenant had vacuumed the carpet.

The landlord stated that the tenant had added a sports channel to her television package and filed a copy of an invoice for the added cost of \$21.00 to her bill over three months. The tenant denied having requested the sports channel. The landlord stated that there was no one else who could have done so until the tenant mentioned that the landlord's adult son visited occasionally and may have requested the sports channel.

A move in inspection report was filed into evidence. The parties met to do a move out inspection on July 31, 2018. The conversation got heated and the tenant decided to leave without completing the inspection or signing the report.

The landlord is claiming the following:

1.	Internet for July 2018	\$35.00
2.	Addition of Sports Channel	\$21.00
3.	Replace blind	\$89.57
4.	Labor for painting	367.50
5.	Estimated labor for painting other parts of unit	\$200.00
6.	Cost of paint	\$225.03
7.	Shampoo Carpet	\$50.00
8.	Filing fee	\$100.00
	Total	\$1,088.10

The tenant is claiming the return of the security deposit of \$675.00 plus the filing fee of \$100.00.

Analysis

Landlord's application:

1. Internet for July 2018 - \$35.00

Based on the testimony of both parties, I find that the parties had an agreement for the tenant to mow the lawn in exchange for the use of internet. The landlord stated that the lawn was not mowed in July and therefore the tenant must cover the cost of the internet. The tenant stated that he mowed the lawn at the start of July.

To support her testimony, the landlord filed photographs of an unkempt lawn taken on July 31, 2018. The photographs do not show the condition of the lawn during July and therefore I am unable to determine the condition of the lawn prior to July 31, 2018, which was the last day of tenancy. The agreement was verbal and therefore in the case of verbal agreements, I find that when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the landlord, has the onus of proving, during these proceedings, that the claim is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail.

For this reason, I am not prepared to interpret whether either party fulfilled the agreed-upon terms and I find that this portion of the landlord's application must be dismissed.

2. Addition of a Sports Channel - \$21.00

The tenant denied having ordered a sports channel and the landlord was unable to prove that he had done so. The tenant stated that the landlord's adult son visited occasionally and may have done so but maintained that he did not order the sports channel. Based on the above, I find that the landlord has not proven her claim and therefore it is dismissed.

3. Replace blind - \$89.57

The tenant agreed that he had broken one of the blinds in the rental unit and agreed to cover the cost of replacing it.

4. Labor for painting - \$367.50

5. Estimated labor for painting other rooms in the unit - \$200.00

6. Cost of paint - \$225.03

The landlord stated that the rental unit was painted just prior to the start of tenancy. The tenant agreed that he had put some screws and nails in the wall but stated that 80% of the damage to the walls was done when he attempted to remove the sticky hooks given to him by the landlord, for use in the rental unit.

The landlord filed a large number of photographs. Upon trying to view the damage to the walls, I found many of the photographs were multiple shots of the same damage. The tenant also filed photographs of the damage to the walls. The photographs show damage to the walls and also show that the damage which consists of holes in the walls are filled with white plaster.

The landlord stated that the entire rental unit was painted except one bedroom. The landlord has provided an estimate for the remainder of the painting in the amount of \$200.00 for labor and \$225.03 for the cost of paint. Since the entire unit except one bedroom was painted at a cost of \$367.50, the estimate of a total of 425.03 for the remaining one bedroom is not in line with the cost of painting the entire unit except one bedroom.

The landlord testified that the unit was painted in March 2018 just prior to the start of this four month tenancy. Pursuant to *Residential Tenancy Policy Guideline #40*, the useful life of paint is about five years. Based on this guideline, the entire unit would not need a coat of paint, four months later. However the damaged portion would require a touch up and therefore I find that the landlord is entitled to the cost of touching up the paint on the damaged areas of the walls. The landlord has so far incurred a total of \$367.50 to finish the repair of the holes in the walls and to paint the entire unit except one bedroom.

I have considered the following factors in the making of my decision:

- The unit was recently painted and required only a touch up
- The tenant filled the holes with putty but not to the satisfaction of the landlord
- The landlord provided sticky hooks to the tenant which caused a major part of the damage
- The estimate to paint one bedroom is more than the cost to paint the entire remainder of the rental unit

Based on the above I find it appropriate to award the landlord \$200.00 towards the repair and touch up of the damage to the walls caused by the nails, screws and sticky hooks

7. Shampoo the carpet - \$50.00

Residential Tenancy Policy Guideline#1 addresses the responsibility for the residential premises. With regard to carpets, the guideline states:

Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

This tenancy started on April 01, 2018 and ended in July 31, 2018. Since the length of the tenancy was less than one year, I find that the tenant was not required to shampoo or steam clean the carpets. The landlord agreed that the tenant had vacuumed the carpet and therefore the landlord's claim for shampooing the carpet is dismissed.

8. Filing fee - \$100.00

The landlord has proven a portion of her claim and therefore I award her the recovery of the filing fee of \$100.00.

Overall the landlord has established the following claim:

1.	Internet for July 2018	\$0.00
2.	Addition of a Sports Channel	\$0.00
3.	Replace blind	\$89.57
4.	Labor for painting	\$200.00
5.	Estimated labor for painting other parts of unit	\$0.00
6.	Cost of paint	\$0.00
7.	Shampoo Carpet	\$0.00
8.	Filing fee	\$100.00
	Total	\$389.57

Tenant's application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the security deposit.

In this case the landlord made application to retain the security deposit in a timely manner and therefore the tenant is not entitled to the return of double the security deposit. However the tenant is entitled to the return of the base amount of the security deposit in the amount of \$675.00. The tenant made this application on August 17, 2018 because he had not received his deposit by that date. Since the tenant has proven his claim, he is entitled to the recovery of the filing fee of \$100.00

Overall the tenant has established a claim of \$775.00 and the landlord has established a claim of \$389.57. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$385.43 which consists of difference in the established entitlements of both parties.

Accordingly, I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$385.43**.

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 13, 2018

Residential Tenancy Branch