



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: MNRLS, MNDCLS, FFL
For the tenant: MNDCT MNSD FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) by both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The landlords applied for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the tenant’s security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee. The tenant applied for the return of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant and the landlords attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties confirmed that they were served with the application from the other party and had received documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. Based on the above, I find the parties were sufficiently served in accordance with the *Act*.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”). However, only

the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

Firstly, although the landlords applied for unpaid rent or utilities, I find that as their monetary claim did not specify an amount for unpaid rent or loss of rent, I grant the landlords liberty to reapply for unpaid rent or loss of rent. I have reached this finding as the landlords included that aspect in their application, yet did not provide a monetary breakdown of an amount of rent being claim, whether it was unpaid rent or loss of rent and is required under section 59 of the *Act*.

Secondly, the parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the tenant entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is either party entitled to the recovery of the cost of the filing fee?

Background and Evidence

The parties confirmed that a written tenancy agreement was not created by the landlords. The tenant did agree that a verbal, month to month tenancy began on October 1, 2018. The parties also agreed that the monthly rent was \$2,250.00 per month and was due on the first day of each month. The parties confirmed that a security deposit of \$1,125.00 was paid by the tenant at the start of the tenancy, which the landlords continue to hold.

The landlords stated the tenant vacated the rental unit on November 1, 2018, and the tenant stated on at least three occasions that he vacated the rental unit on November 30, 2018, which the landlords denied. Later in the hearing; however, the tenant admitted

that he was incorrect and that he vacated by November 1, 2018, as claimed by the landlords.

Landlords' claim

The landlords' monetary claim of \$4,588.06 contains an adding error and actually totals \$4,601.86 and comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Fortis BC gas bill	\$22.98
2. New fence	\$3,400.00
3. Bathroom door	\$193.59
4. Lights	\$59.07
5. Replace CO2 detector	\$49.39
6. Locks changed (start of tenancy)	\$157.15
7. Locks changed (end of tenancy)	\$191.98
8. Air freshener	\$11.20
9. Mileage – opening tenant door	\$16.50
10. Stress, pain and suffering	\$500.00
TOTAL	\$4,601.86

Based on the above, I find the landlords' claim limit is the amount claimed of \$4,558.06 as the higher amount was not specified in the landlords' application.

Regarding item 1, the landlords have claimed \$22.98 for an unpaid gas bill during the tenancy, which was dismissed during the hearing as the landlords provided the incorrect gas bill in evidence to support this portion of their claim. The bill submitted by the landlords was for a period of time before the tenancy began with the exception of three days. I find the landlords failed to meet part three of the test for damages or loss, which I will explain in detail later in this decision.

Regarding item 2, the landlords have claimed \$3,400.00 for a new fence. The landlords confirmed that they did not complete an incoming or outgoing Condition Inspection Report and failed to submit before photos for my consideration. As a result, the landlords were advised that they failed to meet parts one and two of the test for damages or loss, which I will explain in detail later in this decision.

Regarding item 3, the landlords have claimed \$193.59 for a bathroom door, which was dismissed during the hearing as the landlords confirmed that they did not complete an incoming or outgoing Condition Inspection Report and failed to submit before photos for my consideration. As a result, the landlords were advised that they failed to meet parts one and two of the test for damages or loss, which I will explain in detail later in this decision.

Regarding item 4, the landlords have claimed \$59.07 for the cost to place covers on lights as requested by the tenant. This portion of the landlords' claim was dismissed during the hearing as I find the landlords have failed to meet parts one and two of the test for damages or loss under the *Act*, which I will explain in detail later in this decision.

Regarding item 5, the landlords have claimed \$49.39 for the cost to replace what the landlords claim was a stolen CO2 detector from the rental unit. The tenant denied stealing a CO2 detector as claimed by the landlords. The landlords confirmed that they did not provide a receipt or other documentary evidence to support that a CO2 detector was purchased for the rental unit at the start of the tenancy. In addition, there was no incoming or outgoing Condition Inspection Report to support that a CO2 detector was provided in the rental unit and no photos were submitted to show the CO2 detector at the start of the tenancy. This portion of the landlords' claim was dismissed during the hearing as I find the landlords have failed to meet parts one and two of the test for damages or loss under the *Act*, which I will explain in detail later in this decision.

Regarding item 6, the landlords have claimed \$157.15 to change locks at the start of the tenancy, which the landlords stated was due to the tenant requesting one key to the rental unit instead of several keys. The landlords voluntarily made the lock change upon request from the tenant. This portion of the landlords' claim was dismissed during the hearing as I find the landlords have failed to meet parts one and two of the test for damages or loss under the *Act*, which I will explain in detail later in this decision.

Regarding item 7, the landlords have claimed \$191.98 to change locks after the tenancy vacated the rental unit as the tenant failed to provide all of the keys to the rental unit. The tenant confirmed during the hearing that he did not return the keys directly to the landlords and did not return all of the rental unit keys. The landlords submitted a receipt in support of this portion of their claim.

Regarding item 8, the landlords have claimed \$11.20 for the cost of air fresheners due to the smell of smoke in the rental unit after the tenant vacated the rental unit. This item

was dismissed without leave to reapply during the hearing due to a lack of an incoming and outgoing Condition Inspection Report to support that the rental unit smelled like smoke at the end of the tenancy. This portion of the landlords' claim was dismissed during the hearing as I find the landlords have failed to meet parts one and two of the test for damages or loss under the *Act*, which I will explain in detail later in this decision.

Regarding item 9, the landlords have claimed mileage in the amount of \$16.50 to attend the rental unit to unlock the rental unit for the tenant during the tenancy. This item was dismissed during the hearing as I find that there is no remedy for such a cost under the *Act* and is a cost associated with being a landlord. There was no evidence presented or alleged that this was a regularly occurring situation in the tenancy. Therefore, this portion of the landlords' claim was dismissed during the hearing as I find the landlords have failed to meet parts one and two of the test for damages or loss under the *Act*, which I will explain in detail later in this decision.

Regarding item 10, the landlords have claimed \$500.00 for stress, pain and suffering however did not indicate the details of such a claim in their application, which was dismissed during the hearing as I find the landlords have failed to meet parts one and two of the test for damages or loss under the *Act*, which I will explain in detail later in this decision.

Tenant's claim

The tenant has claimed \$1,125.00 for the return of the security deposit. The tenant admitted during the hearing that he has not provided his written forwarding address to the landlords. Therefore, I find that the landlords would have only been made aware of the tenant's new address at the time the tenant submitted their application. I will deal with the written forwarding address later in this decision.

The tenant has also claimed \$500.00 for stress, pain and suffering however did not indicate the details of such a claim in their application, which was dismissed during the hearing as I find the landlords have failed to meet parts one and two of the test for damages or loss under the *Act*, which I will explain in detail later in this decision.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

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 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 what is reasonable to minimize the damage or loss.

In this instance, the burden of proof is on both parties to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the respondent(s). Once that has been established, the applicant(s) must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant(s) did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlords' claim

Firstly, I will deal with the fact that the landlords failed to complete a written tenancy agreement. Section 13 of the *Act* applies and states:

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;

- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;
 - (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
 - (vi) which services and facilities are included in the rent;
 - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

[Emphasis added]

Based on the above, I **caution** the landlords to comply with section 13 of the *Act* in the future.

Item 1 - The landlords have claimed \$22.98 for an unpaid gas bill during the tenancy. This item was dismissed during the hearing as the landlords provided the incorrect gas bill in evidence to support this portion of their claim. The bill submitted by the landlords was for a period of time before the tenancy began with the exception of three days. I find the landlords failed to meet part three of the test for damages or loss as noted above. Therefore, this portion of the landlords' claim is dismissed without leave to reapply, due to insufficient evidence.

Item 2 - The landlords have claimed \$3,400.00 for a new fence. As the landlords confirmed that they did not complete an incoming or outgoing Condition Inspection Report and failed to submit before photos for my consideration, I find the landlords failed to meet part three of the test for damages or loss as noted above. Therefore, this portion of the landlords' claim is dismissed without leave to reapply, due to insufficient evidence. **I caution** the landlords to comply with sections 23 and 35 of the *Act* in the future which requires the landlords to complete both an incoming and outgoing Condition Inspection Report as follows:

Condition inspection: start of tenancy or new pet

- 23** (1) The 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 or on another mutually agreed day.
- (2) The landlord and tenant together **must** inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) **The landlord must** offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) **The landlord must complete a condition inspection report in accordance with the regulations.**
- (5) 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.**
- (6) The landlord **must** make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.

Condition inspection: end of tenancy

- 35** (1) The landlord and tenant together **must** inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.

- (2) The landlord **must** offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord **must** complete a condition inspection report in accordance with the regulations.
- (4) **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.**
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

[Emphasis added]

Item 3 - The landlords have claimed \$193.59 for a bathroom door, which was dismissed during the hearing as the landlords confirmed that they did not complete an incoming or outgoing Condition Inspection Report and failed to submit before photos for my consideration. I find the landlords failed to meet parts one and two of the test for damages or loss as noted above as there are no before photos and a Condition Inspection Report was not completed. Therefore, this portion of the landlords' claim is dismissed without leave to reapply, due to insufficient evidence.

Item 4 - The landlords have claimed \$59.07 for the cost to place covers on lights as requested by the tenant. This portion of the landlords' claim was dismissed during the hearing as I find the landlords have failed to meet parts one and two of the test for damages or loss under the *Act*. I find the landlords made the decision to add covers to the lights based on a request from the tenant. I also find that the tenant is not liable for the landlords' voluntary decision to add covers on lights and that it is only reasonable that lights have covers on them, versus an exposed light bulb. Therefore, this portion of the landlords' claim is dismissed without leave to reapply, due to insufficient evidence.

Item 5 - The landlords have claimed \$49.39 for the cost to replace what the landlords describe was a stolen CO2 detector from the rental unit. Both parties were affirmed and the tenant denied stealing a CO2 detector. The landlords did not submit a receipt or other documentary evidence to support that a CO2 detector was purchased for the rental unit at the start of the tenancy. In addition, there was no incoming or outgoing Condition Inspection Report to support that a CO2 detector was provided in the rental unit at the start of the tenancy and no photos were submitted to show the CO2 detector

at the start of the tenancy. As a result, this portion of the landlords' claim was dismissed during the hearing as I find the landlords have failed to meet parts one and two of the test for damages or loss under the *Act*. This item is dismissed without leave to reapply, due to insufficient evidence.

Item 6 - The landlords have claimed \$157.15 to change locks of the rental unit at the start of the tenancy, which the landlords stated was due to the tenant requesting one key to the rental unit instead of several keys. The landlords voluntarily made the lock change upon request from the tenant. As a result, this portion of the landlords' claim was dismissed during the hearing as I find the landlords have failed to meet parts one and two of the test for damages or loss under the *Act* and that the tenant is not liable for the landlords' decision to change the locks at the start of the tenancy. Furthermore, section 25(2) of the *Act* states:

Rekeying locks for new tenants

- 25** (1) At the request of a tenant at the start of a new tenancy, the landlord must
- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
 - (b) pay all costs associated with the changes under paragraph (a).

Based on the above, this item is dismissed without leave to reapply, due to insufficient evidence.

Item 7 - The landlords have claimed \$191.98 to change locks after the tenancy vacated the rental unit as the tenant failed to provide all of the keys to the rental unit. The tenant confirmed during the hearing that he did not return the keys directly to the landlords and did not return all of the rental unit keys. The landlords submitted a receipt in support of this portion of their claim. Section 37(2)(b) of the *Act* applies and states:

Leaving the rental unit at the end of a tenancy

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- (2) **When a tenant vacates a rental unit, the tenant must**
- (b) **give the landlord all the keys or other means of access that are in the possession or control of the tenant and that**

allow access to and within the residential property.

[Emphasis added]

Therefore, I find the tenant breached section 37(2)(b) of the *Act* by failing to return all the keys to the rental unit to the landlords. Consequently, I find the landlords have met the burden of proof and are entitled to **\$191.98** as claimed for this portion of their claim.

Item 8 - The landlords have claimed \$11.20 for the cost of air fresheners due to the smell of smoke in the rental unit after the tenant vacated the rental unit. This item was dismissed without leave to reapply during the hearing due to a lack of an incoming and outgoing Condition Inspection Report to support that the rental unit smelled like smoke at the end of the tenancy. As a result, this portion of the landlords' claim was dismissed during the hearing as I find the landlords have failed to meet parts one and two of the test for damages or loss under the *Act*. This item is dismissed without leave to reapply, due to insufficient evidence.

Item 9 - The landlords have claimed mileage in the amount of \$16.50 to attend the rental unit to unlock the rental unit for the tenant during the tenancy. This item was dismissed during the hearing as I find that there is no remedy for such a cost under the *Act* and is a cost associated with being a landlord. There was no evidence presented or alleged that this was a regularly occurring situation in the tenancy. As a result, this portion of the landlords' claim was dismissed during the hearing as I find the landlords have failed to meet parts one and two of the test for damages or loss under the *Act*. This item is dismissed without leave to reapply, due to insufficient evidence.

Item 10 - The landlords have claimed \$500.00 for stress, pain and suffering however did not indicate the details of such a claim in their application, which was dismissed during the hearing as I find the landlords have failed to meet parts one and two of the test for damages or loss under the *Act*. This item is dismissed without leave to reapply, due to insufficient evidence.

As the landlords' application had some merit, I grant the landlords the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

Tenant's claim

The tenant has claimed \$1,125.00 for the return of the security deposit. The tenant admitted during the hearing that he has not provided his written forwarding address to

the landlords. As noted above, I find that the landlords would have only been made aware of the tenant's new address at the time the tenant submitted their application. Pursuant to the Residential Tenancy Branch Practice Directive 2015-01, the parties were advised that the landlords were deemed to have received the tenant's written forwarding address from the tenant as of the date of the hearing, February 22, 2019. The tenant's forwarding address has also been included on the cover page of this decision for ease of reference. Should the landlords fail to deal with the tenant's security deposit in accordance with section 38 of the *Act*, I grant the tenant leave to reapply for compensation under the *Act*.

The tenant has also claimed \$500.00 for stress, pain and suffering; however, did not indicate the details of such a claim in their application, which was dismissed during the hearing as I find the landlords have failed to meet parts one and two of the test for damages or loss under the *Act*. This portion of the tenant's claim is dismissed without leave to reapply due to insufficient evidence.

I find the landlords have established a monetary claim in the amount **\$291.98** comprised of \$191.98 for item 7, plus the \$100.00 filing fee. The tenant's security deposit of \$1,125.00 has accrued \$0.00 interest since the start of the tenancy. **I authorize** the landlords to retain **\$291.98** of the tenant's security deposit in full satisfaction of the landlords' monetary claim. I find the tenant's security deposit balance is now **\$833.02** effective immediately. The landlords must deal with the tenant's security deposit balance of \$833.02 pursuant to section 38 of the *Act*.

Conclusion

A portion of the tenant's application is premature and the remaining portion is dismissed without leave to reapply as noted above.

The landlords' application has some merit. The landlords have established a monetary claim in the amount \$291.98 comprised of \$191.98 for item 7, plus the \$100.00 filing fee. The tenant's security deposit of \$1,125.00 has accrued \$0.00 interest since the start of the tenancy. The landlords have been authorized pursuant to sections 38, 67 and 72 of the *Act* to retain \$291.98 of the tenant's security deposit in full satisfaction of the landlords' monetary claim.

The tenant's security deposit balance is now \$833.02 effective immediately. The landlords must deal with the tenant's security deposit balance of \$833.02 pursuant to section 38 of the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 28, 2019

Residential Tenancy Branch