



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNDC, MNR, MNSD, 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 unpaid utilities, cleaning, garbage removal, repairs and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied for the return of double the security deposit and for the recovery of 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. The 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*.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid utilities, cleaning, garbage removal, repairs and for the filing fee? Did the landlord make application to retain all or part of the deposit in a timely manner? Is the tenant entitled to the return of double her security deposit and to the recovery of the filing fee?

Background and Evidence

The parties agreed that the tenancy started on October 31, 2017 and ended on November 30, 2018. The monthly rent was \$1,750.00 and prior to moving in the tenant paid a security deposit of \$875.00. A move in inspection was conducted and a report was filed into evidence. The copy of the report is unclear and hard to read. A move out inspection was carried out on December 04, 2018 in the presence of the tenant. A report of this inspection was not filed into evidence.

The parties agreed that the rental unit had three bedrooms and that the tenant moved in with two of her friends, who rented the extra bedrooms. The landlord stated that one of the room mates moved out and the tenant found another person to rent the vacant bedroom. The tenant agreed that she did not check with the landlord whether he approved of this new tenant. The landlord added that sometime during the tenancy, the tenant moved out of the unit and rented the bedrooms out on Airbnb. The tenant agreed that she had moved out of the rental unit but stated that she had done so for only one month. The tenant also agreed that her bedroom was rented out to another person after she had moved out but denied that she was renting out rooms through Airbnb.

The landlord stated that on two occasions when he visited the unit to carry out maintenance, he saw unfamiliar people residing in the rental home. The landlord stated that he spoke with these people and learned that the tenant was renting out rooms through Airbnb.

The landlord stated that a move out inspection was scheduled for December 04, 2018. The tenant attended the inspection along with her partner. The tenant stated that the landlord had a laundry list of items that needed repair and did not have a move out inspection report that he could fill out in the presence of the tenant. The parties were unable to come to an agreement. The landlord agreed that he did not fill out a move out inspection report.

The landlord also agreed that he had received the forwarding address of the tenant by registered mail early December 2018. The landlord could not remember the exact date but stated that the envelope was post stamped November 26, 2018. The landlord made this application on December 14, 2018.

The landlord stated that the rental unit needed cleaning and repairs to the blinds and door frame. The linoleum was stained and needed to be replaced. Light bulbs and the bathroom key were missing, and one light fixture and window were broken. The tenant agreed that she has left some items behind and stated that some of the items did not belong to her. The landlord stated that they may have belonged to the various occupants that the tenant had rented rooms to during the tenancy.

The tenant confirmed that she did not want any of those items back. The landlord agreed to dispose of them by taking them to the local dump.

The landlord provided photographs to support his testimony of the condition of the rental unit and filed proof of the costs incurred and to be incurred to restore the unit to its original condition. The tenant also filed photographs of the rental unit at the start of tenancy. These photographs depict peeling paint, mildew and an old bathroom door.

The landlord is claiming the following:

1.	Utility bill – Water	\$245.78
2.	Blinds	\$76.51
3.	Light fixture	\$31.51
4.	Bathroom key	\$5.89
5.	Light bulbs	\$21.71
6.	Re key dead bolt	\$37.00
7.	Leaf disposal	\$10.50
8.	Garbage disposal	\$23.25
9.	Repairs to door frame and linoleum	\$973.35
10.	Replace broken window	\$138.60
11.	Cleaning	\$240.00
12.	Storage of tenant's items	\$500.00
13.	Filing fee	\$100.00
	Total	\$2,404.10

Analysis

Landlord's application:

The tenant agreed to claims #1, #5 and #8

2. Blinds - \$76.51

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the blinds. . As per this policy, the useful life of blinds is ten years.

The landlord testified that the blinds were approximately 17 years old and therefore I find that the blinds had outlived their useful life and accordingly would have to be replaced by the landlord at his own cost. Therefore the landlord's claim for \$76.51 is dismissed.

3. Light fixture - \$31.51

As per section 40 of the *Residential Tenancy Policy Guideline* the useful life of light fixtures is 15 years. The landlord stated that he had put in a new light fixture approximately six years ago. Based on the age of the light fixture and the photographs and receipt filed into evidence, I find it appropriate to award the landlord \$18.90 which is the prorated value of the remainder of the useful life of the fixture

4. Bathroom key - \$5.89

The landlord stated that the tenant did not return the bathroom key and it cost him \$5.89 to replace it. The tenant denied having been provided with a bathroom key. Since the move in inspection report does not indicate that such a key was supplied to the tenant, the landlord's claim to replace it, is dismissed.

5. Light bulbs - \$21.71

The tenant agreed to cover the cost of light bulbs.

6. Re key deadbolt - \$37.00

I accept the landlord's testimony that there were multiple tenants residing at the rental unit and therefore the landlord was not sure how many keys were given to these occupants. I award the landlord his claim to re key the dead bolt.

7. Leaf disposal – 10.50

The landlord filed photographs showing leaves in the yard that needed to be disposed of. The tenant stated that she raked most of the leaves, but they kept falling. I find that the landlord has made a very reasonable claim for leaf removal and accordingly I award him his claim.

8. Garbage disposal - \$23.25

The tenant agreed to cover the cost of garbage disposal.

9. Repairs to door frame and linoleum - \$973.35

The landlord has filed a copy of an estimate to repair the door frame and replace the linoleum. The landlord has also filed photographs of the damage to both to support his testimony. The landlord testified that the linoleum was five years old and the doors were more than 20 years old. Pursuant to section 40 of the *Residential Tenancy Policy Guideline* the useful life of flooring is 10 years and of doors is 20 years.

Accordingly the flooring had 5 years of useful life left but the door had outlived its useful life. Based on the estimate filed into evidence the landlord is claiming \$458.85 to replace the linoleum and \$514.50 to repair the door. I find that the landlord is entitled to half his claim to replace linoleum in the amount of \$229.42 and is not entitled to the cost of door repairs.

10. Replace broken window - \$138.60

The tenant agreed that the window was broken but stated that she did not break it. The tenant also agreed that at the start of tenancy the window was not broken. Based on a balance of probabilities, it is more likely than not that the window was broken by one of the occupants of the rental unit during the term of the tenancy and therefore, I find that the tenant is responsible for the cost of repairs. The landlord filed an estimate in the amount of \$138.60. I find that the landlord is entitled to his claim.

11. Cleaning - \$240.00

Based on the photographs filed into evidence by the landlord, I find that the landlord is entitled to the cost of cleaning.

12. Storage of tenant's items - \$500.00

The tenant left behind many unwanted items including a bar-b- que, tents, wheelbarrow, some furniture, microwave oven, lawn mower, lawn chairs, coat rack, circular saw, hedge trimmer etc. The tenant stated that most of the items did not belong to her and confirmed that she had no intentions of returning to pick up these items. Accordingly the landlord will have to dispose of these items at his own cost. Even though the landlord is claiming the cost of storage of these items, I find it appropriate to award the landlord the cost of disposal.

Since the tenant has left behind a substantial number of items that will require man power to transport to the dump, I award the landlord his claim of \$500.00 towards the cost of the disposal of these items.

13. Filing fee - \$100.00

The landlord has proven most of his claim and therefore is entitled to the recovery of the filing fee.

Overall the landlord has established a claim as follows:

1.	Utility bill – Water	\$245.78
2.	Blinds	\$0.00
3.	Light fixture	\$18.90
4.	Bathroom key	\$0.00
5.	Light bulbs	\$21.71
6.	Re key dead bolt	\$37.00
7.	Leaf disposal	\$10.50
8.	Garbage disposal	\$23.25
9.	Repairs to door frame and linoleum	\$229.42
10.	Replace broken window	\$138.60
11.	Cleaning	\$240.00
12.	Storage of tenant's items	\$500.00
13.	Filing fee	\$100.00
	Total	\$1,565.16

Tenant's application:

Section 35 of the *Act* addresses the condition inspection and states as follows:

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.

Based on the testimony of both parties I find that the landlord was not compliant with section 35(3) of the *Act*. The landlord failed to generate a move out condition inspection report during the move out inspection that was conducted in the presence of the tenant.

Section 36 of the *Residential Tenancy Act* address the consequences if inspection report requirements are not met and states the following:

Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and

- (b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, 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

- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) 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.

Based on sections 35 and 36 of the *Residential Tenancy Act*, I find that the landlord's right to claim against the security deposit is extinguished and the landlord must return the security deposit to the tenant.

The tenant applied for the return of double the deposit and for the filing fee. Section 38 of the *Residential Tenancy Act* requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to the recovery of double the amount of the deposit.

The tenancy ended on November 30, 2018 and the landlord is deemed to have received the tenant's forwarding address on December 03, 2018. The landlord made application to keep the deposit in partial satisfaction of his claim within a timely manner, on December 14, 2018. Therefore, I find that the tenant is not entitled to the return of double the deposit. However the tenant is entitled to the return of \$875.00 which is the amount of the security deposit that is held by the landlord.

Since the tenant has not proven her claim, she must bear the cost of filing her application.

Overall the landlord has established a claim of \$1,565.16 and the tenant has established a claim of \$.875.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$690.16 which consists of the difference between the established claims of the parties.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$690.16. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord may retain the security deposit. I grant the landlord a monetary order in the amount of **\$690.16**.

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: April 18, 2019

Residential Tenancy Branch