



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSD FFT
For the landlords: MNDL-S FFL

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* (the Act). The tenant applied for the return of their security deposit and filing fee. The landlords applied for a monetary claim for damages to the unit, site or property, to retain the tenant's security deposit towards any amount owing, and the filing fee.

The landlords attended the teleconference hearing. The tenant did not attend the hearing. As the tenant did not attend the hearing, their application was **dismissed without leave to reapply** after the 10-minute waiting period had elapsed pursuant to Rules 7.1 and 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). The hearing continued with the landlords' application only.

The landlords were affirmed, the hearing process was explained and the opportunity to ask questions was provided. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated March 23, 2020 (Notice of Hearing), the application and documentary evidence were considered. The landlords provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on March 24, 2020. The landlords provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the tenant's estate representative (representative) and the address for the representative provided by them in their application served on the

landlord. The registered mail tracking number has been included on the style of cause for ease of reference.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the Act. As a result, while I would normally find the tenant was deemed served as of March 30, 2020, I will use the actual date of April 6, 2020, which is the date indicated on the Canada Post registered mail tracking website. As the tenant representative has found to be served as of April 6, 2020 and did not attend the hearing, I find the landlords' application to be undisputed and the hearing proceeded without the tenant representative present in accordance with the Rules.

Preliminary and Procedural Matter

The landlords confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The decision will be emailed to the tenant representative at the email address provided by the representative in their application.

Issues to be Decided

- Are the landlords entitled to a monetary claim under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Are the landlords entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenancy began on July 21, 1987. Originally monthly rent was \$425.00 per month and increased over the years to the most recent amount of \$915.00 per month. The tenant paid a security deposit of \$213.00 at the start of the tenancy, which has accrued interest, and which continues to be held by the landlords. Both the interest and the security deposit will be addressed later in this decision.

The landlords' monetary claim of \$1,747.01 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Removal of tenant's junk	\$130.00
2. 2 loads of junk to dump	\$150.00

3. Truck charge	\$100.00
4. Dump charge	\$82.01
5. Repair bifold door (removal and reinstallation)	\$210.00
6. Cleaning suite	\$160.00
7. Loss of rent for January 2020	\$915.00
TOTAL	\$1,747.01

Regarding item 1, the landlords have claimed \$130.00 to pay RL to remove all the junk left behind by the tenant inside the rental unit. The landlords testified that the items left behind by the tenant were of no value and had to be disposed of as the tenant passed away on December 20, 2019. The landlords stated that the rental unit keys were returned to the landlords on January 1, 2020. The landlords referred to both before and after photos in support of this portion of their claim. The photos show an old TV, old bed with dated headboard, an old table, mismatched old chairs and an old cabinet.

Regarding item 2, the landlords have claimed \$150.00 have claimed \$150.00 to pay for two people to remove the junk left behind by the tenant in the rental unit and bring the items for disposal at the dump. The landlords also provided a receipt for the amount of \$150.00.

Regarding item 3, the landlords have claimed \$100.00 to pay for the truck used to haul the junk to the dump for a total of two trips. The landlords referred to a receipt in the amount of \$100.00 for this portion of their claim.

Regarding item 4, the landlords have claimed \$82.01 for the cost charged at the dump for the junk disposal. The landlords presented a dump receipt for \$82.01 in support of this portion of their claim.

Regarding item 5, the landlords have claimed \$210.00 for the cost to replace a damaged bifold closet door. The landlords testified that the tenant punched a hole, or someone invited onto the property by the tenant, punched a hole in the bifold closet door and that a new bifold door was required. The landlords stated that this action was negligence by the tenant. A copy of the cheque to pay for the repair was submitted in evidence and is in the amount of \$210.00.

Regarding item 6, the landlords have claimed \$160.00 for suite cleaning and referred to a receipt for the same amount claimed. The landlords once again referred to the photo

evidence to support how dirty the rental unit was at the end of the tenancy, and that cleaning was required due to the condition the rental unit was left in by the tenant.

The landlords stated that due to the junk left behind by the tenant and the cleaning required, and the repairs, the landlords lost rent for January 2020 and are claiming \$915.00 as a result.

Analysis

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

As the tenants did not attend the hearing to present the merits of their application, I **dismiss** the tenant's application in full **without leave to reapply**. As a result, I do not grant the filing fee for the tenant's application.

Regarding the landlord's application, I find that the landlords have provided sufficient evidence to support all items claimed and have met the burden of proof as a result. I also find the amounts claimed to be reasonable and that the tenant breached section 37 of the Act by failing to leave the rental unit in a reasonably clean condition and that the damages claim, exceeded reasonable wear and tear. I also agree with the landlords that the tenant's personal items had no value as all items appeared to be old, dated and of no value and could be disposed of as junk by the landlords. In addition, I have not applied depreciation to the damages portion of the claim, as I find the hole in the closet door to be negligence and that depreciation does not apply when there is negligent damage by the respondent.

As the landlords were successful with their application in the amount of **\$1,747.01**, I grant the landlords the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act, which brings the total with filing fee to **\$1,847.01**.

I also find that the tenant's \$213.00 security deposit, has accrued a total of \$165.22 in interest under the Act, for a total security deposit including interest of \$378.22.

As the landlord continues to hold the security deposit of the tenants, I **authorize** the landlord to retain the tenant's full security deposit including interest of **\$378.22** in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order for the balance owing by the tenant to the landlords in the amount of **\$1,468.79** pursuant to section 67 of the Act.

Conclusion

The tenant's claim is dismissed without leave to reapply.

The landlords' claim is fully successful.

The landlord has proven a total monetary claim of \$1,847.01. The landlords have been authorized to retain the tenant's full security deposit including interest of \$378.22 in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order for the balance owing by the tenant to the landlords in the amount of \$1,468.79 pursuant to section 67 of the Act. Should the landlords require enforcement of this order, it must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenant may be held responsible for any costs related to enforcement of the order.

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: July 16, 2020

Residential Tenancy Branch