



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNDCT, MNSD, FFT
Landlord: MNDCT, MNSD, FFT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

TTJ (“landlord”) represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant duly served with each other’s Applications and evidence.

Issue(s) to be Decided

Are both parties entitled to a monetary order for compensation and losses that they have applied for?

Are both parties entitled to recover the filing fees for their applications?

Is the tenant entitled to return of their security deposit?

Background and Evidence

This tenancy originally began on September 1, 2018. Both parties renewed the agreement on July 22, 2019 for fixed term from September 1, 2019 to May 31, 2020. The tenancy ended on May 31, 2020. Monthly rent was set at \$3,900.00, payable on the first of every month. The landlord still holds \$1,900.00 of the tenant's security deposit for this tenancy.

The landlord filed their application for the following monetary claims related to losses associated with this tenancy:

Item	Amount
Repair & diagnostics for refrigerator and oven	\$5,128.00
Refrigerator & oven inspection	150.00
Carpet Cleaning	120.00
Water damage	400.00
Unpaid Electricity Bill	293.00
Unpaid water meter	33.00
Filing Fee	100.00
Total Monetary Order Requested	\$6,224.00

The landlord's agent JL testified that although a move-in inspection report wasn't completed for this tenancy, as an agent she had thoroughly inspected the rental unit before the tenant had moved in, and all appliances were in working and excellent

condition. The landlord testified that they were unaware that the appliances required repairs until the date of the move-out inspection. JL testified that she had discovered that the refrigerator and oven were both not working, and that there was water damage throughout the rental unit. The landlord testified that they had discovered items belonging to the tenant behind the refrigerator which may have hindered the proper function of the appliance. The landlord also expressed concern that the tenant experienced issues after cleaners had attended to clean the refrigerator.

JL testified that although the building was built in 2011, the rental unit was the display suite, and was not occupied until 2013 when the landlord had taken possession of the brand new rental unit. The landlord testified that even during their occupancy, they had barely used the oven, and took good care of the upgraded appliances. The landlord testified that the tenant was the first and sole tenant for this rental unit as of 2018, and that they did not give permission for the tenant to sublet the rental unit at the end of the tenancy. The landlord testified that the subtenants had a pet, which they were also unaware of. JL testified that she was shocked during the move-out inspection at the condition of the rental unit, and how the tenant failed to leave the rental unit in reasonably clean and undamaged condition. The landlord submitted a copy of the move-out inspection report, invoices, as well as photos to support their claim.

The tenant disputes the landlords' monetary claims for damages citing wear and tear. The tenant testified that she had reported issues with the refrigerator and oven during the tenancy, but the landlord failed to address these issues. The tenant testified that the water damage was from the water leaking from the broken freezer, and failure of the landlord to repair and maintain the rental unit rather than her deliberate or negligent actions.

The tenant also disputes the landlord's monetary claim for cleaning. The tenant testified that she had hired professional cleaners on May 30, 2020 and June 1, 2020, which she had submitted the invoices for. The tenant notes that this included carpet cleaning. The tenant submits that the photos submitted by the landlord were of the rental unit before the second cleaning. The tenant testified that she had paid for the second cleaning in order to address the landlord's concerns. The tenant feels that instead of addressing any outstanding issues or concerns, the landlord hired their own cleaner instead without consulting with the tenant.

The landlord is also seeking a monetary order for the unpaid utilities, which the tenant is not disputing.

The tenant also filed a monetary claim for losses associated with this tenancy as set out below:

Item	Amount
Return of security deposit less unpaid utility and water bills	\$1,574.00
Compensation for loss of use of oven	2,730.00
Compensation for loss of use of refrigerator	3,781.00
Filing Fee	100.00
Total Monetary Order Requested	\$8,185.00

The tenant testified that she had first informed the landlord on July 6, 2019 that the freezer portion of the refrigerator was not working properly. The tenant submitted copies of her messages to the landlord. The tenant submits that at the end of August the freezer “weirdly started to work again by itself and stopped working again end of Sept”. The tenant testified that the landlord never repaired or replaced the refrigerator, and she ended up purchasing a mini refrigerator. The tenant submitted a copy of the receipt for the purchase made on March 13, 2020, which the tenant made due to the pandemic in order to store her meat and groceries. The tenant provided a calculation for a fifteen percent rent reduction of her monthly rent for the months of September 1, 2019 through to March 12, 2020, plus reimbursement for the purchase of the mini refrigerator in the amount of \$271.00 for total compensation of \$3,781.00 for the landlord’s failure to repair or replace the refrigerator. Both parties confirmed that the tenant did not leave the mini refrigerator at the rental unit when she had moved out.

The tenant testified that she first reported a problem with the oven on October 12, 2019. The tenant submitted a video that she had taken and sent to the landlord documenting the problem, as well as the messages sent to the landlord. The tenant testified that the landlord failed to repair or replace the oven, and she was unable to use the appliance for seven months. The tenant submitted a claim for a rent reduction in the amount of ten percent for the period of October 12, 2019 to May 31, 2020 for total compensation of \$2,730.00 for the landlord’s failure to repair or replace the oven. The tenant testified that she suffered a significant loss during this tenancy for the loss of use of both appliances, and felt “mentally tortured” and helpless as she was unaware of her rights as a tenant until the landlord had filed an application for dispute resolution.

The landlord testified that they did not follow up or repair the oven and refrigerator because they had believed the problems had been resolved. The landlord disputes having knowledge of the tenant's long-term loss of use of these appliances, which they testified is supported by the fact that the tenant renewed the lease by signing a new tenancy agreement on July 22, 2019 despite the tenant's testimony that she had major issues. The landlord testified that they believe the tenant had damaged these appliances, and they were not aware of the damage until the move-out inspection. The landlord disputes the monetary claims for losses by the tenant as they feel that the losses claimed were not associated with the landlord's failure to fulfill their obligations under the *Act* and tenancy agreement. The landlord feels the tenant's monetary claims were retaliatory.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of both applications and my findings around them are set out below.

Under the *Act*, a party claiming a loss bears the burden of proof. The applicant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.

4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, both applicants bear the burden of establishing their claim on the balance of probabilities. They must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the applicants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the applicant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

As the tenant is not disputing the landlord's monetary claim for unpaid utilities and the water bill, I allow this portion of the landlord's monetary claim.

The tenant is seeking compensation for the failure of the landlord to maintain, repair, or replace the oven and refrigerator. The tenant documented the messages she had sent to the landlord informing the landlord of the issues with these appliances. Although it was undisputed by both parties that both the oven and refrigerator required repairs, the landlord disputes that they have failed in their obligations.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

32 (1) *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.

The landlord testified that although the tenant had contacted the landlord regarding the two appliances, the landlord had assumed that the tenant no longer had issues, especially since the tenant signed a new agreement on July 22, 2019 for a new term. I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows. As stated above, the tenant applicant has the burden of proof in supporting their claim for monetary compensation. Although the expectations of the tenant had not been met for this tenancy, I find that the landlord had met their obligations under the *Act*, tenancy agreement, and as required by law. Although I find it undisputed that the several

outstanding repairs need to be addressed during this tenancy, I am not satisfied that the tenant provided formal and clear written requests to the landlord to perform these repairs, nor am I satisfied that the tenant had informed the landlord that the repairs remained outstanding. I find the landlord provided sufficient evidence to support the confusion surrounding the outstanding repairs, especially when the tenant referenced an intermittently functioning refrigerator in her own evidentiary materials. Furthermore, despite the tenant's testimony that she had experienced a tremendous loss associated with the unresolved repairs and landlord's failure to address them, the tenant continued with the tenancy without filing any formal applications for dispute resolution, and even signed a new tenancy agreement for a new term. I find that the tenant has not met the evidentiary burden to support the losses applied for. I am not satisfied that the tenant gave the landlord a fair opportunity to address the outstanding repairs during the tenancy, nor am I satisfied that the tenant suffered the monetary losses due to the landlord's contravention of the *Act* or tenancy agreement. On this basis, I dismiss the tenant's application for monetary losses without leave to reapply. The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was not successful with her claim, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Section 37(2) of the *Act* states that "when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The landlord is seeking monetary compensation related to repairing the refrigerator and oven. Although the landlord admits that they did not fill out a move-in inspection report, the landlord testified that both appliances were in excellent and working condition at the beginning of the tenancy. The landlord believes that both appliances were damaged by the tenant, which the tenant disputes. The landlord testified that both appliances were brand new in 2013 as the landlord had purchased the display suite, and had barely used the appliances before renting the unit out to the tenant in 2018. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of both appliances is 15 years. At the end of the tenancy both appliances still had 7 years of useful life left according to the policy guideline. As the appliances had yet to exceed their useful life, I must determine whether the landlord had met the burden of proof to support that the tenant had damaged both appliances.

Although I am satisfied that both appliances required repairs during this tenancy, I find that the landlord had failed to provide sufficient evidence that either appliance stopped functioning properly due to the tenant's actions. Although the landlord testified that the refrigerator was damaged by the tenant after the cleaner had attended, and possibly by the fact the tenant's belongings were found around the refrigerator, I am not satisfied

that these actions contributed to the failure of the appliances. In consideration of the evidence and testimony before me, I find that the landlord had not met their evidentiary burden to support that the tenant had damaged the oven and refrigerator, and on this basis, I dismiss the landlord's monetary claims related to these two items without leave to reapply.

The landlord is also seeking compensation to repair the water damage in the suite. Although the landlord believes that the water damage was also caused by the tenant, the tenant disputes the landlord's claims. Although the landlord supported their claim by proving that the damage exists, I find that the landlord failed to provide sufficient evidence to support that the damage was caused by the deliberate or negligent actions of the tenant. On this basis, I dismiss the landlord's monetary claim related to the water damage.

Lastly, the landlord filed a monetary claim for the carpet cleaning, which the tenant also disputes. The tenant provided documentary evidence to support that she had professionally cleaned the rental unit twice. Despite the professional cleaning, the landlord testified that the tenant did not properly leave the rental unit in reasonably clean condition, as evidenced by the photos and the fact that the landlord had to hire a professional cleaner to re-clean the carpet. Although I accept the tenant's testimony that she had hired a professional cleaner on two occasions, I find that the landlord had provided sufficient evidence to support that the cleaning was not sufficient to remove the stains left by the tenant or other occupants during this tenancy. Although the tenant feels that the landlord failed to mitigate their losses by instructing the tenant or cleaners on that the rental unit was not reasonably clean, the obligation is on the tenant and not the landlord to leave the rental unit in reasonably clean condition. I find that the landlord had the right to re-clean the carpet at the end of the tenancy as the tenant failed to leave the carpet in reasonably clean condition. On this basis, I allow the landlord's monetary claim for \$120.00.

As the landlord was only partially successful with their claim, I allow the landlord to recover half the filing fee for their application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit satisfaction of the monetary claim. The remainder shall be returned to the tenant.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,404.00 as set out in the table below:

Item	Amount
Carpet Cleaning	\$120.00
Unpaid Electricity Bill	293.00
Unpaid water meter	33.00
Half of Filing Fee	50.00
Less Security Deposit Held by landlord	-1,900.00
Total Monetary Order to Tenant	\$1,404.00

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the applications are dismissed without leave to reapply.

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: October 7, 2020

Residential Tenancy Branch