



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MND-S, MNDC-S, FF

Introduction

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation for alleged damage to the rental unit by the tenants, compensation for a monetary loss or other money owed, authority to keep the tenants' security deposit to use against a monetary award, and recovery of the cost of the filing fee.

The landlord and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant accepted documentary evidence submitted prior to the hearing, and make submissions to me. The tenant did not file evidence.

I have reviewed all oral, written, and other accepted evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant, to keep the tenant's security deposit to use against a monetary award, and filing fee?

Background and Evidence

The tenancy began on April 1, 2019 and ended on or about December 31, 2021. The monthly rent was \$1,500 and the tenants paid a security deposit and pet damage deposit of \$750 each.

The landlord's monetary claim is as follows:

Description	Quantity	Unit price	Amount
Labour - Yard Garbage cleanup/removal	36	\$35.00	\$1,260.00
Labour - Wash, paint, caulk base boards, repair walls, steam clean windowsills.	36	\$35.00	\$1,260.00
Fuel	287.759	\$1.89	\$543.86
Loss of 1 weeks wages	64.31	\$40.00	\$2,572.40
January loss of rent	1500	\$1.00	\$1,500.00
Cleaner's	30	\$11.00	\$330.00
Maintenance repair man/Property manager	1130	\$1.00	\$1,130.00
Total			\$8,596.26

[Reproduced as written]

Claim 1, labour for yard cleanup/removal

The landlord submitted that his wife and repairman were there and the cleanup took 7 days. The condition was quite severe, with the amount of garbage left. The cleanup took hours and hours, with the amount of dog feces and rotting food. The time spent each day was 10 hours and the claim is reasonable.

The tenant submitted that he did a lot of cleaning when he first got there and would have cleaned up more had he known about it.

Claim 2, washing, painting, cleaning and repairs

The landlord submitted that the work was over the course of 4 days for 2 individuals. The photos filed in evidence shows the state of the rental unit before the work and

depicts how the rental unit was left by the tenant. The landlord said that claim was fair as the amount does not reflect the amount of time spent.

In response, the tenant submitted that the walls were pretty messed up from the frozen pipes and they were not able to clean up as there was no running water. The tenant said that the stove and fridge were not on wheels. The tenant said he agrees to the light fixture.

In rebuttal, the landlord said that he believed that the tenants were vacating on December 15 and if they had, they would have been able to organize showings. The landlord said that the pipes froze because the tenants were not present in the rental unit.

The tenant said that the house was empty and could have arranged showings had there been better communication.

Claim 3, Fuel

The landlord said that he lives 6 hours away and the claim for fuel costs reflects the average gas price.

Claim 4, Loss of wages

The landlord said that he took a week off work to deal with the rental unit and get it ready. The landlord said that the claim was reasonable considering the amount of actual time.

Claim 5, January loss of rent

The landlord submitted they were entitled to a loss of rent the month following the end of tenancy as they were strung along by the tenants during December. The landlord said they thought that the tenants would be cleaning as they went along, but they would not allow showings until mid December.

In response, the tenant said that the landlord could have arranged showings as the house was empty by December 15th. The tenant submitted that the landlord would not have rented out the rental unit as he never saw it until January.

Claim 6, Cleaning

The landlord submitted that the charge incurred was after they cleaned themselves, to make the rental unit presentable for the next tenancy.

The landlord said that the claim of \$1,130 could be removed.

The landlord confirmed there was no move-in or move-out condition inspection report. (Report).

The tenant submitted that he agreed with the light globe damage.

The landlord's evidence included an invoice from a reno company, dated February 13, 2022 in the amount of \$1130, a cleaning invoice for \$330 dated May 5, 2022, fuel receipts from May 2022, text messages between the parties, and photos from before and after the tenancy.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Test for damages or loss

In a claim for damage or loss under the Residential Tenancy Act, Residential Tenancy Regulations or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements, as provided for in sections 7 and 67 of the Act:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party does whatever is reasonable to minimize the damage or loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

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 obligation to prove their claim and the claim fails.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

Under sections 23(3) and 35(3) of the Act, a landlord must complete a condition inspection report in accordance with the Residential Tenancy Regulations and both parties must sign the report.

Claims 1 and 2, labour for yard cleanup/removal/ washing, painting, cleaning and repairs -

I have reviewed the landlord's photographs and find that they are black and white, grainy copies of photographs and are difficult to accurately show all areas of concern. I was, however, able to determine that there was a large amount of garbage and debris left in the yard, for which I find the tenants were responsible for removing. In addition, I also find that the tenants did not leave the rental unit reasonably clean overall. I also find that the rental unit did require repairs. There were many marks on the walls.

While the tenant stated that they were not able to clean the rental unit due to frozen pipes, I find that the tenants were still responsible for cleaning.

In reviewing the landlord's claim, and in consideration of the fact the photos were grainy and unclear and there was no move-in Report as required by the Act, I could not determine that the cleaning, garbage removal and repairs would take 72 hours in total. Additionally, I find there was no breakdown or time records of the claim of 36 hours for each claim.

For this reason, I find that a reasonable amount to grant the landlord under the circumstances and lack of clear evidence and move-in Report is \$1,500. I **grant** the landlord a monetary award of **\$1,500**.

Claims 3 and 4, Fuel/Loss of wages -

As to the landlord's request for their time and fuel, I find that the landlord has chosen to incur costs that cannot be assumed by the tenant. I do not find the tenant to be

responsible for the landlord choosing to expend time on renting the rental unit. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business, such as traveling to the rental unit or taking time off work. Therefore, I find that the landlord may not claim for their time and fuel costs, as they are costs which are not named by the Act.

As a result, I therefore **dismiss** the landlord's claim of **\$543.86** for fuel and loss of wages for **\$2,572.40**.

Claim 5, January loss of rent -

I find the landlord's evidence is inconsistent on this claim. The landlord filed an invoice from February 13, 2022 for delivery and installation of a new stove, repair of a water line, and cleaning. The landlord's fuel receipts, said to be incurred due to the requirement to deal with the rental unit after the tenancy ended, were from May 2022.

When I consider this claim, I find the landlord submitted insufficient evidence that they did whatever was reasonable to minimize their loss for January 2022. I find a reasonable measure would be to immediately do the work on the rental unit in order to obtain another tenant. Additionally, the February 13, 2022, email shows that the rental unit would not have been ready until that time and the landlord's work on the rental unit was apparently not done until May 2022, as shown by the fuel receipts. Additionally, the landlord failed to submit advertisements of when the rental unit was first put back on the market.

I find the inconsistent evidence fails to satisfy the landlord's requirement to mitigate their loss and as a result, I **dismiss** the landlord's claim for the loss of rent for January 2022 of **\$1,500** without leave to reapply.

Claim 6, Cleaning -

The receipt for this claim was dated May 5, 2022. I find the length of time from the end of the tenancy on December 31, 2021, until the cleaning in May 2022, not reasonable. I was not convinced the cleaning was as a result of the tenant's actions.

For this reason, I **dismiss** the landlord's claim for **\$330**, without leave to reapply.

The landlord removed the claim for maintenance repair man/property manager of \$1,130.

In light of the tenant's agreement to light globe damage, I grant the landlord a monetary award of **\$60**, which is the amount shown on the February 13, 2022, invoice. I note the invoice showed two charges for "lites", each for \$60. However, I find the second charge was not properly explained.

As a result, I therefore find the landlord has established a monetary claim of **\$1,560**, as noted above.

Due to partial success with their application, I grant the landlord recovery of their filing fee of **\$100**.

Using the offsetting provisions contained in section 72 of the Act, the landlord may withhold the tenants' security deposit and pet damage deposit of \$750 each, in partial satisfaction of the monetary award. With interest to date, the tenants' security deposit and pet damage deposit is \$753.89, each.

Conclusion

I issue a monetary order of **\$152.22** in favour of the landlord as follows:

ITEM	AMOUNT
1. Cleaning, removal, repairs	\$1,500
2. Light globe replacement	\$60.00
3. Filing fee	\$100.00
4. <i>Less security deposit</i>	(\$753.89)
5. <i>Less pet damage deposit</i>	(\$753.89)
TOTAL	\$152.22

The landlord is provided with a Monetary Order in the above terms and the tenants must be served with this order as soon as possible to be enforceable. Should the tenants 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.

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*. Pursuant to

section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 4, 2023

Residential Tenancy Branch