



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord: MND, MNDC, MNSD, FF

Tenant: MNSD

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The landlord filed on **June 09, 2014** pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A monetary Order for damage / loss as orally amended – Section 67
2. An Order to retain the security deposit – Section 38
3. An Order to recover the filing fee for this application - Section 72.

The tenant filed on **June 30, 2014** for Orders as follows;

1. An Order for return of security deposit - Section 38

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute, present *relevant* evidence, and make *relevant* submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present. Neither party was aware of the other's application although each joined the conference call hearing on the basis of their own application. The tenant claims they sent the landlord their Notice of Hearing after they filed their application; and, on the 1st. of September 2014 they further sent their evidence to the landlord and the Branch. The tenant claims they mailed everything to the proper addresses and did not possess any tracking information for the mail. The Branch did not receive any evidence from the tenant in the 6 weeks prior to the hearing. The landlord claims they did not receive any evidence from the tenant. The Branch received all of the landlord's evidence several days after their filing.

The landlord provided evidence that the tenant was sent the Application and Notice of Hearing and all of their evidence on June 11, 2014 by registered mail to the forwarding address provided by the tenant, and ancillary evidence that the tenant's registered mail

was refused and the stated recipient was claimed as “unknown”. The tenant stated they did not reside at the forwarding address but that they advised the occupants at the forwarding address to accept their mail.

I accept the landlord’s evidence that the tenant was served with the application for dispute resolution and notice of hearing, and the entire associated evidence of the landlord by *registered mail* in accordance with Section 89 (1)(d) of the Residential Tenancy Act (the Act). The hearing proceeded on the merits of the landlord’s claims.

The tenant did not provide sufficient evidence leading me to believe they served the landlord their Application, Notice of Hearing, or their evidence as required by the Act, and their application was preliminarily **dismissed**, and subject to the outcome of this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

The landlord bears the burden of proving their respective claims.

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started 01, 2014 and ended May 31, 2014 when the tenant and the 3 other adult occupants of the tenancy vacated. The landlord currently holds the security deposit in trust – in the amount of \$1150.00. I have benefit of a tenancy agreement document, which is inclusive of a 1 page Addendum, signed by both parties subsequent to the start of the tenancy. The parties acknowledged that the Addendum allowed for 4 adult occupants in the unit and that the tenant agreed to re-paint the rental unit walls at the end of the tenancy, and the landlord to provide the paint.

The landlord provided evidence that at the start and end of the tenancy the parties mutually conducted condition inspections. The parties agreed as to the results of the move in inspection. The tenant testified they disagreed with the landlord’s results of the move out inspection and therefore declined to sign the inspection report (CIR).

The landlord claims that the tenant caused *damage* to the rental unit stove, dishwasher, clothes washer and dryer, shower fixture / handle, rental unit doors, and the laminate and tile flooring. The tenant testified that they disagreed with the landlord’s claims other than the broken shower fixture / handle.

The landlord provided evidence that they replaced the *stove, dishwasher, clothes washer and dryer* claiming they were rendered un-repairable. The landlord provided that the appliances were all at least 8 years old, and that the CIR indicated the appliances were “G” – good at the start of the tenancy, but deemed in “bad condition, dirty and broken” at the end. The landlord stated the stove top was excessively worn or

damaged and the exhaust fan covering was broken – the dishwasher front panel had come off and was re-adhered and appeared worn – and the laundry appliances appeared worn and the control knobs were somehow “broken”. The landlord provided photographs to reportedly depict the claimed damages. The landlord was advised that their photographs depicted the stove as excessively dirty, but that the claimed damage to the appliances was not discernible in their evidence. Regardless, the landlord provided invoices for the replacement of the appliances in the sum of \$2887.27. The tenant testified that they left the appliances all in working order and despite some wear and tear, they were all undamaged. The tenant claimed that to their recollection the stove was left reasonably clean.

The landlord also claims that the rental unit was left dirty throughout the rental unit, and provided photographs of a soiled balcony, stained toilet bowl, soiled and stained kitchen and bathroom covers, and stained kitchen sink, amongst other soiled areas. The tenant claimed they left the entire rental unit reasonably clean or that some of the areas were soiled from the outset. In particular, the balcony was purportedly soiled and cluttered with broken pots and potting soil at the start of the tenancy, although the landlord pointed to the move in condition inspection report that the balcony was “good”.

The tenant acknowledged that the shower fixture/handle was broken during their tenancy and that they attempted to re-adhere it without success. The landlord provided an invoice for the broken shower handle and the associated trim parts in the amount of \$180.00.

The landlord provided photographic evidence in support to their claim that the unit entrance and interior doors of the unit were left excessively scuffed and chipped. The tenant does not recall the doors as such.

The landlord provided photographic evidence in support to their claim that the laminate and tile flooring was cracked and chipped. The photograph evidence does not depict the laminate flooring, and a photograph of 6 tiles depicts a vague small dark mark on one tile which the landlord claims is a chip.

The landlord testified that the tenant, effectively refused to paint the walls of the unit as contracted at the start of the tenancy because the tenant claimed to be too busy taking in the city before having to leave it at the end of the tenancy. Therefore, the landlord testified they did not provide the paint as contracted at the start of the tenancy. The tenant disagreed. They testified they took the last week of the tenancy from work to paint, but the landlord would not provide the paint therefore they “touched up” areas of the walls. The landlord testified that they painted the walls after the tenant vacated, with the help of 3 other people, which they paid \$20.00 per hour for a total of 30 hours, plus are claiming 10 hours for themselves in the sum of 40 hours at \$20.00 for a total of \$800.00 – however would accept \$500.00.

The landlord claims the mitigated amount of \$1000.00 in damages, \$500.00 for painting as per the tenancy contract, and \$175.00 for cleaning.

Analysis

Section 7 of the Act states as follows.

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.

Under the *Act*, the party claiming damage or a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test as prescribed by the provisions of **Section 7** of the act:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with allowance for depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unwarranted, unreasonable or extravagant.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the damage and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage claimed.

The landlord relies on their document and photographic evidence that the tenant caused the purported damage and other losses. The tenant relies on their argument that they did not cause the damage, left the unit clean and attempted to comply with their contractual obligation at the end of the tenancy.

The landlord bears the burden of proof. On the face of the available evidence, I find the landlord has met the test for damages in limited ways.

I find the landlord has not provided sufficient evidence to support their claim that the tenant damaged the claimed appliances beyond their repair. Or that as a result of the condition purportedly depicted in their photographic evidence the tenant is liable for a portion of their replacement value. As a result, **I dismiss** the landlord's claim respecting the appliances, without leave to reapply.

I find the tenant acknowledges responsibility for the damage to the shower fixture / handle and I grant the landlord replacement cost of the broken shower fixture / handle in the invoice amount of **\$180.00**.

I find that the evidence indicates the tenant left the entrance and interior doors with excessive wear and tear and as a result the landlord is owed a quantum for damage to the entrance and interior doors, which I set at a nominal **\$150.00**.

I find the landlord has not provided sufficient evidence to support their claim that the tenant damaged the laminate flooring. I am unable to determine from the evidence the landlord's claim of damage to tiles. As a result, **I dismiss** the landlord's claim respecting these items, without leave to reapply.

I accept the landlord's photographic evidence that the rental unit was not left *reasonably clean* as required by the Act. As a result I grant the landlord the claim for their cleaning in the amount of **\$175.00**.

I find that neither party has proven they diligently complied with their obligation of the contractual agreement respecting the painting at the end of the tenancy. Moreover, however, the landlord did not provide the paint as contracted, therefore I accept the tenant's testimony they could fulfill their end of the contract. As a result, **I dismiss** the landlord's claim for painting as per the tenancy agreement.

As the landlord has been partly successful in their claims I grant the landlord recovery of the filing fee of **\$50.00**. The security deposit held will be off-set from the total award made herein.

Calculation for Monetary Order

Shower fixture / handle	\$180.00
Damage to doors	150.00
Cleaning	175.00
Filing fees for the cost of this application	50.00
<i>Less security deposit</i>	<i>-1150.00</i>
Total Monetary Award to landlord	\$555.00
Balance	\$(595.00)

It must be noted that Residential Tenancy Policy Guideline #17, in part, states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for Arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the landlord's award amounts to less than the amount of the security deposit, it is appropriate that I Order the return the balance of the security deposit to the tenant.

Conclusion

The tenant's application **is dismissed**, but effectively decided by this Decision. The landlord's claim, in part, has been granted. The balance of the landlord's claim **is dismissed**, without leave to reapply.

I Order the landlord may retain \$555.00 of the tenant's security deposit and must return the balance of \$595.00 to the tenant. The landlord must use a service method described in Section 88 (c), (d) or (f) of the Act [*service of documents*] or give the deposit personally to the tenant.

I grant the tenant a **Monetary Order** under Section 67 of the Act for the amount of **\$595.00**. If the landlord does not return the balance of the security deposit this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 09, 2014

Residential Tenancy Branch

