# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPN, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an order of possession based on a tenant's notice to end tenancy, pursuant to section 55;
- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant and her advocate (collectively "tenant") and the two landlords attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that her advocate had authority to speak on her behalf at this hearing. This hearing lasted approximately 76 minutes in order to allow both parties to fully present their submissions.

*Preliminary Issue – Adjudication of Matter*

At the outset of the hearing, the tenant's advocate confirmed that she was an employee of the Residential Tenancy Branch ("RTB"). During the hearing, I advised both parties that I had not personally worked with this employee and that I had no personal relationship with her. I advised both parties that I believed that I was not in a conflict of interest by adjudicating this matter and that I could remain unbiased, neutral and fair during this hearing and in my decision. During the hearing, I asked the two landlords whether they had any objection to me adjudicating this dispute. The two landlords

stated that they had no objection and consented to me adjudicating this dispute. Accordingly, with the landlords' consent, I proceeded with the hearing.

*Preliminary Issue – Interim Decision and Service of Evidence*

A previous hearing was held in this matter on October 13, 2015, after which I issued an interim decision of the same date. This matter was adjourned at the previous hearing at the landlords' request. In my interim decision, I issued certain directions with respect to the service of the landlords' application and both parties' written evidence packages, in accordance with the timelines and rules in the RTB *Rules of Procedure*.

The tenant confirmed receipt of the landlords' application for dispute resolution ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' Application.

The tenant confirmed receipt of the landlords' written evidence package on December 7, 2015, which the landlords confirmed was sent by way of registered mail on December 3, 2015. The evidence package includes a three-page statement signed by both landlords, an itemized list of damages, a number of black-and-white photographs, a copy of the tenancy agreement and the tenant's notice to vacate, dated December 31, 2014. The tenant stated that she objected to me considering this evidence at this hearing and in my decision because she did not have enough time to respond to the evidence, as it was served less than 14 days prior to this hearing, contrary to Rule 3.14 of the RTB *Rules of Procedure*. The landlords confirmed that they were unable to serve their written evidence on time because work, anxiety, sickness and other "life" events prevented them from doing so.

The landlords stated that they did not receive the tenant's two-page written evidence package, which the tenant confirmed was sent by way of registered mail on December 7, 2015.

During the hearing, I advised both parties that I would not be considering both written evidence packages at this hearing. Both packages were served late, contrary to Rules 3.14 and 3.15 of the RTB *Rules of Procedure*. I gave specific and detailed instructions to both parties in my interim decision, requiring the landlords to serve their evidence at least 14 days before the hearing and the tenant to serve her evidence at least 7 days before the hearing, not including the hearing date in these calculations. Both parties had ample notice of these rules and they were reviewed in great detail during the previous hearing on October 13, 2015. The parties had over two months to prepare for

this hearing after the adjournment was granted, as the reconvened hearing was held on December 14, 2015.

At the previous hearing on October 13, 2015, the landlords withdrew their application for an order of possession. Accordingly, this portion of the landlords' application is withdrawn.

*Preliminary Issue – Prior RTB Decision*

The parties attended a prior hearing on July 15, 2015, where another Arbitrator issued a decision ordering the female landlord to pay the tenant $1,150.00 to account for an award of double the return of the security deposit plus the filing fee for that application. The file number for that application appears on the front page of this decision. Both parties agreed that the issue of the security deposit was already decided at the prior hearing on July 15, 2015. Accordingly, the landlords' application at this hearing to retain the security deposit is *res judicata*, as the matter has already been decided by another Arbitrator.

Issues to be Decided

Are the landlords entitled to a monetary award for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to recover the filing fee for this Application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

As noted above, I was unable to consider the landlords' entire written evidence package submitted for this hearing, including a summary regarding the costs of all items claimed. During the hearing, I reconfirmed with the landlords, a number of times, the costs being claimed and the description of the items as well as how the damage occurred to each item. Accordingly, the below claims are based on the landlords' testimony at this hearing, not the documents produced by the landlords.
Both parties agreed that this tenancy began on April 1, 2012 and ended on February 1, 2015. Monthly rent in the amount of $1,100.00 was payable in bi-weekly installments of

$550.00 each. Both parties agreed that no move-in or move-out condition inspection reports were completed for this tenancy.

The landlords seek a monetary order of $10,405.00 from the tenant, as per the below costs. The landlords also seek to recover the $100.00 filing fee for their Application.

The landlords seek $2,200.00 to clean up the yard at the rental unit. The landlords confirmed that they put sod in the front and back yards in August 2011 and it cost them $2,200.00. They explained that they told the tenant to maintain the yard but she destroyed it by failing to water it, not raking the leaves and leaving garbage. The landlords agreed that a large oak tree, from the neighbour's property, hung over the landlords' property and that many leaves from that tree fell onto their property. The tenant disputes the landlords' claim, stating that the yard was properly maintained and that regular raking and removal of leaves, including leaves under the snow, was done by both the tenant and her advocate. The tenant maintained that it was difficult to rake the leaves because the rake would get stuck in the netting of the sod. The tenant explained that she vacated the rental unit in winter before the leaves began falling off the trees.

The landlords seek $200.00 for the cost of two cedar fence panels that they say were broken by the tenant. The landlords confirmed that the tenant told them that a deer or bear broke the fence, while the tenant denied this. The tenant disputes the landlords' claim, stating that she did not damage the fence, but that it probably fell over due to ice buildup. The landlords claimed that the tenant tried to repair one panel. The landlords confirmed that because they did not have the money to replace the two fence panels, they repositioned other fence panels to bridge the gap.

The landlords seek $950.00 to replace a shed and three pieces of cedar lattice as well as $55.00 for painting and sanding the shed. The landlords claimed that the tenant's son burned the shed and the back part of the shed as well as the lattice had to be replaced. The tenant testified that her 13-year-old son was carrying a burning hot pan and ran out of the house, dropping the pan near the back of the shed in order to get close to the garden hose water supply. The tenant stated that she told the landlords about the fire in the shed and they failed to make a claim against their own home insurance to cover the replacement costs. The landlords stated that they did not make an insurance claim because the fire was due to the tenant's negligence, not theirs. The landlords stated that the shed cost them $800.00 in 2009 when it was built.

The landlords seek $3,300.00 to replace the linoleum floor in the basement. The landlords stated that they purchased the flooring for the above amount in the summer of 2011 and the tenant moved in one year later. The landlords maintained that they

unsuccessfully attempted to fix approximately 50 to 60 tears in the flooring that they say was caused by the tenant moving furniture around. The landlords confirmed that they have not yet replaced the flooring. The tenant disputes the landlords' claim, stating that the flooring already had tears when she moved in to the unit.

The landlords seek $450.00 to replace the carpet in the basement. The landlords explained that they bought carpet for $900.00 for both the main floor and basement in the late summer or early fall of 2011. The landlords stated that they are only claiming half of the original cost because only the basement carpet had to be replaced, due to three tears and runs in the carpet, due to the tenant's actions. The landlords confirmed that they have not yet replaced the carpet.

The landlords seek $75.00 for sanding, $110.00 for staining and $55.00 for the top coating for maple hardwood flooring on the main floor of the rental unit. They claim that the tenant damaged the flooring from moving furniture and due to her dog. The landlords confirmed that they performed the above repairs themselves. The tenant disputes this cost, stating that the floor was at least a couple of years old when she moved in and the landlords failed to produce any receipts for the above costs.

The landlords seek $225.00 to replace a pre-hung door because they say that the tenant's dog scratched it to get into the house. The tenant disputes this cost, stating that she has a small dog who could not reach high enough to scratch the door frame. She stated that the scratches were already present on the door when she moved in because the landlords had three dogs in the rental unit when she came to view it before moving in. The landlords disputed this fact, stating that their daughter only had two dogs in the unit when the tenant viewed it and those dogs did not cause the damage.

The landlords seek $225.00 for the cost of paint, due to the tenant splashing food on the ceiling of most rooms in the rental unit. The tenant disputed this cost, stating that the landlords failed to produce any receipts for the paint.

The landlords seek $30.00 for hauling garbage to the landfill, due to two bags of garbage that the tenant left on the back deck, causing the landlord to make three trips to the landfill. The tenant disputes this cost, stating that she and her advocate cleaned the rental unit and disposed of garbage before vacating the unit. The tenant maintained that the landlord failed to produce receipts for the above cost.
The landlords seek $90.00 to change the locks at the rental unit. The landlords claimed that they were advised by the tenant that her vehicle, containing her rental unit keys, was stolen. The landlords changed the locks for safety reasons. The tenant claimed that she advised the landlord that her car insurance company would pay for changing

the locks at the rental unit if the landlords provided a receipt to the insurance company. The landlords stated that they did not submit the receipt to the insurance company because they were not told the above information by the tenant in a timely fashion. The tenant disputes the landlords' costs, stating that the landlords can still send in the receipt in order to get reimbursed from the insurance company.

The landlords seek $2,440.00 for labour costs for having to personally clean and repair items in the rental unit, as noted above. The landlords confirmed that they were charging a reduced rate of $10.00 per hour for approximately 244 hours. The tenant disputes these costs.

Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim on a balance of probabilities. In this case, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

> *An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.*

The tenant claimed that the landlords' entire application should be dismissed because the landlords failed to meet the four part test above. The tenant explained that the landlords failed to produce documentary or other sufficient evidence that their damages and losses exist, as no receipts were produced to substantiate the costs claimed and no move-in or move-out condition inspection reports were completed to show the condition

of the unit. The tenant maintained that the landlords are attempting to make her pay for repairs and improvements to this property, that they planned to do in any event. The landlords denied this, stating that no major improvements have been made to the unit.

Generally, I note that the landlords failed to produce important documents to substantiate their monetary claim. The landlords did not submit any receipts, invoices or estimates to substantiate their expenses. The landlords only submitted a list of costs and blurry, black-and-white photographs that were difficult to see and which I cannot consider at this hearing in any event. The landlords filed their application on July 14, 2015, five months prior to this reconvened hearing date of December 14, 2015. The first hearing occurred on October 13, 2015, where I reviewed specific rules and timelines about serving evidence with both parties who confirmed their understanding of same. The landlords were then given another two months from the first hearing date to produce additional documents for the second hearing date, and still failed to do so.

I award the landlords $200.00 in nominal damages to replace the back portion of the shed and the cedar lattice, and for sanding and painting costs. The tenant agreed that her son burned the back portion of the shed. The landlords should not be required to claim the above costs against their own home insurance because the damage was due to the tenant's negligence, not the landlords' negligence. Even if the landlords were to claim against their own home insurance, there may be a deductible required for the claim as well as a possible subrogated claim made by the insurance company against the tenant because of the damage due to the tenant's negligence. Although the landlords were unable to produce receipts to substantiate the above costs, I find that there was an infraction of the landlords' legal rights and a loss was suffered; the tenant agreed that she was responsible for the loss that occurred. I accept the landlords' testimony that they had to replace the back of the shed, replace the cedar lattice and sand and paint the area.

I dismiss the landlords' claim of $2,440.00 in labour costs for the repairs performed by them. I find that the landlords failed to prove the damages as noted below, so they are not entitled to the labour costs for repairing those damages.

I dismiss the landlords' claim of $90.00 to replace the locks at the rental unit. The landlords should have submitted their receipt for this cost to the tenant's insurance company for reimbursement. In any event, the landlords failed to produce a receipt for this cost, as required by part 3 of the above test.

I dismiss the landlords' claims of $2,200.00 and $30.00 for cleaning the yard and disposing of garbage from the rental unit. Both the tenant and her advocate testified

that they adequately cleaned the yard and the rental unit. I find that the landlords failed part 1 of the above test, to show that the above losses exist. I find that the landlords also failed to produce receipts or professional estimates to substantiate their costs, failing part 3 of the above test.

I dismiss the landlords' claims of $3,300.00 to replace the linoleum floor in the basement, $450.00 to replace the carpet in the basement and $75.00 for sanding, $110.00 for staining and $55.00 for the top coating for the maple hardwood flooring on the main floor of the rental unit. The landlords failed to prove the condition of the flooring when the tenant moved in, as no photographs or move-in condition inspection report was completed. Further, the landlords had two dogs in the rental unit before the tenant moved in, thereby questioning the causation of the damages. I find that the landlords failed to show that the tenant caused the damage to the flooring, as required by part 2 of the above test. I also find that the landlords failed to produce receipts or professional estimates to confirm the costs, as required by part 3 of the above test.

I dismiss the landlords' claim for $225.00 to replace a pre-hung door, as I find that the landlords failed to prove that the tenant caused this damage as required by part 2 of the above test. The landlords had two dogs in the rental unit before the tenant moved in and the tenant stated that her dog was too small to reach the height of where the scratches were located. Further, the landlord failed to produce a receipt or professional estimate to confirm the cost, as required by part 3 of the above test.

I dismiss the landlords' claim for $225.00 for ceiling paint for the rental unit. The landlords did not provide a receipt for this cost, failing part 3 of the above test.

I dismiss the landlords' claim for $200.00 for the cost of two cedar fence panels. I find that the landlords failed to prove that the tenant caused this damage, as required by part 2 of the above test. The parties testified that the damage may have been caused by a bear, a deer, or ice buildup, all of which are outside of the tenant's control. I also find that the landlords did not replace these panels, as they simply repositioned the other fence panels, thereby failing to show a loss as per part 1 of the above test. The landlords further failed to provide receipts or professional estimate for this cost, as required by part 3 of the above test.

As the landlords were mainly unsuccessful in this Application, I find that they are not entitled to recover the $100.00 filing fee from the tenant.

Conclusion

I issue a monetary order in the landlords' favour in the amount of $200.00 against the tenant and the tenant must be served with this Order as soon as possible. Should the tenant 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 landlords' application to recover the $100.00 filing fee is dismissed without leave to reapply.

The landlords' application for an order of possession was withdrawn.

The landlords' application to retain the security deposit is *res judicata*, as the matter has already been decided by another Arbitrator.

The prior decision and order, both dated July 15, 2015, made by another Arbitrator at a previous hearing for the file number that appears on the front page of this decision, are still in full force and effect.

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: December 29, 2015

Residential Tenancy Branch