



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ABSTRACT PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: MND MNSD FF

For the tenants: MNR MNDC FF

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The landlord applied for a monetary order for damage to the unit, site or property, for authorization to keep all or part of the tenants’ security deposit, and to recover the cost of the filing fee. The tenants applied for a monetary order for the cost of emergency repairs, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”) and tenant Q.A. (the “tenant”) attended the teleconference hearing. The tenant confirmed that he was served with and was aware of the landlord’s Application for Dispute Resolution (the “Application”). The landlord testified that he was unaware and had not been served with the tenants’ Application. The tenant testified that he served at an address that both parties agreed was the incorrect service address of the landlord. Both parties have the right to a fair hearing and I find that to proceed with the tenants’ Application would be unfair and prejudice the landlord without first having been properly served as required by the *Act* and the Residential Tenancy Branch Rules of Procedure. As a result, **I dismiss the tenants’ Application with leave to reapply** due to a service issue. The hearing continued with consideration of the landlord’s application only.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. Neither party

raised any concerns regarding the service of documentary evidence in relation to the landlord's Application.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

As the tenants confirmed their new mailing address during the hearing, the tenants' new mailing address was updated in both the landlord's and tenants' Applications by consent of the parties. The tenants' new mailing address has been included on the cover page of this Decision for ease of reference.

In addition to the above and by consent of the parties, the tenant acknowledged that he incorrectly named the agent versus the landlord in the tenants' Application and agreed to replace the name of the agent with the company name of the landlord, which was amended pursuant to section 64(3)(c) of the *Act*. The correct mailing address of the landlord was confirmed by the parties during the hearing and has also been included on the cover page of this Decision for ease of reference.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agree that a fixed term tenancy began on May 1, 2014 and reverted to a month to month tenancy as of May 1, 2015. Monthly rent in the amount of \$1,900.00 was due on the first day of each month at the start of the tenancy and was increased to the final amount of \$2,045.00 during the course of the tenancy. The tenants paid a security deposit in the amount of \$950.00 to the landlord which the landlord continues to hold.

The landlord's monetary claim of \$1,550.00 is comprised of the following:

ITEM #	ITEM DESCRIPTION	AMOUNT CLAIMED
Item 1	Damage to vinyl flooring on patio – burn hole	\$450.00
Item 2	Damage to millwork	\$250.00
Item 3	Damage to bleached carpet – minimize loss by installing tile and a transition piece instead of a full carpet replacement	\$350.00
Item 4	Damages to walls including repainting costs	\$500.00
TOTAL		\$1,550.00

Item 1

The agent testified that the rental unit was brand new at the start of the tenancy which the tenant denied. The landlord is seeking \$450.00 for the vinyl flooring on the patio being damaged by a burn from grease coming from the barbeque. The agent referred to colour photos submitted in evidence in which the tenant agreed with the photo that showed several holes in the vinyl patio flooring and confirmed that is where the tenants had their barbeque during the tenancy. A copy of the condition inspection report was submitted in evidence which supports this portion of the landlord's claim.

The agent stated that the final cost of the repair was over \$1,400.00 with GST; however, the landlord claimed \$450.00 for the repair and did not amend his claim to a higher amount before the hearing in accordance with the Rules of Procedure.

Item 2

The landlord is claiming \$250.00 for damage to the millwork in the home which the landlord stated was caused by the tenants. This portion of the landlord's claim was dismissed during the hearing due to insufficient evidence as the landlord failed to provide any receipts or photos of the damage to the millwork in the rental unit.

Items 3

The landlord is claiming \$350.00 to repair the bleached carpets spots in front of the laundry washer and dryer due to the neglect on the part of the tenants by spilling bleach on the carpet. The agent testified that instead of replacing the entire carpet, they decided to repair the area by installing tile in front of the laundry washer and dryer instead in an attempt to minimize their losses. The agent referred to several colour

photos in evidence and the condition inspection report submitted supports this portion of the landlord's claim.

Item 4

The landlord has claimed \$500.00 to repair damage to walls in the rental unit and for repainting costs of the damaged walls. The agent testified that the paint of the rental unit was 1.5 years old at the start of the tenancy. The agent also referred to several colour photos submitted in evidence. The condition inspection report submitted in evidence which was signed by the tenant indicates "satisfactory" for the walls at the end of the tenancy and also indicated some marks on the walls including the entry area at the start of the tenancy.

Analysis

Based on the oral testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

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TOTAL		\$1,550.00

For ease of reference, I will respond to each of the item being claimed by their corresponding item number.

Item 1 – Based on the evidence provided including the condition inspection report, the testimony of the parties and the colour photos, I find the landlord has provided sufficient evidence to support this portion of their claim. As a result, I find the landlord has met the burden of proof and grant the landlord **\$450.00** for this portion of the landlord's claim.

Item 2 – The landlord is claiming \$250.00 for damage to the millwork in the home which the agent stated was caused by the tenants. As described above, this portion of the landlord's claim was **dismissed without leave to reapply** during the hearing due to insufficient evidence. At the very least, I would have expected the landlord to support this portion of their claim by provided colour photos of the damage to the millwork and receipts as to how the landlord arrived at the amount of \$250.00, the amount being claimed. I find the landlord failed to meet the burden of proof for this portion of their claim.

Item 3 – This portion of the landlord's claim relates to repair of the bleached carpets spots in front of the laundry washer and dryer in the amount of \$350.00. The agent testified that instead of replacing the entire carpet, they decided to repair the area by installing tile in front of the laundry washer and dryer instead in an attempt to minimize their losses. The agent referred to several colour photos in evidence and the condition inspection report submitted supports this portion of the landlord's claim. I find the photo evidence and the condition inspection report support this portion of the landlord's claim. As a result, I find the landlord has met the burden of proof and is entitled to \$350.00 for the cost of repairing the bleached carpet area with tile. I also find that the landlord complied with section 7 of the *Act* which requires the landlord to minimize the damage or loss when claiming for compensation under the *Act*.

Items 4 - For this portion of the landlord's claim, the landlord has claimed \$500.00 to repair damage to walls in the rental unit and for repainting costs of the damaged walls. The agent testified that the paint of the rental unit was 1.5 years old at the start of the tenancy. The agent also referred to several colour photos submitted in evidence. The condition inspection report submitted in evidence which was signed by the tenant indicates "satisfactory" for the walls at the end the tenancy and also indicated some marks on the walls including the entry area at the start of the tenancy.

I find the condition inspection report contradicts the agent's testimony. The condition inspection report clearly indicates that while some walls had marks at the start of the tenancy, all the walls were indicated as "satisfactory" by the use of a checkmark at the end of the tenancy. This supports that the walls were not in new condition at the start of the tenancy and already has some wear and tear on them. Furthermore, I find the colour photos submitted in evidence support that the marks on the walls to represent normal wear and tear which is not a breach of the *Act* by the tenants. Section 37 of the *Act* applies and states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[my emphasis added]

The security deposit of \$950.00 has accrued zero interest since the start of the tenancy, which the landlord continues to hold. As the landlord's claim had merit, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**.

I find that the landlord has established a total monetary claim of **\$900.00** as follows:

ITEM #	ITEM DESCRIPTION	AMOUNT CLAIMED
Item 1	Damage to vinyl flooring on patio – burn hole	\$450.00
Item 2	Damage to millwork	Dismissed
Item 3	Damage to bleached carpet – minimize loss by	\$350.00

	installing tile and a transition piece instead of a full carpet replacement	
Item 4	Damages to walls including repainting costs	Dismissed
	Recovery of cost of the filing fee	\$100.00
TOTAL		\$900.00

I authorize the landlord to retain **\$900.00** from the tenants' security deposit of \$950.00 in full satisfaction of the landlord's monetary claim.

I grant the tenants a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenants for the balance of the tenants' security deposit in the total amount of **\$50.00**.

Conclusion

The tenants' application is dismissed with leave to reapply due to service issue.

The landlord's monetary claim was partially successful.

The landlord has established a total monetary claim of \$900.00 and has been authorized to retain \$900.00 of the tenants' \$950.00 security deposit, leaving a security deposit balance of \$50.00 owing to the tenants. I grant the tenants a monetary order in the amount of \$50.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: May 2, 2016

Residential Tenancy Branch

