



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOLE ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenants: MNDC MNSD OLC LRE FF

For the landlord: MNSD 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 tenants applied for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of their security deposit, for an order to suspend or set limits on the landlord’s right to enter the rental unit, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to retain all or a part of the tenants’ security deposit, and to recover the cost of the filing fee.

Attending the hearing was an agent for the landlord (the “agent”), and the tenants. 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 evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all 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.

Neither party raised concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

At the outset of the hearing, the tenants were advised that due to the fact that their monetary order worksheet did not match the breakdown of the amount claimed in their Application for Dispute Resolution (the “Application”) that they were limited to the \$5,554.32 amount listed in their monetary order worksheet as the respondent was served with a monetary order checklist stating that the tenants were seeking \$5,554.32. I find that it would be prejudicial to the landlord to proceed with the original tenants’ claim of \$15,572.21 as a detailed breakdown of that amount

was not provided by the tenants. Given the above, I dismiss without leave to reapply any amount above the \$5,554.32 as claimed by the tenants.

In addition to the above, as the tenants confirmed that they are no longer residing in the rental unit, I dismiss the tenants' claims to have the landlord comply with the *Act*, regulation or tenancy agreement, and to set limits on the landlord's right to enter the rental unit as I find both of those issues to be moot as the tenancy has already ended and the tenants no longer reside in the rental unit.

Finally, the tenants' Application was amended pursuant to section 64(3) of the *Act* as I find the tenants inadvertently omitted the "Ltd" name when the tenants wrote the company name of the landlord company name on their Application. The agent requested that the tenants' Application be dismissed due to what I find to be a minor typographical error and as a result, I permit the amendment and deny the agent's request for the tenants' Application to be dismissed.

Issues to be Decided

- Is either party 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*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on July 15, 2014 and reverted to a month to month tenancy after July 31, 2015. The parties did not agree on the date the tenants vacated the rental unit. The tenants stated they vacated the rental unit on July 25, 2016; the agent claims the tenants vacated the rental unit on July 30, 2016. Originally monthly rent was \$930.00 plus \$10.00 for parking due on the first day of each month. During the course of the tenancy, monthly rent was increased to \$960.00 including parking per month. The tenants paid a security deposit at the start of the tenancy in the amount of \$470.00 which the landlord continues to hold of which has accrued no interest.

The parties agreed that on June 25, 2016, the tenants provided the landlord with their notice to vacate the rental unit effective July 31, 2016.

Evidence presented for Landlord's Claim

The landlord's claim of \$841.42 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Suite cleaning	\$200.00
2. Carpet cleaning rental machine	\$41.42
3. Drapes cleaning (5 windows at \$25.00 each)	\$125.00

4. Missing kitchen scraps bucket	\$10.00
5. Forfeit of security deposit of \$465.00 as the tenants failed to attend the outgoing condition inspection)	\$465.00
TOTAL	\$841.42

Regarding item 1, the agent testified that the tenants did not do any cleaning of the rental unit and just removed their personal items and that it took 8 hours to clean the rental unit at \$25.00 per hour. The agent referred to the condition inspection report and colour photos submitted in evidence in support of this portion of the landlord's claim. The agent testified that two options for a move-out inspection were provided to the tenants and that when they did not respond to those options, the agent posted a Final Opportunity to Schedule a Condition Inspection (the "final opportunity") on July 27, 2016 to the rental unit door, which was scheduled for July 31, 2016 at 1:00 p.m.

The tenants confirmed that they did not respond to the proposed appointments or the final opportunity for the outgoing condition inspection. The tenants claim they felt "harassed" and did not participate in the condition inspection as a result. The condition inspection report indicates that the rental unit "needs cleaning" throughout. The tenants confirmed that they did not clean the carpets in the rental unit at the end of the tenancy. The agent referred to an invoice submitted in evidence dated August 4, 2016 in the amount of \$200.00 for general cleaning of the rental unit including light fixtures, window frames, tracks and glass, kitchen cupboards, appliances, floors, clean bathroom, shampoo carpets, clean patio and remove garbage.

Regarding item 2, the landlord has claimed for \$41.42 for the cost of renting a carpet cleaner, the agent affirmed that while the receipt indicates \$51.42, the agent received a deposit of \$10.00 back which resulted in the amount of \$41.42 being claimed. As indicated above, the tenants confirmed that they did not clean the carpets at the end of the tenancy. The agent also referred to the condition inspection report which indicates that the carpets were shampooed at the start of the tenancy and in need of cleaning at the end of the tenancy.

Regarding item 3, the landlord has claimed \$125.00 for the cost of drape cleaning. The agent referred to section 23 of the tenancy agreement which indicates that the tenants are responsible for periodic cleaning of the window coverings. The tenants confirmed that they did not clean the drapes during the tenancy. The agent stated that \$25.00 per set of drapes is what the landlord charges as a set fee when they have not been cleaned by the tenants. The agent also referred to the condition inspection report in support of this portion of the landlord's monetary claim.

Regarding item 4, the landlord has claimed \$10.00 for the cost of a missing kitchen scraps bucket (the "scraps bucket") which the tenants claim was returned to the agent. The agent referred to the condition inspection report which supports that the scraps bucket was missing

and was a total charge of \$10.00. The tenants could not recall the date they returned the scraps bucket to the agent, which the agent denies was returned.

Regarding item 5, the landlord has claimed \$465.00 as the tenants extinguished their rights to claim their security deposit by failing to attend the outgoing condition inspection as scheduled. As mentioned above, the tenants stated that they did not attend the condition inspection as they felt "harassed".

Evidence presented for Tenants' Claim

The tenants' claim of \$5,554.32 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Return of 100% of rent from April 2016 to July 2016	\$3,840.00
2. Deposit paid to moving company	\$139.00
3. Boxes for moving	\$49.17
4. Mattress covers and packing tape	\$27.94
5. Movers/moving costs	\$1,028.21
6. Return of damage deposit	\$470.00
TOTAL	\$5,554.32

Regarding item 1, the tenants are claiming to have 100% of their rent returned from April 2016 to July 2016 due to what they claim was a false assumption by the agent that the tenants had another occupant living with them. The tenants stated that a nephew came by often to care for one of the tenants and the tenants claim they were harassed by the agent as a result and that they needed to leave due to the harassment. On April 8, 2016, the tenants affirmed that the agent accused the tenants of having a third occupant and a few days later scheduled an inspection. On April 18, the agent completed the unit inspection and opened the fridge and according to the tenants said "you have too much food" and "you have another tenant living here." The tenants claim the agent looked in all the closets and said she could do what she wanted. The tenants testified that the agent attended in June and July; however no dates were provided during the hearing regarding other specific dates of inspections.

The tenants claim that on July 8 after they had already provided their notice that they would be vacating the rental unit on July 31, 2016 the landlord came to show the rental unit to a prospective tenant which surprised the tenants as they claimed they did not check their mailbox for a notice of entry. The agent stated that she served a proper notice of entry for all scheduled showings and that the neglect on the part of the tenants to check their mailbox is not the fault of the landlord. The tenants confirmed that they received the notice of rent increase through their mailbox previously during the tenancy.

The agent denies any harassment of any kind and stated that all entries were legal and that proper notices of entry were provided as required by the *Act*. The agent stated that even with the proper notice, when the tenants denied her entry to show the unit to a prospective tenant, the agent walked away with the prospective tenant. The agent denies the claims by the tenants in their entirety. The agent affirmed that in the tenants' notice to end the tenancy, the tenants did not mention anything about harassment as their reason for giving notice to end the tenancy. A copy of the Notice to Enter Premises documents were submitted in evidence by the tenants.

Regarding item 2, the tenants have claimed for \$139.00 as a deposit paid to the moving company they hired to move them out of the rental unit. The tenants testified that they felt they had no choice but to move due to harassment. The tenants were asked if they ever wrote to the landlord during the tenancy to complain about being harassed to which they confirmed they had not. The tenants referred to document that had the amount of \$139.00 for "credit paid" but does not state it was a deposit for a residential move.

Regarding items 3 and 4, the tenants have claimed \$49.17 for boxes and \$27.94 for a mattress cover and packing tape and referred to a receipt for \$49.17 and a receipt for \$27.94 submitted in evidence. The agent stated that the landlord is not responsible for moving costs as the tenants provided notice to end the tenancy and moving costs are not the responsibility of the landlord.

Regarding item 5, the tenants have claimed \$1,028.21 including a tip for moving costs. The tenants stated that in April 2016 they had no intention of moving but felt they had no other option due to the harassment by the landlord. The agent provided the same response as to items 3 and 4 above and added that it was the decision to add a tip by the tenants and would not be a cost they could claim after the fact against the landlord. The agent stated that based on the documents submitted by the tenants, she questioned the validity of the documents as they appeared "phony" to the agent as there was no moving address listed.

Regarding item 6, this item, which was the tenants seeking the return of their \$470.00 security deposit was dismissed during the hearing as the tenants were informed that they had already extinguished their rights to request the return of their security deposit by failing to attend the outgoing condition inspection report which will be discussed further below.

Analysis

Based on the documentary evidence, the oral testimony, 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.

Landlord's claim – Regarding item 1, the landlord has claimed \$200.00 for suite cleaning. Having considered the condition inspection report, colour photos, receipt, and testimony I am satisfied that the tenants breached section 37 of *Act* which 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]

Based on the above, I find the landlord has met the burden of proof and is entitled to the recovery of the **\$200.00** as claimed for this portion of the landlord's claim.

Regarding item 2, and consistent with my finding in item 1 above, having considered the condition inspection report, receipt and testimony in which the tenants confirmed they did not have the carpets cleaned at the end of the tenancy, I find the landlord has met the burden of proof and is entitled to the recovery of the **\$41.42** as claimed for this portion of the landlord's claim.

Regarding item 3, having considered the condition inspection report and the agent's testimony which supports the amount claimed and the dirty condition of the drapes, and taking into account that the tenant confirmed they did not clean the drapes at the end of the tenancy, and having reviewed section 23 of the tenancy agreement that requires the tenants to clean the drapes, I find the landlord has met the burden of proof and is entitled to the recovery of the **\$125.00** as claimed for this portion of the landlord's claim.

Regarding item 4, while the item is only \$10.00 that relates to the scraps bucket, I prefer the evidence of the agent over that of the tenants as the condition inspection report indicate that the scraps bucket was missing and the tenants were vague in their testimony as they could not recall a date that they allegedly returned the scraps bucket. As a result, I find the landlord has met the burden of proof and is entitled to the recovery of the **\$10.00** as claimed for this portion of the landlord's claim.

Regarding item 5, although the landlord has claimed to retain the tenants' \$465.00 security deposit, the parties agreed during the hearing that the actual security deposit that the landlord continues to hold is \$470.00 as indicated on the tenancy agreement. I find the tenants extinguished their rights towards their security deposit as per section 36 of the *Act* which applies states:

Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

[my emphasis added]

Given the above, I find the landlord has met the burden of proof as I find the tenants have extinguished their right to their security deposit, and therefore, the landlord is entitled to retain the tenant's full security deposit of **\$470.00**. As this amount has already been retained by the landlord, it will not be added to the landlord's total monetary claim below.

Tenants' claim – As the tenants' claim relies on the tenants providing sufficient evidence that the landlord harassed them, I will deal with the tenants' claim as a whole. Firstly, I find the tenants provided insufficient evidence to support that the landlord has breached the *Act* or harassed the tenants. For example, I find the landlord had the right under section 29 of the *Act* to perform rental unit inspections based on her concern that she believed another occupant was residing in the rental unit and based on the tenant's evidence of those inspections that the landlord complied with the *Act*. Furthermore, I agree with the agent that the fact the tenants did not check their mailbox is not the fault of the landlord and does not mean the tenants were not properly served with a notices of entry as provided for under section 29 of the *Act*.

In addition, I find that it would be reasonable to expect that if the tenants felt harassed at any time by the agent, that they would have written their concerns to the landlord so the landlord had the opportunity to address any such complaint. Furthermore, I find that it would be reasonable to expect that if the tenants were moving due to harassment that they would have

indicated that in their notice to vacate the rental unit. In the matter before me, the tenants did neither. As a result, I find the tenants claim fails in its entirety due to insufficient evidence and is **dismissed without leave to reapply.**

As the tenants' claim did not have merit, I do not grant the tenants the recovery of the cost of the filing fee.

As the landlord's claim did have 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 ~~\$946.42~~ \$476.42 comprised of ~~\$470.00 to retain the tenants' security deposit that the tenants extinguished their rights towards,~~ \$200.00 for suite cleaning, \$41.42 for the carpet cleaning machine rental, \$125.00 for drupe cleaning, \$10.00 for the cost of the kitchen scrap bucket, and \$100.00 for the recovery of the cost of the filing fee. I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of ~~\$946.42~~ \$476.42.

Conclusion

The application of the tenants has been dismissed in full, without leave to reapply.

The landlord's application is successful. The landlord has established a total monetary claim of ~~\$946.42~~ \$476.42 and has been granted a monetary order pursuant to section 67 in that amount. 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: February 14, 2017
Corrected Date: April 4, 2017

Residential Tenancy Branch