



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRLS MNDCLS FFL

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlords applied for a monetary claim of \$6,175.03 unpaid rent or utilities, for money owed or compensation for damages to the unit, site or property, to retain the tenant's security deposit, and to recover the cost of the filing fee.

An agent for the landlord JM (agent) attended the teleconference hearing. The hearing process was explained to the agent and the agent was given an opportunity to ask questions about the hearing process. Thereafter the agent gave affirmed testimony, was provided the opportunity to present the landlord's relevant evidence orally and in documentary form prior to the hearing and make submissions to me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated January 22, 2020 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served by registered mail on January 28, 2020. The registered mail tracking number has been included on the style of cause for ease of reference. According to the Canada Post online registered mail tracking website, the tenant failed to pick up the registered mail package and it was eventually returned to sender as "unclaimed". Based on the undisputed testimony of the agent, I find the tenant was sufficiently served in accordance with the Act. Section 90 of the Act stated that documents sent by registered mail are deemed served five days after they are mailed. Therefore, I find the tenant was deemed served with the Notice of Hearing, application and documentary evidence as of February 2, 2020, which is five days after the package was mailed to the tenant.

In addition, the agent testified that their amendment increasing the monetary claim to \$12,014.00 was served by email on June 1, 2020, which was an approved method of service due to the State of Emergency first declared on March 18, 2020. As a result, I find the tenant was sufficiently served by email as of June 4, 2020. Consequently, I find this matter to unopposed by the tenant and the hearing continued without the tenant present as a result.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The agent confirmed the email addresses for both parties. The agent was advised that the decision and any related orders would be emailed to the landlord and that the decision would be sent to the tenant by email.

Issue to be Decided

- Is the landlord entitled to a monetary order under the Act?
- If yes, in what amount?
- What should happen to the tenant's 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

A copy of the two tenancy agreements were submitted in evidence. The first tenancy began on August 1, 2016 and was a fixed-term tenancy that reverted to a month to month tenancy after August 1, 2017. The agent stated that on August 1, 2019, the parties entered into a new fixed-term tenancy that was scheduled to expire on July 31, 2020. Instead, the agent stated that the tenant vacated the rental unit on January 31, 2020, before the end of the second fixed-term tenancy agreement. The tenant paid a security deposit of \$1,250.00 at the start of the tenancy, which the landlord continues to hold.

The landlord's amended monetary claim of \$12,014.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid rent for December 2019 and January 2020	\$5,100.00
2. Unpaid utilities	\$975.03
3. Junk removal	\$558.00
4. Fence/gate repair	\$370.00
5. Bathroom floor repair	\$600.00
6. Tree removal	\$932.40
7. Landscaping	\$892.50
8. Sod	\$413.33
9. Gutter repair	\$170.00
10. Master ensuite repair	\$140.00
11. Carpet and vinyl flooring	\$1,083.20
12. Flooring installation	\$670.11
13. 2 garage remotes	\$109.96
TOTAL	\$12,014.00

Firstly, the agent stated that the tenant did not attend the outgoing condition inspection. The tenant vacated the rental unit on January 31, 2020. The landlord continues to hold the tenant's security deposit of \$1,200.00. The landlord file this application on January 22, 2020 and amended it for more money owed as of June 1, 2020.

Regarding item 1, the landlord has claimed \$5,100.00 for unpaid December 2019 rent of \$2,550.00 and unpaid January 2020 rent of \$2,550.00. The agent testified that the tenant failed to pay rent for both December 2019 and January 2020 rent and is seeking the unpaid rent as a result. The agent testified that the tenant vacated the rental unit on January 31, 2020.

Regarding item 2, the landlord has claimed \$975.03 for unpaid utilities. The tenancy agreement does not include water, electricity, cable, internet, heat, natural gas, or sewer fees. The agent referred to a utility bill in the amount of \$975.03 for the time period of October 6, 2019 to December 6, 2019, which the agent stated was not paid by the tenant and includes water and sewer.

Regarding item 3, the landlord has claimed \$558.00 for junk removal and the agent referred to an invoice for junk removal. The agent also referred to several colour photos, which show a lot of junk left behind by the tenant at the end of the tenancy both inside and outside of the rental home. The invoice indicates labour at 8 hours, and the agent

stated that \$50.00 was for trailer usage plus \$148.00 for the landfill costs with a separate receipt.

Regarding item 4, the landlord has claimed \$370.00 for the cost to repair a fence and gate, which is listed on the condition inspection report. The agent referred to a home inspection report dated May 12, just 2.5 months before the tenancy began to support how the home and property looked at the start of the tenancy. The agent stated that the tenant damaged the fence and gate. The invoice submitted indicates \$270.00 for 6 hours of labour to fix the gate and fence, plus \$100.00 in materials.

Regarding item 5, the landlord has claimed \$600.00 to repair a damaged bathroom floor. The agent testified that the tenant allowed a lot of water to penetrate the flooring causing the wood under the flooring to rot. The photo evidence supports the testimony of the agent. The agent stated that they are not claiming for the total cost, just for the area near the shower as the amount paid by insurance is not being claimed. The agent stated that the amount of \$600.00 is for 10 hours of labour plus \$150.00 in materials to keep the cost as low as possible for the tenant.

Regarding item 6, the landlord has claimed \$932.40 for tree removal. Although the agent referred to an invoice in the amount of \$932.40, the agent did not have before photos to show the area of the tree at the start of the tenancy. At the end of the tenancy, there was a large tree near the back corner of the fence in the backyard.

Regarding item 7, the landlord has claimed \$892.50 for landscaping due to the tenant adding an above-ground pool without permission of the landlord causing the grass in the backyard to die, which required repair. The agent referred to an invoice in the amount of \$892.50 for landscaping. The invoice states "replace sod, prune, redo front bed" on the invoice for \$892.50. The home inspection report is missing 6 pages, which the agent was advised of during the hearing. The tenancy agreement addendum #3 Grounds, states that the tenant will be responsible for the care and upkeep of the property and ground surrounding the premises, including all patios, lawns, garden, trees and shrubbery. The same section states that lawns will be cut, watered and fertilized, garden weeded, trees and plants pruned and fruit trees (if any) property sprayed.

Regarding item 8, the landlord has claimed \$414.33 for the cost of the sod used to replace the damaged area mentioned in item 7 above. The invoice submitted matches the amount claimed for the cost of the sod.

Regarding item 9, the landlord has claimed \$170.00 to repair the front gutter, which the agent testified was damaged due to the tenant hanging Halloween decorations on the front gutter. A Halloween photo showing items attached to the gutter and a close up of the gutter damaged were referred to by the agent during the hearing. The agent stated that 3.5 hours to remove tape and took the surface off the gutter was need plus \$12.50 in supplies and currently the gutter paint is still damaged. The agent stated that the tenant was negligent at taping items to the painted gutter.

Regarding item 10, the landlord has claimed \$140.00 to repair a damaged shelf with burn marks in the master ensuite bathroom. The agent stated that the shelf could not be repaired so it was removed, and the wall was patched after the shelf was removed. The landlord is claiming for 2 hours at \$90.00 total for labour plus \$50.00 in materials.

Regarding item 11, the landlord has claimed \$1,083.20 for the cost to repair carpet and vinyl flooring that the tenant burned either intentionally or accidentally during the tenancy. The invoice matching the amount claimed was submitted in evidence. The agent referred to photos which supports that the carpet and vinyl flooring had what appear to be cigarette burns on them. The agent stated that there were no burn marks at the start of the tenancy.

Regarding item 12, the landlord has claimed \$670.11 for the cost to install the flooring described in item 11 above. The agent presented a receipt in the amount of \$670.11 which describes the installation of the vinyl and carpet flooring.

Regarding item 13, the landlord has claimed \$109.96 for the cost to replace 2 garage remotes. The agent submitted a receipt in the same amount claimed and referred to the condition inspection report, which indicates that two garage remotes were provided to the tenant. The agent testified that neither of the garage remotes were returned at the end of the tenancy.

Analysis

Based on the undisputed testimony of the agent and the undisputed 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 whatever 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 tenant. 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 landlords did what is reasonable to minimize the damage or loss that were incurred.

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 onus to prove their claim and the claim fails.

Item 1 - The landlord has claimed \$5,100.00 for unpaid December 2019 rent of \$2,550.00 and unpaid January 2020 rent of \$2,550.00. Section 26 of the Act applies and states that the tenant must pay rent in accordance with the tenancy agreement, and as a result, I find the landlord has met the burden of proof and I award the landlord **\$5,100.00** as claimed for this item for unpaid rent for December 2019 and January 2020.

Item 2 - The landlord has claimed \$975.03 for unpaid utilities. Given that the tenancy agreement does not include water, electricity, cable, internet, heat, natural gas, or sewer fees and having considered the unpaid utility bill of \$975.03 for the time period of October 6, 2019 to December 6, 2019, I find the tenant has breached the tenancy agreement by failing to pay the required utilities. Therefore, I award the landlord **\$975.03** as claimed for this item.

Item 3 - The landlord has claimed \$558.00 for junk removal. I find the colour photos support that the tenant left a lot of junk inside and outside of the rental unit which is a breach of section 37 of the Act, which requires the tenant to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear. I find the tenant failed to leave the rental unit in a reasonably clean condition and instead left a lot

of junk behind and that given the invoice submitted, I award the landlord the full amount of **\$558.00** as claimed for this item.

Item 4 - The landlord has claimed \$370.00 for the cost to repair a fence and gate, which is listed on the condition inspection report. I have reviewed the home inspection report dated May 12, just 2.5 months before the tenancy and find that the fence and gate were not damaged as compared to the after photos provided by the landlord. I have also reviewed the invoice and I find the amount claimed is reasonable given the damage to the gate and fence. Therefore, I find the tenant damaged the gate and fence as claimed by the landlord and I award the landlord **\$370.00** as claimed for this item.

Item 5 - The landlord has claimed \$600.00 to repair a damaged bathroom floor. I find the photo evidence supports that the tenant left water on the bathroom floor leading to damage under the vinyl flooring of the bathroom and that by not wiping up water after a shower, that the tenant was negligent. Therefore, as I find the tenant was negligent, I do not apply Residential Tenancy Branch (RTB) Policy Guideline 40, Useful Life of Building Elements, as I find that policy guideline 40 does not apply to negligence. Therefore, I award the landlord the full amount claimed of **\$600.00** as claimed for this item.

Item 6 – The landlord has claimed \$932.40 for tree removal. I find the landlord has failed to meet the burden of proof for several reasons. Firstly, I find there was no before photo showing that there was no tree in the rear corner of the backyard prior to the start of the tenancy. Secondly, I find it more likely than not that the tenant did not plant a tree that could grow to the size shown in the after photos within the 3-year span of the tenancy. As a result, I find the landlord has provided insufficient evidence to support this item and as a result, I dismiss this item without leave to reapply, due to insufficient evidence.

Item 7 - The landlord has claimed \$892.50 for landscaping due to the tenant adding an above-ground pool without permission of the landlord causing the grass in the backyard to die, which required repair. The agent referred to an invoice in the amount of \$892.50 for landscaping. The invoice states “replace sod, prune, redo front bed” on the invoice for \$892.50. Although the home inspection report was missing 6 pages, I find the evidence presented by the agent and based on the “Grounds” term of the signed tenancy agreement addendum, I find the tenant failed to comply with the “Grounds” term and as a result, cost the landlord \$892.50 to bring the yard back to the condition it was before the start of the tenancy. As a result, I award the landlord **\$892.50** for this item as claimed.

Item 8 – Consistent with my finding for item 7 above, I have reviewed the invoice for the amount of \$414.33 claimed for the cost of the sod used to replace the damaged area mentioned in item 7 above. I find that by erecting an above-ground pool, that the tenant damaged the grass, which required replacement and that the landlord has met the burden of proof as a result. Therefore, I award the landlord **\$414.33** as claimed for this item.

Item 9 – The landlord has claimed \$170.00 to repair the front gutter, which the agent testified was damaged due to the tenant hanging Halloween decorations on the front gutter. I have reviewed the photo showing Halloween items attached to the gutter and a close up of the gutter damaged were referred to by the agent during the hearing. I find the tenant was negligent by attaching items to the gutter that ruined the finish of the front gutter of the home, and therefore, I award the landlord **\$170.00** as claimed for this item as I find the landlord has met the burden of proof.

Item 10 - The landlord has claimed \$140.00 to repair a damaged shelf with burn marks in the master ensuite bathroom. I agree with the agent that the shelf could not be repaired due to the obvious smoke burns. I also find the amount claimed to be reasonable and that the tenant breached section 37 of the Act by burning the shelf. Therefore, I grant the landlord **\$140.00** as claimed for this item.

Item 11 - The landlord has claimed \$1,083.20 for the cost to repair carpet and vinyl flooring that the tenant burned either intentionally or accidentally during the tenancy. I have reviewed the invoice which I find matches the amount claimed and I find the photo evidence supports that the tenant burned the carpets and vinyl flooring with cigarettes. I also find that such burns are negligent and as a result, I do not apply RTB policy guideline 40. Given the above, I find the landlord has met the burden of proof and I award the landlord the full amount claimed for this item in the amount of **\$1,083.20**.

Item 12 – The landlord has claimed \$670.11 for the cost to install the flooring described in item 11 above and consistent with my find for item 11, I find that the landlord is entitled to the entire amount claimed as I do not apply RTB policy guideline 40 to the install labour as I find the vinyl and carpet were negligently damaged by cigarette burns and do not reflect reasonable wear and tear. Therefore, having considered the invoice for the amount claimed, and the photo evidence, I award the landlord the full amount claimed for this item in the amount of **\$670.11**.

Item 13 - The landlord has claimed \$109.96 for the cost to replace 2 garage remotes. I have reviewed the condition inspection report which states the tenant received 2 garage

remotes at the start of the tenancy. I also accept the agent's undisputed testimony that the tenant failed to return either remote. Therefore, I award the landlord **\$109.96** as claimed for this item.

As the landlord's claim was successful, I grant the landlord **\$100.00** pursuant to section 72 of the Act for the filing fee.

I find the landlord has established a total monetary claim in the amount of X as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Unpaid rent for December 2019 and January 2020	\$5,100.00
2. Unpaid utilities	\$975.03
3. Junk removal	\$558.00
4. Fence/gate repair	\$370.00
5. Bathroom floor repair	\$600.00
6. Tree removal	dismissed
7. Landscaping	\$892.50
8. Sod	\$413.33
9. Gutter repair	\$170.00
10. Master ensuite repair	\$140.00
11. Carpet and vinyl flooring	\$1,083.20
12. Flooring installation	\$670.11
13. 2 garage remotes	\$109.96
14. Filing fee	\$100.00
TOTAL	\$11,182.13

I authorize the landlord to retain the tenant's full security deposit of \$1,250.00, which has accrued \$0.00 in interest, in partial satisfaction of the landlord's claim. I grant the landlord a monetary order pursuant to section 67 of the Act for the balance owing to the landlord by the tenant in the amount of **\$9,932.13**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord's application is mostly successful.

The landlord has established a total monetary claim of \$11,182.13 as described above. The landlord has been authorized to retain the tenant's security deposit of \$1,250.00 towards the amount owing and the landlord has been issued a monetary order in the amount of \$9,932.13 pursuant to section 67 of the Act.

This decision will be emailed to the parties. The monetary order will be emailed to the landlord only for service on the tenant as necessary.

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: July 3, 2020

Residential Tenancy Branch