



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNSD, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to sections 67, 38 and 72 of the *Residential Tenancy Act*. The landlord applied for a monetary order to recover the cost of replacing a washing machine, for the cost of repairs and cleaning and for the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Both parties provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Is the landlord entitled to a monetary order to recover the cost of replacing a washing machine, for the cost of repairs and cleaning and for the filing fee?

Background and Evidence

The background facts are generally undisputed. The tenancy started on September 27, 2018 and ended on July 31, 2020. Prior to moving in the tenant paid a security deposit of \$1,875.00. On August 13, 2020, the tenant provided the landlord with a forwarding address. The landlord made this application on August 20, 2020 which is within the legislated time frame of 15 days. The rental unit is located in a triplex which houses two other residences. The landlord purchased the unit in May 2017 at which time it was newly constructed.

The landlord agreed that he had not done a walk-through inspection with the tenants at the time the tenancy started or at the end of tenancy. The landlord stated that since the rental unit was fairly new at the start of tenancy, there were no discrepancies to be documented.

On July 31, 2020, the tenancy ended, and the landlord attended the rental unit and carried out an inspection in the absence of the tenants. The landlord stated that he took photographs to document the condition of the unit on that day and filed them into evidence.

The landlord stated that the washing machine was not working properly, and he called in the technician who had serviced the machine earlier in the tenancy. An inspection was done, and it was determined that the bearings and shock springs had to be replaced. The landlord was charged \$126.00 for the inspection. The landlord filed an estimate of the cost to repair the machine in the amount of \$1,438.88. The landlord decided that it would be financially beneficial to him to replace the machine as it would cost him less. The landlord is claiming the cost of the machine, the cost of installation and the cost of disposal of the old one.

The landlord stated that rental unit was left in a dirty condition and filed photographs to support his testimony. The tenant stated that she had cleaned the unit, but the photographs showed that there was a fair bit of cleaning left to do. The landlord is claiming \$150.00 for the cost of cleaning.

The landlord stated that one of the walls in the bedroom was damaged and the washroom door and cabinet doors were off their hinges. The landlord filed photographs of the damage to the wall and the washroom and cabinet doors. The tenant agreed that her bedframe had damaged the wall and stated that the cabinet doors and bathroom doors were problematic right through the tenancy.

The landlord is claiming the following:

1.	Replace washing machine	\$1,142.81
2.	Inspection of washing machine	\$126.00
3.	Washing machine disposal and installation	\$220.50
4.	Cleaning	\$150.00
5.	Repair bedroom wall	\$630.00
6.	Repair washroom and cabinet doors	\$70.00
7.	Filing fee	\$100.00
	Total	\$2,439.31

Analysis

During the hearing the tenant raised the issue of consequences of not conducting move in and move out inspections. The tenant stated that the right of the landlord to the return of the security deposit is extinguished if the landlord has not conducted inspections at the start of tenancy and/or has not provided the tenant with two opportunities for inspection at the end of tenancy.

Sections 35 of the *Residential Tenancy Act* addresses this issue and states:

Condition inspection: end of tenancy

- 35** (1)The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a)on or after the day the tenant ceases to occupy the rental unit, or
 - (b)on another mutually agreed day.
- (2)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3)The landlord must complete a condition inspection report in accordance with the regulations.
- (4)Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5)The landlord may make the inspection and complete and sign the report without the tenant if
- (a)the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b)the tenant has abandoned the rental unit.

Section 36 of the *Residential Tenancy Act* address the consequences if inspection report requirements are not met and states the following:

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.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the landlord's evidence and testimony of both parties, I find that the landlord did not offer the tenant an opportunity to do a move out inspection and allowed a new tenant to move in immediately after the tenant moved out. Therefore, pursuant to section 24 of the *Residential Tenancy Act*, the right of the landlord to make a claim against the security deposit is extinguished and he must return the deposit of \$1,875.00 to the tenant.

However, even though the landlord's right to make a claim against the security deposit is extinguished, the landlord may make a claim for damages.

The landlord filed a monetary worksheet with his claims as listed in the table above. I will address the landlord's claims as follows:

1. Replace washing machine - \$1,142.81
2. Inspection of washing machine - \$126.00
3. Washing machine disposal and installation - \$220.50

Section 40 of the *Residential Tenancy Policy Guideline* addresses the useful life of an item. I will use this guideline to assess the remainder of the useful life of the washing machine. As per this policy, the useful life of appliances such as a washing machine is 15 years. The landlord stated that the washing machine was 3 years and 2 months old at the end of tenancy and therefore the washing machine had approximately 11 years and 10 months of useful life left.

Accordingly, if the landlord is entitled to his claim, I will prorate the amount of the award to reflect the useful life left on the appliance at the end of tenancy.

The landlord filed proof of having serviced the machine earlier in the tenancy and one of the problems detected by the technician was that the tenant used an excessive amount of detergent. The inspection report dated July 31, 2020, indicates that the bearings and shock absorbers needed to be replaced.

The landlord provided a receipt as proof of purchase of the washing machine in the amount of \$1,198.81 but is claiming less than this amount as installation and disposal were included. The landlord has made another claim for installation and disposal in the amount of \$220.50. The landlord could have mitigated his losses by using the services offered by the supplier of the machine for \$50.00, instead of contracting the service out for \$220.50. Therefore, I dismiss the landlord's claim for the cost of installation and disposal of the old machine.

I will use the *Residential Tenancy Policy Guideline #40*, to assess the prorated value of the remainder of the useful life of the machine. Since the machine had approximately 11 years and 10 months of useful life left, I find that the pro rated value of the balance of the useful life of the washing machine is approximately \$1,045.00.

Apart from the use of excessive detergent, I find that it is possible that some of the damage to the machine may have been from wear and tear. Therefore, I find it appropriate to award the landlord \$600.00 towards his claim #1, #2 and #3

4. Cleaning - \$150.00

Based on the photographs filed into evidence by the landlord I find that the landlord has proven his claim for the cost of cleaning.

5. Repair bedroom wall - \$630.00

The landlord stated that he has not carried out this repair and the new tenants have moved in. Since the landlord did not incur this expense, his claim is dismissed.

6. Repair washroom and cabinet doors - \$70.00

Based on the photographs filed by the landlord and the testimony of both parties, I find on a balance of probabilities that it is more likely than not that this damage is a result of wear and tear. Accordingly, the landlord's claim is dismissed.

1. Filing fee - \$100.00

Since the landlord has proven his case, he is entitled to the recovery of the filing fee.

Overall, the landlord has established the following claim:

1.	Replace washing machine	\$600.00
2.	Inspection of washing machine	\$0.00
3.	Washing machine disposal and installation	\$0.00
4.	Cleaning	\$150.00
5.	Repair bedroom wall	\$0.00
6.	Repair washroom and cabinet doors	\$0.00
7.	Filing fee	\$100.00
	Total	\$850.00

The landlord has established a claim of \$850.00 and the tenant has established a claim of the return of the deposit in the amount of \$1,875.00. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$1,025.00 which consists of security deposit of \$1,875.00 minus the landlord's established monetary claim of \$850.00.

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1,025.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$1,025.00**.

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: November 24, 2020

Residential Tenancy Branch