



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MND, RPP, FF.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for the cost of painting, repairs, cleaning, replacements of appliances and blinds, garbage removal and loss of income. The landlord applied to retain the security and pet deposits in partial satisfaction of his monetary claim. The tenant applied for the return of the security and pet deposits, for compensation due to the presence of mould in the rental unit and for the cost of cleaning supplies, an air conditioner and soil left behind. The tenant also applied for the return of his personal property.

Both parties applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Are the landlord and tenant entitled to their monetary claims? Is the tenant entitled to the return of the security and pet deposits?

Background and Evidence

The landlord filed an extraordinary number of documents into evidence totalling approximately 400 items consisting of photographs, videos, invoices, worksheets etc.

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The tenancy started on December 01, 2017 and ended on March 31, 2023. The monthly rent was \$1,200.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$550.00 and a pet deposit of \$550.00.

The tenant stated that before he moved into the rental unit, he requested the landlord to remove the laundry machines in the unit, as he had his own that he preferred to use. The landlord stated that his laundry machines remained inside the rental unit at the start of tenancy. The tenant maintained that at his request, the landlord removed the machines prior to the start of tenancy, and he used his own laundry machines during the tenancy.

The tenant also stated that the stove knobs were not fully functional and there was a cracked glass on the oven front. The tenant stated that during the tenancy, he asked the landlord to remove the stove and he replaced it with his own. The tenant stated that the landlord along with his handyman removed the stove from the rental unit. The landlord denied having removed the stove.

The tenant stated that in the summer of 2019, he informed the landlord of leaks that were creating mould in the house. The landlord stated that he was not notified of the issue. The tenant provided photographs that show an abundance of black mould in multiple areas of the home - in the attic, around windows, in corners of the ceiling etc.

The tenant stated that the mould affected their health and they purchased cleaners/disinfectants over the years to keep the mould at bay. The tenant is claiming compensation for the cost of cleaning supplies and for the stress and ill health effects, caused by the mould during the final 3 years of the tenancy.

The parties agreed that that the tenant provided adequate notice to end the tenancy effective March 31, 2023.

On March 05, 2023, the landlord sent the tenant a notice, by email, to enter the rental unit on March 10 for the purpose of "*conducting a condition inspection and a walk through with contractors*". The tenant replied by email, informing the landlord that March 10 was not convenient for him, and that the condition inspection could be done on March 31, 2023.

The landlord testified that despite having been informed that an inspection on March 10, 2023, was not suitable for the tenant, the landlord attended the unit on that day and was denied access by the tenant. The landlord stated that this denial of access to the rental unit resulted in him having to pay the contractors for their time. The landlord stated that the work that the contractors were hired to do, got delayed and he suffered a loss of income, as he had to wait for the unit to be ready before he could re rent it.

It must be noted that the landlord hired contractors from a city that was at a distance away from the rental unit and is claiming the cost of 8 hours of travel time and meals for two days. The tenant alleged that the contractor is a relative of the landlord who was visiting. The landlord denied the allegation.

On March 31, 2023, the landlord conducted a move out inspection. The parties did not agree to the contents of the report and the tenant did not sign the report. The tenant stated that the landlord called the police, and the tenant was asked to leave before he could complete the removal of some items from the back yard and the removal of his air conditioner.

The tenant stated that he had enriched garden soil in the backyard, and it was too frozen to move. He requested the landlord for additional time till the weather permitted removal. The landlord stated the soil was not frozen and could have been removed on the day the tenant moved out. The landlord refused to allow the tenant back to remove the items he intended to take with him.

Analysis

Landlord's application:

The landlord has claims for various items and has provided extensive evidence by way of videos, receipts and photographs. I will group the landlord's claim under broad categories for the sake of brevity and clarity.

1. Reseeding the lawn

The landlord stated that the tenant was supposed to reseed the lawn and did not. The landlord has claimed the cost of doing so. The tenancy agreement and the addendum do not state that the tenant was responsible for seeding grass.

Section 1(4) of the Residential Tenancy Policy Guidelines states as follows:
Generally, the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

Based on this Guideline, I dismiss the landlord's claim for the cost of reseeding the yard.

2. Removal of Garbage

The landlord stated that the tenant built a shed and failed to remove it at the end of tenancy. The tenant stated that he found a dismantled shed in the yard and assembled it. It did not belong to him.

The tenant agreed that he left soil behind and a fire ring of wood that he intended to remove on the day he moved out. However, the tenant stated that on that day, the landlord called the police and at the landlord's request the police moved the tenant off the property before he had the opportunity of removing these items. The landlord also refused to allow the tenant back to retrieve his property.

Since the landlord did not allow the tenant the opportunity to clear the yard, I dismiss the landlord's claim for the cost of removing these items.

3. Exterior wall and door repair, gutter repair and window replacement

Section 1 of the Residential Tenancy Policy Guidelines states as follows:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit.

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

The landlord is claiming the cost of repairs to exterior walls and doors and gutter repair. Upon reviewing the evidence filed by the landlord, I find on a balance of probabilities that it is more likely than not that the damage was due to wear and tear.

I further find that the landlord has not proven that the tenant deliberately caused damage or that the damage was due to negligence on the part of the tenant. For these reasons, I dismiss the landlord's claim for the cost of repairs.

The landlord stated that there was a small hole in a window and that he had the window replaced. The tenant stated that the hole was present at the start of tenancy and the landlord was informed about it. The landlord stated that this was not noted in the move in inspection report. The tenant replied that the hole was so small that they did not notice it till the next day and reported it to the landlord. The landlord denied having been informed of the hole in the window.

Since the parties provided contradictory testimony, I find on a balance of probabilities that it is more likely than not that the damage occurred prior to the tenant moving in. I also find that the size of the damage is unlikely from deliberate damage or neglect on the part of this or the previous tenant.

The landlord must bear the cost of replacing the window.

4. Cleaning Windows and Ceiling fan

The landlord filed evidence to support his claim of \$120.00 for the cost of cleaning the windows and ceiling fan. Accordingly, I award the landlord this amount.

5. Replacement of Stove and laundry machines

The parties provided contradictory evidence regarding the appliances. The landlord agreed that the appliances were purchased second hand. The landlord was not sure of when these appliances were installed in the rental unit prior to the start of tenancy.

Policy guideline #40 provides information about the **Useful Life of Building Elements**

This Policy Guideline is intended to provide a statement of the policy intent of legislation and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application, understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position.

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

Based on this guideline the useful life of these appliance is 15 years.

Based on the testimony of the tenants, I find on a balance of probabilities that it is more likely than not that the tenants requested the landlord to retrieve his appliances, so that they could use their own. Also based on the landlord's testimony, he purchased the appliances second hand. The landlord did not provide information regarding the age of the second-hand appliances at the time of purchase. The landlord was also not sure of when he installed these appliances in the rental unit. The length of the tenancy was 5 years and 3 months.

Overall, I find that even if I accept the landlord's testimony that he did not retrieve his appliances, he is not entitled to the cost of new appliances as the ones he is claiming for, have probably outlived their useful life.

The landlord's claim for the cost of new appliances is dismissed.

6. Replacements of blinds

The landlord is claiming the cost of the replacement of the blinds. The tenant stated that the blinds were old at the start of tenancy. The landlord argued that the blinds were 1 year old at the start of tenancy but did not file evidence to support his testimony. The photos show that the blinds have signs of wear and tear.

As per policy guideline #40, the useful life of blinds is 10 years. Based on the testimony of both parties and the length of the tenancy, I find on a balance of probabilities that is more likely than not that the blinds had outlived their useful life, at the end of this tenancy. Accordingly, the landlord's claim for the cost of blinds is dismissed.

7. Dog Urine remediation

The landlord stated that there was a strong odour of dog urine in the rental unit, by the front door. The landlord is claiming \$49.15 for a remover and \$18.41 for a primer.

The landlord filed evidence to support his claim. I find that the landlord is entitled to his claim of a total of \$67.56.

Under this category, the landlord is claiming the cost of asbestos test. I find that the tenant is not responsible for the cost of this test.

8. Bathroom door repair

The landlord stated that the bathroom door was damaged from what appeared to be the dog scratching the door. The landlord filed photos and invoices to support his claim of a total of \$139.98. I find that the landlord has proven his claim.

9. Utility room sanding and painting

As per policy guideline #40, the useful life of indoor paint is 4 years. The tenancy was at least 5 years old and therefore the landlord is not entitled to the cost of sanding and painting.

10. Failed kitchen measuring and delayed start of rent

The landlord provided notice on March 05, 2023, for a visit on March 10, 2023 to do a condition inspection report and a walk through by contractors. The tenant replied to the landlord on March 08, 2023, informing him that March 10 was not convenient and that a move out condition inspection could be done on March 31, 2023, which was the move out date.

The landlord attended the rental unit on March 10, 2023, despite receiving information that it was not convenient for the tenant. The landlord stated that he was accompanied by out-of-town contractors who wanted to be compensated for their travel time and meals. The landlord also stated that because the contractors were unable to take measurements, the work was delayed which resulted in a loss of rental income.

I find that a move out inspection must be conducted on the last day of tenancy and therefore the tenant's refusal to allow the landlord to conduct a move out inspection 20 days before the end of tenancy was reasonable.

The landlord chose to hire contractors that were from a town that was at a distance from the rental unit. I find that the landlord's claim for their travel time and meals is unreasonable. The tenant is not responsible for the cost of travel and meals of the out-of-town contractors or the loss of income the landlord incurred.

11. Filing fee

Since the landlord has proven a portion of their case, I award the landlord the recovery of the filing fee of \$100.00.

Overall the landlord has established the following claim:

1.	Window Cleaning	\$60.00
2.	Ceiling fan Cleaning	\$60.00
3.	Dog Urine Remover	\$49.15
4.	Oil Primer	\$18.41
5.	Bathroom door Paint	\$85.11
6.	Bathroom door Latex Paint	\$54.87
7.	Filing fee	\$100.00
	Total	\$427.54

Tenant's application:

The tenant has made a claim for compensation in the amount of \$30,000.00 for having to live with mould during the last 3 years of tenancy, for \$1,500.00 for the cost of mould cleaners and the time spent cleaning, for \$1,000.00 for enriched garden soil that they were not given an opportunity to haul away and for the return of an air conditioning unit that that they were unable to remove because the landlord asked them to leave the property and never return.

1. Mould

Section 6 of the *Residential Tenancy Policy Guideline*, states that a landlord would normally be held responsible for a problem, if he was aware of a problem and failed to take reasonable steps to correct it.

In this case, tenant stated that he first notified the landlord of the problem in the summer of 2019 and reminded him multiple times during the tenancy. The tenant stated that the landlord did not take action to remediate the problem.

The tenant stated that they made efforts to clean the mould by using a disinfectant but the mould kept coming through the ceiling and the walls. The tenant filed photographs of the mould coming through the ceiling and the wall paint, in multiple locations. The tenant also stated that the mould was present on the outside of the home, above the main entrance door, in the eaves and on the front of the house and filed photographs to support their testimony. The tenant testified that the crawl space and attic were covered in black mould and filed photographs of the same.

The tenant testified that in the fall of 2022, the City bylaw officer visited the rental unit and in March 2023, an environmental inspector visited the rental unit. The tenant stated that both reported mould but reports were not filed into evidence.

Based on the evidence and testimony of both parties, I find that mould was present inside the rental unit. The photographs show that problem manifested itself by coming through the ceiling, through the wall paint and onto the outside of the home. Based on the photographs, I find that the mould was present in excessive amounts and was probably a build over several years. The areas like the attic and crawl space, not in use by the tenants on a daily basis, were covered in mould.

I accept that the tenant informed the landlord about the problem and the landlord did not take action to eliminate the mould. I also accept the tenants' testimony that the mould affected their health.

For all the above reasons, I find that the tenant's claim for compensation has some merit.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Taking into account that the tenant occupied a rental unit that was infested with mould and no steps were taken by the landlord to remediate the problem, despite being put on notice, I find it appropriate to award the tenant a minimal award of \$1,000.00 towards the loss of quiet enjoyment of the rental unit and the possible adverse effects on the tenants' health.

2. Cleaning Products

Based on the testimony and evidence of the tenant, I find that the rental unit was infested with mould. The tenant informed the landlord, but the landlord did not remedy the problem. The tenant stated that they purchased cleaning products over the last three years and spent time attempting to clean the living areas of the home. I find the testimony of the tenant credible, and the photographs support their testimony.

Accordingly, I award the tenant their claim of \$1,500.00 for the cost of cleaning products and their time to clean the unit.

3. Enriched Garden soil

The tenant stated that he was not given the opportunity to haul away the soil as the landlord had the tenant removed from the property by police before he could haul away the soil. The tenant reduced his claim from \$1,000.00 to \$500.00.

I find that the tenant is entitled to his claim of \$500.00.

4. Return of Airconditioning unit

During the hearing the tenant withdrew his claim for the return of the air conditioning unit. The tenant's claim is dismissed without leave to reapply.

5. Filing Fee

Since the tenant has proven a portion of their case, I award them the filing fee.

Overall the tenant has established the following claim:

1.	Compensation for Mould Infestation	\$1,000.00
2.	Cleaning Products	\$1,500.00
3.	Enriched garden soil	\$500.00
4.	Filing Fee	\$100.00
5.	Security and pet deposits	\$1,100.00
	Total	\$4,200.00

The landlord has established a claim of \$427.54 and the tenant has established a claim of \$4,200.00. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$3,772.46 which consists of difference between the established entitlements of the parties.

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$3,772.46**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$3,772.46**.

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: October 24, 2023

Residential Tenancy Branch