



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPB, MND, MNR, MNSD, MNDC, FF and SS

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order, an order for substituted service and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing and had opportunity to be heard.

The landlord applied for an order of possession, but the parties agreed that the tenants had vacated the rental unit and I consider that claim to be withdrawn. The landlord also applied for an order for substituted service, but as the respondents participated in the hearing and raised no issue of service, I find that it is unnecessary to address that claim.

The tenants suggested that they had an entitlement to an award of double the security deposit, but the testimony was clear that the tenants were not finished cleaning the rental unit until at least September 2 and there is no evidence that the tenants gave the landlord a forwarding address until the hearing. The Act requires that the tenants must provide a forwarding address in writing to the landlord before the landlords must make an application to retain the security deposit. I find that the landlords made the application before the tenants provided their forwarding address and accordingly find that the tenants are not entitled to an award of double their security deposit.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for loss and damage?

Background, Evidence and Analysis

The parties agreed that the tenancy began on June 24, 2006 and that pet and security deposits of \$450.00 each were collected at that time. The parties further agreed that at

the end of the tenancy the tenants were paying monthly rent in the amount of \$936.00.

I address the landlord's claims and my findings around each as follows:

- [1] **Cleaning.** The landlord claims \$720.00 as the cost of cleaning the rental unit. The landlord testified that although the rental unit appeared to be clean, the surface areas of the rental unit were tacky to the touch, which the landlord attributes to the tenants smoking inside the rental unit. The landlord further testified that the cleaning costs include the cost of cleaning carpets five times because of the damage caused by cigarettes and the tenants' pets. The tenants testified that they thoroughly cleaned the rental unit at the end of the tenancy and provided photographs showing the condition of the unit at the end of the tenancy. The tenants testified that the landlord had given them permission to smoke inside the rental unit but testified that they usually smoked in the garage or outside, which I take to be an admission that they at least occasionally smoked inside. The landlord provided a handwritten record of the cleaning that was done inside the house which included a record of 22 hours of cleaning. The landlord's records further show that _____ was paid \$112.00, presumably for cleaning the carpets five times. Having considered the testimony and evidence of both parties, I find that the rental unit was substantially clean at the end of the tenancy. As the tenants acknowledged that they smoked inside on occasion, I accept that some additional cleaning may have been required as residue would have accumulated on surfaces in the home. However, as the tenants' photographs show that everything in the rental unit appeared to have been wiped down and stain-free, I find the landlord's claim of 22 hours of cleaning to be excessive. I find that 15 hours would have been sufficient to remove the residue from the surface areas of the home and accordingly find the landlord is entitled to recover \$240.00 for cleaning costs which represents 15 hours of cleaning at a rate of \$16.00 per hour. As for the claim for the cost of cleaning carpets, I find that the landlord has failed to prove that the carpets were sufficiently soiled to require 5 cleanings. I find that 3 hours would have been sufficient to clean the carpets, which at a rate of \$16.00 per hour results in an entitlement of \$48.00. The landlord is awarded a total of

\$288.00 under this head of damage.

- [2] **Accommodation for owner.** The landlord claims \$600.00 as the cost of the owner's accommodation. The landlord testified that the owner of the rental unit wanted to inspect the condition of the rental unit at the end of the tenancy and flew in from out of town to do so. As the rental unit was being cleaned, the owner could not stay in the unit and had to rent accommodation elsewhere and seeks to recover that cost. I find that the tenants should not be held responsible for the cost of housing the owner when the owner is the one who made the choice to purchase a rental unit which was too far from her own home to permit her to visit without staying overnight. If the owner wishes to personally handle the remediation of the rental unit, she must be prepared to pay for her own accommodation. The landlord's claim is dismissed.
- [3] **Missing items.** The landlord seeks to recover \$100.00 as the cost of a missing microwave and cot. At the hearing the tenants explained that the microwave stopped working during the tenancy and that they discarded the cot at the beginning of the tenancy because it had a bad odour. The landlord accepted this explanation and stated that she did not wish to pursue this claim. I consider the claim to be withdrawn.
- [4] **Gate/Fence repair.** The landlord seeks to recover \$64.00 as the cost of removing a gate and fence from the residential property. The landlord testified that at the end of the tenancy the tenants left a gate and a fence in the yard which the landlord had to remove. The tenants testified that the landlord gave them permission to put up a fence as long as it was not permanent and testified that the fence was easy to disassemble. I find that the tenants were responsible for removing the gate and fence at the end of the tenancy and find the landlord's claim for the cost of that removal to be reasonable. I award the landlord \$64.00.
- [5] **Fireplace screen.** The landlord seeks \$500.00 as the cost of replacing a fireplace screen. The landlord testified that at the beginning of the tenancy

there was in the rental unit a black fireplace screen with glass doors installed on the front of the fireplace. At the end of the tenancy, the landlord found the screen broken and lying beside the fireplace. The landlord did not provide professional estimates as to the cost of the screen and testified that she did not know how old the screen was. The tenants testified that the screen broke the first time they attempted to use it and that they removed it at that time and merely placed the screen back beside the fireplace at the end of the tenancy. I find that the landlord has not proven that the screen was in good working condition at the beginning of the tenancy and further find that the landlord has not proven the value of the screen. The landlord's claim is dismissed.

- [6] **Unpaid rent.** The landlord claims \$936.00 for each of the months of September and October as unpaid rent and loss of income. The tenants testified that at the end of August they discovered that the landlord's agent had stopped working for the property management company that had managed their tenancy from the start and begun working for the company named as the applicant in this proceeding. The tenants testified that they wanted to remain clients of _____, the property manager with whom they had originally dealt, and chose to end their tenancy as they had been given no formal notice that the landlord was switching property management companies. The tenants could not recall the date on which they gave the landlord notice that they were vacating the rental unit, but testified that they believe it was between August 21 and September 2. The landlord testified that she received the tenant's letter on September 5. The letter was originally dated August 31 and that date was crossed out and replaced by hand with a September 2 date. I find that the tenants did not give the landlord notice that they were vacating the rental unit until September 2 and that pursuant to the provisions of section 45 of the Act, that notice cannot have been effective until October 31, 2008. I accept that the landlord made every effort to mitigate her losses by advertising the rental unit as early as September 8, but has been unable to re-rent the unit thus far. I find the landlord is entitled to recover \$1,872.00 as unpaid rent and loss of income and I award the landlord that sum.

- [7] **Insurance.** The landlord claims \$94.00 as the cost of insuring the property during the month of October. The landlord provided evidence from the insurance company showing that the additional cost was payable because the property was unoccupied. As I have already found that the tenants' notice that they were vacating could not have been effective earlier than October 31, 2008, I find the tenants are responsible for the cost of insuring the premises until that date. I award the landlord \$94.00.
- [8] **Carpets.** The landlord claims 85%, or \$3,400.00, of the \$4,000.00 cost of replacing carpets at the end of the tenancy. The landlord testified that the carpets on the upper floor may have been approximately 5 years old as the neighbours who live near the rental unit believe the previous owner replaced the carpets immediately before selling the rental unit to the current owner. The landlord acknowledged that the carpets on the lower floor were older. The landlord testified that at the beginning of the tenancy the carpets were in good condition but at the end of the tenancy there were burn marks on the carpets in several areas and the carpets on the lower floor were stained with pet urine. The tenants acknowledged one burn mark and denied that their pets had urinated inside the house. The landlord submitted faxed photographs as evidence, but the photographs did not transmit well through the fax and were so dark it was impossible to discern the condition of the carpets. Only one of the tenants' photographs show the carpets and there is no discernable damage in that photograph. The landlord did not submit an invoice from a company that specializes in carpet replacement. The landlord submitted an undated statement from _____ who claimed to have been in the cleaning industry for 25 years and stated that in her view, the carpet required replacement as the pet stains and oil/grease stains could not be removed. On that written statement, the landlord's claim for the cost of carpet replacement is hand-written with no indication of where the figures were obtained. The landlord is responsible to prove both liability and quantum of her claim. I note that _____'s statements did not address burn marks in the carpets and that the landlord did not allege that the tenants had caused grease or oil

stains, which suggests that those stains pre-dated the tenancy. I find that the landlord has not proven that the upper carpets had damage or stains which were beyond the reasonable wear and tear one would expect in a two-year tenancy. I further find that while the lower carpets may have been stained, the parties agree that the carpets on the lower floor were considerably older than those on the upper floor and in a style which was popular in the 70's. I find that the carpets on the lower floor had long outlived their useful life and accordingly find that the landlord has failed to prove that a compensable loss in value occurred. The landlord's claim is dismissed.

- [9] **Filing fee.** The landlord seeks to recover the \$50.00 paid to bring this application. I find that the landlord is entitled to recover the fee and award the landlord \$50.00.

Conclusion

In summary, the landlord has been successful in the following claims:

Cleaning	\$ 288.00
Gate/Fence repair	\$ 64.00
Unpaid rent/loss of income	\$1,872.00
Insurance	\$ 94.00
Filing fee	\$ 50.00
Total:	\$2,368.00

I find that the landlord has established a claim for \$2,368.00. I order that the landlord retain the deposit and interest of \$926.98 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,441.02. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated October 21, 2008.