



Dispute Resolution Services

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

Decision

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a monetary order for costs associated with cleaning and repairs to the unit, loss of rental income, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee for this application. Both parties participated in the hearing and gave affirmed testimony.

Issue to be Decided

- Whether the landlord is entitled to a monetary order under the *Act*

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy commenced June 15, 2007. Rent in the amount of \$400.00 was payable in advance on the first day of each month, and a security deposit of \$200.00 was collected at the start of tenancy. It is understood that on or about June 26, 2008, there was a change in ownership of the complex and the landlord's agent was hired as property manager.

Pursuant to the landlord's issuance of a 2 month notice to end tenancy for landlord's use of property dated September 23, 2008, tenancy ended November 30, 2008. The reason identified on the notice for its issuance is as follows:

The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

It is understood that the principal reason for issuing this notice was so that repair of the bathroom ceiling could be undertaken where damage had resulted from water leaking from the bathroom above.

The tenant states there was no move-in condition inspection or report completed at the start of tenancy. The landlord's agent takes the position that a move-in condition inspection and report were completed but stated that the report is unable to be found. However, the parties agree that a move-out condition inspection took place. In this regard a move-out condition inspection report which is signed by the parties and dated November 29, 2008 was submitted into evidence. The tenant has made handwritten notations on the move-out condition inspection report with regard to walls and trim in various rooms of the unit, as follows:

dirty needs painting; dirty needs cleaning & painting;

With respect to carpet in various rooms she has noted on the report:

burned & stained; stained needs cleaning.

Finally, on the report the tenant makes reference to notes such as those above and writes:

This is the condition of it when I rented it.

Into evidence the tenant submitted a letter dated January 2009 from another former resident in the complex. In this letter the writer states, in part:

None of the walls had been washed or painted at the time [the tenant] rented the place. This was evident by the tape marks on the walls. Both of the former tenants were smokers and smoked in the apartment. [The tenant] is a smoker too and as her eviction indicated that major renovations were to be done, she was advised not to wash walls by several people.

The apartment right over 204 had a toilet problem and had to be repaired from 204. The fan, which is the only ventilation in the bathrooms, was removed and never replaced and the hole in the ceiling in 204 was not repaired while [the tenant] lived there.

The bathrooms were all back to back so the traps handle waste from at least six apartments. For this reason it would be hard to hold any one person responsible for any blockages or back up.

I am sure that the parking lot at the apartment hasn't been resurfaced since the building was built. Most of the spaces are oil stained and there are lots of pot holes throughout the lot. It would be hard to say at this time who would be responsible for this damage. [The tenant] only had a car for about three months while she lived in the building.

Included in the landlord's submission is a video cassette focusing on the comparative condition of the unit immediately after the departure of the tenant and following the landlord's cleaning of the unit. Additionally, the landlord submitted a breakdown of costs claimed in association with the post-tenancy cleaning and repair of the unit. In summary, this breakdown is as follows:

Hardware:

\$1.00 light bulb (sink)

\$2.50 smoke detector battery

\$3.00 door security chain

\$6.50

Cleaning supplies:

\$22.50 carpet cleaning solution

\$ 3.93	bleach
\$10.00	cleaning supplies for bathtub
\$ 4.99	oven cleaner
\$ 5.88	Tilex cleaner
\$ 4.00	S.O.S. pads
\$ 7.00	laundry fee: drapes & cleaning rags
\$31.52	bathroom sink drainer & parts
<u>\$ 2.00</u>	paper towels
\$91.82	

Labour for general cleaning (except bathroom / 9.75 hours x \$10.00 hour):

\$97.50

Labour for work in bathroom (8.25 hours x \$20.00 hour):

\$165.00

Parking stall:

\$5,565.00

Loss of rental income:

\$400.00

Miscellaneous:

\$336.00 legal fees

\$ 10.00 video tapes for evidence

\$ 20.00	1 hour of labour for preparing video tape evidence
\$ 6.80	photocopies for evidence
\$ 6.72	digital photos for evidence
<u>\$ 40.00</u>	2 hours of labour for preparing RTB submission
\$419.52	

The parties agree that no portion of the security deposit has presently been returned to the tenant.

Analysis

In order to decide these issues, I have carefully weighed the testimony and documentary evidence presented by the parties. A test for assessing credibility is set out in *Faryna v. Chorny* [1952] 2 D.L.R. 354 (BCCA). In part, the test reads as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject the story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of probabilities which a practical and informed person would readily recognize in that place and those circumstances.....(pp. 356-357).

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 2 month notice to end tenancy for landlord's use of property. The notice was dated and served on September 10, 2008, and the tenant vacated the unit by the date shown on the notice which is November 30, 2008.

Following is a summary of my findings arising from consideration of the landlord's claim:

Hardware: (\$6.50)

I find it likely that the need for replacement of the kitchen light bulb came about during the tenancy. I therefore allow the landlord's claim for the cost of replacement in the amount of \$1.00.

Residential Tenancy Policy Guideline # 1 speaks to "Landlord & Tenant – Responsibility for Residential Premises." In regard to smoke detectors, the guideline states, in part:

If there are smoke detectors, or if they are required by law, the landlord must install and keep smoke alarms in good working condition. Regular maintenance includes:

- annual inspection of the system
- annual cleaning and testing of the alarm
- replacing batteries at least annually and according to the manufacturer's instructions

In view of the provisions set out in this guideline, I dismiss this aspect of the landlord's claim for the cost of replacing the smoke detector battery.

Finally, there is no apparent notation in the move-out condition inspection report of a door security chain needing replacement. Accordingly, the claim for this cost is dismissed.

Total cost allowed: \$1.00

Cleaning supplies: (\$91.93)

An invoice has been submitted into evidence for this cost and I accept that these supplies were purchased by the landlord and used to clean the unit. While the evidence does not include a copy of any condition inspection report at move-in, I am persuaded that the unit had not been properly cleaned at the time when the tenant moved in.

However, I also note that the tenant acknowledged that she undertook no cleaning of the unit prior to moving out. The video entered into evidence by the landlord shows clearly that the unit was in need of extensive cleaning after the end of tenancy. In the result I find that the landlord is entitled to 50% of the costs claimed in the amount of \$45.97.

Labour for general cleaning (except bathroom): (\$97.50)

Section 32 of the *Act* speaks to **Landlord and tenant obligations to repair and maintain**. Once again, while there is no evidence of a move-in condition inspection report, I accept that the unit was not properly cleaned when the tenant took possession. Nevertheless, the tenant also acknowledges undertaking no cleaning of the unit when she left. In the result, I find that the landlord is entitled to 50% of the cost of labour for cleaning in the amount of \$48.75.

Labour for work in bathroom: (\$165.00)

I see no evidence that a trades person was required to be called in for work undertaken in the bathroom. Consistent with the hourly rate of \$10.00 identified by the landlord for labour invested in general cleaning, I allow an hourly rate of \$10.00 (versus the \$20.00 rate set out in the landlord's application) for labour undertaken in the bathroom. Once again, I am persuaded that the bathroom was in need of cleaning when the tenant moved in; balancing this with the tenant's declaration that she did no cleaning in the unit before she vacated, I find the landlord is entitled to 50% of the total cost allowed in the amount of \$41.25 [(8.25 hours x \$10.00 /hr.) ÷ 2]

Parking stall: (\$5,565.00)

A move-in condition inspection report might include reference to the condition of the parking stall assigned to the unit. However, as stated earlier, there is no evidence before me of a move-in condition inspection report in the circumstances of this dispute.

The invoice submitted into evidence by the landlord makes reference to work undertaken as follows:

To patch area designated by customer

Overlay varying 1" – 4" in depth

While the invoice references the street address of the complex within which the unit is contained, there is no specific reference to any particular stall. Further, the square footage of the area remedied is identified in the invoice as 1,830 square feet, an area far in excess of one parking stall. Additionally, the job appears to entail patching and overlay, as opposed to cleaning or removing oil spots. Finally, it appears the tenant only owned a vehicle for approximately the final six months of her tenancy from June to November 2008. For all of the above reasons, I dismiss this aspect of the landlord's claim.

Loss of rental income: (\$400.00)

The landlord's issuance of the 2 month notice to end tenancy was the result of the landlord's wish to undertake certain repairs to the unit which would render it more suitable for occupancy. According to the testimony of the landlord's agent, the work required that the unit be vacant.

Further, the landlord takes the position that the unit could not be accessed to show prospective tenants because the subject tenant would not negotiate a time agreeable for both parties. Residential Tenancy Policy Guideline #7 speaks to **Locks and Access**. This particular guideline includes as a "reasonable purpose" the landlord's entry to the unit in order to show the premises to a prospective tenant.

This guideline also provides that a landlord may access the unit by giving the tenant "written notice not less than 24 hours, and not more than 30 days before the time of entry." Copies of documents submitted into evidence reveal that one, perhaps two attempts were made by the parties to reach agreement in regard to a time for the

landlord's agent to enter the premises. Even while no showing of the unit to prospective tenants apparently occurred, there is insufficient evidence to demonstrate that the tenant was outright uncooperative or simply denied entry to the landlord's agent.

Accordingly, for the reasons set out above, the landlord's claim for compensation for 1 month's loss of rental income is dismissed.

Miscellaneous: (\$419.52)

Section 72 of the *Act* addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the *Act* does not provide for the award of costs associated with litigation to either party to a dispute.

Accordingly, the landlord's claim for miscellaneous costs is dismissed.

In regard to the monetary order, in sum, I find the landlord has established a claim for \$186.97 which is comprised of the above subtotals in addition to the \$50.00 filing fee for this application. As earlier noted, the landlord still retains the tenant's security deposit of \$200.00 which was collected on June 17, 2007. Interest earned since the date of collection to the date of this decision is calculated as \$4.66.

Conclusion

I hereby order that the landlord retain **\$186.97** from the security deposit plus interest in full satisfaction of the claim, and repay FORTHWITH the balance of **\$17.69** to the tenant (\$204.66 - \$186.97).

DATE: February 19, 2009

Dispute Resolution Officer