

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes:

OPR, MT, CNR, MNR, MNDC, FF, OLC, ERP, RP, RPP, LRE, OPC, MND

Introduction:

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

On February 03, 2009, the landlord served a 30 day notice to end tenancy for cause and the tenant filed to dispute the notice on February 13, 2009. The landlord filed a cross application for an order of possession and a monetary order for repairs and unpaid rent.

On February 17, 2009, the landlord served a ten day notice to end tenancy for non payment of rent and the tenant filed to dispute the notice along with various other claims. The landlord filed a cross application for an order of possession and a monetary order for unpaid rent and repairs.

This hearing dealt with all four applications.

The landlord applied for the following in both his applications:

- An order of possession pursuant to Section 55;
- A monetary order for the recovery of unpaid rent and damage to the rental unit pursuant to Section 67.

The tenant applied for the following in both his applications:

- An order for more time to make an application to dispute the notice to end tenancy, pursuant to Section 66;
- An order to cancel the notice to end tenancy, pursuant to Section 46 and 47;
- An monetary order for the cost of emergency repairs and compensation for loss of property, pursuant to section 67;

- An order for the landlord to comply with the *Act*, make repairs and emergency repairs, return the tenant's personal property and suspend the landlord's right to enter the rental unit pursuant to sections 62, 32, 65 and 70;
- A monetary order to recover the filing fee pursuant to Section 28.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, the tenant advised me that he was moving out of the rental unit on April 03, 2009. Therefore the tenant withdrew most of the claims on his application as they were now moot. The portion of the tenant's application that required resolution was his claim for a monetary order for compensation and to recover the filing fee.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent and for the cost to fix damage that he claims was caused by the tenant? Is the tenant entitled to a monetary order for the cost of various items that he supplied to the landlord and to recover the fee to file this application?

Background and Evidence

Based on the sworn testimony of both parties, the agreed upon facts are as follows: The tenancy started on June 01, 2001 on a month to month basis. Rent is currently \$1048.00 due on the first day of each month. The tenant did not pay rent for January, February or March 2009 and stated that he was going to be moving out on April 03, 2009.

Landlord's Application

The landlord has applied for an order of possession and for a monetary order to recover unpaid rent and the cost of repairs for the following:

1.	Rent for January, February and March	\$3,144.00
2.	Repair parking area after gasoline spill	\$2,000.00
3.	Repair parking area after roofing tar spill	\$200.00
4.	Repair aluminium fencing and railing on porch	\$300.00
5.	Replace hallway closets	\$1,000.00
6.	Replace kitchen cupboards	\$1,000.00
7.	Repair flashing	\$200.00
	Total	\$7,844.00

Tenant's Application

The tenant testified that he did not pay rent for the first three months of the year because the landlord owed him money for various items he had supplied to the landlord and also for work done to remove and dispose of the carpet in the rental unit. The tenant is claiming the following:

1.	Carpet removal, disposal and clean up	\$1,500.00
2.	27 rolls of membrane	\$500.00
3.	Steel beams and rebar	\$500.00
4.	Steel Propane cage	\$300.00
5.	Wood blocks and lumber	\$200.00
6.	Drums (cartage only)	\$120.00
7.	Washing machine	\$300.00
8.	Two door refrigerator	\$1,000.00
9.	Disposal of plants, patio furniture etc	\$250.00
10.	Consulting fees for 2007/2008	\$2,000.00
	Total	\$6,670.00

Analysis

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

The claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

Keeping the above test in mind, I will consider each of the tenant and landlord's claims in turn.

Landlord's claim:

1. Rent for January, February and March 2009 - \$3,144.00:

Section 26(1) states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The tenant acknowledged that he had not paid rent for these months and therefore I find that the landlord is entitled to \$3,144.00 which consists of rent for January, February and March 2009 at \$1,048.00 per month.

2. Repair the parking area after gasoline spill - \$2,000.00:

The tenant agreed that he was responsible for the spill and the landlord has provided a receipt in the amount of \$2,000.00 for the clean up and repair of the parking area. I find that the credibility of the receipt is questionable as it is dated March 31, 2005 for work done in August 10-22, 2005. I also find that the GST amount is incorrect and has been rounded off to bring the total to an even \$2000.00. Since the tenant has admitted to causing the spill, he is responsible for the cost of the clean up. However, due to the inconsistencies on the receipt, I will award the landlord \$1000.00 which is half the amount of the receipt.

3. Repair parking area after roofing tar spill - \$200.00:

The landlord has not filed a receipt to support this claim. Therefore, I find that the landlord is not entitled to his claim of \$200.00 for repair and clean up.

4. Repair of aluminum fence and railing on porch - \$300.00:

The fence and railing are located in a common area that is also used by the tenant of the adjacent rental unit. The landlord was unable to provide evidence that the damage to the fence and railing was the sole responsibility of the tenant. Therefore, I find that the landlord is not entitled to \$300.00 to repair the fence and railing.

5. Replace hallway closets - \$1,000.00:

The tenant stated that he removed the closets with the landlord's permission. The tenant agreed to replace the closets at his own cost. Therefore, the landlord's claim of \$1,000.00 to replace the closets is dismissed.

6. Replace kitchen cupboards - \$1,000.00:

The tenant stated that the refrigerator needed to be replaced and the tenant brought in a double door refrigerator which did not fit in the space occupied by the old refrigerator. The tenant removed the kitchen cupboards to accommodate the new appliance, with the permission of the landlord.

Pursuant to section 27, a landlord must not restrict or terminate a facility if it is a material term of the tenancy agreement.

Providing a refrigerator for tenant's use was a material term of the tenancy agreement, therefore I find that the landlord is not entitled to the cost of replacing the kitchen cupboards to accommodate the new refrigerator.

7. Repair flashing - \$200.00:

The tenant agreed that he had caused damage to the flashing but did not agree to the cost that the landlord is claiming for repairs. In addition the landlord has not filed an invoice to support his claim of \$200.00 to fix the flashing. The tenant stated that the landlord fixed it himself. I find that the landlord is not entitled to \$200.00 for repairs to the flashing.

On the landlord's claim of \$7,844.00, I find that the landlord has established a claim in the amount of **\$4,144.00**

Tenant's claim:

1. Carpet removal, disposal and clean up - \$1,500.00:

The tenant is claiming \$1,500.00 for removal of the carpet and underlay, a trip to the dump, scraping of concrete to remove glue and the cost of cleaning materials. The landlord stated that he agreed to replace the carpet if the tenant removed it. The tenant did not have to take the garbage to the dump as the landlord had a dumpster located on the property for this purpose.

The landlord stated that there was no agreement to pay the tenant to remove the carpet. The tenant has not filed any receipts to support the costs he incurred from a trip to the dump, cleaning supplies etc and has also not provided an itemized account of his claim. Therefore I find that the tenant's claim for \$1,500.00 does not meet all the components of the four part test mentioned above and is hereby dismissed.

2. 27 rolls of membrane - \$500.00:

The tenant is claiming \$500.00 for rolls of membrane that he supplied to the landlord. The landlord agreed that he had received 24 rolls and was willing to pay the tenant \$200.00 for them. The tenant agreed to accept \$200.00.

3. Steel beams and rebar - \$500.00:

The landlord offered to pay \$300.00 and the tenant accepted.

4. Steel propane cage - \$300.00:

The landlord stated that he would return the cage to the tenant. Therefore, the tenant's claim for \$300.00 is dismissed.

5. Wood blocks and lumber - \$200.00:

The landlord agreed to pay \$200.00 for these items.

6. Cartage of Drums - \$120.00:

The landlord agreed to pay \$40.00 and the tenant accepted this offer.

7. Washing machine - \$300.00:

The landlord offered to pay \$200.00 for the machine and the tenant accepted this offer.

8. Two door refrigerator - \$1,000.00:

The landlord refused to agree to pay and indicated to the tenant that he was free to remove the appliance. Therefore the tenant is not entitled to \$1000.00 and must remove the refrigerator.

9. Removal of plants, patio furniture etc. - \$250.00:

The tenant withdrew his claim of \$200.00 for removal of the above items from the patio.

10. Consulting fees - \$2,000.00:

The tenant withdrew his claim of \$2,000.00 for consulting fees.

On the tenant's claim of \$6,670.00, I find that the tenant has established a claim of **\$940.00**. Since both parties are partially successful in their claims against each other, each must bear the cost of filing his own application.

Conclusion

The tenant agreed to move out on April 03, 2009. I will grant the landlord an order of possession effective two days after service on the tenant, to be served on the tenant in the event that the tenant does not move out on April 03, 2009. This Order may be filed in the Supreme Court for enforcement.

The landlord has established a claim in the amount of **\$4144.00** and the tenant has established a claim in the amount of **\$940.00**. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of **\$3204.00** which consists of the difference between the claims established by the landlord and the tenant.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of **\$3204.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated April 07, 2009.

Dispute Resolution Officer