



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MND Monetary Order for Damage to the Unit/Site/Property

FF Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act, (the Act).

Only the landlord was in attendance. Despite being served by registered mail sent on April 21, 2009, the tenant did not appear.

Issue(s) to be Decided for the Landlord's Application

The landlord was seeking to receive a monetary order for damage to the unit and for money owed or compensation for damage and loss under the Act for a total claim of \$12,000.00.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the Act for damages or loss. This determination is dependant upon answers to the following questions:
 - Has the landlord submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act by establishing on a balance of probabilities:
 - a) that the damage was caused by the tenant

- b) a verification of the actual costs to repair the damage
- c) that the landlord fulfilled the obligation to do what ever is reasonable to mitigate the costs

The burden of proof regarding the above is on the landlord/claimant.

Background and Evidence

The tenancy began as on February 15, 2006 and a security deposit of \$525.00 was paid. The landlord testified that the tenant left without paying \$1,092.00 rent owed for the month of February 2009 and left a substantial amount of damage in the suite and on the property, including discarded furniture and an abandoned cat.

The landlord is claiming rental arrears for February 2009 in the amount of \$1,092.00.

The landlord is also claiming damage and losses including the following:

1. Painting and Drywall Repairs
2. Replace dishwasher Purchase & Delivery
3. Replace Refrigerator Purchase and Delivery
4. Carpet Replacement
5. Flooring
6. Plumbing Repairs
7. Garbage Removal
8. Vehicle Removal
9. Cleaning
10. Yard Cleanup
11. Landscaping Charges

12. Replacing doors and hardware
13. Loss of rent of \$1,092.00 for the month of March 2009
14. Loss of rent of \$546.00 for half of April 2009.
15. Filing fee for this application \$100.00

The landlord provided a substantial amount of evidence including some “before and after” photographs, a copy of the tenancy agreement, a copy of a move-in inspection report, invoices for cleaning and repair work, a copy of a Ten-Day Notice for Unpaid Rent dated February 6, 2009, letters from the municipality and copies of communications from the landlord to the tenant. The total claim is \$12,000.00.

However, the landlord did not submit an itemized list of each category of damage with the applicable amount of the claim individually allocated. The landlord did submit numerous invoices, receipts, photographs and account statements in support of the claim.

In regards to the damage to the walls, the landlord testified that the unit was last painted in 2003 or 2004. The landlord testified that the tenant had repainted some walls in colors that were difficult to cover. The landlord testified and presented photographic evidence showing tenant had damaged the walls with large holes left in some areas and others improperly patched and portions of the wall had to be cut out and replaced. The landlord had obtained several estimates for painting and drywall, copies of which were enclosed. The landlord contracted with one company for \$3,800.00 and the invoice in evidence shows the notation, “*Complete house repaint*” The landlord stated that some of the drywall patching was done by other tradespersons as part of general repairs and submitted invoices for labour and materials from individuals who were evidently hired to do a variety of repair tasks in the unit, including \$120.00 that was charged at \$35.00 per hour which, in addition to other jobs listed also, included “*Repair Drywall and refinish walls*”. The landlord testified that another invoice, for \$1,434.46 representing 53.5 hours at \$20.00 per hour and materials of \$364.64 may likely have included wall repairs in addition to the other tasks.

Invoices for the purchase and delivery of a new refrigerator and dishwasher were submitted in support of the claim.

The landlord testified that the carpets which were several years old, were completely destroyed and had to be replaced, including removal and replacement of the baseboard. However, the landlord did not submit invoices for the carpeting job. According to the landlord, the owner had arranged for the carpeting supplies. In regards to the claim for flooring, the landlord testified that the linoleum in the kitchen and bathroom areas had to be replaced. An invoice for \$1,500.00 was submitted. The landlord testified that that flooring was likely the original flooring and would have been over ten years old.

The landlord testified that one of the faucets needed to be replaced. The landlord acknowledged that this item was likely installed by the original builder at the time of construction. An invoice for the parts, labour and taxes amounted to \$344.39.

The landlord supplied evidence to show that several different individuals performed work, a portion of which included hauling away garbage. Some of the invoices do not feature a detailed description of the labour costs for each task listed and others have included garbage cleanup in conjunction with other unrelated jobs as well. However, one invoice for \$139.00 indicated that it was solely for the *“removal of abandoned yellow station wagon full of garbage”*, and another indicated, *“Rubbish removal includes 2 freezers and dump fees”* for \$275.00. The landlord testified that the freezers belonged to the tenant and were left abandoned in the unit and had to be removed.

In regards to general cleaning of the suite, the landlord included an invoice showing twenty hours at \$15.00 per hour and 2 hours at \$20.00 per hour and a copy of a cheque to an individual for \$340.00 without any further details in regards to exactly what the charges were for.

One invoice was submitted indicating it was for roof repair and repairs to the garage frame job. Several invoices were submitted for purchases of items from various building

supply stores. The landlord identified what some of the purchases were utilized for such as the purchase of door tracks, baseboards, hinges and door knobs.

Analysis

In regards to an applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and order payment in such circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by 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 Respondent 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

In this instance, the burden of proof is on the claimant, that being the landlord, to 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 tenant. Once that has been

established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to mitigate the damage or losses that were incurred.

Section 32 of the Act contains provisions regarding both the landlord's and the tenant's obligations to repair and maintain. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear. I find that the value of an item or interior finish is affected by how much of its estimated useful life has passed and that damage due to wear and tear is likely to affect the amount of compensation warranted. In some cases it is therefore necessary to assess the pro-rated value of replacing or repairing the item or restoring the finish.

Painting and Drywall - In regards to the claim of \$3,800.00 against the tenant for the painting the walls, I note that the unit there is no firm data on the age of the paint. The landlord estimated that it had last been painted approximately 5 to 6 years ago. The average lifespan of paint is between 5 and 10 years. I find that the landlord's move-in inspection report indicates deficiencies on the surface of the walls in every room including, "*dings, holes, marks and chips*". I find that it is likely that the entire home needed to be repainted and minor spackling due to the wear and tear that already existed at the start of the tenancy and continued for the duration of the tenancy. I find that because compensation must only take into account repairs of damage caused exclusively by the tenant and not wear and tear, the painting costs must be bourn by the

landlord and I dismiss the portion of the landlord's application relating to the painting costs.

However, I do find that there was extraordinary destruction to some sections of drywall in the unit that went well beyond normal wear and tear. I find that the challenge for the landlord in the matter before me is to succeed in meeting element 3 of the test for damages by sufficiently proving the actual amount of expense attributable solely to the tenant's damage of the drywall.

I find that the invoice from one of the contractors shows that \$120.00 was charged for wall preparation at \$35.00 per hour and this included "*Repair Drywall and refinish walls*" as one of the tasks listed on the invoice. However, the landlord testified that the other invoice from a labourer showing \$1,434.46 for 53 1/2 hours for labour at \$20.00 per hour and unspecified materials of \$364.64, also included some work on repairing walls, in addition to various other tasks. Despite the fact that I find that the landlord has provided clear evidence that damage from the tenant occurred, it is difficult to conclusively determine the amount of the costs specifically dedicated to the drywall repairs alone. Therefore I find it necessary to estimate the amount of compensation for drywall repair due to damage by the tenant. I estimate this amount at \$400.00.

Appliances

The landlord had testified that food items were discarded in the refrigerator making it necessary to replace. The landlord took delivery of a new refrigerator for \$510.71 and paid \$105.00 delivery and removal costs. The landlord also replaced the dishwasher for \$347.19 and paid \$157.50 installation and to have the old one removed. All of these invoices were included to support the expenses. However, I note that the existing appliances were between 10 and 15 years old, which is the limit of the expected useful life of such items. Accordingly, I find that the tenant is not liable for the appliances and landlord is not entitled to be compensated for the damage and loss. Therefore I must dismiss the portion of the application that relates to this claim.

Carpet and Flooring Replacement

The landlord testified that the carpet was destroyed and had photos of damaged and stained carpeting but did not submit any invoices showing costs. The invoice submitted for replacement of the linoleum in the kitchen and bath was \$1,500.00 with no breakdown of labour and materials. I find that the move-in inspection report indicated that the flooring at the start of the tenancy already had serious condition problems and I also find that due to the age of the flooring, it was beyond its useful life expectancy. . Accordingly, I find that the portion of the landlord's claim relating to carpets and flooring, including the baseboard replacement must be dismissed.

Plumbing repairs

The evidence submitted by the landlord shows that a faucet was replaced and the parts, labour and taxes amounted to \$344.39. However, I find that the landlord did not prove that the replacement was necessary due to anything other than normal wear and tear of a plumbing fixture in a rental home and I find it is likely that it had reached the useful end of its life. Therefore, I find that the portion of the landlord's application relating to this item must be dismissed.

Garbage and Vehicle Removal

The landlord has supplied evidence to show that several different individuals performed work that may have hauling garbage. However it is evident that some of the hauling related to items that were not the tenant's responsibility including old carpeting and other renovation disposal. I find that the invoice for \$975.00 which indicating "cleanup yard and driveway", and showing "*2 Dump runs – carpet, drywall and miscellaneous*" also represented payment for replacing decking, baseboard installation and closet doors. It is not clear what portion of this bill pertained to haulage. I find that the portion of hauling fees attributable to damage by the tenant would be estimated at \$100.00. I also find that some of the invoices which the landlord verbally identified as being for refuse clean-up failed to sufficiently detail what was done, why it was done or how long

the job took.. However, I find that the invoice for, "*removal of abandoned yellow station wagon full of garbage*," is sufficiently detailed and I find that the landlord is entitled to the \$139.00 indicated on this invoice. In addition, abandoned freezers, apparently belonging to the tenant, were removed and there is an invoice stating: "*Rubbish Removal includes 2 freezers and dump fees*" in the amount of \$275.00. I find that the landlord is entitled to be compensated for this expenditure. I accept the claim for garbage removal in the amount of \$514.00 and find that the landlord is entitled to be compensated in for that amount.

Cleaning

In regards to general cleaning of the suite, I find that the invoice purported by the landlord to be for cleaning in the amount of \$340.00 was insufficiently detailed to verify what work was actually being charged for and whether it related to the subject address. I also find that, according to the move in inspection the unit was not totally clean at the start of the tenancy. Moreover, given that the landlord had engaged in other work, such as flooring, to improve and maintain the unit, I find that this would require a cleanup that was unrelated to the tenant. I find that the landlord has not adequately proven that it is entitled to reimbursement for this particular claim and this portion of the application is therefore dismissed.

Yard Cleanup and Landscaping Charges

I find that the tenancy agreement places the responsibility for yard maintenance on the tenant, and I accept the landlord's testimony that the yard was in a bad state. I find that the landlord did not include any photographs of the yard. Although the landlord has submitted into evidence an invoice for "*Front bed pruning and cleanup, Backyard garbage cleanup, Dump fee, Trucking*" amounting to \$606.00, it is not clear how much of this was repair and how much was improvement. I find that the Notice for the municipality citing the property for rubbish and debris submitted into evidence by the landlord is dated November 5, 2008 and is therefore not useful proof of the condition of

the yard for February 2009. I find that it is evident that after this notice, the yard was likely cleaned up in response to the notification as there was apparently no further communication on the subject. In any case, I find that the move in inspection report shows that at the start of the tenancy the yard was not in pristine shape. Notations on the report indicate that even before the tenancy began there was garbage left in front of the garage and the yard was messy. The exterior garden also needed pruning and raking when the tenant moved in. Given the above, while there may likely have been some condition issues caused by the tenant, I find that the tenant can not be held financially responsible for the yard cleanup without proof of the relative degree of damage for which the tenant must be held accountable. This claim does not satisfy the criteria in elements two and three of the test for damages and I dismiss this portion of the landlord's application relating to exterior yard restoration.

Doors & Hardware Replacement

Invoices submitted by the landlord for door hardware included \$23.97 for bifold tracks, \$34.00 for two bolts, \$40.00 for repairs to the garage and workshop strike plate, a service call for \$40.00, \$17.16 for four door hinges, \$41.98 for two privacy door handles, \$37.98 for two passage door handles. I find that the doors and hardware were likely installed at the time the house was built and would thus be subject to a certain amount of wear and tear. I find that some of the repair work would be in the category of maintenance. I find that the landlord is entitled to 50% of the costs of door supplies totalling \$117.50.

In regards to the claim for rent for the month of February in the amount of \$1,092.00, I find that the landlord is entitled to payment of this amount. I also find that the loss of rent for the month of March 2009 is a valid claim and that the landlord is entitled to \$1,092.00.

In regards to the claim for loss of rent of \$546.00 for half of April 2009, I find that because some of the repair work was in the nature of renovation and maintenance, the

tenant can not be held financially responsible for the additional two weeks delay in re-renting.

In regards to the filing fee for this application of \$100.00, I find that the landlord is entitled to be reimbursed a portion and I set the amount at \$50.00.

In summary, Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation of \$3,265.50, comprised of \$400.00 for drywall repair due to damage by the tenant , \$514.00 for garbage removal , \$117.50 for the costs of door supplies, \$1,092.00 rental arrears for the month of February, 2009, \$1,092.00 loss of rent for the month of March 2009 and \$50.00 to compensate the landlord for a portion of the cost of the application.

I order that the landlord retain the security deposit and interest of \$543.32 in partial satisfaction of the claim leaving a balance due of \$2,722.18.

Conclusion

I hereby issue a monetary order for \$2,722.18. This order must be served on the Respondent and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

July 2009

Date of Decision

Dispute Resolution Officer