



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's request for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and utilities, damage to the rental unit, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other party's submissions.

At the commencement of the hearing, the parties confirmed the tenant had vacated the rental unit and an Order of Possession is no longer required. The remainder of the hearing and this decision pertains to the landlord's monetary claims.

Issues(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent and utilities, and if so, the amount?
2. Has the landlord established an entitlement to damages to the rental unit, and if so, the amount?
3. Retention of the security deposit.
4. Award of the filing fee.

Background and Evidence

Upon hearing testimony of both parties and review of the documentation before me, I make the following findings. The tenant began renting the both floors of the rental house in March 2003 and the tenant paid a \$705.00 security deposit. Starting April 1, 2009 the tenant rented the upper floor only. The tenant was required to pay 100% of the utilities to the landlord which decreased to 60% when the tenant rented the upper floor only. The tenant would pay a fixed rate of \$187.00 for utilities per month and then at the end of the year the actual usage would be determined and the tenant would pay the difference between the fixed rate and the actual consumption. From March 2008 to March 2009 the actual consumption of utilities was \$1,244.99 greater than the fixed rate paid. The parties agreed that the tenant owed \$1,246.99 in rent and utilities as of March 2009 and \$1,250.00 in rent for May and June 2009.

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The landlord claimed the tenant owed \$518.95 in utilities for May and June 2009 which the tenant claimed was excessive. The landlord did not provide copies of utility bills for the months of May and June 2009.

The landlord was claiming damages and cleaning of \$11,812.50 based on a quote received from an individual. The landlord reduced the claim by \$500.00 to reflect the tenant recently cleaning the garbage out of the carport and backyard. The remainder of the quote was comprised of the following amounts:

Replace 2 doors and replace 6 doors and frames	\$ 2,800.00
Repair and paint walls and ceilings	3,400.00
Repair fireplace bricks	500.00
Clean interior of unit	250.00
Replace carpets and underlay	3,800.00
GST	<u>562.50</u>
Total amended claim for damages	\$ 11,131.50

The landlord provided photographs that depicted damaged doors and walls, missing bricks from the fireplace, old and dirty carpet and a dirty freezer. The landlord estimated the house to be approximately 50 years old and the carpets over 10 years old. The pictures depict what appear to be original doors and mouldings to the house.

The tenant acknowledged damage to three interior doors and some missing moulding which he estimated would cost \$300.00 to replace. The tenant claimed some responsibility for 8 or 9 large holes in the walls from moving furniture over five years of the tenancy. The tenant pointed to the move-in inspection report which reflects nail holes and some marks on the walls and stated the rental unit had not been painted during his tenancy. The tenant acknowledged the fireplace bricks fell out near the end of the tenancy but denied responsibility and claimed the landlord did not maintain the fireplace. The tenant stated that the carpets were very old at the commencement of his tenancy. The tenant claimed the rental unit was left cleaned when it was vacated at the end of June and pointed out that several of the landlord's photographs are taken June 19, 2009.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts,

without other sufficient evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

As the parties agreed to the amount of unpaid rent and utilities of \$1,246.99 to March 2009 and \$1,250.00 for unpaid rent for May and June 2009 I award those amounts to the landlord.

Upon review of the ledger and in the absence of utility bills for May and June 2009 I find it reasonable to estimate utilities consumed in May and June 2009 to be \$344.00 based on previous consumption depicted on the tenant's ledger. Using the fixed rate of \$187.00 per month plus approximately \$100.00 per month for actual consumption and multiplying the result by 60% the landlord is awarded of \$344.00 for utilities for May and June 2009.

Where a party is able to show the other party caused damages to the rental unit, the party making the claim must be able to substantiate the loss. Awards for damages are intended to be restorative and not place the party making the claim in a better position than they would have been without damage. Most fixtures depreciate with age and normal wear and tear and it is not just to expect a tenant to pay for full replacement of an item that has depreciated over time and normal usage. Accordingly, awards for damages are usually the cost of repair or the depreciated value if an item has to be replaced.

Upon hearing the testimony of both parties and upon review of the photographs and other documentation I make the following findings:

Doors and mouldings

Although damaged, I find the doors were older than their normal useful life and had minimal remaining value. Therefore, I find the tenant's estimate of \$300.00 to be a fair estimate of the labour to replace the doors and mouldings.

Wall damage

I find the tenant responsible for the large holes in the walls. I accept the tenant's testimony that there were 8 or 9 large holes. As the landlord was due to paint the interior walls since several years had passed since it was last painted, I hold the tenant responsible for the patching of the large holes but not painting. I estimate the cost to patch the large holes to be \$500.00.

Fireplace bricks

The landlord did not satisfy me that having fires in the fireplace is the cause of the bricks coming off the face of the fireplace. Rather, I find it more likely that the bricks

came loose from a lack of maintenance over time or inferior installation. I do not award the landlord any amount for the fireplace.

Cleaning

As the parties provided disputed verbal testimony concerning the condition of the rental unit at the end of the tenancy and the landlord has the burden of proof, I find that the landlord's photographs satisfied me that the tenant left the freezer in a dirty condition and I award the landlord \$25.00 for cleaning the freezer. I find the other photographs depicting clutter in the rental unit were taken before the tenant had vacated.

Carpet and underlay

As I heard the carpets were over 10 years old and upon review of the photographs I accept the tenant's testimony that the carpets were much older than 10 years old. Accordingly, I find the carpets had exceeded their normal useful life and were due for replacement. Therefore, the depreciated value of the carpets is nil and I award nothing for carpet replacement to the landlord.

As the landlord has established an entitlement to unpaid rent I authorize the landlord to retain the tenant's security deposit and accrued interest in partial satisfaction of the unpaid rent. I calculate interest on the security deposit to be \$24.96. I also the landlord \$50.00 of the filing fee paid for this application.

In summary, I award the landlord the following amounts and provide the landlord with a Monetary Order as follows:

Unpaid rent and utilities – up to March 31, 2009	\$ 1,246.99
Unpaid rent – May and June 2009	1,250.00
Utilities – May and June 2009	344.00
Door and moulding repair	300.00
Wall repair	500.00
Cleaning	25.00
Filing fee	50.00
Sub-total	<u>\$ 3,715.99</u>
Less: security deposit and interest	<u>(729.96)</u>
Monetary Order	<u><u>\$ 2,986.03</u></u>

The landlord must serve the tenant with the Monetary Order and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.



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Conclusion

The landlord was partially successful and has been authorized to retain the tenant's security deposit and accrued interest in partial satisfaction of the rent owed the landlord and the landlord is provided with a Monetary Order for the balance owing of \$2,986.03.

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: July 24, 2009.

Dispute Resolution Officer