



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MND, MNR, MNDC, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking a monetary claim due to loss of rent and damage to the rental unit. The landlord also seeks to retain the tenants' security deposit plus interest in partial satisfaction of this claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issues(s) to be Decided

Has the landlord established a monetary claim due to loss of rent and damage to the rental unit?

Background and Evidence

This tenancy began on January 1, 2008 for the monthly rent of \$1,200.00 and a security and pet deposit of \$1,200.00 on January 22 and 25th, 2008. The landlord accepted pets at the start of the tenancy. The parties signed four tenancy agreements, the final beginning on February 1, 2009 for the monthly rent of \$1,250.00 for a fixed term ending effective June 1, 2009. The tenants gave notice and vacated the rental unit in February 2009.

The landlord seeks the following damages and loss due to the tenants' failing to return the rental unit in a clean and undamaged condition at the end of the tenancy and breaching the tenancy agreement:

Liquidated damages due to terminating fixed term lease	\$300.00
Carpet cleaning due to smell and stains (\$285.00 & \$210.00)	\$495.00
New paint in rental unit due to tenants smoking and damaging walls and supplies (\$258.05)	\$1,898.05
Replacement and repair of linoleum -	\$464.00

including reimbursement for previous compensation given to the tenants for installing linoleum	
Replacement of 6 shrubs in yard at \$20.00 per plant, replacement of garden hose (\$16.79), lawn seed (\$20.94)	\$157.73
Replacement of four mirror panels	\$134.70
38 hours of cleaning at \$20.00 per hour (\$760.00) and cleaning supplies (\$111.19)	\$871.19
For repairs completed by carpenter - \$542.00, \$200.00, & \$50.00 – copies of cheques provided but no detailed invoice included.	\$792.00
Damage to Kitchen including damage to two cabinets and burn damage to flooring	\$370.22
Downstairs door frame damage (\$100.00), replacement of two cracked tiles (\$24.00), burn damage to window sills (\$127.64), replacement of toilet seat (\$11.19), replacement of missing fire extinguisher (\$21.96), & missing shelf (\$20.00)	\$304.78
Replacement of missing outdoor tin garden shed	\$366.09
Removal of debris and dump fees	\$62.00
Outstanding rent and lost revenue for February, March, April and May 2009	\$4,375.00
Recovery of \$100.00 filling fee paid for this application	\$100.00
TOTAL	\$10,835.76

The landlord's evidence is incredibly difficult to follow, calculate and decipher. The landlord has failed to provide detailed receipts for work completed related to the current damage the landlord alleges was caused by the tenants. For example, the landlord has claimed the sum of \$792.00 paid to her carpenter; however, the only receipts are copies of the cheques paid to the carpenter. There is no detailed break down provided by the carpenter showing what work was completed, whether the work was completed on this rental unit, how many hours he worked and what materials were used. I have calculated the sum of \$10,835.76 based on the summary provided by the landlord, while the landlord calculated a sum of \$10,812.23. I note that the landlord only claimed the sum of \$10,000.00 in the application for dispute resolution.

The tenant submitted that the landlord has exaggerated the claims and has always known about the pets and that the tenants smoked. The tenant submitted that the rental unit only required touch up painting and not a full paint job and that the carpets were to be cleaned but the landlord had already locked the door. The tenant acknowledged that the rental unit was not clean, that there were burns, that the mirrors were damaged and that the shed was taken.

Analysis

I grant the landlord's application in part as I find that the evidence does support the conclusion that the tenants failed to return the rental in a clean and undamaged condition. I make this determination largely based on the photographic evidence provided by the landlord. The landlord had the burden of proving this claim. However, I find that there are several items and aspects of the landlord's claim which are not proven, do not demonstrate that the landlord mitigated and do not reflect depreciation and normal wear and tear.

I reject the landlord's claim that she was unaware of the issues related to the tenants' pets and smoking and as to the condition of the rental unit. The landlord conducted an inspection prior to entering into two more fixed term tenancies with the tenants and I find was aware of the condition of the rental at that time. The tenants are not responsible for normal wear and tear, reasonable holes in the walls or the landlord's failure to mitigate the losses. I find it was unreasonable that the landlord was unable to clean and repair the rental unit for three and half months. I do not accept that the tenants' are responsible the total cost of painting the rental unit but only for repairing of damage to the walls and touch up painting.

I find that the landlord failed to provide sufficient evidence to support the claim for the work completed by the carpenter. There was no receipt provided to establish that this individual completed work totally \$792.00 to complete the repairs to walls, floors, unplugging drains, and light switches. There was no evidence provided, as far as I was able to decipher from the landlord's evidence, confirming any actual loss to the windows for the sum of \$63.00

I also reject the landlord's claim to replace linoleum on the basis that she is now unsatisfied with the work completed by the tenants. This was an issue that should have been dealt with and address at the time the work was completed. I find that the landlord sought to claim damages greater than was reasonable against the tenants. This is demonstrated by the landlord attempting to claim damages due to cracked floor tiles which are due to normal wear and tear.

I accept the following claim as being established by the landlord's evidence and the tenants' acknowledgement of damage caused:

Liquidated damages due to terminating fixed term lease	\$300.00
Carpet cleaning due to smell and stains (\$285.00 & \$210.00)	\$495.00
Cost of materials to repair wall damage and complete touch up paint - (\$258.05 & \$328.00 comprised of 20% of landlord's claimed cost to paint whole rental unit)	\$586.05
Replacement of outdoor metal/tin shed which tenants dismantled and took – 75% of replacement cost	\$274.56
Replacement of 6 shrubs in yard at \$20.00 per plant, replacement of garden hose (\$16.79), lawn seed (\$20.94)	\$157.73
Replacement of four mirror panels	\$134.70
38 hours of cleaning at \$20.00 per hour (\$760.00) and cleaning supplies (\$111.19)	\$871.19
Replacement of toilet seat (\$11.19), replacement of missing fire extinguisher (\$21.96)	\$33.15
Removal of debris and dump fees	\$62.00
Outstanding rent and lost revenue for February & March 2009	\$2,500.00
Recovery of \$100.00 filing fee paid for this application	\$100.00
TOTAL	\$5,659.30

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$5,659.30** comprised of \$5,559.38 in damages and the \$100.00 fee paid by the Landlord for this application. I order that the landlord may retain the deposits and interest held of \$1,216.97 in partial satisfaction of the claim and grant an order for the balance due of **\$4,442.33**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion



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I have granted the landlord's application in part. I have determined that the tenants were not responsible for some portions of the damages claimed by the landlord as the claims were unreasonable, did not reflect normal wear and tear and the landlord did not mitigate her loss. I have allowed the landlord to retain the tenants' pet and security deposits in partial satisfaction of this claim.

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: September 3, 2009.

Dispute Resolution Officer