



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with the landlord's request for monetary compensation for damage to the rental unit 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 parties' submissions. The tenants were assisted by their adult son.

Issues(s) to be Decided

1. Identity of the tenants.
2. Has the landlord established an entitlement to compensation for damage to the rental unit from the tenants, and if so, the amount.
3. Award of the filing fee.

Background and Evidence

I heard undisputed testimony that the tenancy commenced September 1, 2007 and a \$750.00 security deposit was paid at that time. On May 31, 2009 the rental unit was vacated. In making this application the landlord is seeking to recover the following amounts for damage to the rental unit.

Item(s)	Amount Claimed
Broken window	372.59
Repainting entire unit	400.00
Carpet cleaning	110.00
Blinds replacement	65.00
Light bulb replacement	41.06
Bi-fold door track repair	19.46
Stove and dishwasher repair	317.09
Strata fee for move-out	150.00
Replacement FOBs (2)	200.00
Replacement parking pass	10.00
Loss of rent (1/2 month rent)	750.00
Filing fee	50.00
Total	\$2,485.20
Less: security deposit	(750.00)
Net claim	1,735.20

The landlord testified that the rental unit was brand new at the beginning of the tenancy and upon inspecting the rental unit after it was vacated the landlord discovered a broken window, a damaged blind, burnt out light bulbs, a broken door track, two burners on the stove not working, the dishwasher not draining and the tenants had touched up the walls with different coloured paint. In addition, the FOBs and parking pass were not returned to the landlord and the strata charged the landlord with a move-out fee. The landlord testified that a new tenant was found for June 15, 2009 and the landlord is seeking to recover loss of rent for June 1 – 15, 2009 due to the condition of the rental unit.

The tenants were of the position that their tenancy ended August 31, 2008 and a new tenancy agreement was entered into with the tenant's son (not the son that was in attendance at the hearing). The tenants claimed that their son began paying the landlord rent. The landlord denied that he had a tenancy agreement with the tenants' son and claimed that all tenancy related issues were directed to the female tenant and the female tenant responded to the landlord's communications regarding the tenancy up

until May 2009. The tenants did not provide any documentary evidence to show that they terminated their tenancy agreement or that a new tenancy agreement was entered into with their son. The tenants claim to have no knowledge of their son's whereabouts.

In response to the landlord's claims for damages the tenants offered the following responses:

- that the window was broken during an attempted break-in;
- agreement to pay a pro-rated portion of the painting, blind replacement cost, and door track repair costs based on the length of their tenancy and the normal useful life of the item;
- agreement to pay for carpet cleaning costs;
- the tenants do not have an explanation as to why the stove burners and dishwasher were not working properly;
- the tenants did not agree that all the light bulbs were burnt out;
- the tenants were not aware of a move-out fee;
- the tenants paid cash for the FOBs at the beginning of the tenancy; and,
- the tenants disagree with paying for loss of rent as notice to end tenancy was given in January 2009 and the landlord was trying to sell the rental unit.

In response to the tenants' statements the landlord claimed the window was not broken during a break in but during a fight in the rental unit; that he informed the tenants the day before they vacated that the strata would charge a move-out fee; and denied that he charged the tenants for the FOBs at the beginning of the tenancy. Upon enquiry, the landlord acknowledged that he had tried to sell the rental unit at one time but that he removed it from the market in the summer of 2008. The landlord stated he advertised the unit for rent on Craigslist but could not recall when he commenced advertising efforts. The landlord also acknowledged that he had not provided the tenants with a copy of the strata by-laws but claimed the tenants were present during a discussion with the strata manager about the requirement to pay a move-out fee.

As evidence for the hearing, the landlord provided a copy of the application for tenancy, the tenancy agreement, photographs of the rental unit, invoices for repairs, a move-in inspection report, a notice to end tenancy dated January 14, 2009 and an undated document depicting the tenants' forwarding address.

Analysis

Upon review of the tenancy agreement, I find that the tenancy agreement provided for a tenancy to commence on September 1, 2007 for a fixed term of one year and that at the end of one year the tenancy "may continue on a month-to-month basis or another fixed length of time". The application for tenancy indicates that the rental unit was to be occupied by two adults and one child. The notice to end tenancy dated January 14, 2009 appears to be signed by an individual other than the tenants.

In determining whether the tenants are responsible for damages caused to the rental unit up until May 31, 2009 I have considered the following factors. The tenants have not provided any documentary evidence to indicate they ended their tenancy by giving notice to end tenancy. The tenants did not provide evidence that they had returned the keys and FOBs to the landlord when they vacated as is required of a tenant when they end a tenancy. The tenants did not provide any indication that they had requested the return of their security deposit since they allegedly ended their tenancy in August 2008. The tenants spoke with the strata manager about moving out fees in May 2009.

I find the preponderance of the evidence indicates that the tenants continued to have the right to possess the rental unit under the tenancy agreement entered into with the landlord in 2007 and that they continued to meet the definition of tenants, within the meaning provided under the Act, until May 31, 2009. From the evidence before me, I find it more likely that the tenants ceased to occupy the rental unit but that they permitted their son to remain in the rental unit. Thus, I find that the tenants did not end the tenancy and the tenants continued to be responsible for obligations under the

tenancy agreement, *Residential Tenancy Act* and regulations with respect to the rental unit up until May 31, 2009. Accordingly, any damage caused by persons permitted in the rental unit or residential property by the tenants is the responsibility of the tenants.

A party that makes a monetary claim against another party has the burden to prove the claim. The burden of proof is based on the balance of probabilities, meaning it is more likely than not that the events occurred as claimed by the applicant. Where one party provides an explanation of events and the other party provides an equally probable explanation, without additional evidence to substantiate the applicant's version, the claim fails. In addition, the party making the claim must be able to prove the following:

1. that the other party violated the Act, regulations or tenancy agreement;
2. the violations resulted in the applicant incurring damages or loss;
3. the quantum of the claim; and,
4. that the applicant took all reasonable steps to minimize the damage or loss.

As explained to the parties during the hearing, awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item.

It was not in dispute that the window was broken during the tenancy; however, I found the landlord's explanation of the broken window more likely and I had insufficient evidence to conclude the window was broken during a break in as alleged by the tenants. Therefore, I award the broken window cost to the landlord.

I award the carpet cleaning cost to the landlord as tenants are normally required to pay for carpet cleaning after one year of tenancy and the tenants agreed to this charge.

I accept that the rental unit had to be repainted; however, the amount awarded to the landlord is reduced to reflect normal wear and tear of 22 months of tenancy. As interior

painting has an ordinary useful life of four years, the award for re-painting the rental unit is \$216.67 ($\$400.00 \times 26/48$ months).

The landlord is awarded the cost of the replacement blinds and the door track costs, pro-rated over a normal useful life of 10 years. Therefore, to reflect a tenancy of 22 months, the award for the blind and door track is calculated to be \$53.08 and \$15.89 respectfully ($\$65.00 \times 98/120$ months) and ($\$19.46 \times 98/120$ months).

I accept that some of the light bulbs were burnt out, and I note that the landlord provided receipts for \$64.67 for light bulbs, less a credit of \$26.44 given by the supplier the next day. Tenants are normally expected to replace light bulbs as they burn out. Therefore, I was satisfied that the landlord incurred costs of \$38.23 to replace light bulbs; however, I reduce this claim by half as I did not accept the landlord's testimony that all of the light bulbs were burnt out. The landlord's award for light bulbs is \$19.12.

Upon review of the receipts I found only one receipt for a FOB and the receipt was issued April 3, 2009 and the replacement parking pass receipt was issued April 14, 2009. Since I heard the rental unit was occupied and the tenancy was in effect until May 31, 2009 it is unclear to me why the landlord would obtain a replacement FOB and parking pass in April 2009. I also note that the receipts are not signed and do not provide for the name of the strata on the receipts. I cannot reconcile these concerns to a logical explanation based on the evidence before me and I dismiss this portion of the landlord's claim.

The landlord provided invoices for repair of the dishwasher and gas stove, and inspection of the washer and dryer. The invoices indicate the dishwasher had a leak caused by a plugged drain system, the spark module had to be replaced on the gas stove and that no faults were found during the inspection of the laundry machines. As a landlord is responsible for repairs and maintenance, and I am not satisfied that the tenants, or persons permitted on the property by the tenants, misused or damaged the

appliances, I do not find the landlord entitled to recover ordinary maintenance costs from the tenants. Therefore, I dismiss this portion of the landlord's claim.

Having heard the landlord did not provide the tenants with a copy of the strata by-laws, and that the landlord had only informed the tenants of the move-out fee the day before they moved out, I find the landlord is precluded from recovering this cost from the tenants. A landlord has an obligation to ensure the tenants are provided with copies of strata by-laws at the beginning of the tenancy so that they can act within the rules of the strata and have knowledge of the costs they would incur for not acting in accordance with strata rules. Therefore, I find the landlord failed to mitigate this loss by giving the tenants a copy of the strata by-laws and I dismiss this portion of the landlord's claim.

I have been provided evidence that the landlord was aware that the tenancy would be ending in May 2009 since January 2009. In the absence of any clear indication as to when the landlord commenced advertising efforts to re-rent the unit, I cannot determine that the landlord took all reasonable steps to minimize the loss of rent for June 1 – 15, 2009. Therefore, I deny this portion of the landlord's claim.

In recognition of the landlord's partial success in this application, I award \$25.00 of the filing fee to the landlord. I authorize the landlord to retain the tenants' security deposit and accrued interest, and provide a Monetary Order calculated as follows:

Item(s)	Amount Claimed	Amount Awarded
Broken window	372.59	372.59
Repainting entire unit	400.00	216.67
Carpet cleaning	110.00	110.00
Blind replacement	65.00	53.08
Light bulb replacement	41.06	19.12
Bi-fold door track repair	19.46	15.89
Stove and dishwasher repair	317.09	0.00
Strata fee for move-out	150.00	0.00
Replacement FOBs (2)	200.00	0.00
Replacement parking pass	10.00	0.00
Loss of rent (1/2 month rent)	750.00	0.00
Filing fee	50.00	25.00
Total	\$2,485.20	812.35
Less: security deposit	(750.00)	(750.00)
Less: interest on security deposit		(15.07)
Net Amount	1,735.20	47.28

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

Conclusion

The landlord was successful in establishing the tenants must compensate the landlord \$812.35 for damages. The landlord is authorized to retain the tenants' security deposit and accrued interest in partial satisfaction of this amount and the landlord has been provided a Monetary Order for the balance of \$47.28 to serve upon the tenants.

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: December 17, 2009.

Dispute Resolution Officer