# DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; retention of the security deposit and recover 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. The parties also confirmed service of documents upon them.

Issues(s) to be Decided

1. Has the landlord established an entitlement to monetary compensation from the tenant and if so, the amount?
2. Retention of the security deposit.
3. Award o the filing fee.

Background and Evidence

I was provided undisputed evidence as follows. The parties had a verbal tenancy agreement. The month-to-month tenancy commenced May 1, 2006 and ended October 31, 2009. The tenant was required to pay rent of $700.00 per month plus ½ of hydro and 1/3 of gas bills. The landlord did not prepare a move-in inspection report. The parties met at the rental unit on the last day of tenancy to do an inspection; however, words were exchanged between the parties and the tenant left before the inspection was complete. The landlord proceeded to take photographs of the rental unit. The landlord made this application with 15 days of the tenancy ending.

The landlord is seeking to recover the following amounts from the tenant:

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| Wall and window sill repair | $ 100.00 |
| Cleaning – 10 hours | 250.00 |
| Damage to kitchen floor | 200.00 |
| New locks | 175.00 |
| Missing smoke alarm | 12.00 |
| Carpet cleaning | 150.00 |
| Missing portable heater | 75.00 |
| Unpaid hydro and gas bills | 45.00 |
| Advertising | 26.00 |
| Carpet replacement – 25% | 140.00 |
| Filing fee | 50.00 |
| Total claim | $ 1,223.00 |

The landlord testified as follows in support of his claim.

- The tenant's cat damaged the window sill and the tenant had plants on the window sill that caused damage. The landlord acknowledged a previous tenant had a cat for a very short time several years ago. In addition, the landlord had to patch holes in the drywall from art hanging on the wall. The landlord is charging for his labour to make these repairs.
- The tenant did not sufficiently clean the fridge, stove, cupboards, bathroom and walls which required the landlord and his wife to clean the unit for 10 hours. The landlord claims he called a cleaning company who advised him that they would charge $25.00 per hour to clean.
- The tenant damaged the vinyl flooring which the landlord has received an estimate of $200.00 to repair. The vinyl flooring was installed only a couple of months before the tenancy ended.
- The tenant did not leave a key to the locks and the landlord did not have spare keys causing the landlord to have to replace the deadbolt and locking doorknob. The landlord acknowledged that he ordinarily replaces locks for new tenants but explained that this lock set was now useless to him without keys.

- The smoke alarm was missing at the end of the tenancy. The landlord provided changing testimony as to the age of the smoke alarm.
- The landlord rented a carpet cleaner from Home Depot. The landlord provided an invoice showing $42.77 was spent on the carpet cleaning rental and soap.
- The tenant left only three portable heaters in the unit but the landlord had provided the tenant with four heaters during the tenancy.
- Hydro and gas bills were received after the tenancy ended. The landlord estimates the tenant's portion of the bills to be $45.00.
- The rental unit was advertised at a cost of $26.00 to find replacement tenants. The landlord was of the position the tenant should be responsible for advertising costs since the tenant gave notice to end the tenancy one day late. The landlord provided an invoice showing the unit was advertising on October 1, 2009.
- The carpet was damaged and requires replacement. The carpets are approximately 12 years old.

In response to the landlord's claims, the tenants responded as follows:

- The landlord did not conduct a move-in inspection of the rental unit and that the damage to the window sill and holes in the walls were pre-existing at the beginning of the tenancy.
- The landlord became irate and told the tenant to leave during the move-out inspection.
- The tenant had placed a chair under the window sill so that his cat would not damage the window sill when the cat jumped on it. The tenant acknowledged that he did have some plants on the window sill. The tenant claimed he had only one large picture in the bedroom and a tapestry hanging on four thumbtacks on the living room wall.
- The tenant acknowledged that additional cleaning was required in the rental unit but was of the opinion 10 hours was excessive and that four hours was more reasonable. The tenant was of the opinion there was not juice and food on the kitchen walls as described by the landlord but attributed the staining to red paint left by the previous tenants.

- The tenant claims to not have noticed the damage to the flooring when he vacated and testified that on the day he moved out a washing machine was removed and installed in the rental unit.
- The tenant left the keys on a coat hook in the rental unit.
- A smoke detector was never provided. Only the ring that holds the smoke detector was present.
- The tenant acknowledges that he did not clean the carpets due to a change in the time he was required to vacate the unit. The tenant was of the position the carpet cleaning cost should be shared as smoke had infiltrated and there were mould issues.
- The tenant left all four heaters in the rental unit, with the one described as missing being left in the living room.
- The tenant agreed that $45.00 for hydro and gas consumption was reasonable.

I denied the landlord's claims for advertising and replacement carpeting during the hearing, thus I did not take testimony from the tenant with respect to those items.

Neither party provided consistent or convincing testimony with respect to payment of a security deposit. The parties were encouraged to resolve any dispute over a security deposit between themselves and if they cannot resolve the dispute, the tenant is at liberty to make an application for dispute resolution.

As evidence for the hearing, the landlord provided photographs of the rental unit, a list of damages and receipts. The tenant provided a written submission, copies of email communications between the parties and the Notice regarding the condition inspection that was to take place on October 31, 2009 at 1:00 p.m.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I dismissed the landlord's claims for advertising costs during the hearing as I found the landlord failed to show that receiving the tenant's notice to end tenancy one day late caused the landlord to incur advertising costs he would not have incurred had the tenant given notice one day earlier. Even though I found the tenant's notice did not comply with the requirements of the Act, the landlord failed to meet the second part of the four part test outlined above.

I also dismissed the landlord's claim for replacement carpeting during the hearing for the following reasons. 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. In order to estimate depreciation of the replaced item, I refer to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37. Carpets have a normal useful life of 10 years and upon hearing the carpets were approximately 12 years old, I dismissed the landlord's claim for replacement carpeting as I found the carpeting at the end of its useful life and had little or no depreciated value remaining.

At the beginning and end of a tenancy, the landlord and tenant must inspect the rental unit together and the landlord must prepare a condition inspection report that is also given to the tenant. The purpose of preparing inspection reports is to establish the condition of the rental unit before and after the tenant has possession of the rental unit. The absence of an inspection report does not automatically mean the landlord cannot establish damages were caused by the tenant; however, the landlord will have to provide other evidence that proves, on a balance of probabilities, that the damage was caused by the tenant. The balance of probabilities means it is more than 50% likely that the version of events occurred as described by the party with the burden of proof.

There is no dispute that inspection reports were not prepared by the landlord as required by the Act and regulations. However, I find the landlord acted in accordance with the requirements of the Act and regulations by giving the tenant a Notice of Final Opportunity for a condition inspection and setting up an appointment for both parties to inspection rental unit together at the end of the tenancy. Of concern to me is that the tenant did not remain at the rental unit for the duration of the move-out inspection. The tenant explained that the landlord became irate and told the tenant to leave. I accept that tensions were high between the parties and that the landlord was likely unhappy about the condition of the rental unit, but the evidence before me does not satisfy me that the tenant was precluded from completing the move-out inspection.

The Act requires that a tenant leave a rental unit reasonably clean and undamaged at the end of the tenancy. Damage does not include normal wear and tear. Upon review of the photographs and other documentation and in consideration of the provisions of the Act, I make the following findings based on the balance of probabilities.

Having heard the tenant had a cat in the rental unit and acknowledged that it did jump on the window sill, I find it likely that the tenant's cat caused damage to the window sill. I accept that the tenant placed a chair by the window to permit the cat to jump up without causing as much damage; however, I find that the chair was likely placed there after some or all of the damage was caused. Having heard the tenant had plants on the

window sill and having found that the tenant was somewhat evasive in answering my enquiries, I find it more likely than not that the plants caused damage to the window sill. The landlord did not dispute that the tenant had only two art pieces hanging on the walls and I do not find the tenant liable to compensate the landlord for the holes as I find it more likely than not that the holes amount to normal wear and tear. Therefore, I award the landlord a reduced amount of $75.00 for window sill repairs.

I am satisfied that the rental unit was not left reasonably clean at the end of the tenancy. I also accept that the stain on the kitchen wall could be paint and in the absence of a move-in inspection report I deduct two hours from the landlord's claim for cleaning. I find the $25.00/hour charge to be reasonable. The landlord is awarded 8 hours @ $25.00/hour for a total of $200.00.

The damaged area of the kitchen floor appears rather small (6 cm) and did not penetrate the depth of the floor. I am also unable to determine based on disputed verbal testimony whether the flooring was damaged by the tenant or the removal and installation of a new washing machine. I find the parties provided equally probable explanations of what happened to the flooring; however, since the landlord has the burden to prove the claim, I find the burden has not been met and I do not award the landlord damages to the vinyl flooring.

The carpet cleaning charge of $150.00 is comprised of $42.77 for soap and machine rental and $107.33 for labour. Tenants are ordinarily expected to clean the carpets after one year of tenancy or after any length of tenancy if they have had a pet or smoked in the unit. Tenants must have the unit cleaned before the end of their tenancy which was 1:00 p.m. on October 31, 2009 in this case.

I reviewed the tenant's evidence and did not find sufficient evidence the landlord had agreed to permit the tenant to clean after 1:00 p.m. on October 31, 2009. I did not consider the landlord forwarding an email to the new tenants to constitute an agreement. Rather, the tenant's emails to the landlord indicate the tenant was intending

on finishing the cleaning on the morning of October 31, 2009. Therefore, I find the tenant was obligated to have the carpets cleaned by 1:00 p.m. on October 31, 2009 and since the tenant did not do so he is liable to compensate the landlord for the landlord's costs and time. The receipts show the rental machine was out approximately three hours in the afternoon of October 31, 2009 and when I consider travel time I find the landlord's claim reasonable. The landlord is awarded $150.00 for carpet cleaning.

Smoke alarms have a limited useful life of seven years and given the inconsistent testimony of the landlord I find it likely that the smoke alarm was at or near the end of its useful life. Therefore, even if I were to accept the landlord's testimony over that of the tenant's with respect to the existence of the smoke alarm, I find the depreciated value of the smoke alarm was nominal and I make no award to the landlord for a smoke alarm.

The parties provided disputed testimony with respect to keys and a portable heater being left in the rental unit. Ideally, the landlord would have noted these items on a move-out inspection report and the tenant would have agreed or disagreed with the landlord's observations on the inspection report. Except in this case, the landlord did not prepare inspection reports and even if he did, the tenant did not remain at the rental unit long enough to agree or disagree with the landlord's findings.

With respect to compensation for the missing keys, I find as follows. Even if I accepted that the tenant failed to leave keys, the landlord contributed to the loss he suffered with respect to the cost of new locks since the landlord failed to keep a duplicate copy of the keys. Furthermore, locks have a limited useful life and I am uncertain as to the age of the locks that were replaced. Therefore, even if the landlord satisfied me the tenant failed to leave the keys, the landlord has not established the depreciated value of the locks or that he took reasonable action to minimize his loss by having duplicate keys. The landlord is not awarded any costs for new locks.

With respect to compensation for the missing portable heater, I find as follows. Even if I accepted the landlord's position that the tenant failed to return the portable heater, the

landlord failed to prove the value of the heater missing which is part three of the four part test. Therefore, I make no award for the allegedly missing heater.

The landlord satisfied me that the tenant's portion of the hydro and gas bills received after the tenancy ended were at least $45.00 and I grant this part of the landlord's claim.

As the landlord was partially successful with this application, I award the landlord $25.00 of the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order as follows:

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|---|---|
| Wall and window sill repair | $ 75.00 |
| Cleaning – 8 hours | 200.00 |
| Carpet cleaning | 150.00 |
| Unpaid hydro and gas bills | 45.00 |
| Filing fee | 25.00 |
| Monetary Order for landlord | $ 495.00 |

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

Conclusion

The landlord was partially successful in establishing an entitlement to recover $495.00 from the tenant and has been provided a Monetary Order in that amount to serve upon the tenant. Neither party established the payment of a security deposit and I have not offset the landlord's award by any amount for a security deposit.

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: March 19, 2010.

Dispute Resolution Officer