

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, MND, FF

Introduction

This hearing was convened in response to an orally amended application by the landlord for:

- A Monetary Order to recover unpaid rent / rental arrears, damage to the rental unit, and for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement.
- An order to retain the security deposit in partial satisfaction of the monetary claim.

The hearing was conducted by conference call in the presence of both parties. Both parties were given a full opportunity to present evidence and make submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. All of the evidence was carefully considered.

The landlord's monetary claim on application is as follows:

Rent for April 2010	\$900.00
Utilities to end of tenancy	\$124.55
Remediation of lawn	\$128.63
Replacement of rose bushes	\$50.05
Replacement of Rhododendron	\$35.00
Remediation / replacement of flooring	\$1652.22

Newspaper Advertisement	\$28.59
Cleaning – 8 Hrs. @ \$20 - interior	\$160.00
Cleaning – 7 Hrs. @ \$20 - exterior	\$140.00
Drywall repairs – 6 hrs. @ \$25	\$150.00
Carpet cleaning	\$125.00
Total of landlord's claim <i>on application</i>	\$4393.99

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed. The tenancy began on August 01, 2009 and ended April 12, 2010. Rent in the amount of \$900 was payable in advance on the first day of each month, plus the cost of utilities. At the outset of the tenancy the landlord collected a security deposit of \$450 which the landlord retains. The parties mutually conducted a start of tenancy inspection. An end of tenancy inspection was not conducted by the parties. Nonetheless the landlord conducted an inspection without the tenant and recorded their findings. On March 26, 2010 the tenant provided the landlord with verbal Notice to End the tenancy, and again provided verbal Notice to end the tenancy on April 02, 2010. The tenant failed to pay rent for April 2010 and on April 02, 2010 the landlord gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent and utilities. The landlord acted on the tenant's verbal Notice to End and sought new tenants, and was able to partially remediate the rental unit and mitigate loss of rental revenue and secure new tenants for May 01, 2010.

The landlord claims the tenant caused damage to the rental unit prior to vacating the unit. The landlord claims damage of a portion of the exterior lawn and some shrubbery purported to be the result of damage by the tenant's dog and visiting dog(s) in the amount of \$213.63. The landlord also claims total cleaning costs of \$300, \$160 for

drywall repairs and costs to repair/replace damaged flooring within the unit in the amount of \$1652.22. The landlord further claims cost of a newspaper advertisement in order to re-rent the unit for May 01, 2010 – in the amount of \$28.59.

The tenant disputed the cost of repairing the lawn (\$128.63) claiming the damage occurred because of water runoff – and not solely due to her dog. As well, the tenant disputed the cost for newspaper advertising (\$28.59). The balance of the landlord's claim was largely undisputed by the tenant. However, the tenant questioned the landlord's claims for cleaning, and \$20 and \$25 per hour for labour to clean and repair the rental unit - as unreasonable. The landlord expressly testified and advanced photograph evidence showing the tenant neglected to clean behind the refrigerator and stove and under the dishwasher.

The landlord submitted document and photographic evidence supporting their claim.

Analysis

I have considered all evidence and all submissions to this claim and have considered all testimony given in the hearing.

On the preponderance of all the evidence advanced, I am satisfied the landlord is entitled to unpaid rent and utilities for the month of April 2010 in the amount of **\$1024.55.**

In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, solely, of the actions or neglect of the other party 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 reasonable steps to mitigate or minimize the loss or damage.

As well, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs (with some allowance for possible loss of rent or loss of occupation during the repair), or replacement. In such a case, the onus is on the tenant to show that the expenditure claimed by the landlord is unreasonable.

Therefore, the claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage or loss, and that it stemmed or flowed directly from the actions or conduct of the other party. Once that has been established, the claimant must then provide evidence that can verify *the amount of the loss or damage*. Finally, the claimant must show that reasonable steps were taken to address the situation and to reasonably mitigate the damage or losses that were incurred.

On the preponderance of all the evidence before me and on the balance of probabilities, I find the landlord has mostly met the test for their claims of damages and loss.

I grant the landlord **\$20** per hour as reasonable hourly compensation for *all aspects* of their own labour.

I find the landlord has not fully supported their claim in respect to damage to the *lawn* and shrubbery (2 *rose bushes* and 1 *rhododendron*) in the amount claimed. However, on the balance of probabilities I grant the landlord **\$100** in respect to these three (3) items, without leave to reapply.

I find the landlord has not proven their claim for newspaper advertising costs in the amount of \$28.59 and therefore **I dismiss** this portion of their claim, without leave to reapply.

I find the landlord's claim for interior cleaning behind and under major appliances as beyond reasonable. Tenants are not responsible to clean behind or under major appliances unless the appliances are on wheels and easily moved. I set the landlord's

claim for cleaning (interior and exterior) in the total amount of **\$280**, without leave to reapply.

I grant the landlord their claim for drywall repairs (@ \$20 /hr) in the amount of **\$120**.

I grant the landlord the cost of flooring repairs in the amount of **\$1652.22**

I grant the landlord the cost for carpet cleaning in the amount of **\$125**

I order that the landlord retain the security deposit of **\$450** in partial satisfaction of the landlord's entitlement claim.

As for the monetary order, I find the landlord has established an entitlement as follows:

Rent for April 2010	\$900.00
Utilities to end of tenancy	\$124.55
Remediation of lawn, rose bushes, Rhododendron	\$100.00
Remediation / replacement of flooring	\$1652.22
Cleaning – 7 Hrs. @ \$20 - interior	\$140.00
Cleaning – 7 Hrs. @ \$20 - exterior	\$140.00
Drywall repairs – 6 Hrs. @\$20	\$120.00
Carpet cleaning	\$125.00
Security deposit to landlord	- \$450
Total of landlord's claim <i>on application</i>	\$2851.77

Conclusion

I grant the landlord a Monetary Order under Section 67 of the Residential Tenancy Act for the amount of **\$2851.77**. The landlord is being given this Order. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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*.