



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, FF, O

Introduction

This hearing dealt with the landlords' application for a Monetary Order for damage to the rental unit; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and recovery of the filing fee. The tenants did not appear at the hearing. The landlords affirmed that the landlords' application and all evidence was served upon the tenants by registered mail and provided registered mail tracking numbers as proof of service. A search of the last registered mail tracking number showed that the registered mail was successfully delivered September 30, 2010. I was satisfied the application and evidence were sufficiently served upon the tenants and I proceeded to hear from the landlords without the tenants present.

The landlord requested their monetary claim be amended to reduce the amount of the claim and to request authority to retain the security deposit. As the landlord's amendments do not prejudice the tenants I accepted the amendments.

Issues(s) to be Decided

1. Have the landlords established an entitlement to compensation for damage to the rental unit?
2. Have the landlords established an entitlement to unpaid rent?
3. Are the landlords authorized to retain the security deposit?

Background and Evidence

I was provided the following undisputed testimony from the landlords. The tenancy commenced December 2008 for a fixed term to expire December 1, 2009 and then convert to a month to month basis. The tenants were required to pay rent of \$800.00 on the 1st day of every month. The tenants' security deposit cheque of \$300.00 was returned for insufficient funds but the tenants eventually paid the \$300.00 by way of instalments. On December 3, 2009 the landlords received an email from the tenants advising the landlords they had moved out. The tenants did not provide a forwarding address in writing. The landlords learned of the tenants' new address upon their research.

Upon attending the rental unit the landlords discovered the unit was left dirty, the kitchen flooring was burned, the blinds were missing and garburator was no longer working. The kitchen sink and countertop were also discoloured but the landlord was able to improve the appearance of these items and is not claiming compensation for replacement of these items. The landlords are seeking compensation for the following:

Registered mail costs	\$ 22.03
Cleaning	210.00
Replacement window coverings	863.52
Replacement flooring	795.32
Replacement garburator and plumbing parts	290.46
Replacement faucet	106.23
Unpaid rent – December 2009	<u>800.00</u>
Total claim	\$ 3,507.56

Upon enquiry, the landlords testified that the kitchen flooring was burned by molten metal. The flooring in the kitchen was cork which was installed September 2002 at a cost of \$1,760.55 and an expected life of 50 years. The cork flooring could not be

matched so the kitchen and bathroom flooring were replaced with vinyl flooring. The bathroom flooring was original, approximately 18 years old.

Upon enquiry, the landlords testified that the tenants threw the blinds away. They were approximately 10 years old but in good condition. The landlords have replaced the window coverings with new drapery.

The landlords explained that the molten metal caused the garburator to stop working. The garburator was installed in 2002. In addition, the plumbing in the bathroom vanity was taken apart and not put back together and the faucet was removed by the tenants and incorrectly replaced by a new faucet.

During the hearing the landlords also stated that they have not re-rented the unit as they have chosen not to use the condominium as a rental unit.

In the email of December 3, 2009 the tenants acknowledge burning the floor by way of a melted pot and advise the landlords they may retain the security deposit. The tenants also mention the bathroom plumbing is not working properly and requires a plumber to fix the drain pipe, which the tenants do not feel responsible for. The tenants mention the landlords' blinds did not fit after the windows were remediated and the tenants installed their own curtains which they took with them. The tenants offer to courier the keys to the landlord or leave them with somebody at the building.

In a written submission by the landlords the landlords state that \$200.00 cash was received for the security deposit in addition to the \$300.00 cheque. The landlords mention a phone call from the tenant in mid-November 2009 advising the landlords they would be moving out. After the tenants vacated the keys were eventually obtained on December 13, 2010 by having a friend meet the tenants at a skytrain station. The landlords acknowledge that the tenants had complained about a bathroom sink that was not draining properly and that a plumber had attended but did not put all the plumbing

back in place. In addition, the landlords describe a bathroom faucet was taken and partially replaced but it leaks and the stopper was not installed.

Provided as documentary evidence by the landlords were registered mail receipts, photographs of the rental unit, invoices and quotes with respect to the damaged and missing items, copies of email communication from the tenants, the tenancy agreement and copies of NSF cheques written by the tenants.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. 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. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon review of all of the documentary evidence before me and the landlords' testimony I make the following findings.

The Act does not provide for recovery of costs associated to preparing for dispute resolution except for the filing fee. Therefore, I have denied the claim for registered mail costs.

The Act requires a tenant to leave the unit reasonably clean and undamaged at the end of the tenancy. The tenant must also return the keys to the landlord. I accept the landlords' undisputed testimony that the rental unit was not left reasonably clean by the tenants. The landlords provided an invoice to substantiate the cost of cleaning the unit on December 14, 2009 and I award the landlords \$210.00 for cleaning.

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 have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37.

Window blinds have a limited useful life of approximately 10 years. Having heard the blinds were of that age and considering the tenants' written statement that the blinds did not fit properly after the building was remediated I find the missing blinds of little or no value. Therefore, I do not award damages to the landlords for the missing blinds.

With respect to the damaged flooring, I accept that the landlords replaced the cork flooring with a more economical flooring and that the quality of vinyl flooring is inferior to the cork flooring. I also accept the landlords' testimony that the cork flooring had a life of 50 years and cost \$1,760.55 in 2002. Factoring in depreciation of 8 years I find the devaluation of the cork flooring is greater than the costs claimed by the landlord for replacement flooring. Therefore, I award the landlords the \$795.32 claimed for replacement flooring.

I accept that the tenants damaged the garburator with molten metal. I estimate the useful life of a garburator to be 10 years. Having heard the garburator was installed in 2002 I estimate the remaining useful life of garburator was approximately 2.5 years at the end of the tenancy. The landlords also satisfied me that a replacement garburator

cost them \$222.00 plus tax. Therefore, I award the landlords \$62.00 $[(\$222.00 + \text{tax}) \times 2.5 / 10 \text{ years}]$ for the garburator.

In the landlords' written submission the landlords acknowledge the plumbing was not completed by the strata's plumber; however, the landlords point the tenants' failure to inform the landlords of this. I find it reasonable to expect the landlords would follow up on the repair with the tenants. Therefore, I was not satisfied the tenants are responsible for the incomplete plumbing repair in the bathroom vanity by the strata's plumber and I do not award the cost of plumbing parts to the landlords.

With respect to the bathroom faucet, I find insufficient evidence to award the amount claimed by the landlords. The receipt from Hillcrest Plumbing was not provided to me. Rather, I was provided a Rona receipt which shows the purchase of a faucet which was subsequently returned. Further, faucets have a lifespan of approximately 15 years according to the policy guideline. Having heard the building was 18 years old I find it reasonable that the faucet was at the end of its useful life and of little value. For these reasons, I make no award to the landlords for a new bathroom faucet.

Upon review of the tenancy agreement I note the term of the tenancy is "December 5, 2008 until November 31, 2009". The agreement provides that the rent will be increased to \$800.00 after the scaffolding comes down "...till the end of the lease". Further, the tenancy agreement provides "when the lease is about to expire we can discuss continuing to rent on a month to month basis or possibly another lease."

It is upon the landlord to prepare a tenancy agreement that is clear and conforms to the requirements of the Act. The tenancy agreement and the provision for the term of the tenancy do not comply with the requirements of the Act. I find the landlords had communicated to the tenants at the commencement of the tenancy that near the end of the term they would discuss continuation of the tenancy. I find the landlords and tenants did have a discussion in mid-November 2009 and the tenants advised the

landlords they would not continue to rent the unit. Therefore, I am not satisfied that the tenancy had converted to a month-to-month tenancy as stated by the landlords during the hearing.

In light of the above and considering the landlords did not make attempts to re-rent the unit, I do not find the landlords entitled to rent for the full month of December 2009. However, considering the tenants' email of December 3, 2009 I find the tenants violated the Act and tenancy agreement by not vacating the rental unit on the last day of November 2009, not leaving the unit reasonably clean and not returning the keys to the landlords on the last day of November 2009. Therefore, I find the landlords entitled to compensation of one-half of December's rent for the tenants' over-holding the unit.

With respect to the security deposit, I accept that \$500.00 was paid by the tenants as evidenced by the tenancy agreement and the landlords' written submission. I authorize the landlords to retain the security deposit in partial satisfaction of the landlords' claims. I award the filing fee to the landlords and provide a Monetary Order to the landlords calculated as follows:

Cleaning	\$ 210.00
Damaged flooring	795.32
Damaged garburator	62.00
Over-holding	400.00
Filing fee	50.00
Less: security deposit	<u>(500.00)</u>
Monetary claim	\$ 1,017.32

The landlords 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 landlords were partially successful in this application. The landlords have been authorized to retain the tenants' security deposit and have been provided a Monetary Order for the balance of \$1,017.32 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: October 19, 2010.

Dispute Resolution Officer