



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR MND MNR MNSD MNDC FF

Preliminary Issues

At the outset of the hearing the Landlord advised she had submitted late evidence which included a copy of a written settlement between the parties. The Landlord requested that an Order be issued to reflect the settlement agreement.

The Tenants did not appear at the teleconference hearing and therefore could not confirm that they had settled the matter. I advised the Landlord that I would not issue a monetary order based solely on the alleged settlement agreement in the absence of the Tenants. The Landlord was given the choice to either withdraw her application, with leave to reapply if the Tenants failed to uphold the settlement, or proceed with her claim on the merits of the application. The Landlord chose to proceed with her claim on its merits.

The Landlord requested to withdraw her request for an Order of Possession as the Tenants vacated the property as of January 12, 2011.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the pet and or security deposit, for money owed for compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlords to each Tenant, was done in accordance with section 89 of the Act, sent via registered mail January 6, 2011 and the amended application was sent January 14, 2011. Mail receipt numbers were provided in the Landlord's evidence. I accept that each Tenant has been sufficiently served with notice of today's hearing, in accordance with section 89 of the Act.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. No one appeared at the teleconference hearing on behalf of the Tenants.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to establish a monetary claim as a result of that breach?

Background and Evidence

The parties entered into a fixed term tenancy agreement effective February 1, 2010 set to switch to a month to month tenancy after January 31, 2011. Rent was payable on the first of each month in the amount of \$850.00. The Tenants first occupied another unit owned by the Landlords in the same building on June 1, 2009. They paid a security deposit for the first unit which was forfeited because of damage caused to that unit. Their pet deposit of \$200.00 which was paid July 15, 2009 was transferred to the new unit February 1, 2010 and a security deposit of \$425.00 was paid November 7, 2010.

The Landlord testified that when the Tenants failed to pay their January 1, 2011 rent a 10 Day Notice to End Tenancy was issued January 2, 2011 and the Tenants vacated the unit January 12, 2011. The unit was re-rented effective February 1, 2011 so the Landlord is seeking \$850.00 for January's unpaid rent.

The Landlord confirmed the tenancy agreement states electricity is included in the rent but that heat is not. The rental unit is heated by electric baseboard heaters which are connected to the same hydro meter as everything else in the unit. She is seeking compensation for \$1,376.66 for unpaid hydro bills as supported by her evidence which included a printout of the hydro customer account history.

The remainder of the Landlords' claim pertains to damages as follows:

- \$107.52 for carpet cleaning. This amount is based on an estimated charge to clean all the carpets in the unit. The carpets have not yet been cleaned as the Landlord is waiting until the repairs have been completed. She stated the carpets will be cleaned before the onset of the next tenancy which is scheduled for February 1, 2011.
- \$351.00 for an estimated cost to purchase another used stove. The stove in the unit suffered some type of damage to the oven door hinges which

- prevents the oven door from closing properly. The Landlord purchased a used stove off of the local "used" website on June 20, 2010 for \$300.00 cash so she is seeking the reduced amount. The Landlord purchased this property in 2008 and the stove was in the unit at that time. She does not know the exact age of the stove.
- \$1,984.00 to repair the damages caused to the walls, replace the damaged doors, and paint the entire unit. This amount is an estimated amount based on the written estimate provided in the Landlord's evidence. The work to repair the unit commenced January 20, 2011 and is scheduled to be finished on Saturday or Sunday. The Landlord could not "say for certain" what the final cost of the repairs will be. She stated the doors that were being replaced were original doors that are about 18 years old and the entire unit was painted in January 2010, just prior to this tenancy.

The Landlord made reference to a completed move-in and move-out inspection report form in support of her claim for damages. It was noted that the move-in section of the report did not note the date the move-in inspection was completed and the Tenants did not sign the move-in form. The move-out form is signed and dated by the female Tenant on January 12, 2011 which agrees to the listed damages "as noted on report & as per pictures". The Landlord confirmed the photographs provided in her evidence were taken at the time of the move-out inspection on January 12, 2011. The Tenant provided her forwarding address on the move-out inspection form on January 12, 2011.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and

4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the Tenants breached section 26 of the Act when they did not pay rent for January 1, 2011. The tenancy ended January 12, 2011, the effective date of the 10 Day Notice, pursuant to section 44(1)(a) of the Act. As a result of this breach the Landlords have suffered a loss of rent for the month of January 2011. Their loss was mitigated by the Landlord's action of re-renting the unit as of February 1, 2011. As per the aforementioned I find the Landlords have met the burden of proof and I support their claim for rent/loss of rent for January 2011 in the amount of **\$850.00**.

The Landlord has sought \$1,376.66 for the cost of electricity or hydro. The tenancy agreement provides the cost of electricity is included in the monthly rent however the cost of heat is not. The heat for the rental unit is provided through electric based board heaters which are not on a separate electric meter from the rest of the unit. Section 6(3)(c) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. Based on the aforementioned I find the cost of electricity or hydro to be included in the monthly rent, therefore I dismiss the Landlords' claim for unpaid hydro without leave to reapply.

The evidence supports the Tenants accepted that the rental unit suffered damaged as noted on the move out inspection form and confirmed by the female Tenant's signature. The Landlord wanted to rely on a settlement that the parties allegedly entered into on January 20, 2011. The Tenants did not appear at the scheduled teleconference hearing so I was not able to determine the validity of the settlement. Therefore my decision is based on more weight being given to the signed move-out inspection form and will not consider the alleged settlement agreement.

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 repair or replacement cost by the depreciation of the original item.

The Landlords seek \$300.00 for the cost to replace the stove. The age of the stove is unknown and the Landlord did not submit evidence to prove that a stove was in fact purchased. I note there is no indication on the move-out inspection form that the stove or oven door hinges were damaged or that the oven door could not close. In fact the two items that relate to the stove or oven show a check mark which indicates the condition of the stove and oven to be "good". A photo of an oven door left open to the first part of

the hinge in and of itself does not meet the burden of proof that the door or hinges were damaged. Therefore, I dismiss the Landlords' claim of \$300.00 without leave to reapply.

The Landlord seeks \$107.52 for carpet cleaning that has not yet been completed. There is no evidence to support the Tenant agreed to bear this cost as it is not listed on the move-out inspection report. The Landlord has not yet suffered the loss for carpet cleaning as the work has not been performed therefore the actual amount of the loss cannot yet be determined. Based on the aforementioned I find the Landlord has provided insufficient evidence to support she suffered the loss, therefore her claim of \$107.52 is hereby dismissed, without leave to reapply.

The Tenant signed the move out inspection form acknowledging the presence of the existing damages. The Landlord testified the doors were approximately 18 years old and the unit was completely painted in January 2010, just prior to the Tenants occupying the unit. The *Residential Tenancy Policy Guideline # 37* provides that the useful life of a door to be approximately 20 years while the useful life of interior paint to be 4 years.

The testimony supports the repair work and painting has commenced on the unit, however at the time of the hearing the repairs were not completed and the actual cost not yet known. I accept the testimony that some amount of work was authorized to commence based on the written estimate provided in the Landlord's evidence, however there is insufficient evidence to support whether the entire amount of work was authorized.

After careful consideration of the evidence I find there was damage to the unit during the tenancy, the work has not yet been completed, and the total amount being claimed by the Landlords includes replacement cost for items that have almost reached their useful life expectancy. In addition, while there is the presence of damage on some of the walls there is insufficient evidence to support that every wall in every room must be completely repainted. The unit was fully painted just prior to this 11 month tenancy, therefore there is insufficient evidence before me to indicate the walls could not be patched and the paint touched up, rather than painting the entire unit. That being said, section 32 of the Act states a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Based on the aforementioned, I find in favour of the Landlords and award a nominal amount of **\$595.20** (30% of \$1,984.00).

The Landlords have been partially successful, therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit as follows:

Unpaid rent and loss of rent for January 2011	\$850.00
Repair of damages to the rental unit (repair, painting and doors)	595.20
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlords)	\$1,495.20
Less Security Deposit of \$425.00 plus interest of \$0.00	- 425.00
Less Pet Deposit of \$200.00 plus interest from July 15, 2009 \$0.00	-200.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$870.20

Conclusion

I HEREBY FIND in favor of the Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$870.20**. The order must be served on the respondent Tenants and is enforceable through the Provincial Court 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*.

Dated: January 31, 2011.

Residential Tenancy Branch