



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, 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; authority to retain the security deposit; and, recovery of the filing fee. The tenants did not appear at the hearing.

The landlord testified that the female tenant's new address was determined by way of the landlord's skip tracing efforts. A process server attended the residence in order to serve the tenants with the hearing documents; however, only the male tenant would come to the door. The landlord provided a signed Affidavit of Service as evidence the male tenant was personally served with the hearing documents on September 10, 2010 by the process server. The landlord provided a registered mail receipt and copy of the envelope sent to the female tenant at the same address on September 13, 2010. The registered mail was returned to the landlord. Section 90 of the Act deems a person is served five days after mailing when the mail is sent to the respondent's address of residence.

Based upon the evidence provided to me, I was satisfied the tenants have been sufficiently served in a manner that complies with the Act. I proceeded to hear from the landlord without the tenants present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit?
2. Has the landlord established an entitlement to compensation for unpaid rent?
3. Has the landlord established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
4. Is the landlord authorized to retain the security deposit?

Background and Evidence

The landlord provided the following testimony during the hearing. The tenancy commenced November 13, 2006 and a \$600.00 security deposit was paid on November 13, 2006. The tenants were required to pay rent of \$1,200.00 on the 1st day of every month. In January 2009 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenants paid all but \$100.00 of the rent owed for January 2009.

The tenants failed to pay rent for February 2009. The landlord spoke with the tenants on February 7 or 8, 2009 and the tenants promised to pay the rent by February 15, 2009. The landlord was unable to reach the tenants on February 15, 2009 and upon attending the rental unit on February 21, 2009 the landlord found that the rental unit had been vacated.

Upon entering the rental unit the landlord found the rental unit very dirty and damaged. The landlord took photographs of the rental unit shortly after entry and provided them as evidence for this hearing. The landlord proceeded to clean and repair the damages and re-rented the rental unit for June 2009. In making this application the landlord is seeking to recover the following amounts from the tenants:

<u>Item</u>	<u>Reason</u>	<u>Evidence</u>	<u>Amount claimed</u>
Labour: wall repairs, paint, door repair and door installation	Walls dented and marked; door kicked in	Estimate, photos	2,200.00
Materials: new door, toilet lid, garage door window, downpipe, folding door knobs	Door kicked in, toilet lid cracked, window broken, downpipe missing, knobs missing	Receipts, photos	162.13
Unplug toilet	Diaper found in toilet	Invoice	228.40
Replace dishwasher	Tenant screwed deck screw into dishwasher which penetrated tub	Receipts	526.26
Cleaning and repairs	Cleaning supplies and labour; missing or broken hardware replacement	Receipts \$423.04 Landlord's labour \$300.00	723.04
Refuse disposal	Disposal of carpet, vinyl floor, dishwasher and garbage	Verbal testimony	305.55
Tenant's water bill	Tenants did not pay last water bill, paid by landlord	Verbal testimony	61.05
Unpaid rent	January 2009	Verbal testimony	100.00
Unpaid rent	February 2009	Tenancy agreement	1,200.00
Unpaid rent	March 2009	Tenancy agreement	1,200.00
Total claim			\$11,447.89

Upon enquiry, the landlord testified that the house was constructed in 2004 and there was one previous set of tenants in the rental unit before this tenancy began. The appliances and fixtures repaired or replaced were installed at the time of the construction of the house.

Upon enquiry, the landlord confirmed that the contractor that provided an estimate for \$2,200.00 to provide labour to repair walls, paint and install a door was engaged to perform the work and was paid at least \$2,200.00 by the landlord.

Analysis

Under the Act, tenants are required to leave the rental unit reasonably clean and undamaged at the end of the tenancy. Normal wear and tear and aging is not damage.

I have reviewed the photographs provided as evidence by the landlord and I accept that the house was constructed in 2004 and that at the end of the tenancy the carpets were ruined by excessive soiling, the vinyl flooring was stained, the walls were dented and drawn upon with markers, the garage window was broken, a door was damaged beyond repair, a door frame was damaged, the downpipe was missing and kitchen drawer fronts were broken. I am also satisfied that the extent of damage is far beyond what any reasonable person would consider normal wear and tear.

I have reviewed the invoices and receipts and estimate provided as evidence and I accept that the landlord substantiated the majority of the costs incurred to repair or replace the above items. In addition, I accept that the landlord had to have the toilet unplugged due to actions of the tenants and incurred the cost claimed. However, certain costs claimed by the landlord have been adjusted for the following reasons.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same 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. This is to reflect the useful life of items and fixtures which depreciate through normal wear and tear. 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.

Carpets and vinyl flooring have an average useful life of 10 years. At the end of the tenancy the carpets and vinyl flooring were approximately 5 years old or half way through their expected life span. Therefore, I award the landlord 50% of the amounts claimed for new carpet and flooring.

Interior paint has an average useful life of 4 years and I find the interior paint was fully depreciated at the end of the tenancy. Accordingly, I do not award the landlord painting costs. However, I accept that the walls required repairs and preparation due to dents, gouges and defacing and I award those costs to the landlord. Since the wall

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preparation and painting in encompassed in one amount, I estimate the recoverable portion to be 50% of the \$2,200.00 claim.

With respect to the materials purchased to replace the door, garage door window, downpipe and knobs I have decreased the claim by 20% to reflect 5 years of depreciation for the original items.

Appliances have an average useful life of 15 years and since the dishwasher was 5 years old at the end of the tenancy I award the landlord 2/3 of the cost of the new dishwasher.

I accept that the landlord's testimony that he paid \$305.55 for refuse disposal; however, in the absence of a receipt for the refuse disposal I find it likely the majority of the cost is associated to disposal of the carpet and flooring. Since the landlord is entitled to recover only a portion of the costs of carpet and flooring due to normal aging and wear and tear, I also reduce the recoverable portion of the refuse disposal cost to \$200.00.

In the absence of evidence to the contrary, I accept that the tenants did not pay \$100.00 of the rent owed for January 2009 or their last water bill and the tenants continued to overhold the rental unit into February 2009 without paying for use and occupancy. Further, I find the landlord lost rent for the month of March 2009 due to the tenants' actions and damage to the rental unit. Therefore, I grant the landlords request to recover unpaid and loss of rent for the months of January through March 2009.

I award the filing fee to the landlord and I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlord. I calculate interest on the security deposit is \$18.55. With this decision I provide a Monetary Order to the landlord calculated as follows:

<u>Item</u>	<u>Amount claimed</u>	<u>Amount awarded</u>
Labour: wall repairs, paint, and door	2,200.00	1,100.00

repair and installation		
Materials: new door, toilet lid, garage door window, downpipe, folding door knobs	162.13	129.70
Unplug toilet	228.40	228.40
Replace dishwasher	526.26	350.84
Cleaning and repairs	723.04	723.04
Refuse disposal	305.55	200.00
Tenant's water bill	61.05	61.05
Unpaid rent - January 2009	100.00	100.00
Loss of rent – February 2009	1,200.00	1,200.00
Loss of rent – March 2009	<u>1,200.00</u>	<u>1,200.00</u>
Total claim	\$ 11,447.89	\$ 7,663.76
Plus: Filing fee		100.00
Less: Security deposit and interest		<u>(618.55)</u>
Monetary Order		\$ 7,145.21

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

Conclusion

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$7,145.21 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: January 13, 2011.

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