



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for money owed or compensation for damage or loss under the Act, for damage to the rental unit, and to recover the filing fee.

The Landlord sent a notice of the hearing to the Tenants to the address where they reside by registered mail on September 22, 2010, and provided the tracking numbers. The Tenants failed to claim the mail and from the testimony provided by the Landlord, I was satisfied that the Landlord made reasonable attempts to serve the Tenants notice of the hearing. Upon query, the Landlord testified that he knew the Tenants resided at the address listed on the registered mail as he tracked them down to this address, has seen them there and knocked on the front door, with the Tenants answering the door.

Pursuant to section 90, I deem the Tenants served 5 days after the Notices were mailed, or September 27, 2010.

The Landlord and his witness appeared gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

I note that the Landlord testified from his hospital bed, but when given the opportunity to adjourn, the Landlord stated he was prepared to proceed with the hearing.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order for monetary relief?

Background and Evidence

There is no written tenancy agreement, but the Landlord testified that the tenancy began in mid September, 2007 and ended May 1, 2010, when the Tenants vacated the

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rental unit. The monthly rent began at \$900.00, was increased to \$935.00 in 2009, and \$965.00 in 2010. A security deposit was not paid by the Tenants.

I note that upon query, the Landlord acknowledged there was no move in or move out condition inspection report.

The Landlord supplied photographic evidence and gave affirmed testimony that the Tenants failed to pay all rent due during the tenancy and caused extensive damage to the rental unit during the tenancy, for which he is seeking a monetary order for loss or damage under the Act. The Landlord is claiming the following:

Unpaid rent	\$3,635.00
Appliances	2,255.00
Repairs	1,267.00
Cleaning	1,125.00
Yard work	1,260.00
Missing items	115.00
Additional damages	786.00
Kitchen sink	425.00
Patio screen	70.00
Power saw	50.00
Heating oil	550.00
Skid	100.00
Filing package	790.56
Total	\$12,428.56

The Landlord's photographic evidence depicted the state of the oven, freezer, kitchen counter, washer and dryer, the front door, back bedroom door, flooring under the carpet, kitchen cupboard, bathroom sink, window sills, condition behind the washer/dryer, the yard, the laminate flooring and the saw.

The Landlord also supplied evidence of tax statements indicating the amount of rent collected during the tenancy, receipts for rent, credit card statements and summary sheets.

The Landlord's relevant testimony indicated that due to some health problems in 2008, he intended to sell the rental unit, giving the Tenants the first option to buy. The Landlord testified that when he went to collect the rent on May 1, 2010, he found the rental unit vacated, with the Tenants owing unpaid rent since the beginning of the tenancy through May 31, 2010, in the amount of \$3,635.00.

In support of his documentary evidence, the Landlord testified about each element of alleged damage on the appliances, the flooring, doors, sinks, windows, counter tops, cupboard and the yard.

When queried about each item allegedly damaged, the Landlord testified that he did not know the age of the stove, refrigerator, dryer, front and back door, flooring, kitchen counters, bathroom sinks, but believed they were all original appliances with the manufactured home, which the Landlord estimated to be in 1978. The Landlord testified that the washer was 3 years old and the laminate flooring was installed in 2007.

The Landlord testified that the Tenants did not clean the rental unit when they moved out.

The Landlord's witness was a former tenant, who moved out in 2007, who testified that there were no damages when she moved out.

Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

When making a claim for damages under a tenancy agreement or the Act, the party (in this case, the Landlord) making the allegations, has the burden of proving their claim. Proving a claim in damages requires:

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.

As to the issue of unpaid rent, there was no written tenancy agreement establishing the monthly rent, but I accept the affirmed testimony of the Landlord that monthly rent was \$900.00 at the beginning of the tenancy. Section 42 of the Act deals with the methods a rent may be increased. The Landlord has not provided any evidence that he complied with Section 42 (2) and (3) by issuing a notice in the time and approved form necessary for a valid rent increase; therefore I reject the Landlord's claim for unpaid rent based upon \$935 for 2009 and \$965.00 for 2010. I allow the Landlord to claim for unpaid rent of \$900.00 per month from the beginning of the tenancy to the end of the tenancy.

I accept the Landlord's accounting evidence of rent payments received for the tenancy as follows:

	Rent Owed	Rent Paid
2007 (mid Sept. through Dec.)	\$3,150.00	\$3,050.00
2008	\$10,800.00	\$10,200.00
2009	\$10,800.00	\$10,280.00
2010 (Jan. Through May)	\$4,500.00	\$2,765.00
Total	\$29,250.00	\$26,295.00
Total Unpaid Rent	\$2,955.00	

I therefore find that the Landlord has established a monetary claim for unpaid rent of **\$2,955.00**.

Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy. Section 35 of the Act, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection.

The Landlord acknowledged that there was no move in or move out condition inspection with the Tenants as required under the Act. Without a properly completed inspection report in conformance with the Act, I find the Landlord cannot establish the condition of the rental unit either before or after this tenancy. Therefore I find the Landlord has submitted insufficient evidence to prove that any damage to the rental unit was caused by the Tenants and I **dismiss** his claim for repairs, damage to the flooring and dryer, cleaning, yard work, missing items, additional damages, dryer and the skid.

Further the Landlord's testimony indicated that with the exception of the dryer and laminate flooring, the appliances, the patio screen, the sinks, the counter tops, front door, missing items and flooring were original with the 1978 manufactured home. Therefore I find the items listed had met their useful life, were fully depreciated, according to RTB Guidelines 37 and I **dismiss** his claim for these items.

As there was no written tenancy agreement and no receipts, I find there is insufficient evidence that the Tenants agreed to pay for heating oil or that the Landlord suffered a loss. Therefore I **dismiss** his claim for heating oil.

The Landlord did not submit a receipt for repair to the power saw and has not established his loss. Therefore I **dismiss** his claim for the power saw.

I find the Landlord pursued his claim in the manner of his choosing, which perhaps led to additional filing costs. Therefore I cannot find that the Tenants are responsible for these costs and I **dismiss** his claim for the filing package.



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The Landlord submitted a document entitled IOU, purportedly signed by the male Tenant, which listed some items the Landlord claimed in his application. However, I cannot determine the intent of the parties or even if the signature was that of the Tenant. I find the subject of the IOU is not within the jurisdiction of the Residential Tenancy Act, but rather would be a matter for the Landlord to pursue in the Provincial (Small Claims) court.

I find the Landlord was partially successful with his application and I **award** him one half of the filing fee in the amount of **\$50.00**.

I find the Landlord has established a monetary claim of **\$3,005.00**, comprised of **\$2,955.00** for unpaid rent and \$50.00 for the filing fee.

Pursuant to the policy guideline, I have provided the Landlord with a monetary order in these terms. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord has established a monetary claim of \$3,005.00 and is granted a monetary order in that amount.

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 14, 2011.

Residential Tenancy Branch