



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a monetary order for damage to the unit site or property, for unpaid rent or utilities, to keep the security and pet deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord, to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail on October 6, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant confirmed receipt of the hearing package.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to acquire a monetary order as a result of that breach?

Background and Evidence

The Landlord testified that he did not receive a copy of the Tenant's evidence. The Tenant disputed this testimony and looked up the tracking number on-line provided by the courier company which confirms her evidence was delivered to the Landlord's address on January 28, 2011 at 12:16 p.m. Based on the tracking information provided by the Tenant I find her evidence was sufficiently served to the Landlord in accordance with section 88 of the *Act* and the hearing proceeded.

The Tenant's Witness stated that she provided a written statement in the Tenant's evidence which outlines how she was at the rental unit, assisted the Tenant in cleaning the unit at the end of the tenancy, and was present for the scheduled move out inspection on October 1, 2010 at 7:30 p.m. The Landlord did not attend as scheduled and instructed the Tenant to leave the keys on the kitchen counter along with money for an estimated utility bill.

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement effective September 1, 2008 which switched to a month to month tenancy after February 28, 2009. Rent was payable at the onset of the tenancy on the first of each month in the amount of \$1,125.00. The Tenant paid a security deposit of \$562.50 on September 1, 2008 however did not pay the \$100.00 pet deposit that was supposed to be paid by October 15, 2008. The rent was later increased to what the Landlord estimated to be about \$1,160.00 per month.

The Landlord testified he has owned the duplex since 2004 and each side has an upper and lower rental unit. The duplex was built in 1976 and has been a rental property from the time he has owned it. He stated it was renovated in 2003, prior to his purchasing it, and then he repainted it all in August 2008 except for the kitchen proper and entrance hallway.

He stated he conducted a move-in inspection report on September 3, 2008 in the presence of the Tenant. He stated that he had scheduled move out inspections for September 25th, September 28th, September 29th, and September 30th, however the Tenant had not completely moved out or finished cleaning the unit. He then scheduled a move-out inspection for October 1, 2010 at 7:30 p.m. The Tenant called him at 8:00 p.m. and said she wanted him to sign a release of condition form. He attended the unit later that evening around 9:30 p.m. and completed a move-out inspection form in the absence of the Tenant. He claims he did not find the keys or the paper with the forwarding address at the suite until October 3, 2010.

The Landlord stated that when they thought the tenancy was going to end they provided information to the Tenant so she could begin the process of cleaning. He stated the condition of the unit was not due to normal wear and tear. The Tenant had several rabbits housed in what he thought were dog cages. He attended the unit to conduct a repair when he first notice the rabbits and saw urine and feces on the floor in the kitchen. He noticed that the Tenant's daughter had posters plastered all over the walls in her bedroom. He had also received complaints from the lower tenant about the smell coming from garbage the Tenant had left on the deck. After receiving the Tenant's

notice they provided her with a letter with the names of local companies that could assist her in cleaning the unit.

He stated that he did not receive the Tenant's notice to end tenancy until September 3, 2010 when he picked up her rent cheque. He confirmed the Tenant was required to place her monthly rent payment and any other correspondence in a mailbox which is located at the rental unit. The Tenant's letter to end her tenancy was dated September 1, 2010. He advised the Tenant was agreeable to allow showings however it was very difficult to acquire new tenants giving the condition of the unit at that time.

He is seeking compensation for one month of unpaid rent of \$1,125.00 because the notice to end tenancy was received late. He is also seeking the following damages:

- \$89.59 x 2 for the two light shades that were broken. His original claim was for the one shade that had the end broken off but since making his application he noticed the shade in the other bathroom was also broken. He states both shades were new in 2003 when the unit was renovated. He stated he provided receipts in his evidence which supports he purchased two lights.
- \$88.20 for the electrician's bill to install the two light shades which he states was completed on October 12, 2010. No receipt was provided in the Landlord's evidence.
- \$224.00 to repair the carpet. The Landlord stated this work has not been completed pending the outcome of this hearing. He argued the carpet was new in 2003 and now a section leading from the child's bedroom was chewed and frayed. A copy of the quote was not provided.
- \$100.79 to remove debris that was left outside by the tenant. The Landlord did not submit receipts for this and stated it was completed on October 10, 2010.
- \$252.00 to have the family room wall repaired and repainted as well as the rear bedroom. This work was completed October 13, 2010 and the Landlord did not provide an invoice for this work.
- \$123.20 for a professional cleaner to come into the unit and clean the bathroom and part of the kitchen. The Landlord stated this was completed October 6, 2010. No receipt was provided.
- \$179.19 to have a professional carpet cleaning company come in to sanitize the hard floors. This work was completed October 6, 2010. No receipt was provided.

Upon further clarification the Landlord testified that he was reducing the amount of unpaid rent he is claiming to only one half of a month's rent because he was able to re-rent the unit as of October 15, 2010. He entered into the new agreement on October 5, 2010 for the monthly rent of \$1,235.00.

The Tenant testified she never saw the move-in or move-out inspection form until she received the Landlord's evidence. The initials written on the last page for a move-in signature are not her signature or initials. She agreed she saw the unit before occupying it but never had an inspection form completed and never received a copy of one prior to this proceeding.

She confirmed the Landlord kept trying to arrange for a move-out inspection prior to the end of her tenancy. Her rent was paid to the end of the month so she cleaned the unit when she could fit it in around her work schedule. When the Landlord failed to attend the October 1, 2010 inspection at 7:30 p.m. she sent him a text message to confirm she had left the keys on the counter as he instructed, along with her forwarding address.

The Witness confirmed she was at the rental unit October 1, 2010 and it was adequately cleaned. The unit is an old unit with old walls and old appliances. She found the Landlord to be intimidating towards the Tenant and kept demanding that she do more. During the conversation the Tenant had with the Landlord on October 1, 2010 he demanded that she leave payment for an estimated hydro amount along with the keys. The Tenant refused to leave the money and later paid the hydro bill in full on November 4, 2010, once the actual amount was known.

She confirmed that she had four pet rabbits in rabbit cages and one cat. She confirmed the corner of one light fixture was broken by her daughter but that the other one remained in the same condition as it was at the beginning of the tenancy. She also confirmed her couch left a mark on the drywall in the living room and the gate on the deck fell off two weeks after they moved in. She denies that her daughter had posters over every wall or that she left debris in the yard. She provided evidence to support she had the carpets cleaned and paid to have her junk removed. She stated the walls looked like that when she moved in.

The Landlord stated the photos he provided into evidence were taken October 1, 2010 which he later corrected to be October 3, 2010. He denied being intimidating and stated he tried to be reasonable with the Tenant. He stated this is not reasonable wear and tear.

The female Landlord testified that they attended the unit and conducted additional cleaning in the bathroom and kitchen. Then she added that the required cleaning was beyond their capability so they hired professionals.

The Tenant stated she called the carpet company the Landlord listed as hiring and they

told her they do not provide a service of pet deodorizing on solid floor services. She added that she cleaned the unit to the best of her ability.

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

Section 45 of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month or in the other period on which the tenancy is based, and that rent is payable under the tenancy agreement. In this case the Tenant was required to provide her notice to end tenancy no later than August 31, 2010; however the notice was issued until September 1, 2010.

I accept the Landlord's testimony that he began to advertise the unit September 5, 2010, and was able to re-rent it as of October 15, 2010. The Landlord therefore suffered a loss of only one half of a month's rent. I note that the Landlord filed his claim of unpaid rent, rather loss of rent, in the amount of \$1,125.00 and later changed this to one half of \$1,125.00 in his October 4, 2010 statement of claim. As per the aforementioned I find there is sufficient evidence to support the Landlord suffered a loss of rent of **\$562.50** as a result of the Tenant's breach to section 45 of the Act.

A significant factor in my considerations of the Landlord's claim for damages is credibility. I am required to consider the Landlord's evidence not on the basis of whether

his testimony “carried the conviction of the truth”, but rather to assess his evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. That being said, I have considered the following inconsistencies with respect to the Landlord’s claim of \$1,056.97 for damages:

- The validity of the move-in, move-out inspection report was questioned by the Tenant for which the Landlord did not provide a response. Upon careful review of the report it is evident that the move-in and move-out sections were completed with the same pen as the Landlord’s initials which he placed on his entire evidence package which is suspect of the entire document (move-in and move-out) being completed on the same day. I also note that the Tenant’s initials do not match any other initials she signed to previous documents such as the tenancy agreement.
- Section 14 of the Regulation stipulates that the rental unit must be empty at the time the inspection is conducted. Therefore the move-in inspection report could be questioned if it truly was completed on September 3, 2008, as the Tenant had occupied the unit for several days.
- The Regulation further stipulates that the Landlord must provide the Tenant at least two opportunities to complete the inspection. It is unconscionable for a Landlord to demand inspection dates a week prior to the end of a tenancy as this would not comply with the Section 14 that stipulates the unit must be empty at the time of the inspection. The evidence supports the Tenant attended the scheduled inspection time and it was the Landlord who did not.
- The Landlord testified the bathroom light cover which was broken was new from 2003. He provided a very obscure photo of the light shade taken from the side. After review of the Landlord’s photo and the photo provided by the Tenant it is clearly evident the light cover is from the mid 1970’s and not 2003.
- The Landlord went to the effort to provide photos of the light fixture, a couple of walls, a dirty drawer, and the gate that was off the deck, yet he made no effort to provide photos of the alleged damage or fraying to the carpet nor is the alleged damaged carpet noted on the move-out inspection report; however he is seeking \$224.00 for the repair and did not provide a copy of the alleged estimate that he obtained.
- The Landlord completed his “calculation of repairs” on October 4, 2010, outlining costs he incurred, including HST. I note that this list was created “prior” to the Landlord incurring any the listed costs.
- The Landlord provided a store name and item number for the claim of two bathroom light fixtures which do not match the receipts he provided, or the cost of his purchases. Based on the receipts he provided he purchased an entire light fixture, base and shade when only the shade(s) was broken. If these lights were

truly from 2003 why would the Landlord not purchase the shade which was broken instead of the entire light fixture? I also note that he purchased a very expensive exterior light (\$149.97) instead of purchasing a replacement globe.

- The Landlord testified the electrician work was completed on October 12, 2010 so how would the Landlord know the amount of the bill on October 4, 2010 when he created his calculation of repairs? The Landlord did not provide receipts for this claim.
- Professional cleaners allegedly attended the unit October 6, 2010 to provide additional cleaning to the kitchen and bathroom. How would the Landlord know the amount of time spent to clean the unit on October 4, 2010 when the work was not completed until October 6, 2010? I note that the Landlord did not provide a receipt for this claim.
- The Tenant provided opposing testimony that the company named by the Landlord that he allegedly hired to sanitize the floor does not work on hard floor surfaces. The Landlord did not respond to the Tenant's testimony. The work was allegedly performed October 6, 2010 two days after the Landlord created the October 4, 2010 calculation of repairs. There was no receipt provided in the Landlord's evidence.
- Repair and paint the family room and back bedroom. The Tenant provided opposing testimony stating the walls looked that way when she moved in. The Landlord alleges the painting took place October 13, 2010, nine days after he created the calculation of repairs. There was no receipt provided in the Landlord's evidence.
- The Tenant provided opposing testimony that she had paid to have the debris removed and there were other tenants living on the property who could have contributed to the accumulation of debris. The Landlord made a claim of \$100.79 for debris removal however did not provide photos of the alleged debris that was to be removed and did not provide a copy of a receipt. He testified the debris was removed October 10, 2010, six days after he created the calculation of repairs.

Section 32(3) of the Act provides that 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 while Section 32(4) states a tenant is not required to make repairs for reasonable wear and tear.

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.

Upon careful consideration of the above, the photographic evidence provided by both parties, and the receipts provided by the Tenant for carpet cleaning and debris removal, I accept the Tenant's testimony, as supported by her Witness, that her couch rubbed off the paint in one small section of the living room wall, that her daughter broke the light shade in the main bathroom, that she removed all of her debris from the unit and she cleaned the rental unit to the best of her ability. Therefore, in the presence of the above contradictions and in the absence of receipts, I award the Landlord the nominal amount of **\$105.00** for damages (\$95.00 for paint supplies and labour plus \$10.00 for having to replace the fully depreciated lamp shade), pursuant to section 67 of the Act. The remainder of the Landlord's claims are dismissed without leave to reapply.

The Landlord has been partially successful with his application, therefore I award recovery of the filing fee.

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

Loss of rent for October 2010	\$562.50
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$717.50
Less Security Deposit of \$562.50 plus interest of \$2.81	- 565.31
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$152.19

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$152.19**. The order must be served on the respondent Tenant and is enforceable through the Provincial 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*.

Dated: February 08, 2011.

Residential Tenancy Branch