



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; unpaid rent; and, damage or loss under the Act, regulations or tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

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 unpaid rent?
3. Has the landlord established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy commenced October 1, 2005 and the rent was \$650.00 per month. The tenant did not pay any security deposit or pet deposit. A condition inspection report was not prepared by the landlord at the start of the tenancy. The tenant left the rental unit in early 2010 but permitted his son and his son's friends to reside in the rental unit until May 31, 2010. At the end of the tenancy the landlord could not contact the tenant by telephone and proceeded to take photographs of the property as evidence of its condition.

The landlord is also seeking to recover the following amounts from the tenant and the tenant provided the following responses, in brief:

<u>Item</u>	<u>Amount</u>	<u>Landlord's reason</u>	<u>Tenant's response</u>
Loss of rent June and July 2010	1,600.00	The rental unit was left in such a condition it could not be rented until August 2010. When it was rented it garnered \$800.00/month.	Tenant acknowledged some damage and pointed to some items being old or damaged at the beginning of the tenancy. Tenant disagreed with landlord's claim based on new amount of rent.
Travel costs	391.00	Landlord's travel time to and from rental unit to remedy damages and cleaning.	Tenant did not agree he is responsible for landlord's travel costs.
Materials	1,087.27	Repairs to bathroom, doors, closet, flooring, kitchen counter, windows, and wall. Landlord described house as an old farmer's house. The floor covering was used and older but was in good condition.	Tenant acknowledged left truck, trailer and shed on property; cutting hole in carpet; damaging doors, wall and light switches; the floor was left greasy from an engine being worked on in the unit; breaking one window; and pets in the unit. The fence broken by area kids cutting through property which he did not stop. Gate broken by large truck backing into it. Tenant also pointed out house very old; the toilet tank sweated; the countertop was damaged at beginning of tenancy and basement leaked.
Labour	1,600.00	Cost of labour to repair above items.	See above.

Cleaning	815.00	Flooring, walls, bathroom and kitchen dirty and greasy.	After offer to call cleaner as witness tenant responded that he knows cleaner and her testimony cannot be relied upon.
Cost to locate tenant	10.55	Forwarding address not provided by tenant.	Tenant's telephone had been disconnected.
Cost of photocopies and pictures for dispute	21.46	Cost of dispute	
TOTAL CLAIM	\$ 7,050.28		

The landlord provided numerous receipts as evidence of the materials and labour costs incurred to clean and repair the rental unit although the landlord did not summarize the receipts and reconcile the receipts to the amount claimed. The landlord also provided several photographs as evidence of the condition of the rental unit at the end of the tenancy.

Analysis

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

The Act requires that a tenant leave a rental unit undamaged and reasonably clean at the end of the tenancy. The tenant is responsible for repairing damage caused by the tenant or persons permitted on the property by the tenant. Normal wear and tear does not constitute damage.

Condition inspection reports serve as the best evidence to establish the condition of the rental unit on a given date; however, the landlord did not prepare such reports in this

case. I accept that the photographs depict the condition of the rental unit at the end of the tenancy. However, the condition of certain items at the beginning of the tenancy was in dispute and I find the landlord has not established the condition of those items at the beginning of the tenancy.

Although the landlord provided a letter from a former tenant attesting that the rental unit was "in a good, clean state" I do not find the letter sufficiently addresses specific items identified by the tenant, such as the kitchen countertop and one of the broken windows.

As the parties agreed the tenant owes \$1,525.00 for unpaid rent I award that amount to the landlord. Upon review of the photographs, I accept that the rental unit was left very dirty and certain items damaged by the tenant, or persons permitted on the property by the tenant, and I award the landlord one month of loss of rent at the monthly rate of \$650.00. I do not award the landlord \$800.00 per month for two months as the increased rent was garnered after several repairs were made and I do not find the tenant responsible for all of the repairs as explained later in this decision.

I do not award the landlord travel costs as costs associated to the landlord's decision to be a long distance landlord is an operating expense of the landlord. I do not award the landlord costs associated to locating the tenant and making copies and photographs for this proceeding as those costs are ordinary operating costs of a landlord and are not recoverable under the Act. Finally, the landlord provided a statement with respect to a hydro security deposit. I do not find a refundable deposit paid by the landlord to be damage or loss since the landlord may receive a refund of the amount paid.

Upon review of the photographs I am satisfied the tenant did not leave the rental unit in a reasonably clean state as he was required to do under the Act and the landlord is entitled to recover cleaning costs from the tenant. As the tenant did not wish to call the cleaning lady called as a witness I accept the photographs and cleaning invoices as evidence of the amount of cleaning required. The invoices provided by the cleaning lady amount to \$815.00 including an invoice of \$70.00 that refers to painting. Since I cannot differentiate the invoice of \$70.00 between cleaning and painting I deny the entire invoice. I do not find the landlord entitled to painting costs as interior painting has an average useful life of four years and this tenancy exceeded four years. I award the landlord clean up costs of \$745.00 after deducting \$70.00 for painting.

I have reviewed the receipts for materials, the landlord's description provided on the receipts and the landlord's submissions, and the tenant's submissions in determining the materials the landlord is entitled to recover from the tenant. It is important to note

that 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.

Below I have provided my findings and reasons for allowing or denying the amounts claimed for materials by the landlord:

<u>Description of receipt</u>	<u>Findings and Reasons</u>	<u>Awarded</u>
Window Putty	Allowed. Tenant admitted to breaking a window.	3.90
Key	Allowed. Landlord submitted tenant did not return key. Tenant did not deny.	2.25
Baking soda for cleaning	Allowed. Landlord established unit left dirty.	1.79
Cement for broken fence	Allowed. Tenant acknowledged he did not stop people from coming through fence.	3.22
Bathroom calking and tile; cement for gate repair	Denied. Calking and tiles have likely exceeded ordinary useful life. Tenant denied gate broken by someone he permitted on property.	Nil
Garbage dump fees	Allowed. Photographs establish garbage left behind by tenant.	23.15
Outside cleaning supplies	Denied. Landlord did not establish how tenant is responsible for hornet and wasp foam.	Nil
Door and closet repairs	Denied. Receipts mostly for caulking which has a limited useful life.	Nil
Floor cleaner	Allowed. Photographs show very greasy floors.	7.99
Cleaning supplies	Allowed. Photographs show dirty floors. Landlord submitted bathroom sink riser missing.	4.44
Key replacement, bathroom repairs	Partially allowed. Key replacement granted. Bathroom silicone denied as silicone has limited useful life.	19.04
9V Battery	Denied. Batteries for smoke detectors are a landlord responsibility.	Nil
Cement for broken post for gate.	Denied. Tenant denied gate broken by someone he permitted on property.	Nil
Trimmer line for weeds	Allowed. Photographs show weeds and long grass. Tenants ordinarily responsible for routine yard	20.16

	maintenance of single family dwelling.	
Outside house cleaning.	Denied. Receipt for sandpaper. Landlord did not establish tenant responsible for sanding of house.	Nil
Window glass	Partially allowed. Tenant admitted to breaking one window only.	7.84
New carpeting estimate.	Denied. Carpeting very old and beyond ordinary useful life.	Nil
Total materials costs granted		\$ 93.78

The landlord has claimed a labour cost of \$1,600.00 which was supported by two invoices prepared by her repairman. Both invoices indicate the charges are for “repairs to property”. I have no doubt the landlord paid this amount to have repairs made to the property. However, at issue is whether the tenant is responsible for all of the repairs.

Landlords are responsible for general repairs and maintenance that result from normal wear and tear, depreciation and aging. In analyzing the landlord's claims for materials I have found that many items claimed by the landlord were for items beyond their normal useful life or for items the landlord did not prove were damaged by the tenant. Therefore, I do not award the landlord the full amount of labour costs she is seeking.

Since the repairman's invoice does not provide a specific breakdown of the tasks he performed, I have pro-rated the labour cost based upon the amounts granted to the landlord for materials, excluding the carpet estimate. Total receipts for materials, excluding carpet, amounted to \$444.05. Since I awarded the landlord \$93.78 for materials I award the landlord pro-rated labour costs of \$341.00.

I award the landlord one-half of the filing fee she paid for this application since the amount awarded to the landlord is less than \$5,000.00 and the landlord paid a filing fee based upon a claim greater than \$5,000.00.

In summary, the landlord has been provided a Monetary Order calculated as follows:

Item	Amount claimed	Amount awarded
Loss of rent June and July 2010	1,600.00	650.00
Travel costs	391.00	Nil

Materials	1,087.27	93.78
Labour	1,600.00	341.00
Cleaning	815.00	745.00
Cost to locate tenant	10.55	Nil
Cost of photocopies and pictures for dispute	21.46	Nil
TOTAL CLAIM	\$ 7,050.28	\$ 3,354.78
Filing fee		50.00
Monetary Order		\$ 3,404.78

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord was partially successful in this application and has been provided a Monetary Order in the amount of \$3,404.78 to serve upon the tenant.

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: March 09, 2011.

Residential Tenancy Branch