



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNR, MNSD

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order for \$3620.67. The applicants are also requesting recovery of the \$50.00 filing fee.

Background and Evidence

The applicant testified that:

- The tenant put a stop payment on her February 2011 rent, and therefore the full February 2011 rent is still outstanding.
- The tenant also gave short notice to end the tenancy and breached her tenancy agreement and as a result they lost one half of the March 2011 rent.
- The rental unit was re-rented for March 15, 2011.

- When the tenant vacated she also left the rental unit in need of substantial cleaning and repairs, and they spent a total of 16 hours doing that cleaning and repairs.
- They had to clean the stovetop, the oven, behind appliances, washer dryer, the fridge, stove, blinds, and the kitchen floor.
- They had to replace wallpaper in the master bedroom that was damaged by the cat, which required removing wallpaper and trim applying the new wallpaper and putting up the trim and edging.
- They had to clean all the carpets in the rental unit.
- They had to repair holes in the drywall remove silicone fill that was applied by the tenant then sand and do Drywall repair.
- They had to repaint the railing areas, where the holes were, touch-ups and painting the fireplace to cover up writing on some of the bricks.
- They also had to have a chip in the counter repaired professionally.

Therefore the applicants are requesting an order as follows:

February 2011 rent outstanding	\$1450.00
Lost rental revenue for March 2011	\$725.00
16 hours of cleaning/repairs X \$50.00 Hr.	\$800.00
Kitchen counter repair	\$201.60
Invoice #1 for materials	\$41.04
Invoice #2 for materials	\$170.30
Invoice #3 for materials	\$74.97
Invoice #4 for materials	\$50.92
Invoice for carpet cleaner rental	\$41.44
Stop payment Cheque fee	\$25.00
Filing fee	\$50.00
Total	\$3630.27

The applicant's further request that they be allowed to keep the full security/pet deposit totalling \$1450.00, and that a monetary order be issued for the difference.

The respondent testified that:

- She did put a stop payment on the February 2011 rent cheque and requested that the landlords use her security/pet deposit to cover this rent.
- The landlords refuse to use the security/pet deposit and therefore the February 2011 rent is still outstanding.
- She informed the landlords that the cheque would not be honoured however they attempted to cash it anyway and therefore she does not believe she should have to pay any fee for the dishonoured cheque.
- She does not believe she should have to pay any lost rental revenue for March 2011, because she found renters that were willing to take the rental unit for March 1, 2011 however the landlord did not accept them.
- She also found the tenant who eventually did take the rental unit for March 15, 2011 however she believes the landlords purposely left the rental unit empty for the first half of March 2011 because they were having the rental unit re-roofed and did not want to disturb new tenants.
- She was unable to participate in the move out inspection on the first date the landlords suggested, and then the landlords never suggested a second opportunity, however she left the rental unit clean and undamaged except for some damage to some wallpaper that her cat had scratched.
- She left some rolls of wallpaper behind to replace the damaged wallpaper.
- There was no damage to the kitchen counter when she vacated the rental unit and therefore that damage must have occurred after she vacated.
- There was no other damage to the rental unit beyond normal wear and tear, and she does not believe she should be charged for normal wear and tear.

The respondent therefore believes she only owes rent for February 2011, and a small amount for the landlord's time to replace the wallpaper. She therefore requested the remainder of the claim be dismissed.

Analysis

I will allow the landlords claim for the outstanding rent for February 2011, because the tenant was at the rental unit for the full month of February 2011 and that rent is still outstanding.

I also allow the \$25.00 claim for the check was not honoured, because the tenant has agreed to pay \$25.00 for each dishonoured check.

I will also allow the claim for lost rental revenue for March 2011, because it's reasonable for the landlords to screen prospective tenants and pick the one who is most suitable, and in this case the one that was most suitable was unable to take the unit until March 15, 2011.

I will only allow a small portion of the claim for cleaning and repairs because it is my finding that the landlord has not met the burden of proving the majority of this claim.

First of all the landlord is required to do a move out inspection with the tenant at the end of the tenancy, and that was not done. The landlord did offer to do a move out inspection on one date however the tenant was not available on that date and therefore the landlord was required to propose a second opportunity, different from the first opportunity, to the tenant by providing the tenant with a notice in the approved form.

The landlord testified that they never proposed a second opportunity in the approved form.

Therefore it is my finding it is just the landlords word against that of the tenants as to the condition of the rental unit at the end of the tenancy. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met.

The landlord has provided some photo evidence, however for the most part I do not find that there is any damaged beyond normal wear and tear, other than the damage to the wallpaper, and some writing on the fireplace. I therefore allow a small amount for the wallpaper repair and the cost of wallpaper. The cost of repairing the writing on the fireplace is negligible and I will award nothing for this.

The tenant claims to have left wallpaper behind for the landlord however accept the landlords testimony that no wallpaper was found until after the repair had been completed.

As far as the cleaning is concerned, under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required.

Therefore the total amount of this claim that I have allowed is:

February 2011 rent outstanding	\$1450.00
Lost rental revenue for March 2011	\$725.00
Wallpaper repair-materials	\$100.75
Wallpaper repair-labour	\$100.00
The dishonoured cheque fee	\$25.00
Filing fee	\$50.00
Total	\$2450.75

Conclusion

I have allowed \$2450.75 of the applicants claim; the landlords may therefore retain the full security/pet deposit totalling \$1450.00, and have issued a monetary order in the amount of \$1000.75.

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: July 19, 2011.

Residential Tenancy Branch