



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

At the outset of the hearing, I noted that the matter of disposition of the security deposit was dealt with at a previous hearing and as such that matter had already been resolved but that did not preclude the landlord from making a claim for any loss or damages that she may have suffered as a result of the tenancy. As such, I amend the landlord's application to exclude the matter of return of the security deposit.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage or losses and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on August 29, 2008 as a month to month tenancy for the monthly rent of \$1,000.00 due on the 1st of each month. The parties agree the tenant's provided the landlord with written notice on March 1, 2010 of their intent to end the tenancy on April 1, 2010. The tenants testified that they verbally informed the landlord they intended to end the tenancy the day before.

The landlord seeks compensation for rent for the month of April 2010 resulting from the tenant providing notice later than allowed under the *Act*. She also seeks compensation for bank charges incurred during the tenancy for cheques that had been returned by the

banks as insufficient funds and for “service” charges for these same returned cheques for the costs the landlord incurred in processing these payments.

The landlord also seeks compensation for damage done to the rental unit, including carpet and underlay replacement for carpets installed in 2002; window screen replacement; blind replacement; and repairs to woodwork and a “dent” in one drywall location.

The landlord seeks the following monetary award:

Description	Amount
Rent due to short notice to end tenancy	\$1,000.00
Bank Charges (4 returned cheques)	\$40.00
Service Charges (4 returned cheques)	\$100.00
Carpet Replacement	\$600.00
Underlay Replacement	\$125.00
Window Screen Replacement	\$72.80
Blind Replacement	\$139.33
Cost to fix woodwork	\$200.00
Cost to fix Hip check dent in wall	\$100.00
Mailing costs	\$10.00
Total	\$2387.13

The landlord provided a copy of a condition inspection report signed by the tenants, confirming that they disagree that the report fairly represents the condition of the rental unit for the reasons that they had fixed the tent in the wall and it is no noticeable and that the carpet had little stain. The landlord’s comments on the report regarding damage to the rental unit include: “carpet badly stained with hair dye. Bedroom blinds and windows screen need replacing. Dent in hallway (hip check?) needs repairing.”

The landlord provided the following photographic evidence: 4 photos of stains and damage to the carpet; 2 photos of the underlayment; 1 photo showing the condition of the living room carpet at the start of the tenancy; 1 photo of damage to moulding on a window or door frame; two photos showing condition of blinds at the start of the tenancy and two from the end of the tenancy.

The tenants acknowledge having a cat and a dog during the tenancy but state that the pets were house trained and never urinated on the carpet in the rental unit. The landlord testified that the smell of urine after the carpets cleaned was extreme and resulted in her requiring having the underlayment replaced when she had to replace the carpets due to the stains.

The landlord claims damages to the window screens and blinds in the rental unit. The tenants state the photos of the blinds must have been taken after they had moved out because they know the blinds were not in that shape when they left. The male tenant testified that he had spent a week cleaning and repairing the rental unit prior to the end of the tenancy.

He states that he sanded down the trim and mouldings and painted them and the walls. That prior to doing this he made repairs to the dent in the hallway wall. The landlord contends that she had to hire her son to make repairs to the trim and mouldings and that the dent in the hallway was poorly done and that "from certain angles" you could tell it wasn't repaired properly.

Analysis

To be successful in a claim for loss or damages the applicant must provide sufficient evidence to establish the following 4 points:

1. That a loss or damage exists;
2. That that loss or damages results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. The steps taken, if any, to mitigate any loss.

Section 45 of the *Act* requires a tenant who wants to end a tenancy to provide notice to the landlord of their intent to end the tenancy on 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 that rent is payable under the tenancy agreement. The notice must also comply with the requirements set out in Section 52.

Section 52 requires, among other things, that the notice provided by the tenants be in writing. I accept that the tenants informed the landlord of their intent to end the tenancy prior to March 1, 2010, however as they confirmed they provided the landlord with their written notice to end tenancy in writing on March 1, 2010, I find the earliest the tenants could have ended the tenancy would have been April 30, 2010 and the tenants are responsible for rent for the month of April 2010.

Section 7 of the Residential Tenancy Regulation states that a landlord may charge a fee for a service charged by a financial institution to the landlord for the return of a tenant's cheque and administration fee of not more than \$25 for the return of a tenant's cheque

by a financial institution or for late payment of rent. But that in order to charge these fees there must be a term in the tenancy agreement confirming the landlord will charge them.

As neither party provided me a copy of the tenancy agreement and the landlord could not confirm that there was a term in the tenancy agreement regarding these fees, I dismiss this portion of the landlord's application.

I do not accept the tenant's testimony that the photographic evidence regarding the blinds was taken after the tenants had vacated and that there was no problem with the screens or blinds. In the copy of the condition inspection report the tenants provided the landlord clearly identifies problems with the carpet; blinds; window screens; and the dent in the hallway and the tenants only refute the carpet and the dent in the hallway on the same form.

Clearly the tenants were aware of the problems with the blinds and screens but did not disagree with the landlord's comments regarding their condition in the inspection report. I accept, from the receipt provided, the landlord paid \$73.94 for replacement blinds, however in relation to the estimate provided for screen repairs, I find the email to be ambiguous in that it appears to be an email between friends as opposed to a legitimate quote for services and/or products. I dismiss the landlord's claim for compensation for screen replacements.

Based on the testimony by both parties I accept there was some damage to the carpet, however, the landlord testified that the carpet had been installed in 2002. Residential Tenancy Policy Guideline #37 contains a table of indicating the useful life of products used in homes and states that the useful life of carpet is 10 years. As the tenancy ended in 2010 the carpet would have been due for replacement in 2 years and as such, I discount the landlords claim for carpet and underlayment replacement by 80%. I find the landlord is entitled to \$145.00 in total.

I accept the tenant male did complete work on the rental unit such as painting and repairing some of the damage, however, based on the photograph of the moulding I find the tenant painted over the scratches in the moulding and find the landlord is entitled to compensation for this work. However, the landlord has failed to provide sufficient evidence to establish the value of this loss and I therefore dismiss this portion of her application.

I accept the tenant's testimony in relation to the "dent" in the wall that the dent had been repaired and painted. The fact that the landlord could see the dent "from certain angles"

implies the work had been completed and the landlord is only dissatisfied with the aesthetics of the finish. I dismiss this portion of the landlord's application.

The landlord provided no explanation of why she was requesting compensation for mailing; nor did she provide any receipts for any mailing, as such I dismiss this portion of the landlord's application.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1243.94** comprised of \$1,000.00 rent owed; \$73.94 blind replacement; \$145.00 carpet replacement; and \$25.00 of the \$50.00 fee paid by the landlord for this application as the landlord was only partially successful in her application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: July 11, 2011.

Residential Tenancy Branch