



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 a Monetary Order for damage to the rental unit; unpaid rent and utilities; damage or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit; and, recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that the landlord sent the hearing documents and evidence to the tenant at the forwarding address provided by the tenant via registered mail. The landlord provided a copy of a letter dated February 18, 2011 showing the forwarding address provided by the tenant and the registered mail tracking number as proof of service. The landlord stated the registered mail was not picked up by the tenant.

Section 90 of the Act deems a document to be received five days after mailing whether the respondent picks it up or not. Based upon the landlord's evidence I am satisfied the tenant was sufficiently served with notice of this hearing and the claims made against him. Therefore, I proceeded to hear from the landlord without the tenant present.

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 compensation for unpaid rent and utilities?
3. Has the landlord established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
4. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced July 1, 2007 and the tenant paid a \$825.00 security deposit. The monthly rent was \$1,650.00 at the beginning of the tenancy and after yearly rent increases the monthly rent payable at the end of the tenancy was \$1,825.00. The tenant gave a notice to end tenancy January 20, 2011 effective "as soon as possible".

The tenant stated he would be out by February 1, 2011 but would pay rent for February 2011. February 18, 2011 the tenant wrote a letter to the landlord giving the landlord his new mailing address and a statement that he was enclosing a \$500.00 certified cheque. The landlord testified that a cheque was not enclosed with the letter. The landlord attended the property February 28, 2011 to perform the move-out inspection but the tenant was not present. On March 7, 2011 the tenant wrote an email to the landlord giving the landlord permission to retain the security deposit for "expenses". The landlord made this application on March 15, 2011.

The landlord is seeking to recover the following amounts from the tenant:

Item	Reason	Amount claimed
Garbage disposal	Garage full of household items	728.00
Cleaning	Unit not left sufficiently clean	203.84
Refinishing hardwood floors	Floors very scuffed, beyond normal wear and tear	190.38
Water arrears	Tenant responsible for paying water bill and bill was in tenant's name. Unpaid 2010 water bill of \$124.52 and \$87.50 penalty transferred to property tax account. The landlord estimated the tenant was responsible for \$80.00 of the November 2010 – March 2011 bill of \$212.82.	292.02
Door replacement	Interior door damaged and had to be replaced	<u>250.00</u>
Total claim		\$ 3,489.24
Less: security deposit and interest		<u>(844.53)</u>
Monetary Order requested		\$ 2,644.71

The agent that appeared for the landlord did not know when the tenant moved out of the rental unit and returned the keys.

The landlord provided a copy of the tenancy agreement; condition inspection reports; invoices for garbage disposal, cleaning, floor refinishing, and door replacement; and, the previously described written communication from the tenant.

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.

Upon review of the tenancy agreement I find the tenancy was on a month-to-month basis in January 2011. In order to end a month-to-month tenancy the tenant is required to give the landlord one full month of written notice. The tenant gave written notice dated January 20, 2011; therefore, I hold the tenant responsible for February's rent. In the absence of evidence to the contrary, I accept the landlord's statement that a \$500.00 cheque was not received from the tenant in February 2011. Accordingly, I award the landlord \$1,825.00 for unpaid rent for February 2011.

A tenant is required to leave a rental unit reasonably clean and undamaged at the end of the tenancy. Upon review of the condition inspection report and the invoices, and in the absence of any evidence to the contrary, I accept the tenant did not sufficiently clean the rental unit and did not remove all the garbage or abandoned possessions. Therefore, I grant the landlord's claims for costs to clean and remove garbage from the rental unit.

Upon review of the move-out inspection report I do not see any notation about a damaged interior door or excessively scuffed hardwood floors. Rather, the move-out inspection report largely reflects that the unit was in the same condition as it was at the beginning except for it being dirty and the garage being full of items. The Residential Tenancy Regulations provide that a condition inspection report is the best evidence of a condition of a rental unit except where there is a preponderance of evidence to the contrary. Since the move-in inspection report shows "marked" floors and "marked" doors I am not satisfied the repairs were required due to damage caused during the tenancy. Therefore, I dismiss the landlord's claims for these items.

With respect to the claim for water arrears, I accept that the tenant is responsible for paying for water based upon the tenancy agreement. However, in the absence of a copy of the unpaid water bills or evidence of the amount transferred to the property tax

account, I find the landlord failed to provide sufficient evidence to verify the value of the loss. Therefore, I dismiss this portion of the landlord's claim.

I authorize the landlord to retain the tenant's security deposit and interest in partial satisfaction of the rent owed the landlord. I also award the filing fee to the landlord. The landlord is provided a Monetary Order calculated as follows:

Item	Amount claimed	Amount awarded
Garbage disposal	728.00	728.00
Cleaning	203.84	203.84
Refinishing hardwood floors	190.38	Nil
Water arrears	292.02	Nil
Door replacement	<u>250.00</u>	<u>Nil</u>
Total claim	\$ 3,489.24	\$ 2,756.84
Less: security deposit and interest	<u>844.53)</u>	<u>(844.53)</u>
Monetary Order requested	\$ 2,644.71	\$ 1,912.31

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord is authorized to retain the tenant's security deposit and interest in partial satisfaction of the amounts awarded to the landlord. The landlord has been provided a Monetary Order for the balance of \$1,912.31 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: July 14, 2011.

Residential Tenancy Branch