



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit and unpaid rent. The tenant did not appear at the hearing. The landlord testified that the tenant was notified of the landlord's application by registered mail and provided a copy of the registered mail tracking number and the envelope as evidence. The registered mail envelope indicates two reasons for its return to the landlord: that the recipient has moved and refused the mail. The landlord testified that the address used to serve the tenant was provided by the tenant at the end of the tenancy via email.

Where a document is sent via registered mail to an address at which the tenant resides or the forwarding address provided by the tenant it is deemed to be received five days later, even if the recipient refuses to accept or pick up the mail. Since the application was made shortly after the tenancy ended I accept that the landlord sent the hearing documents to the tenant in a manner that complies with the Act and the tenant refused to accept it. Therefore, I proceeded to hear from the landlord without the tenant present.

As I determined that the evidence package received by the Residential Tenancy Branch on June 20, 2011 was not served upon the tenant I did not consider that evidence in making this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation damage to the rental unit?
2. Has the landlord established an entitlement to unpaid rent?

Background and Evidence

The tenancy commenced September 1, 2010 and was for a fixed term set to expire June 30, 2011. The tenant paid a \$1,600.00 security deposit and the monthly rent was \$3,200.00 due on the 1st day of every month. The tenant was responsible for paying for

utilities (hydro and gas) to the landlord. The landlord and tenant participated in move-in and move-out inspections together; however, the landlord did not prepare condition inspection reports.

The landlord testified that on February 2, 2011 the tenant emailed the landlord to advise the landlord she was ending the tenancy. The landlord was out of town but responded via email on February 4, 2011 reminding the tenant she was in a fixed term tenancy. The tenant responded via email on February 9, 2011 and advised the landlord she would pay rent for March 2011 and told the landlord to keep the security deposit

In making this application, the landlord sought compensation totalling \$7,470.00. Below I have provided a description of the reasons and amounts claim, as described by the landlord.

| Item | Reason | Amount claimed |
|--|--|---------------------------|
| Grand piano repair | Piano damaged during tenancy. Amount paid for patching piano. | 390.00 |
| Bathroom floor repair and kitchen ceiling repair | Tenant neglected to use shower properly and allowed water to saturate bathroom flooring. Water damage caused bathroom tiles to crack and stain ceiling in kitchen below. The landlord showed the tenants how to use the shower curtain properly as this had been an issue during a previous tenancy. | 3,000.00 estimate |
| Repair curtain rods | Five rods damaged during tenancy. | Included in \$3,000 above |
| Hardwood flooring repair | Tenant's children used floor for hockey practice causing significant scuff marks and scratches. Floors finished approx. 20 years ago but were in good condition because they had been covered by rugs. | Included in \$3,000 above |
| Owners' travel costs | Cost of two owners to return from Ottawa due to early termination of tenancy. | 1,000.00 |
| Replacement of nesting tables | Tables damaged during tenancy. Tables have not been replaced. Cost \$200.00 approximately 12 years ago. | 200.00 |
| Broken bed frame and | Bed frame legs broken off. DVD player will | \$100.00 |

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| DVD player | not play. | estimate |
| Replacement clothes dryer | Dryer stopped working during tenancy. Tenant washed rugs and duvets. Approx. 20 years old. | \$ 330.00 |
| Damaged fridge | Second fridge unplugged and became rusty and mouldy. | No amount specified |
| Ink stains on two silk carpets | Carpets stained with ink during tenancy. Professional cleaning quote of \$450.00 but have been advised that cleaning will not remove ink. Carpets 20 years old with expected live span of 50 – 60 years. | No amount specified |
| Damaged stove top | Top of stove scratched. Stove approx. 12 years old and still functional. Claiming 50% of cost of new stove. | 350.00 |
| Total claim | | \$ 7,470.00 |

The landlord affirmed that the following documentary evidence was sent to the tenant in support of the above claims: invoice for piano repair; estimate for repair of master bathroom flooring, kitchen ceiling repair and hardwood floor repair; list of amounts payable for hydro and gas; tenancy agreement; emails exchanged between the parties; and, photographs taken at the end of tenancy and during 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.

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.

With respect to each of the landlord's claims I provide the following reasons and awards using the above described criteria.

| Item | Findings and Reasons | Amount awarded |
|--|--|----------------|
| Grand piano repair | Photographs show damage to piano. Landlord provided copy of invoice for cost of patching the piano. Claim granted. | 390.00 |
| Bathroom floor repair and kitchen ceiling repair | The photographs show cracked tiling around the toilet and water staining on the sub-floor. The quote was sent to the landlord by email from the landlord's wife and I cannot determine who prepared the quote. The quote does not indicate when the contractor viewed the property or indication that the reason for the tile cracking is due to water damage or observation of wet sub-flooring. The landlord indicated the issue of water on the floor was a problem in the past which indicates the issue may not have been properly resolved and the water stains may have been pre-existing. Nor did the quote explain why a new shower curtain rod was needed. I find the landlord has not satisfied me that the cracked tiling is the result of the tenant's neglect to use the shower curtain properly. Claim denied | Nil |
| Repair curtain rods | The photographs depict draw strings askew from the tracks and drapery hanging improperly. I cannot differentiate the cost to repair the curtain rods from the above described estimate of \$3,000.00. Further, the curtain rods appear several years old which would necessitate an allowance for depreciation. I find the landlord has not | Nil |

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| | sufficiently substantiated the value of this loss and the claim is denied. | |
| Hardwood flooring repair | The photographs depict marked hardwood flooring and I accept that marks may have been made to the flooring during the tenancy. However, hardwood flooring finishing has a limited useful life. Having heard the flooring was last refinished 20 years ago and the quote for hardwood flooring repair is intermingled with the quote for bathroom flooring repair I find the landlord has not substantiated the value of this loss. Therefore, this claim is denied. | Nil |
| Owner's travel costs | Claim denied. The landlord's decision to reside in Ottawa during tenancy and return at the end of the tenancy is the landlord's own decision. Tenant is not responsible for this decision. | Nil |
| Replace nesting tables | I cannot determine from the photographs of the nesting tables that a leg is broken. I find the landlord has not proven the table is broken or the value of the loss. The claim is denied. | Nil |
| Broken bed frame and DVD player | In the absence of condition inspection reports, photographs, or other evidence to substantiate these items are broken, or their depreciated value, I deny this claim. | Nil |
| Replacement clothes dryer | Dryer's have a useful life of approximately 15 years. The dryer was greater than 15 years old and fully depreciated. This claim is denied. | Nil |
| Damaged fridge | No amount claimed. No amount awarded. | Nil |
| Ink stains on two silk carpets | No amount claimed. No amount awarded. | Nil |
| Damaged stove top | The landlord testified the stove is 12 years old. The stove is nearing the end of its useful life and is still functional. I find the landlord's claim for 50% of the cost of a new stove to be excessive. From the photographs supplied | 50.00 |

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| | by the landlord I cannot determine the stove top is scratched or stained and in need of cleaning. I award the landlord \$50.00 for cleaning and/or depreciated value due to scratches. | |
| Total amount landlord has substantiated | | \$ 2,540.00 |

From the total of \$2,540.00 I subtract the \$1,600.00 security deposit that the tenant authorized the landlord to retain, leaving a balance of \$940.00. However, I do not provide the landlord with a Monetary Order in this amount as I am satisfied the landlord has been sufficiently compensated for this loss as explained below.

The landlord testified that he is residing in the rental unit and the rental unit address is the address for the landlord on this application. Further, in the landlord's email to the tenants dated March 4, 2011 he states "as you know, I moved back on February 28". Thus, I conclude the landlord has resided in the rental unit for the month of March 2011. Since the landlord has received compensation for March 2011 and had the benefit of residing in the rental unit in March 2011 I find this compensation offsets the landlord's loss of \$940.00.

Conclusion

The landlord has established an entitlement to compensation of \$2,540.00 which has been offset by the security deposit and payment of rent for the month of March 2011. The landlord has been sufficiently compensated for his losses and no Monetary Order is provided with this decision.

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: August 02, 2011.

Residential Tenancy Branch