



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, 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, the tenant and the tenant's agent/witness.

In his Application the landlord named two respondents, a male and a female. In a submission from the female respondent she points out that that while she had been a tenant named in a previous tenancy agreement with the landlord that tenancy ended on November 30, 2010 and the male tenant and landlord entered into a new tenancy agreement on December 1, 2010.

The landlord asserted that the damage to the rental unit likely occurred over the duration of both tenancies and that a condition inspection report was not completed when the female respondent moved out of the rental unit, so he feels the female respondent should be held accountable as well as the male respondent.

The landlord also stated that female continued to pay rent for the unit and attended the end of tenancy inspection at the end of the second tenancy, the only difference in the second tenancy was that the female did not live in the unit.

The landlord testified that he was advised by staff in the Residential Tenancy Branch (RTB) that he could file an Application against both tenants as the new tenancy agreement was a renewal and both tenants could be held responsible for the duration of both tenancies.

At the outset of the hearing, I noted that I would reserve my decision on this preliminary matter until all testimony was heard and with the agreement of both parties advised that until I made my ruling on this issue I would treat the female respondent as a tenant during the hearing.

After considering the arguments at the outset of the hearing and listening to all of the evidence presented in the hearing I find that by entering into a new written tenancy agreement that names only one tenant and with no evidence provided regarding the condition of the rental unit at the end of the first tenancy the female respondent is not a party to this tenancy. I also find that despite the landlord's testimony that the female

continued to pay the rent from her account and attended the end of tenancy inspection the female respondent acted as an agent of the tenant only and I amend the landlord's Application to exclude the female respondent.

The landlord remains at liberty to file a separate Application against both of the tenants for any damages or compensation related to the previous tenancy where both of these named respondents were parties to the tenancy agreement.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for all or part of the security deposit; for compensation for lost revenue; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 23, 24, 35, 36, 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on December 1, 2010 for a 6 month fixed term tenancy beginning on December 1, 2010 for a monthly rent of \$975.00 due on the 1st of each month. A security deposit of \$487.50 was paid on December 1, 2009 and transferred from the previous tenancy agreement.

This tenancy agreement required the tenant to vacate the rental unit at the end of the fixed term. The agreement also had a clause noting that a notice would be required from the tenant in writing for a renewal of another fixed term at least 60 days before the end of the tenancy.

The landlord testified that he had informed the tenant a couple of months prior to the end of the tenancy that he would not be renewing the tenancy and that he never did receive a request from the tenant to renew anyway. The tenant testified the landlord informed the tenant's witness with 12 days left in the month of May 2011 that the landlord would not be renewing the tenancy agreement.

The landlord also testified that he began advertising the rental unit in Kijiji, Craigslist and the local college housing registry in April and May 2011 and that he first showed the rental unit to potential new tenants on June 1, 2011. The landlord provided no documentary confirmation of advertising the rental unit.

The landlord submitted a letter from a person identified as a potential tenant who chose not to take the rental unit because the "condition is deplorable and not able to be lived in." The landlord testified that he was unable to rent the unit until August 1, 2011.

Both parties acknowledge that an end of tenancy condition inspection was set for May 31, 2011 at 12:45 p.m. The tenant's agent attended on his behalf and both parties acknowledge the full inspection was not completed and the tenant's agent left after 15

minutes. The tenant's agent asserts that she felt threatened by the landlord. The landlord disputes that he gave the agent reason to feel threatened.

The landlord provided a copy of a Condition Inspection Report completed on November 30, 2009 for the start of tenancy and on May 31, 2011 for the end of tenancy conditions. The tenants provided a copy of the Report that shows only the November 30, 2009 inspection results.

As to the condition of the unit on May 31, 2011 the Report indicates that overall the entire rental unit was dirty and required cleaning and specifically cites the following damage: damage to the entry wall; holes and marks on the living room walls; marks on the dining room walls and holes in the master bedroom walls at the window; cigarette burns in the living room and stairwell/hallway carpet; a missing toilet seat cover; and broken closet door knobs in the master bedroom.

The report also indicates the tenants did not return the storage locker and laundry room keys or a laundry card. The tenant stated he never had a laundry card to begin with and he never used the laundry room.

The landlord also provided 41 photographs – 33 providing views of uncleaned cupboards, flooring, window/patio door tracks and exhaust fans; 4 photographs of the carpeting showing close ups of 3 burn marks and 1 with general staining; 1 photograph of two holes in a wall and 2 of damage to two separate walls where drywall has been damaged; 1 of the toilet seat; and 1 of the toilet paper roll holder.

The landlord has submitted the following invoices:

1. \$1,267.00 - Invoice dated June 9, 2011 - Repair walls/fill/sand/paint 10 hours @ \$72.50 per hour plus \$150.00 supplies & Repair toilet seat and paper holder 2.5 hours at \$72.50 per hour plus \$75.00 toilet seat and supplies;
2. \$572.32 - Invoice dated June 14, 2011 – Cleaning interior and balcony 2 cleaners for 6 hours @ \$56.00 per hour & curtain cleaning (2 sets) \$175.00;
3. \$904.40 - Invoice dated June 15, 2011 - Replace & repair carpet areas 7 hours @ \$72.50 per hour plus \$300.00 carpet & supplies;
4. \$200.00 - Invoice dated June 3, 2011 – move in/out fee.

In addition to the items identified in the above noted invoices the landlord seeks the compensation for the following damage and loss resulting from the condition of the rental unit at the end of the tenancy:

Description	Amount
Invoice dated June 9, 2011	\$1,267.00
Invoice dated June 14, 2011	\$572.32
Invoice dated June 15, 2011	\$904.40

Move out fee	\$200.00
Loss of Revenue	\$1,990.00
Miscellaneous – lost laundry card and key and storage room key	\$66.28
Total	\$5,000.00

The tenant acknowledges some damage to the entry walls and the missing toilet seat, however he states that the paper holder had been in that condition when they moved in and he had actually repaired it at one time during the tenancy.

The tenant and his agent testified that they had cleaned the rental unit thoroughly and that they had had the carpets cleaned by professional cleaners and they had provided the receipt to the landlord. The landlord did not provide any comment regarding this receipt. The tenant did acknowledge that he had not inspected the carpet cleaning job as he never returned to the rental unit after it was complete.

The tenant contends the carpet burns were in the carpet prior to the start of either one of the tenancies that he has been a party to in this unit. In addition, he states that the landlord never informed him that there was any type of a move out fee. The landlord testified the tenant was aware of the move out fee.

Analysis

Section 23 of the *Act* requires a landlord and tenant to conduct a start of tenancy inspection of the condition of the rental unit on the day the tenant is entitled to possession.

Despite my finding above that this hearing is dealing only with the tenancy of the male tenant from December 1, 2010 to May 31, 2011, I acknowledge that the tenant has had responsibility, at least in part, from the start of the original tenancy that began on December 1, 2011.

For this reason, I will accept the Condition Inspection Report prepared after the start of tenancy inspection was completed on November 30, 2009 only as a record of the condition of the rental unit at the time the male tenant took possession of the unit.

However, because this Report was completed prior to the start date of this tenancy, I find the landlord failed to meet his obligation to conduct a start of tenancy condition inspection in accordance with Section 23.

Section 24 outlines that should a landlord fail to comply with Section 23 the landlord extinguishes his right to claim against the security deposit for damage to the residential property.

This does not, however, preclude the landlord from making a claim for damage to the rental unit or for other losses or damages. It also does not preclude my ability to set off

the security deposit against any debt that I find the landlord is owed from the tenant in accordance with Section 72(2)(b).

Section 35 requires a landlord and tenant to conduct an end of tenancy inspection of the condition of the rental unit before a new tenant begins to occupy the unit and on or after the day the tenant ceases to occupy the unit or on another mutually agreed upon day.

Despite the tenant's agent leaving prior to the end of the inspection and/or signing a copy of the end of tenancy Condition Inspection Report, I accept the tenant was in attendance, through his agent, at the inspection and has complied with Section 35.

To be successful in his claim for damage and loss the landlord must provide sufficient evidence to establish the 4 following points:

1. That a loss or damage exists;
2. The loss or damage 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, when applicable.

Section 37 of the *Act* requires a tenant who vacates a rental unit to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the Condition Inspection Report and the substantial photographic evidence, I find the landlord has established the tenant failed to leave the rental unit reasonably clean. I find that this is contrary to Section 37 of the *Act* and I accept the amount requested to be a reasonable value for the work required.

In relation to the costs for painting the rental unit, the landlord identified that the unit was painted 12 to 18 months prior to December 1, 2009 or 3½ to 4 years ago. Residential Tenancy Policy Guideline #37 provides a table on the useful life of household items and finishes, in this guideline the useful life for an interior paint job is 4 years.

While the landlord testified that there was substantial damage to the walls in the hallway; 2 bedroom walls; 3 living room walls; and the entrance, he provided three pictures only. Two of these pictures did show substantial damage and one showed 2 pen sized holes in the wall.

Based on this evidence and the Condition Inspection report that speaks of marks on some of these walls and some holes I find the landlord has failed to establish the extensive painting was required as a result of the tenancy. Even if I were to find the landlord had established this need, I would discount the amount of the tenant's responsibility by 100 % due to the age of the previous painting.

I accept that the tenant's acknowledge that a toilet seat cover replacement was required. Based on the photograph from the landlord of the paper holder, I accept the

tenant's testimony that the holder was in poor condition and in need of replacement regardless of the tenant's usage.

As the landlord has not broken down the amounts for labour and/or supplies for these two items I find the landlord has failed to establish the value of replacing the toilet seat cover.

In relation to the carpet, as the burn marks are not noted anywhere in the start of tenancy Condition Inspection Report, I accept the landlord's testimony that these burns occurred as a result of the tenancies that included this tenant and find the tenant responsible for these repairs. I accept the amounts submitted by the landlord as reasonable to complete these repairs.

However, I note that the life expectancy for carpeting from Residential Tenancy Policy Guideline #37 is 10 years. As such, based on the landlord's testimony that the carpets are 4 to 5 years old, I discount the landlord's claim by 50%.

In regard to the landlord's claim for a move out fee of \$200.00, I note that Section 7 of the Residential Tenancy Regulation states that a landlord may charge a move out fee and that it is not a requirement to have this stipulated in the tenancy agreement.

However, the landlord has failed to provide any evidence that the tenant was informed of this fee at any time. I find it unlikely that a landlord who includes 35 additional terms in a tenancy agreement, 9 of which include additional charges, fines and/or fees would fail to either include this charge in the tenancy agreement or have some paper trail that would confirm that he informed the tenants of this charge. I therefore find the landlord has failed to establish that he took steps to mitigate this loss.

I accept the landlord did not start a new tenancy in this rental unit until August 1, 2011, however, in the absence of any confirmation that he advertised the availability of the unit for at least 2 months prior to the end of the tenancy, I find it unlikely that the first showing would be as late as the first day after the end of the tenancy.

Further, as the landlord was invoiced for all the work completed by June 15, 2011 it appears the unit was ready for new tenants by the middle of June and the landlord provided no testimony as to why he was unable to rent it after that time period. As such, I find the landlord has failed to establish he has taken all reasonable steps to mitigate this loss.

Finally, in regard to the landlord's claim for miscellaneous items, I accept the recording in the Condition Inspection Report that the tenant received the keys and laundry card and the tenant failed to return them, however the landlord has failed to establish any value to any of the items claimed by testimony or evidence.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1049.52** comprised of \$572.32 cleaning; \$452.20 carpet repairs (50%); and \$25.00 of the \$50.00 fee paid by the landlord for this application, as he was only partially successful in his claim.

I order the landlord may deduct the security deposit and interest held in the amount of \$487.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$562.02**. This order must be served on the tenant. If the tenant fails 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: September 16, 2011.

Residential Tenancy Branch