



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 pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord's agent (the landlord) by registered mail on November 18, 2011. I am satisfied that the landlord served this package to the tenant in accordance with the *Act*.

The tenant denied having received the landlord's 9-page written evidence package. The landlord testified that he did not send this material to the tenant and provided no explanation for failing to do so. Based on this testimony, I have not given any consideration to the landlord's 9-page written evidence package received by the Residential Tenancy Branch on January 24, 2012. The only written evidence before me, other than the landlord's application for dispute resolution, are copies of the Residential Tenancy Agreement, the tenant's original lease application, a written estimate of the flooring and painting costs, and a copy of the joint move-in and joint move-out condition inspection reports, all of which the tenant confirmed having received.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit

in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This fixed term tenancy for a strata rental unit commencing on July 15, 2011 was scheduled to end on October 31, 2011. According to the terms of the residential tenancy agreement (the agreement), the tenancy could convert to a month-to-month tenancy after the expiration of the initial fixed term. Monthly rent was set at \$4,500.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$2,250.00 security deposit paid on July 7, 2011.

The parties agreed that a joint move-in condition inspection occurred on July 8, 2011 and a joint move-out condition inspection was conducted on November 6, 2011. The landlord entered into evidence a copy of reports created from both of these inspections and provided to the tenant. The landlord testified that the tenant moved out by November 1, 2011, but was doing some work on the premises after he vacated and did not return the keys until November 8, 2011. The tenant said that he thought that he gave the keys to the landlord on November 6, 2011.

The landlord's application for a monetary award of \$17,755.66 included the following items:

Item	Amount
Loss of Rent November 2011	\$4,500.00
Cleaning	350.00
Smoke Alarm	(unspecified)
Replacing Flooring and Repainting	12,305.66
Strata Fines	600.00
Total Monetary Award Requested	\$17,755.66

At the hearing, the landlord reduced the amount of the requested monetary award to \$14,964.98, based on actual receipts he had received since first filing this application.

The landlord confirmed that the joint move-in condition inspection report noted scratches on floors and some holes and stains on walls of the rental unit at the commencement of this tenancy. The landlord said that during the course of the tenancy the tenant made more scratches to the floors and caused more damage to the walls. He said that the premises could not be rented in November 2011 because the floors had to be replaced with new laminate and the walls had to be repainted. Once these

repairs were completed, the owner of the property decided to put the property on the real estate market for sale. He said that the property has not yet been sold.

The tenant testified that when he first moved into this rental home the floors were badly damaged. He said that one hardwood floor was in such poor condition that it had been painted. He said that there were holes from where artwork had been hung and a number of locations where pictures or artwork had discoloured the walls. He said that he agreed to paint some of the walls at the end of this tenancy, purchasing the paint himself, although the owner was not satisfied that the paint matched perfectly. The tenant testified that he thought that the landlord who attended this hearing had agreed that the premises were in acceptable condition at the end of this tenancy. However, he maintained that the absentee owner of the property who had never visited the property wanted to recover money he had lost on his investment by trying to make the tenant responsible for expensive repairs that needed to be done when this tenancy commenced.

At the hearing, the tenant did not dispute the landlord's claim that the tenant should be held responsible for \$600.00 in strata fines imposed by the strata council arising out of the tenant's actions during this tenancy. The tenant did not dispute the landlord's claim that he had retained the smoke alarm from this tenancy. At the conclusion of this hearing, the tenant made arrangements with the landlord to return the missing smoke alarm to the landlord later that afternoon.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I find that the landlord has satisfied very few of the requirements that would need to be met in order to entitle him to the sizeable monetary award he was seeking for damage arising out of this tenancy. The July 8, 2011 joint move-in condition inspection report identified scratches, marks, stains and holes in the same locations as

were noted in the November 6, 2011 joint move-out condition inspection report. I find that the only significant difference between the two reports with respect to the floors and walls is the notation on the move-out report, not signed by the tenant, that "floors are damage, walls are damage." I do not find that the landlord has demonstrated that the extent of the damage by the end of this tenancy was significantly different than that outlined in the original inspection condition inspection report. The landlord did not enter into evidence any photographs, either before or after the tenancy. He did not produce any witnesses to contradict the tenant's sworn testimony that the damage claimed by the landlord at the end of this tenancy was essentially the same as that which had occurred by the date he commenced his tenancy. The tenant testified that he did cause some damage to one of the pieces of wood flooring during this tenancy. However, he questioned the landlord's claim that this formed the basis for replacing the entire 1,700 square foot floor with new laminate. The tenant testified that there were many other floor boards damaged prior to his commencement of this tenancy. I also note that the only written evidence he provided to the tenant prior to this hearing regarding the damage itself was an estimate of the cost of replacing the floors and repainting the rental unit.

I find that the tenant did admit to causing some damage to the floor and to the walls. I allow the landlord a monetary award for damage in the amount of \$400.00 for these items to reflect that the tenant's actions appear to have added to the existing damage to this rental unit. I dismiss the remainder of the landlord's claim for a monetary award for damage to the floors and walls without leave to reapply as I find that the landlord has not substantiated any further eligibility to a monetary award for these items.

There is undisputed evidence that the tenant did not pay any rent for November 2011. I find that the tenant was continuing to clean and make minor repairs during the first several days of November after the official end of this tenancy and after he removed his belongings. As I find the landlord's evidence more credible than that presented by the tenant with respect to the date when the tenant returned the key to the landlord, I find that the tenant overheld this tenancy beyond the October 31, 2011 end date of this tenancy until November 8, 2011. I find that the tenant is responsible for a pro-rated amount of rent for November 2011 to include the first eight days of November 2011, an amount calculated as $8/30 \times \$4,500.00$ or \$1,200.00. However, as of November 9, 2011, I find that the repairs and renovations that the landlord undertook arose not as a result of the tenant's actions but as a result of the landlord's desire to replace flooring, repaint walls and prepare the premises for sale on the real estate market. I dismiss the landlord's claim for recovery of the remaining \$3,300.00 in rent for November 2011, as I do not find that the landlord has demonstrated eligibility for this loss of rent from the tenant.

The tenant did not dispute the landlord's claim for recovery of losses due to the strata council's imposition of \$600.00 in fines against the landlord due to the tenant's actions. The tenant admitted responsibility for these fines. For these reasons, I find that the landlord is entitled to a monetary award for strata fines in the amount of \$600.00.

Although the landlord did not seek a specific monetary award for the tenant's removal of the smoke alarm during this tenancy, the tenant did make arrangements with the landlord to return this smoke alarm to the landlord later on the day of the hearing. In case that does not occur, I order the tenant to return the smoke alarm from the rental unit to the landlord forthwith. Since the landlord has borne some costs in seeking the retrieval of the smoke alarm, and will need to obtain it and re-install it, I find that the landlord is entitled to a monetary award in the amount of \$50.00 to compensate him for his time in restoring this item to the rental unit and reinstalling it.

Based on a comparison of the move-in and move-out condition inspection reports, I find on a balance of probabilities that the tenant did not leave the premises in reasonably clean condition as required under section 37(2)(a) of the *Act*. In the absence of any specific set of receipts for this item copied to the tenant, I find that the landlord's entitlement to a monetary award for cleaning is limited to \$160.00, equivalent to an 8 hour day of cleaning at a rate of \$20.00 per hour.

As the landlord has been partially successful in this application, I allow the landlord to recover \$50.00 of the landlord's \$100.00 filing fee from the tenant.

I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in this decision plus applicable interest. No interest is payable over this period.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to recover an amount for unpaid rent, for damage to the rental unit, for losses arising out of this tenancy, and for a portion of his filing fee, and to retain the tenant's security deposit in its entirety;

Item	Amount
Landlord's Eligibility for November 2011 Rent (8/30 x \$4,500.00 = \$1,200.00)	\$1,200.00
Landlord's Damage Claim for Floors and Walls	400.00
Recovery of Strata Fines	600.00
Replacement of Smoke Alarm	50.00
Cleaning	160.00
Less Security Deposit	-2,250.00
Recovery of \$50.00 from Filing Fee	50.00
Total Monetary Order	\$210.00

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the remainder of the landlord's claim for a monetary award without leave to reapply.

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: February 10, 2012

Residential Tenancy Branch