



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage to the rental unit site or property, compensation for damage and loss under the Act, regulation or tenancy agreement, recovery of the filing fee, and an order to retain the security deposit in partial satisfaction of the claim.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for damage to the rental unit site or property, compensation for damage and loss under the Act, regulation or tenancy agreement, recovery of the filing fee, and an order to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The Landlord and Tenant agree that the tenancy commenced on January 01, 2011, and that the tenancy agreement states that this was a fixed term lease for 13 months, after which point it would become a month to month tenancy. The signed tenancy agreement between the parties was submitted into evidence by the Landlord. The tenancy agreement states that the rent is \$1,390.00 per month, due on the first of the month. The tenancy agreement states that late fees of \$25.00 are due if the rent is not paid on time or a cheque is NSF. The tenancy agreement states that the Tenant pays 50% of the hydro and gas bills. The parties agree that the Landlord holds a security deposit from the Tenant in the amount of \$695.00 paid at the beginning of the tenancy. The tenancy ended on September 30, 2011 as the Tenant moved out. The parties agree that the rent in the amount of \$1,390 was paid for September 2011 and that the Tenant have not paid any further rent. The parties agreed that a move-in condition inspection and report was done on January 03, 2011 and a move-out condition inspection and report was done on September 30, 2011 with participation of the Tenant and the Landlord. The Tenant wrote on the move-out inspection report that she disagreed with the Landlord over many items contained in the report, before she signed the report. The Tenant provided her written forwarding address to the Landlord on

September 30, 2011 and the Landlord filed a claim for dispute resolution within 15 days, on October 15, 2011.

Late fee, end of tenancy, and rental income loss claim

The Tenant gave the Landlord written notice on August 28, 2011 that she would be moving out for September 30, 2011. The Tenant states that the reason she gave the Landlord Notice at that time was due to lack of peaceful enjoyment.

The Landlord stated that he did not agree to allow the Tenant to end her fixed term tenancy early and that the tenancy fixed term was 13 months and not due to convert to a month to month tenancy until after January 31, 2012. The Landlord stated that he began to advertise for a new tenant and began showing the suite as a result of the Tenant's notice.

The Tenant stated that another reason she moved out was due to a 10 Day Notice to End Tenancy due to unpaid rent. The Tenant stated that she had moved most of her belongings out by September 09, 2011 and that she cleaned the rental unit on September 09 and 10, 2011. She stated that she gave the keys to the Landlord at the move-out inspection on September 30, 2011.

The Landlord stated that this matter was previously heard and the decision of October 17, 2011 found that the Notice was of no effect, as the Tenant had paid the outstanding rent within 5 days as required by the Notice.

The Tenant filed an Application which was heard on September 29, 2011, and a decision was issued on October 17, 2011. The decision denied the Tenant her claim for damages/compensation for a claim of lack of peaceful enjoyment. The decision also found that the Tenant paid the outstanding rent for September 2011 within 5 days of receiving a Notice to End Tenancy for unpaid rent and that the Tenant was not required to move out of the rental unit, as the Notice was of no effect.

The Tenant stated that the rent cheque was taped to the Landlord's door on August 31, 2011, but something happened to it, and this resulted in the Landlord issuing a 10 Day Notice to End Tenancy for unpaid rent. The Tenant stated that when she received the Notice, she issued a new rent cheque to the Landlord on September 02, 2011.

The Landlord stated that he received the rent on September 02, 2011 from the Tenant, as a result he did not require the Tenant to move out due to the Notice and he did not seek an order of possession for the rental unit. The Landlord stated that he is seeking \$25.00 as the rent was paid late and the tenancy agreement allows him to request \$25.00 from the Tenant for late payment of rent.

The Tenant stated that house was for sale in August 2011 while she was living in it. The Tenant stated that the Landlord put a for sale sign in front of the house in September 2011. The Tenant stated that by putting the house up for sale new tenants

would have been deterred from renting, and that she should not have to pay for rental income loss for October 2011 as selling the house would have deterred many prospective tenants.

The Landlord stated that the Tenant breached the fixed term tenancy agreement by moving out early. The Landlord stated that he mitigated his losses by advertising for a new tenant, and showing the rental unit during September 2011. The Landlord stated that new tenant signed a tenancy agreement on September 30, 2011 to move in for November 01, 2011. The Landlord stated that although the house was for sale, it was still available for renting. The Landlord stated that he did not put up a for sale sign on the property until the second week of October 2011. The Landlord does not feel prospective tenants were deterred from renting. As a result the Landlord is seeking rental income loss in the amount of \$1,390.00 for October 2011.

Cleaning costs

The Tenant stated that she cleaned the rental unit. The Tenant stated that she did not clean inside the oven as she did not use it, and the Tenant acknowledges that she did not clean under the stove and fridge but stated it was difficult for her to do these tasks. The Tenant stated that she felt the ceiling was clean as well with no stains or marks.

The Landlord stated that they advised the Tenant of their cleaning expectations and also put this to the Tenant in writing on September 09, 2011 when they were providing her written notification of the move-out inspection scheduled for September 30, 2011. The Landlord provided into evidence a copy of the letter written to the Tenant on September 09, 2011. This letter provides some cleaning instructions to the Tenant, and states, in part, that the fridge is on wheels and to move it to clean underneath; that the oven has a drawer which she can pull out to clean the area underneath the stove; and that the ceiling should be cleaned of any stains, marks, or cobwebs. The Landlord testified that the cleaner charged him a minimum fee of \$28.00 for coming out to clean the areas of the rental unit the Tenant failed to clean sufficiently. The Landlord provided a copy of the written receipt from the cleaner, which itemizes the cleaning work done.

Re-install washer/dryer

The Tenant stated that when she moved into the rental unit the Landlord had installed a washer/dryer which was mounted on the wall with 2x4's. The Tenant stated that she wanted to use her own washer/dryer; as a result she stated that she installed her own washer/dryer and acknowledged that she had agreed to reinstall the Landlord's washer/dryer when the tenancy ends. The Tenant feels that the Landlord's washer/dryer was old and poorly installed to begin with, so she does not feel that the Landlord is entitled to more than \$50.00 to have it reinstalled and she feels he was fit enough to do this himself with a friend.

The Landlord stated that with the help of a friend he had properly installed the washer/dryer at move-in and that he installed it securely and level into the stud using

2x4's and brackets. The Landlord stated that when the Tenant moved out she failed to have it reinstalled. The Landlord stated that he has an injured shoulder and did not want to risk worsening it by doing the reinstall, which involves wall mounting, so he hired a contractor to do it so it would be ready in time for the new tenant's move-in. The Landlord provided into evidence a copy of the contractor's bill for \$168.00 which he feels is a reasonable charge for the job being done, as the job requires two people.

Replace carbon monoxide detector

The Tenant stated that she damaged the carbon monoxide detector and failed to replace this before she moved out. The Tenant stated that the Landlord purchased an expensive carbon monoxide detector to replace it and that he should not be entitled to more than \$25.00.

The Landlord stated that he had to replace the damaged carbon monoxide detector in the rental unit due to the Tenant's damage and that he selected one that was similar in make and model to the one damaged by the Tenant. The Landlord stated that the carbon monoxide detector was not the cheapest, nor the most expensive one in the store. The Landlord submitted into evidence a copy of the receipt for the carbon monoxide detector in the amount of \$56.66.

Touch up painting and patching

The Tenant stated that the phone/cable installer made the holes in the bedroom wall when he came to the rental unit, and that she did not have a chance to patch the holes before she moved out of the rental unit. The Tenant stated that the bathroom had no power and the Landlord let her install a power bar in the bathroom, which resulted in her putting holes in the side of the bathroom cabinet to mount the power bar. The Tenant stated that the holes were small and she did not have time to fill them or the paint.

The Landlord stated that he had to get the holes patched in a wall and on the bathroom cabinets. The Landlord stated that the Tenant was expected to repair the holes before move out and failed to do so. The Landlord submitted into evidence a copy of the invoice provided to him by the contractor who did the work for \$50.00. The Landlord stated that he provided the contractor the matching paint.

Hydro Bill and Gas Bill

The parties agree that the Tenant owes the Landlord \$25.49 for the hydro bill and \$26.39 for the gas bill, which represents 50% of the amount of the bills as required by the tenancy agreement. The parties agree that the Tenant has not paid these amounts to the Landlord at this time.

Alarm reprogramming and monitoring fees

The Tenant stated that when she moved into the rental unit she advised the Landlord that she wanted to use the alarm system that was in the rental house. The Tenant stated that the Landlord agreed to this and she proceeded to get a permit from the City police department alarm program to allow her to use the alarm system. The Tenant stated that as she could not use a cellular phone for the alarm she had to have a land line installed and had to pay for a phone line be used for the alarm at her expense. The Tenant stated that the Landlord should pay for the costs of reprogramming the alarm, to separate the suite alarm from the rest of the house, and for the costs of the alarm monitoring account which is in the Landlord's name. The Tenant stated that her tenancy agreement with the Landlord does not require her to pay for alarm monitoring fees or the reprogramming of the alarm system, and she did not agree to pay the Landlord for this. The Tenant stated that the Landlord benefits from having the rental unit monitored, and that the Landlord never reimbursed her for the alarm permit or installing a landline for the alarm to connect to in the rental unit.

The Landlord stated that the Tenant had verbally agreed to pay half of the alarm costs. The Landlord stated that the bill for the alarm monitoring comes to him. The Landlord stated that he is to pay for the lower portion of the house and the Tenant was to pay her half for the main floor of the house which she occupies. The Landlord stated that he had to have the alarm system reprogrammed when the Tenant moved in so that it would separate the main floor of the house where the Tenant resided from the lower portion of the house, which the Landlord was using. The Landlord stated that he was willing to remove the alarm system from the house, but the Tenant wanted to use it. The Landlord states the Tenant owes \$19.60 for August and \$19.60 for September which represents half of the monthly alarm monitoring bill (\$39.60 per month). The Landlord states that the Tenant owes him \$117.60 which represents half of the alarm programming bill (\$235.20) for the costs the Landlord incurred to program/partition the existing security alarm. The Landlord provided copies into evidence of bill from the alarm company relating to the costs incurred. The Landlord also provided copies of text messages between himself and the Tenant regarding the alarm system.

Floor refinishing

The Tenant stated that the floors were not new when she moved in and they were scratched by the Landlord's use. The Tenant stated that the Landlord, his family, and his dog lived in the rental unit prior to her tenancy commencing. The Tenant's witness, LV, provided a letter stating that she assisted the Tenant with her move into the rental unit in January 2011, and that based on her observations, "the hardwood floors had been cleaned but were not in pristine condition. The wood was scratched and had obviously been well lived in." Witness LV's letter also states, "the hardwood floors were consistent with the age of the home and had been kept in decent repair but I would not say that they looked as though they had been recently refinished". Witness LV testified at the hearing that she had written the letter and provided her opinion on the condition of the floors when she assisted the Tenant at move-in. The Tenant's other witness, TS, testified that he was present at the move-out inspection and that the floors were in good condition like new, and he had to get down low to look at the floors in a certain light to

even notice any scratches. The Tenant testified that she used coasters under the legs of her piano, and she did not use the piano bench but played the piano standing up. The Tenant stated that she had the piano bench on a rug and was using it as a table. The Tenant stated that she did not have a table and chairs in the dining room during her tenancy. The Tenant stated that she did not make any scratches on the floors of the rental unit.

The Landlord stated that the Tenant scratched the living room floor and that the floor was new at move in. The Landlord stated that he had the floors stripped down, sanded, stained and refinished in May 2010. The Landlord provided into evidence a document from a company to confirm the hardwood floors were refinished May 2010. The Landlord acknowledged that he lived in the rental unit with his family and dog until December 2010, and the Tenant moved into the rental unit for January 2011. The Landlord stated that the Tenant did not note any scratches in the floor on the move-in condition inspection report. The Landlord's witness, KS, testified that the floors in the rental unit appeared to be in good condition although she only did the baseboards in the rental unit in December 2010 and not the floors. The Landlord's other witness RNM testified that he was present at the move-out inspection and that the scratches in the floor were only visible with the lights on. Witness RNM stated that there were scratches in the living room and scratches on the floor below the dining room light. The Landlord stated that the scratches in the living room were in the area where the Tenant had kept her piano, and in the dining room area where a table may have been located at one point. The Landlord estimates that it would cost him approximately \$2,002.00 to refinish the floors. Landlord stated that he has not undertaken the work to do the floors. The Landlord stated that a new tenant moved into the rental unit on November 01, 2011 and was aware of the scratches in the floor. The Landlord stated that the new tenant accepted the rental unit "as is" and does not require the floors to be refinished. The Landlord stated the new tenant agreed to pay the same rent (\$1,390.00) as the former Tenant. The Landlord stated that they have no plans to refinish the floors while a tenant is in the rental unit. The Landlord provided photos into evidence showing the condition of the floors at move out, with close up photos of the scratched area of floor in the dining room and living room. The Landlord is seeking \$2,002.00 as compensation for the damage to his floors.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Late fee, end of tenancy, and rental income loss claim

I find that the Landlord is entitled to the \$25.00 late fee, as allowed by the tenancy agreement and the Act, because the Tenant failed to pay rent to the Landlord on September 01, 2011 when it was due. The Tenant's testimony confirms that she had to issue a rent cheque to the Landlord on September 02, 2011 as the cheque, she had

allegedly, put on his door rather than personally serving him had not been received by the Landlord.

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the first of the month. The Tenant signed a 13 month fixed term tenancy agreement with the Landlord and the tenancy was not due to end until January 31, 2012. The Tenant moved out by September 30, 2011, but did not have a mutual agreement to end their tenancy with the Landlord. The Tenant breached the tenancy agreement. I am satisfied with the evidence that the Landlord was not able to find a new tenant for the rental unit until November 01, 2012, and I accept that the Landlord mitigated his losses by advertising for a new tenant, and showing the rental unit during September 2011 in an attempt to obtain a tenant at the earliest possible date. The Tenant failed to provide sufficient evidence to support her arguments that the Landlord deterred any prospective tenants. I find that the Landlord is entitled to loss of rental income in the amount of \$1,390.00 for October 2012.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent pay for the loss the Applicant must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Cleaning costs

I find that the Tenant does not dispute that she failed to clean certain areas of the rental unit. I accept the Landlord's testimony and evidence that he notified the Tenant of his cleaning instructions in writing and how to access the area under the fridge and stove,

so that these areas could be cleaned by the Tenant before the move-out inspection. I also accept the Landlord's evidence of the cleaner's written receipt and his testimony that that the cleaner charged him a minimum fee of \$28.00 for coming out to clean the areas of the rental unit the Tenant failed to clean sufficiently. I find that the Landlord is entitled to the cleaning costs in the amount of \$28.00.

Re-install washer/dryer

The Tenant agrees that she was supposed to reinstall the Landlord's washer/dryer before she moved out of the rental unit. The Tenant did not provide any evidence of an appropriate value or any estimates of the cost to have the work done, yet she disagrees with the amount claimed by the Landlord and stated that he should have done the install job himself with a friend to reduce the cost to her. I accept the Landlord's testimony that it is a two person job to re-mount/attach the washer/dryer to the wall in the rental unit, and that he does not want to worsen a shoulder injury and do this task. I find that the contractor's invoice of \$168.00 for two persons to do this job is reasonable, and that had the Landlord and an assistant done this work their time and materials would be of similar value. I find that the Landlord is entitled to washer/dryer re-installation costs in the amount of \$168.00.

Replace carbon monoxide detector

The Tenant agrees that she damaged the carbon monoxide detector in the rental unit and that the Landlord had to replace it. The Tenant disagrees with cost of the carbon monoxide detector purchased by the Landlord, however, she neglected to replace it herself and failed to provide sufficient evidence of a more affordable carbon monoxide detector that matched the one in the rental unit. I accept the Landlord's testimony and evidence regarding the cost of the carbon monoxide detector in the amount of \$56.66, and find that this is a reasonable cost for a carbon monoxide detector similar to the one damaged by the Tenant. I find that the Landlord is entitled to \$56.66 for the cost of replacing the carbon monoxide detector.

Touch up painting and patching

I find that the Tenant does not dispute that she failed to patch and paint the holes she was responsible for in the rental unit. I accept the Landlord's evidence of the labourer's written receipt and testimony that that he was charged \$50.00 for the patching and painting of the holes in the rental unit, and that he mitigated this by providing the matching paint himself at no cost to the Tenant. I find that the Landlord is entitled to the \$50.00 for the cost of the labourer to paint and patch the holes in the rental unit.

Hydro Bill and Gas Bill

I find there is no dispute that the Tenant owes the Landlord \$25.49 for the hydro bill and \$26.39 for the gas bill.

I allow the Landlord's claim for \$51.88 for the hydro and gas bill, as the Tenant agreed that she owes this amount to the Landlord.

Alarm reprogramming and monitoring fees

I have considered the evidence of the parties and find that the Landlord is not entitled to the cost of the alarm reprogramming and monitoring fees. The Landlord failed to obtain a written agreement with the Tenant to identify any division of costs in relation to the alarm system. The documented evidence from the Landlord including the tenancy agreement, letters, and text messages regarding the alarm system do not contain sufficient evidence to prove that the Tenant agreed to paying the reprogramming and monitoring fee costs.

Floor refinishing

I have considered the evidence of the parties and find that the Landlord is not entitled to compensation for floor refinishing. While the Landlord's evidence and testimony indicates that the floors were refinished in May 2010, it also confirms that the rental unit was occupied by the Landlord, his family their dog in the months prior to the Tenant moving into the rental unit in January 2011, so I find the floors were not in new condition, but were in used condition when the tenancy commenced. The move-in condition inspection report signed by the parties did not identify any scratches in the floor, but the move-out condition inspection report signed by the parties and the move-out photos do indicate scratches to the wood floor in two areas. The Landlord's testimony and evidence indicates that he has not refinished the floors to remove the scratches and he provided only estimates of costs for refinishing. The Landlord's testimony also indicated that his new Tenant did not require the floors to be refinished and took the rental unit "as is", agreeing to pay the same rent as the previous Tenant, at \$1,390.00 per month. The Landlord stated that he has no intention of refinishing the floors while a tenant is residing in the rental unit. The Landlord has not proven that he has incurred any loss due to the floor scratches; as a result I deny the Landlord's claim for \$2,002.00 to refinish the floors.

I find that the Landlord is entitled to a monetary order for the following:

- \$25.00 late fee for September 2011 rent
 - rental income loss for October 2011 in the amount of \$1,390.00;
 - cleaning costs \$28.00;
 - reinstall washer/dryer \$168.00;
 - touch up painting and patching \$50.00;
 - carbon monoxide detector \$56.66;
 - hydro and gas bills totalling \$51.88 (\$25.49 + \$26.39)
- Subtotal owing: \$1,769.54.

As the Landlord has in part succeeded in his Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. This brings the balance of the amount owing to the Landlord to \$1,819.54.

The Landlord holds the Tenant's security deposit of \$695.00. I order that the Landlord retain the security deposit, in partial satisfaction of the claim. I grant the Landlord an order under section 67 for the balance due of **\$1,124.54**.

Conclusion

I dismiss the Landlord's claim for alarm reprogramming and monitoring fees, and floor refinishing.

I grant the Landlord's claim for a late fee for September 2011, rental income loss for October 2011, cleaning costs, costs to reinstall washer/dryer, touch up painting and patching costs, cost to replace carbon monoxide detector, hydro and gas bills, and the filing fee.

I find that the Landlord is entitled to \$1,819.54. As I have ordered that the Landlord retain the security deposit of \$695.00, I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenant in the amount of **\$1,124.54**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of 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: February 17, 2012.

Residential Tenancy Branch