



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

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:40 a.m. in order to enable them to connect with this hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she sent the tenants individual copies of her dispute resolution hearing package by registered mail on February 2, 2012. She provided copies of the Canada Post Tracking Numbers and Customer Receipts to confirm these mailings. I am satisfied that the landlord served these packages and her written evidence in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This one-year fixed term tenancy commenced on May 1, 2011. Monthly rent at the time that the tenant vacated the premises on or about November 15, 2011 was set at \$900.00. The landlord testified that the tenants did not pay their security deposit. The tenancy ended on the basis of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent issued on November 2, 2011.

The landlord entered into written evidence a copy of the joint move-in condition inspection report of April 28, 2011. She also provided written evidence to document her repeated efforts to try to arrange a joint move-out condition inspection with the tenants. The landlord entered into written evidence a copy of her November 20, 2011 inspection of the premises which she set out in an inspection report and forwarded to the tenants.

The landlord's application for a monetary Order of \$2,615.15 included the following items:

Item	Amount
Unpaid November 2011 Rent	\$900.00
Carpet Cleaning	84.00
Carpet Replacement	1,015.08
New Wardrobe	123.19
New Pantry	134.39
New Wheels for Range Drawer	33.49
Garbage Removal from Cellar	60.00
Bathroom Cleaning	50.00
Range Cleaning	50.00
Fridge Cleaning	25.00
Wash Kitchen Floor	25.00
Landfill Charge	5.00
Replacement of Missing Key	10.00
Replacement of Door Moulding	50.00
Repair Towel Rod in Bathroom	50.00
Total Monetary Order	\$2,615.15

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 tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Based on the undisputed evidence of the landlord, I allow the landlord's application for \$900.00 in unpaid rent owing from November 2011. I am also satisfied that by that point it would have been difficult for the landlord to have re-rented the rental premises for any portion of November 2011, given the work that needed to be done to enable the landlord to rent the premises to another tenant. The landlord testified that she was able to find a new tenant who took possession and commenced paying rent early in 2012. I

am satisfied that the landlord has taken reasonable steps to try to mitigate the tenants' losses for unpaid rent.

I allow all of the landlord's claims for damage arising out of this tenancy with the following exceptions, as I am satisfied that the landlord has demonstrated that she encountered actual losses arising from the tenants failure to leave the premises in a clean and undamaged condition.

I dismiss the landlord's claim for the replacement of the carpets without leave to reapply because the landlord testified that she has not replaced the carpets and, as a result, had no receipt to demonstrate her loss for this item.

I also dismiss the landlord's application for the replacement of a missing key without leave to reapply. According to the *Act*, landlords bear the responsibility for changing locks and providing new keys to new tenants at the end of a tenancy.

The landlord testified at the hearing that the landlord's wardrobe and pantry that were removed from the rental unit during this tenancy were approximately two years old. As these items would have been exposed to a certain amount of normal and wear and tear since they were first placed in the rental unit, I allow the landlord to recover 2/3 of her costs in replacing these missing items with a new wardrobe and pantry.

Since the landlord was successful in this application, I allow her to recover her \$50.00 filing fee from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent, damage and her filing fee:

Item	Amount
Unpaid November 2011 Rent	\$900.00
Carpet Cleaning	84.00
New Wardrobe (2/3 x \$123.19 = \$82.13)	82.13
New Pantry (2/3 x \$134.39 = \$89.59)	89.59
New Wheels for Range Drawer	33.49
Garbage Removal from Cellar	60.00
Bathroom Cleaning	50.00
Range Cleaning	50.00
Fridge Cleaning	25.00
Wash Kitchen Floor	25.00

Landfill Charge	5.00
Replacement of Door Moulding	50.00
Repair Towel Rod in Bathroom	50.00
Filing Fee	50.00
Total Monetary Order	\$1,554.21

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) 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.

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: March 29, 2012

Residential Tenancy Branch