



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 was convened by way of conference call in repose to the landlords application for a Monetary Order for damage to the unit, site or property; a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant, the tenants agent and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this month to month tenancy started on September 01, 2011 and ended on December 31, 2011. Rent for this unit was \$850.00 per month due on the first day of each month in advance. The tenant paid a security deposit of \$425.00 on July 29, 2011. The tenant and landlord attended the move in condition inspection and the move out condition inspection was completed in the tenant's absence. The tenant gave the landlord his forwarding address in writing on December 31, 2011.

The landlord testifies that she gave the tenant two opportunities to agree on an inspection date but the tenant failed to appear. The landlord testifies a final opportunity for inspection notice was given to the tenant on December 29, 2011 for a final opportunity to do the inspection on December 31, 2011. The tenant failed to appear for this inspection and the landlord completed the inspection in the tenant's absence on December 31, 2011.

The landlord testifies that the inspection noted some damages and cleaning required in the rental unit. The landlord states the tenant had put up some shelving units and when these were removed they left 24 screw holes in the walls which the tenant had filled but not sanded or painted. The landlord seeks to recover the sum of \$70.00 for labour and the sum of \$77.47 for paint.

The landlord testifies that the tenant has damaged a kitchen cupboard with the steam from the tenant's kettle which has taken the finish off the oak veneer. The landlord had this repaired at a cost of \$70.00 for labour and \$30.00 for materials. The landlord also seeks to recover the costs of two kitchen cupboard handles to the sum of \$13.42. The landlord states she had supplied these to the tenant to fit however the tenant had not fitted them and they are now missing from the unit. The landlord states the sink stopper in the bathroom was also missing and a new one has been purchased at a sum of \$2.45.

The landlord testifies that the tenant had not cleaned the unit thoroughly and the landlord states she had to re-vacuum the edges of the carpet, clean the linoleum floors with Murphy's oil; clean under the appliances; clean the bathroom; clean the oven and stove and replace an oven bulb; clean some spillage in the fridge. The landlord states she also had to

remove some bicycle tire marks from the entrance door and repaint this area and clean the entrance way and the carport. The landlord seeks to recover the sum of \$2.24 for vacuum bags; \$6.37 for Murphy's oil; \$5.24 for oven cleaner; \$2.66 for an oven light; \$160.00 for labour costs (eight hours at \$20.00 per hour). The landlord states only the fridge was on wheels and the other appliances were not.

The landlord testifies that the tenant failed to provide proper Notice to end the tenancy. The landlord states the tenant gave written notice on December 01, 2011 instead of on November 30, 2011. The landlord testifies that she attempted to re-rent the unit for January, 2012 and placed advertisements in the classified ads of the local newspaper. To date the landlord states the unit still remains unrented. The landlord seeks to recover a loss of rent for January 2012 to the sum of \$850.00.

The landlord seeks to recover costs associated with this application as follows: \$17.67 to develop the photographs; \$20.46 for registered mail cost; and \$8.49 for photocopying costs.

The landlord has provided a copy of the tenancy agreement and addendum, a copy of the move in and move out condition inspection reports, receipts for work carried out and items purchased, copy of the newspaper advertisement and photographic evidence of some of the claimed damages and cleaning.

The tenant testifies that he did put up some shelving on the walls but the tenants agent states he filled these holes with filler and smoothed it down with his fingers. The tenant's agent states you could still see the filled holes against the white walls if you looked closely enough.

The tenant's agent agrees there was some damage to the kitchen cupboard but states the cupboards were old and all miss-matched. The tenant testifies that he does not recall there being a sink stopper in place during his tenancy and states the handles for the cabinets were left in the unit in or on a white cabinet above the washer dryer.

The tenant's agent testifies that the tenant, his agent and the agent's wife all cleaned the unit, the tenant thoroughly vacuumed the carpet including the edges and the linoleum floor

was cleaned with Mr. Clean with the exception of under the appliances as they did not want to move these for fear of damaging the flooring. The tenant agrees he did not clean hair from the side of the cupboard in the bathroom and states he could not get his nozzle in the gap.

The tenants agent states the stove top trays are the throw away kind and agrees the oven could have been left cleaner. The tenant testifies that they did clean the fridge but were not aware the shelf could be removed to clean the spill under it. The tenant disputes leaving tire marks on the entrance door and states the landlords photographic evidence does not show tire marks. The tenant also disputes the landlords claim for cleaning the bathroom and states they cleaned this area and have no idea what these white marks would be showing in the landlord's photographic evidence. The tenant's agent states they do not find the landlords hourly cleaning charge of \$20.00 to be excessive but do dispute that the minor cleaning required would take the landlord eight hours.

The tenant testifies that he was not aware that he had not given the landlord proper notice to end the tenancy. The tenant's agent states the tenant accepts that now that he did give his Notice one day late but states the tenant should not be penalized for this and should not be held responsible for a full month's rent.

The landlord seeks to keep the tenants security deposit of \$425.00 as the tenant has extinguished his right to the deposit as the tenant failed to attend the move out inspection. The landlord also seeks to recover the \$50.00 filing fee paid for this application from the tenant.

The tenant disputes that he has extinguished his right to the security deposit and states they tried to make appointments with the landlord to do the inspections but the landlord was not available on the days or times the tenant or his agent were.

Analysis

With regard to the landlords claim for cleaning the unit; under the *Residential Tenancy Act* s. 32(2) and 32(3); a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required with the exception of the bathroom and oven. The landlords claim for cleaning is therefore limited to **\$60.00**.

With regard to the landlords claim for damages to the walls of the unit; the addendum to the tenancy agreement clearly notes that the tenant may use picture hooks to avoid damage to the walls. The tenant agrees he did put up shelving and agrees when this was removed his father filled the holes. The landlord argues that although the holes were filled the walls still required painting to cover the filler. I therefore find in favor of the landlords claim to repaint the walls to the sum of **\$147.47**.

With regard to the landlords claim for repairs to the kitchen cabinet, I find that this damage is the tenant's responsibility and therefore the landlord is entitled to recover the sum of **\$100.00**.

With regard to the landlord claim for a sink stopper and kitchen cupboard handles. I accept the landlord's evidence that these items are missing and I find in favor of this portion of the landlords claim. The landlord is entitled to recover the sum of **\$13.42** and **\$2.45** from the tenant.

With regard to the landlords claim for her labour to repaint the entrance door due to the tenants tire marks I find the landlords evidence supports this portion of her claim and I award the landlord **\$50.00** for this work.

With regard to the landlords claim for a loss of rent for January, 2012; I refer the parties to s. 45(1) of the *Act* which states;

(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As rent is due on the first day of each month under the tenancy agreement the tenant should have given notice by November 30, 2011 in order for the notice to have been effective by December 31, 2011. As the tenant did not give Notice until December 01, 2011 the landlord is therefore entitled to recover a loss of rent for January, 2012 as the unit was not re-rented during this period. The landlord is therefore entitled to a monetary award to the sum of **\$850.00**.

I Order the landlord to keep the tenants security deposit of **\$425.00**. This sum will be offset against the unpaid rent pursuant to s. 38(4)(b) of the *Act*.

With regard to the landlords claim for costs associated in filing her application and preparation of evidence for processing pictures, photocopying and registered mail costs; these cost are deemed to be the costs associated in doing business as a landlord and there is no provision under the *Act* to allow me to award costs such as these to a landlord. Consequently this portion of the landlords claim is dismissed.

As the landlord has been partially successful with her claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount pursuant to s. 67 of the *Act*:

Limited cleaning costs	\$60.00
Painting walls	\$147.47
Repairs to the kitchen cabinet	\$100.00

Sink stopper and handles	\$15.87
Painting the entrance door	\$50.00
Loss of rent	\$850.00
Subtotal	\$1,223.34
Filing fee	\$50.00
Less security deposit	(-\$425.00)
Total amount due to the landlord	\$848.34

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$848.34**. The order must be served on the respondent and is enforceable through the Provincial Court 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: March 13, 2012.

Residential Tenancy Branch