



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- 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; 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 the landlord handed him a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on February 2, 2012. The tenant also confirmed that the landlord handed him copies of his dispute resolution hearing package. The landlord's amended package was handed to the tenant on February 8, 2012. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*. Both parties also exchanged written evidence with one another.

As the parties agreed that the tenant vacated the premises on February 2, 2012 and the landlord has possession of the rental unit, the landlord withdrew his application for an Order of Possession.

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 recover the filing fee for this application?

Background and Evidence

This fixed term tenancy commencing on August 30, 2011 was scheduled to end on September 1, 2014. Monthly rent was set at \$1,750.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$875.00 security deposit paid on August 30, 2011. Although the parties agreed that they had a lease to own agreement for this rental home, they did not enter into evidence details regarding that

agreement. The only signed agreement either party entered into written evidence was a copy of what appears to be a standard Residential Tenancy Agreement (the Agreement) signed by both parties on July 3, 2011. The only unusual element of this Agreement is the 3-year term of this tenancy.

The parties agreed that no move-in condition inspection was conducted when this tenancy began. The landlord testified that this rental home was “brand new” in 2008. The parties agreed that no joint move-out condition inspection was conducted at the end of this tenancy because the tenant abandoned the rental home. The landlord did not conduct his own move-out condition inspection at the end of this tenancy and did not prepare any condition inspection report or provide a copy of a move-out condition inspection report to the tenant.

The landlord’s amended application for a monetary award of \$4,975.00 included the following items:

Item	Amount
Unpaid February 2012 Rent	\$1,750.00
Loss of Rent from March 2012 until September 1, 2012 (6 months @ \$350.00 per month = \$2,100.00)	2,100.00
Cleaning	300.00
Damage to Laundry Area	500.00
Lock Replacement	150.00
Labour	1,000.00
Recovery of Filing Fee for this application	50.00
Total of Above Items Identified in Landlord’s Application	\$5,850.00

I advised the parties at the hearing that the maximum monetary award I would consider issuing in the landlord’s favour would be the \$4,975.00 identified in his amended application for a monetary award.

As part of the tenant’s written evidence, the tenant referred to a previous decision of a Dispute Resolution Officer (DRO) with respect to this tenancy and provided the final page of that January 9, 2012 decision. I found it important to read this decision in its entirety to ensure that my present consideration of the landlord’s application did not address issues already considered by the previous DRO in her decision. I advised the parties that I had obtained a copy of the January 9, 2012 decision of the previous DRO, a copy of which both parties confirmed they had received. The January 9, 2012

decision addressed the tenant's application for orders for emergency repairs and repairs, a reduction in rent until the landlord made repairs, and for a monetary order for money owed or compensation for damages under the *Act*. The previous DRO dismissed the tenant's application but granted leave to reapply "only if the landlord fails to have a qualified electrician inspect, and if necessary, make repairs to the electric baseboard heater in the master bedroom and ensuite."

At the hearing, the tenant did not dispute the landlord's claim for a monetary award for unpaid rent for February 2012. The tenant acknowledged that he did not pay any rent for February 2012, did not submit any written notice to end this lengthy fixed term tenancy, and remained in the rental unit for a portion of February 2012.

Analysis – Landlord's Application for Unpaid Rent and Loss of Rent

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenant was in breach of his fixed term tenancy agreement because he vacated the rental premises prior to the September 1, 2014 date specified in that agreement. Section 45(1) of the *Act* requires a tenant even in a periodic tenancy to end a tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for March 2012 even in a periodic tenancy, the tenant would have needed to provide his notice to end the tenancy before February 1, 2012. Section 52 of the *Act* requires that a tenant provide notice to end a tenancy in writing.

I find that the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord testified that considerable clean-up and repairs were necessary when he gained possession of the rental unit in preparation for a new tenancy. He testified that he started advertising the availability of the rental home for a one-year fixed term on a Victoria rental website shortly after the tenant abandoned the premises. He said that he was able to re-rent the home to new tenants commencing on April 1, 2012 for a monthly rental of \$1,400.00 for a five-year fixed term to end on April 1, 2017. He testified that the new tenants did not wish to move into this home if they were not guaranteed a lengthy fixed term. The property had been for sale at one point and the new tenants wanted an assurance that the out-of-province landlord would not sell the property and require them to move. The landlord applied for a monetary award for the difference

between the \$1,400.00 monthly rent he will be receiving from the new tenants and the \$1,750.00 he would have received from the tenant. He requested a monetary award of this \$350.00 difference in the two rentals for a six-month period, a total of \$2,100.00 in loss of rent, for the period from March 2012 until August 2012.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises. Although the five-year term of the tenancy is unusually long, there is written evidence provided by the tenant and confirmed by the landlord that the landlord was only seeking a more standard one-year tenancy in his advertisement seeking a new tenant. On this basis, I find that the five-year term for the new tenancy did not significantly affect the amount that the landlord was able to obtain for the new tenancy commencing April 1, 2012. In coming to this determination, I have also taken into account that the tenant had committed to a three-year tenancy, itself an unusually long term for a fixed term tenancy. I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' loss.

I find that the landlord is entitled to a monetary award of \$1,750.00 for February 2012 for unpaid rent. Rather than the \$350.00 for loss of rent for March 2012 claimed by the landlord when he submitted his amended application for dispute resolution in early February 2012, I find that the landlord has demonstrated that he is entitled to a monetary award of \$1,750.00 for March 2012. I also allow the landlord a monetary award of \$350.00 for each of the five months following March 2012, until August 31, 2012, the period of monetary loss identified in the landlord's amended application. This results in a monetary award of \$1,750.00 for the five month period from April 1, 2012 until August 31, 2012.

Although the landlord has not applied to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

Analysis – Remainder of Landlord's Application for a Monetary Award

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.

Much of the evidence submitted in support of the landlord's application for a monetary award and the tenant's objection to the landlord's application was directed at the landlord's claim for damage arising out of this tenancy. I find that the tenant's claim that the landlord withheld services or facilities that should have been included in the tenant's monthly rent amounts to a reiteration of some of the same arguments presented by the tenant at the hearing of the tenant's application for dispute resolution. The tenant had the opportunity through his own application for dispute resolution to identify any deficiencies in the value of the tenancy that would have given the previous DRO an opportunity to find that a rent reduction was justified. The tenant's application for a monetary order for a rent reduction was dismissed in its entirety by the previous DRO. The landlord's current application for a monetary order for damage does not afford the tenant a further opportunity to seek a reduction in rent that he was unable to achieve in his own application for a monetary order. As the tenant could have raised any request for a rent reduction in the context of his own application for a monetary order, I have given little weight to the tenant's evidence attempting to obtain a retroactive reduction in rent paid during this tenancy.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

The landlord admitted that no joint move-in condition inspection was conducted or requested at the commencement of the tenancy and that he did not complete a move-in condition report. Responsibility for completing this report rests with the landlord. Although a joint move-out condition inspection was not necessary given that the tenant abandoned the rental premises, the landlord did not prepare a condition inspection report himself and provide a copy of this to the tenant as set out in section 36 of the *Act*.

Without copies of move-in or move-out reports, the landlord had little evidence to contradict the tenant's claim that some of the damage claimed by the landlord was for items the tenant identified as deficient from the early stages of this tenancy. The

tenant's claims in this regard seemed at least partially supported by undisputed email exchanges between the parties the tenant entered as written evidence.

Since the landlord did not follow the requirements of the *Act* regarding the joint move-in condition inspection and inspection reports, I find that the landlord's evidence in support of his claim for damage arising out of the tenancy was limited. I also find that the landlord did not provide comprehensive receipts to substantiate many of the landlord's claims for damage. Some of the landlord's costs were his own estimates of the work that was undertaken; others relied on estimates provided by third parties, but which were not supported for the most part by actual receipts. The landlord also testified that he has entered into an arrangement with the new tenants to conduct some of this work in exchange for a temporary reduction in rent. The landlord's application for the replacement of locks is not a cost for which a landlord can obtain reimbursement under the *Act* at the end of a tenancy.

Despite the above deficiencies in the landlord's application for damage and based on the oral, written and photographic evidence of the parties, I find on a balance of probabilities that the tenant did not comply with the requirement under section 37(2)(a) of the *Act* to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. I find on a balance of probabilities that the tenant did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean and undamaged" as some cleaning and repair was likely required by the landlord after the tenant vacated the rental unit. For that reason, I find that the landlord is entitled to a monetary award of \$300.00 for general cleaning and repairs that was required at the end of this tenancy.

As the landlord has been successful in this application, I also allow the landlord to recover his \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary award in the landlord's favour in the following terms which allows the landlord to recover unpaid rent, loss of rent, damage to the rental unit and his filing fee for this application and to retain the tenant's security deposit:

Item	Amount
Unpaid February 2012 Rent	\$1,750.00
Landlord's Loss of Rent March 2012	1,750.00
Landlord's Loss of Rent from April 1, 2012 until August 31, 2012 (5 months @ \$350.00 per month = \$1,750.00)	1,750.00
Cleaning and General Repairs	300.00
Less Security Deposit	-875.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$4,725.00

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.

The landlord's application for an Order of Possession is withdrawn.

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: April 11, 2012

Residential Tenancy Branch