



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was originally scheduled for May 8, 2012 to deal with the landlord's application for a Monetary Order for damage to the rental unit; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared at the originally scheduled hearing.

At the commencement of the May 8, 2012 hearing the tenant submitted that he had not been sufficiently served with the hearing documents. I determined that the landlord had erroneously addressed the registered mail package sent to the tenant. The tenant was aware of the hearing due to email communications from the landlord. The tenant provided a new mailing address during the hearing and I ordered the landlord to serve the hearing package upon the tenant again at his new address via registered mail. I adjourned the hearing and both parties were mailed Notices of Adjourned Hearing by the Residential Tenancy Branch.

The hearing reconvened on May 31, 2012 and the tenant did not appear. The landlord was asked to provide proof of service of the hearing package sent to the tenant at his new address. The landlord provided a registered mail tracking number and a search of the tracking number showed that the package was received by the tenant on May 18, 2012.

I was satisfied the tenant has been duly notified of the proceeding against him and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit?
2. Has the landlord established an entitlement to compensation for unpaid rent and/or utilities?
3. Has the landlord established an entitlement to compensation from the tenant for other damages or losses?

4. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced February 1, 2010 and the tenant paid a \$400.00 security deposit. The tenant was required to pay monthly rent of \$850.00 and was responsible for paying for heat and electricity to the landlord. The tenant vacated the rental unit February 17, 2012. The landlord received an email with the tenant's forwarding address on February 22, 2012 and filed this application on March 6, 2012.

The landlord is seeking to recover the following amounts from the tenant:

<u>Item</u>	<u>Reason/Explanation</u>	<u>Amount</u>
Unpaid utilities	Unpaid hydro bill for period up to February 6, 2012.	117.23
Unpaid utilities	Hydro owed for previous and subsequent bills.	50.00
Painting	Tenant smoked in unit. Two coats of paint required to cover smell. Claiming 25% of painting cost.	474.00
Countertop damage	Small section of countertop burned during tenancy which was replaced.	89.60
Broken light, cleaning supplies and wall patching supplies	Tenant left unit unclean and walls damaged with bloodstains and gouges, among other damage caused from fight in unit.	90.23
Cleaning and repair labour	Amount paid to carpenter for drywall repair, cleaning and preparation work for painting.	500.00
Hardwood floor damage	Burn marks in hardwood floor. Remains unrepaired. Estimated diminished value or cost to repair.	200.00
TOTAL CLAIM		\$ 2,002.73

The landlord testified that the unit was completed renovated before the tenancy began, including new paint and flooring. The landlord also pointed out that the tenant was prohibited from smoking in the rental unit but photographs and complaint letters show that the tenant, or a person permitted on the property by the tenant, smoked in the unit.

In support of the landlord's claims the landlord provided copies of the following documentary evidence: the tenancy agreement and addendum; a hydro bill for the

period of January 7 – February 6, 2012; a cheque payable to the painter; a cheque payable to the landlord's nephew for labour and countertop replacement; receipts for various purchases of supplies and materials; letters of complaint from neighbours regarding smoke emitting from the unit and sights and sounds of domestic violence.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. At the end of the tenancy the Act requires that the tenant is required to leave the rental unit reasonably clean and undamaged.

Based upon the undisputed evidence before me, I am satisfied the tenant occupied the rental unit until February 17, 2012 and the landlord did not receive rent for this period of time. Therefore, I grant the landlord's request to recover unpaid rent on a per diem basis, calculated as \$481.67.

Upon review of the hydro bill and tenancy agreement submitted as evidence, I find the tenant owes the landlord \$117.23 for hydro for the period of January 7, 2012 through February 6, 2012 and I award that amount to the landlord.

I note that on the hydro bill submitted as evidence the landlord had made a notation that \$12.00 was still owed for the previous month. I accept the landlord's undisputed evidence that \$12.00 was owed for the previous bill and I accept that approximately \$38.00 in hydro is attributable to the period of February 7, 2012 to February 17, 2012. Therefore, I further award the landlord's request for recover \$50.00 in hydro for the period up to February 17, 2012.

Upon review of the tenancy agreement addendum I accept that smoking was prohibited in the rental unit and based upon the photographs and complaint letters submitted as evidence I accept that the tenant, or someone permitted in the unit by the tenant, did smoke in the unit. I find it reasonable that the smell and nicotine stains associated with smoking is remedied by repainting the walls. Having heard the rental unit was last repainted two years prior to the end of this tenancy I find the landlord's request to recover 25% of the painting bill to be very reasonable and I grant the landlord's request for recovery of that amount.

Upon review of the photographs and receipts and the landlord's undisputed testimony, I accept that the unit was left damaged and unclean by the tenant. I also accept that the amounts claimed by the landlord to clean and remedy the damage to be largely substantiated and reasonable. Therefore, I grant the remainder of the landlord's claims for cleaning, repairs and diminished value of the hardwood floor.

In light of the above findings, I grant the landlord's entire request to recover \$2,002.73 from the tenant. I further award the landlord recovery of the \$50.00 filing fee paid for this application. In partial satisfaction of the amounts awarded to the landlord I authorize the landlord to retain the tenant's security deposit and I provide the landlord with a Monetary Order to serve upon the tenant for the balance remaining of \$1,652.73.

Conclusion

The landlord's application has been granted in its entirety. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,652.73 to serve upon the tenant.

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: June 05, 2012.

Residential Tenancy Branch