



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, the tenant, her legal counsel and her witness.

The landlord originally applied for dispute resolution on these matters on September 5, 2008. As a result of the Application a hearing was conducted on November 5, 2008 and a written decision was provided on November 30, 2008. The tenant requested a new hearing through Review Consideration in February 2009.

A new hearing was granted and on May 11, 2009 the decision confirmed the original hearing decision and order due to the tenant's absence from the new hearing. On November 17, 2011 the tenant was granted, through judicial review, a new hearing and an order to quash the May 11, 2009 decision.

As the May 11, 2009 decision was only to confirm the November 30, 2008 decision the hearing held on June 1, 2012 was conducted as a new hearing on the landlord's Application and both parties were advised that no evidence from the original file would be considered; both parties submitted documentary evidence prior to this hearing to each other and to the Residential Tenancy Branch.

Both parties attended and provided affirmed testimony. The tenant was represented by legal counsel and had one witness attend and provide affirmed testimony.

The tenant submitted on June 8, 2012 a letter addressed to me dated June 6, 2012. As this letter was neither discussed nor requested during the hearing conducted on June 1, 2012 and it was provided outside of the requirements in the Residential Tenancy Branch Rules of Procedure I have not considered the tenant's additional letter in this decision.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit or property; for all or part of the security deposit; for money owed or compensation for damage or loss; and to recover the filing fee from the tenant

for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Both parties submitted a copy of a tenancy agreement signed by the parties on August 22, 2005 for a 5 month and 1 day fixed term tenancy beginning on September 1, 2005 that converted to a month to month tenancy on February 2, 2006 for a monthly rent at the start of the tenancy of \$950.00 due on the 1st of each month with a security deposit of \$475.00 paid. The tenant provided a copy of a rent increase notice raising the rent to \$988.00 on April 1, 2007.

The parties agreed that a condition inspection report was not completed at the start of the tenancy. The landlord testified that the rental unit was new at the start of the tenancy and that this condition is confirmed on the tenancy agreement where the word "new" is handwritten; the landlord specifically identifies this as referring to the carpet.

The landlord provided a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 1, 2008 with an effective date of May 31, 2008 citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The landlord submits the tenant vacated the rental property sometime prior to May 1, 2008 without any notice or advice to the landlord and left "a ton of garbage and furniture behind, all of the windows, doors, and lights on. The tenant did not dispute these submissions.

The tenant and her witness testified that some of the larger pieces of furniture were left behind because the landlord refused, when asked by the tenant's witness, to allow the tenants to move the items through the landlord's personal area of the residential property even though that is how they moved them into the unit in the first place. The landlord testified the tenant never asked permission to do so.

The tenant also testified that during the tenancy the rental unit was infested with rats and that as a result many of her belongings were unsanitary and when she was packing she found rat feces throughout her possessions and she did not want to transport these items to her new home so she left them, including many items with sentimental value.

The landlord confirmed the tenant had complained about a rodent problem for which they investigated and put out poison and only one mouse was found. The landlord testified that if there had been an infestation he and his family would have heard them as they live right upstairs. The tenant testified the landlord refused to call in an exterminator; the landlord testified he runs a pest control company.

The landlord makes the following financial claim:

Description	Amount	Evidence from Landlord	Receipt
Outside entrance stairs and railings – painting repairs	\$1,000.00	None	See below – Walls section include all paint receipts
Keys	\$150.00	Written Submission	\$29.99
Garbage including 30hrs @ \$25.00/hr. to take to dump & 20hrs for room cleanup	\$1,383.00,	Photographic	Gas receipt \$100.00 Dump fees - \$100.00
Walls – Repairs and Painting	\$3935.00	Photographic – at end of tenancy only	\$486.49
Ceiling Tile Replacement	\$350.00	None	None
Electrical – light replacements; cover plates; cable/phone jack and doorbell repairs; exhaust fans and smoke alarm; alarm base	\$1,085.99	Photographic – at end of tenancy only	\$19.37
Plumbing – tub drain; showerhead; toilet seat; laundry tub/faucet/plug; missing kitchen sink plugs	\$154.94	Photographic – at end of tenancy only	\$195.40
General Repairs, including carpentry; knob replacements; towel rack; shelves; blinds; door repairs/painting	\$1,517.37	Photographic – at end of tenancy only	\$474.54
Flooring	\$6,300.00	Photographic at end of tenancy only	\$690.25
Cleaning labour – includes room by room charges for appliances; windows, etc.	\$600.00	Photographic	N/A
Service Calls	\$470.00	None	None
Total	\$17,096.30	N/A	\$2,096.04

I note that the receipts submitted by the landlord were not all complete and in some cases the customer name on the paint receipts were a numbered company and not in the landlord's name.

The tenant, by way of the affidavit she relied upon for her judicial review application and submitted into evidence by the landlord disputes all of the landlord's claim for damage to the rental unit with the following exceptions: the tenant acknowledges breaking a towel rack in the bathroom and damage to a pot light caused by a bulb melting the fixture.

The tenant recognizes that there may have been ceiling tile damage in some of the rental unit but attributes it a plumbing problem from the landlord's residence above. The tenant also disputes the cleaning costs associated with the unit for two reasons:

- The tenant submits there was a rodent infestation that cause there to be a significant amount of rodent feces and urine; and
- The tenant and her witness testified that when they moved into the rental unit the landlord allowed them to move some of their bigger pieces into the rental unit through the landlord's residence because the entry to the rental unit from outside has a sharp angle which did not allow the ability to move in larger pieces.

The tenant made no reference in her affidavit or testimony in response to the landlord's submissions that the tenant failed to return the keys or to the landlord's claim that he did not know when the tenant moved out completely and that the tenant abandoned the unit.

The landlord testified that the tenant or her son never did ask to move items through his residence during their move out and in fact items like the bunk beds left behind should have been dismantled to be removed.

The tenant also submits in her affidavit that she disagrees with an award for lost rental income due to the time it took to repair damage to the unit because the landlord had issued a notice to end the tenancy for landlord's own use and was not intending to re-rent the unit.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As the tenant disputes the majority of the landlord's submission regarding the condition of the rental unit at the start of the tenancy the landlord's burden requires additional evidence that could corroborate his position that the unit was new at the start of the tenancy.

I find that a notation on the tenancy agreement of the word "new" floating in amongst the list of items and services included in the tenancy agreement is insufficient evidence of the condition of any part of the rental unit at the start of the tenancy. Further, landlords are required, under Section 23 of the *Act*, to complete a condition inspection at the start of a tenancy, in part, to ensure there is a record of the condition in case disputes arise.

As there is no record of the condition of the unit at the start of the tenancy, I find the landlord cannot substantiate that any damage in the unit at all is related to the tenancy or caused by the tenant during the tenancy. As such, I find the landlord has failed,

specifically in regard to physical damage to the rental unit, to provide sufficient evidence to establish there was a loss or damage that resulted from a violation of the Act, regulation or tenancy agreement.

I dismiss this portion of the landlord's claim for any of these repairs, with the following exceptions:

1. Replacement of a bathroom towel rack in the amount of \$14.07, as per the landlord's receipt;
2. Replacement of rental unit lock in the amount of \$29.99, as per the landlord's receipt. The landlord claimed \$150.00 for this but provided no documentary evidence to establish this amount; and
3. Replacement of a pot light fixture in the amount of \$30.00. While I found no receipt in the landlord's evidence specific to the cost of pot lights, I find this amount to be reasonable.

Further, I note that the landlord did not apply for compensation for any lost revenue or rent as part of his Application nor is it mentioned in his evidence package or testimony. As such, despite the decision of November 30, 2008, in which the landlord was awarded compensation in the equivalent of two month's rent (\$1,900.00), I have not considered any such compensation in this decision.

Despite the landlord's claim for \$470.00 for service calls including the servicing of all the appliances and cable and phone jack repair, the landlord has provided no documentary evidence such as receipts for these expenses or evidence that there was any problem with the appliances either at the start or end of the tenancy.

In relation to the landlord's claim for compensation for cleaning the unit and removing furniture and other items and removing them from the residential property the landlord, in total, claims \$1,983.00. This amount includes: 20 hours to remove items and garbage from the unit; 30 hours to move those items to the dump; 24 hours in total for specific time frames for specific tasks in each of the rooms; gas \$40.00 and dump fees \$93.00.

Some examples of time frames in individual rooms include: 3 hours for cleaning the stove and overhead fan; 2 hours to clean the kitchen sink; 2 hours each to clean the windows in two of the bedrooms and the kitchen; 3 hours to clean the laundry room, etc. As the tenant did not provide any response to the landlord's claim that she abandoned the unit without notifying him I find, based on the balance of probabilities, that it is unlikely the tenant's son requested access to the landlord's residence to remove some of the larger items.

Further, the tenant testified that she left some of the items because she didn't want them anymore and because some were contaminated with rodent feces and urine. I find the tenant has failed to establish that there was a rodent infestation for the majority of the tenancy, in part, because she failed to provide anything more than one

photograph of items on the carpet that appear that they could be small animal feces. She provided no photographs confirming that any of her belongings contained feces.

As such, I find the landlord has established that tenant failed comply with the Section 37 requirements to leave the rental unit reasonably clean and that as a result the landlord has suffered a loss. As to the value of that loss, I accept the landlord's claim for gas and dump fees as supported by his receipts. While I accept the hourly rate of \$25.00 as reasonable, I am not satisfied the landlord established the time requirements. For example, I find the claim for 2 hours for cleaning a sink or a window to be exaggerated

Based on this, I find a reasonable amount of cleaning time required for individual room cleaning, based on the landlord's photographic evidence to be 8 hours. However, based on the volume of material that had to be removed from the rental unit, I am satisfied the landlord has established a reasonable time frame for this removal.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,707.06** comprised of \$1,583.00 cleaning and garbage removal; \$14.07 replacement towel rack; \$29.99 replacement deadbolt; \$30.00 replacement pot light; and as the landlord was only partially successful in his claim \$50.00 of the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$491.82 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,215.24**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced 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: June 14, 2012.

Residential Tenancy Branch