



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: *MNDC, MNSD, MND, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, the cost of repairs and cleaning and for the filing fee. The landlord also applied to retain the security deposit.

The landlord testified that she served the tenant with the notice of hearing by registered mail to the forwarding address provided by the tenant. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, the cost of cleaning and repairs and the filing fee?

Background and Evidence

The landlord testified that the tenancy started on June 01, 2011 for a fixed term of one year. On November 01, 2011, the tenant gave notice to end the tenancy effective January 31, 2012. The monthly rent was \$3,000.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$1,500.00.

The landlord stated that the rental unit was fully renovated in July 2008 and painted again in July 2010. Move in and move out inspections were conducted and the reports were filed by the landlord. The tenant acknowledged the condition of the home by signing the move out inspection report. Even though the signature is not in the correct section, the tenant also wrote his forwarding address on the report, which indicates that on a balance of probabilities, it is more likely than not that the tenant did attend the move out inspection and signed the report.

The landlord stated that in the first month of the tenancy, the tenant's teenage daughter threw a party for her friends. There were no adults in the home at the time of the party. Several teens gate crashed the party and caused severe damage to the home. A hole was made in the staircase wall, a sliding door was damaged and a toilet was broken.

The landlord stated that the tenant fixed the toilet with glue. The toilet leaked and damaged the flooring.

Despite a warning letter from the landlord, the tenant left on vacation in December, leaving his teenage daughter alone at home. She threw a second unsupervised party which also got out of hand and involved the police closing it down.

Upon receiving the notice to end tenancy, the landlord advertised the availability of the rental unit and filed evidence to support her attempts to find a new tenant. A new tenant was found for March 2012. The landlord is claiming loss of income for February 2012.

The landlord is also claiming the following:

1.	Painting	\$1,089.76
3.	Carpet cleaning	\$274.53
4.	Refrigerator door	\$732.92
5.	Kitchen cupboard and drawer	\$77.68
6.	Dishwasher repair	\$108.06
7.	Floor damage from leaking toilet	\$397.60
8.	Baseboard heater	\$146.07
9.	Basement sliding door	\$91.35
10.	Lights replaced	\$65.00
11.	Garage door remote controls	\$99.98
12.	Bathroom door handle	\$55.70
13.	Toilet and towel bars	\$113.78
14.	Repair chandelier	\$154.67
15.	Loss of income	\$3,000.00
	Total	\$6,648.56

Analysis

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the items that the landlord is claiming for. The landlord has filed receipts for all claims except for her claim of \$65.00 for replacing lights.

1. Painting - \$1,089.76

As per this policy, the useful life of interior paint is four years. The rental unit was painted in July 2010 and therefore at the end of the tenancy, the paint had 2.5 years of useful life left. Accordingly, I find that the prorated value of the balance of the useful life of the paint is \$681.10.

2. Drywall repair - \$241.46

The damage to the drywall was caused by the tenant's daughter's guests and therefore the tenant is responsible for the cost of repair.

3. Carpet Cleaning - \$274.53

The move out inspection report indicates that the carpet needed cleaning. Therefore I find that the landlord is entitled to her claim for the cost of cleaning.

4. Refrigerator door - \$732.92

Residential Tenancy Policy Guideline #1 provides as follows:

The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises. Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

Based on the evidence in front of me, I find that the tenant damaged the surface of the refrigerator door by using an inappropriate abrasive cleaning fluid. However, the landlord has not yet incurred the expense to fix the damage and I also find that the damage is cosmetic. The landlord has filed a quotation for the replacement of the door in the amount of \$732.92. I find that while the door has some scratches on it, this damage does not affect its functionality. However, the damage has reduced the value of the appliance which is approximately 4 years old. Accordingly, I will award the landlord an arbitrary amount towards this loss of value.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Based on the estimate filed by the landlord, the age of the appliance (four years) and the useful life of the appliance as per *Residential Tenancy Policy Guideline #37* (15 years), I award the landlord a minimal award of \$100.00.

5. Kitchen cupboard and drawer - \$77.68

The move out inspection report indicates that there is damage to the kitchen cupboard. The landlord has filed an invoice to support her claim and therefore I find that she is entitled to the cost of repairs.

6. Dishwasher repair - \$108.06

The move out report does not indicate damage to the dishwasher. Therefore the landlord's claim for repair is dismissed.

7. Floor damage from leaking toilet - \$397.60

8. Baseboard heater - \$146.07

9. Basement sliding door - \$91.35

The above items were damaged during the parties hosted by the tenant's daughter in his absence. Accordingly, the tenant is responsible for the cost of repairs.

10. Lights replaced - \$65.00

The landlord has not filed evidence to support this claim and therefore it is dismissed.

11. Garage door remote controls - \$99.98

Based on the verbal testimony and evidence filed by the landlord, I find that she is entitled to the cost of replacing the garage door remote controls.

12. Bathroom door handle - \$55.70

13. Toilet and towel bars - \$113.78

14. Repair chandelier - \$154.67

The move out inspection report does not indicate that these items were damaged. Accordingly, the landlord's claim for replacement and repair of these items is dismissed.

15. Loss of income - \$3,000.00

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

In this case the tenant did give notice to end the tenancy, by serving the landlord on November 01, 2011, a notice to end tenancy effective January 31, 2012 which is prior to the end date of the fixed term.

By ending the tenancy prior to the end date of the fixed term, the tenant breached the agreement and therefore the landlord is entitled to damages in an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement.

As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by making attempts to re-rent the unit.

Section 7(2) of the *Residential Tenancy Act*, states that a landlord who claims compensation for loss that results from the tenant's non compliance with the tenancy agreement must do whatever is reasonable to minimize the loss.

In this case, the landlord advertised the unit and was able to find a renter for March 2012. I find that the landlord made efforts to mitigate her losses but despite her efforts she suffered a loss of income for the month of February 2012. I find that the landlord is entitled to her claim of **\$3,000.00**.

The landlord has established a claim as follows:

1.	Painting	\$681.10
3.	Carpet cleaning	\$274.53
4.	Refrigerator door	\$100.00
5.	Kitchen cupboard and drawer	\$77.68
6.	Dishwasher repair	\$0.00
7.	Floor damage from leaking toilet	\$397.60
8.	Baseboard heater	\$146.07
9.	Basement sliding door	\$91.35
10.	Lights replaced	\$0.00
11.	Garage door remote controls	\$99.98
12.	Bathroom door handle	\$0.00
13.	Toilet and towel bars	\$0.00
14.	Repair chandelier	\$0.00
15.	Loss of income	\$3,000.00
	Total	\$5,109.77

Since the landlord has proven most of her claim she is also entitled to the filing fee of \$100.00.

I order that the landlord retain the security deposit of \$1,500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy*

Act for the balance due of \$3,709.77. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order of **\$3,709.77**.

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 18, 2012.

Residential Tenancy Branch