



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The hearing did not conclude on May 29, 2012 and was adjourned to continue on June 22, 2012.

The landlord and both tenants attended the conference call hearing on both dates and all parties gave affirmed testimony. The parties also provided evidence in advance of the hearing. The landlord provided evidence that was not received by the tenants or the Residential Tenancy Branch within the time provided for in the Residential Tenancy Branch Rules of Procedure, however the tenants did not oppose the inclusion of that evidence. The parties were given the opportunity to cross examine each other on the testimony and evidence provided, all of which has been reviewed and is 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 or utilities?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began in 1983 and ended on August 28, 2011. Rent in the amount of \$1,175.00 per month was payable in advance on the 1st day of each

month, plus all utilities. The landlord did not collect a security deposit from the tenants at any time before or during the tenancy.

The landlord testified that the rental unit was owned by the parents of one of the tenants and in January, 2006 the brother of the tenant purchased it. The person named as landlord is the property manager for the owner.

The landlord further testified that the parties appeared before a Dispute Resolution Officer with Residential Tenancy Branch previously. During the course of that hearing, the tenant acknowledged owing the landlord \$2,640.00 and by mutual agreement the rent increased by \$220.00 per month for the months of February, 2011 to January, 2012 which would pay out that debt. However, the tenants did not reside in the rental unit that long, the tenants did not pay rent for the month of August, 2011, and the landlord claims the balance due of \$1,320.00. The landlord received a cheque from the tenants in September, 2011 in the amount of \$1,390.00 but the landlord did not cash it. The landlord further claims unpaid rent for the month of August, 2011.

The landlord also testified that the tenants failed to pay the water bill, and the landlord claimed \$250.81 for that bill, but withdrew the application during the course of the hearing.

The tenants also left the oil tank dry and the landlord filled it half full at a cost of \$632.19, although the landlord is not certain whether or not the tenants had an agreement for filling the tank before moving out. A copy of the receipt has been provided for this hearing.

The landlord further claims \$675.00 for cleaning costs at the end of the tenancy, and provided a receipt for that service as well as photographs to illustrate the need for cleaning left by the tenants.

The landlord further claims the following damages:

- \$51.08 for casings and supplies to fix the doors and replacement of broken door frames;
- \$729.13 for repairing a damaged hardwood floor in the hallway; the tenants had duct taped carpeting on the flooring, and the landlord claims \$4.75 per square foot for the hall and closet; the floors are 56 years old, having been refinished sometime in the 1970's;
- \$826.20 for replacement of 2 windows; one was covered with stickers that could not be removed and another was broken. The windows were the original single-paned windows in the house and had not been replaced during the tenancy;

- \$139.86 for replacing the ceiling in the basement; the ceiling had been finished with tiles that were broken during the tenancy, and the landlord replaced it with gypsum;
- \$21.95 for a broken globe for the bathroom light which was cracked during the tenancy and light switches which were beyond cleaning and replaced by the landlord;
- \$3.76 for replacing burned out light bulbs;
- \$68.51 for replacement of the furnace ducting; the tenants had hit the ducting and knocked it out and replaced it improperly held with duct tape;
- \$547.17 for painting due to smoking in the home, although the landlord agrees that no smoking in the rental home was not part of the tenancy agreement; the home was last painted in 2008;
- 3 receipts for painting supplies, one at \$12.91 and one at \$13.26, and one at \$35.82;
- \$20.15 for knee pads for painting;
- \$204.29 for paint;
- \$112.26 for ceiling primer;
- \$82.00 for more paint;
- \$4.99 for brushes;
- \$20.03 for calking to fill the holes in the walls in the bathroom and bedroom and sandpaper one wall had more than 50 picture holes;
- \$25.80 for hauling debris to the local landfill that was hidden behind the cedar trees;
- \$34.41 for more debris to the local landfill;
- \$66.66 for removing a shelf and picnic table belonging to the tenants taken to the local landfill;
- \$258.12 for labor to move the debris;
- \$19.57 for mouse traps and bait due to the rodents attracted by the tenants' belongings in the yard;
- \$59.69 for a missing shower head.

The landlord also testified that the stove, fridge, washer and dryer were all damaged or dirty beyond repair or cleaning, and the landlord claims half of the replacement of the stove, fridge, braided hose for the washer and delivery charges at \$1,083.76. Further, the cupboard hinges were loose, dryer vent pipes required repair and the landlord claims an additional \$59.69 for the shower head which was missing at the end of the tenancy. During cross examination, the landlord testified that the fridge and stove were purchased second-hand in 2003.

The landlord also testified that the Residential Tenancy Branch accepted from the tenants an Application for a Review Hearing of the Decision made on June 21, 2011 wherein the landlord was granted an Order of Possession. The Application for Review Hearing was accepted 45 days after the tenants received the Decision, contrary to the Act, which resulted in a delay to the landlord's ability to obtain a Writ of Possession. The landlord also claims Court costs in the amount of \$2.00 for photocopies and \$120.00 for obtaining a Writ of Possession.

The first tenant testified that his father built the house in the 1950's and had been renting it out. The home was not in great shape, and the tenant's father and the tenant did some fixing but the tenant's father didn't believe in pristine repairs and felt the home wasn't worth it. The tenant's father passed away in 2001 and the tenant's brother bought it in 2005 or 2006. The tenant's mother made some improvements, and the tenants did as well over the years.

The tenant further testified that the hearing in July, 2011 resulted in an Order of Possession in favour of the landlord effective August 31, 2011. The tenants would have completed more cleaning to the rental house, but the landlord forced the tenants out 3 days early.

With respect to the shower head, the tenant testified to giving his brother, the owner of the house a new shower head about a day after moving out.

The tenant also testified that the ducting in the basement came loose, and the tenant was told by his brother to put it back up using duct tape due to asbestos, which he did.

The tenant also testified that the Residential Tenancy Branch has been misled by the named landlord, who has only been around for about 9 months. The tenant's brother and the named landlord now reside in the rental house.

The other tenant testified that the kitchen and bathroom floors were replaced twice during the tenancy by the tenants. The tenants also replaced the shower/bathtub surround, valances and other improvements but were not compensated for it, nor did they expect it; it was a family house.

The tenants also provided strings of printed emails exchanged between the parties.

Analysis

In the circumstances, I am satisfied that the tenants failed to pay the outstanding amount of \$1,320.00 that was agreed to at the hearing on January 10, 2011, and the landlord is entitled to a monetary order in that amount.

With respect to unpaid rent, the landlord testified to receiving a cheque in September, 2011 but the landlord did not cash it. It's unclear why the landlord didn't cash the cheque, however it is likely stale-dated and not likely to be honoured by any financial institution. **I direct the landlord to return the cheque to the tenants**, and I grant a monetary order in favour of the landlords in the amount of \$1,061.29 for the rent owing from August 1, 2011 to August 28, 2012, being the date that the tenants actually vacated the rental unit.

The tenant testified that the landlord forced the tenants from the rental unit on August 28, 2011, which was not disputed by the landlord. However, I have reviewed the documents and letters provided by the parties, and it's clear that the Order of Possession granted on June 21, 2011 is effective July 31, 2011 but the parties agreed that if there were disturbances to the neighbours, the landlord would be at liberty to serve the tenants with the Order of Possession, and if there were no disturbances, the tenants would move from the rental unit by August 31, 2011 and the Order of Possession would not be served on the tenants until August 31, 2011. The tenants took from that order that they would remain in the rental unit until August 31, 2011, however, the documents show that the tenants' son caused disturbances while the tenants were not at home and the landlord provided a letter to the tenants dated July 23, 2011 indicating that as a result of the disturbances, the tenancy would end on July 31, 2011. The tenants stated that they were unable to finish cleaning the rental unit due to the landlord's hasty actions in forcing the tenants from the rental unit on August 28, 2011. The tenants did not dispute that they received the letter of July 23, 2011, and therefore I cannot accept that the tenants did not have notice that they would be required to move out by the end of July, 2011.

I have also reviewed the receipt for cleaning in the amount of \$675.00. The receipt is very generic, and is dated Sept 2011 and states, "45 h at \$15." I have also reviewed the photographs provided by the landlord and I question when the cleaner was at the rental unit, how many days the cleaner was there, and why it would take 45 hours to clean an empty house especially considering that the appliances, light switches and other items in the house were disposed of. The emails exchanged between the parties indicate that the owner of the property told the tenants not to bother cleaning because the owner and the landlord would be renovating. That testimony is not disputed by the landlord, and I find that the landlord has failed to establish that the tenants are responsible for the cleaning bill in the amount of \$675.00.

It is also not clear whether or not the oil tank was filled for the tenants prior to moving into the rental unit, or if the parties agreed that the tenants would fill it prior to moving out. The parties testified that the tenants paid all utilities, but there is no evidence before me that the parties agreed that the tenants would fill the tank thereby providing heat to a future tenant or the landlord. Therefore, I find that the landlord has failed to establish any claim for filling the oil tank, and that portion of the landlord's application is hereby dismissed.

With respect to the remaining damages claimed by the landlord, the *Act* states that a tenant is to leave a rental unit reasonably clean and undamaged except for normal wear and tear. I have reviewed the photographs and the receipts provided by the landlord. During the hearing, I also advised the parties that due to the length of the tenancy, many items may have been required to be replaced in any event because they have passed their life expectancy, and any award I make in favour of the landlord must not put the landlord in a better financial position than the landlord would be if no damage had been caused in the rental unit. For example, replacing a hardwood floor that was near 60 years old would provide the landlord with a new floor. If the tenants had not resided in the rental unit, the landlord would have a 60 year old floor, not a new floor. Also, in order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

The Residential Tenancy Branch publishes Policy Guidelines on the website, which I refer to. Policy Guideline #40 – "Useful Life of Building Elements" sets out the useful life in years of items commonly found in a rental home. The policy states:

"If the dispute resolution officer finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the dispute resolution officer may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

"If the item being replaced was used when first installed, then the useful life will be determined by taking into account the length of time of that previous use."

The landlord provided receipts for \$17.20 for casings and other materials and \$10.58 for replacement of broken door frames. Although door frames are not included in the

Policy Guideline, window frames are deemed to have a useful life of 15 or 20 years depending on whether they were made of wood or aluminum. This was a 28 year tenancy, and I find that the useful life of those building elements has expired and the landlord is not entitled to recovery of those items.

The useful life of a hardwood floor is 20 years, and the parties agree that the floors are near 50 or 60 years old, although the landlord testified that they were in good condition, having been refinished in the 1970's. I cannot accept that the landlord has knowledge of the condition of the hardwood flooring at the outset of the tenancy because the landlord has not testified to being in the rental unit when the tenancy began in 1983 or in the 1970's. That is still well beyond the useful life, and the landlord's application requesting that the tenant pay for repairs cannot succeed.

The useful life of windows is 15 years and the parties agree that the windows in the rental house were original single paned windows, and the house was built in the 1950's or 1960's. It's also clear to me that replacement in the amount of \$826.20 for 2 windows is obviously replacement with a better quality of windows than the landlord would be entitled to. The landlord's application for replacement of the windows is hereby dismissed.

The landlord also claims \$139.86 for replacing the ceiling in the basement stating that the ceiling had been finished with tiles that were broken during the tenancy, and the landlord replaced it with gypsum. The landlord did not provide any evidence or testimony of whether or not the replacement gypsum is a better quality or more expensive type of ceiling than replacement with tiles would be. Therefore, I dismiss the landlord's application for replacing the ceiling.

Although I find that the broken globe for the bathroom light and replacement of light switches are normal wear and tear, I find that the tenants were responsible for replacing light bulbs and the landlord is entitled to recovery of \$3.76.

With respect to replacement of the furnace ducting, the landlord testified that the tenants had hit it and knocked it out, replacing it improperly using duct tape to hold it in place. The tenant testified that it was not knocked out, and that he was told to leave it the way it was due to fears of asbestos, and should not be held responsible. I find that the named landlord was not the landlord that spoke to the tenant, and therefore, the named landlord has no personal knowledge of the facts surrounding that repair, and the landlord's application for repairing it must be dismissed.

The useful life of interior paint is 4 years, and the parties agree that the last time the rental home was painted was in 2008, which was 4 years ago. Therefore, the landlord's application for paint and supplies for painting the rental unit is dismissed.

I accept the landlord's application for hauling debris to the local landfill, but I find that the landlord has not provided a clear explanation for the receipts provided. Some of the receipts are dated late November, 2011 which is 3 months after the tenancy ended, and I hereby grant a monetary order in the amount of \$359.19, including labor.

I find that the landlord's claim for \$20.03 for calking to fill the holes in the walls in the bathroom and bedroom and sandpaper, are normal wear and tear for a 28 year tenancy.

The useful life of a fridge and stove is 15 years, however no one provided any evidence or testimony as to the age of the appliances. The parties agree that they were purchased second hand in 2003. The landlord purchased new appliances and has claimed half the cost. I find that the landlord has failed to establish the worth of the appliances that were replaced.

I find that the landlord has failed to establish that mice or other rodents were caused by the tenants, and the landlord's application for traps and bait is hereby dismissed.

The tenant testified that the owner was provided with a shower head by the tenants, which was not disputed by the landlord, and I find that the landlord has failed to establish that the tenants left the rental unit without a shower head and the landlord's application for another replacement is hereby dismissed.

The landlord has moved into the rental unit, and I find that the landlord has attempted to have the tenants pay for costs to bring the rental unit into a state that the landlord would want the unit to be in for the landlord's own purposes. That is not the intent of the *Act*, and the landlord is not entitled to those claims.

With respect to the landlord's claim for Court costs, I have reviewed the receipts provided by the landlord and I accept that the receipt dated August 22, 2011 represents the filing fee for a Writ of Possession. The landlord was, however, unable to explain the receipt in the amount of \$40.00 dated August 25, 2011. I find that the landlord has failed to establish that the tenants are responsible for both charges, and I grant the landlord a monetary order in the amount of \$80.00 plus \$2.00 for photocopy fees the same day.

In summary, I find that the landlord has established a claim in the amount of \$1,320.00 for a previous order not yet fully paid, \$1,061.29 for unpaid rent for the month of August,

2011, \$3.76 for replacement of light bulbs, \$359.19 for hauling debris to the local landfill, and \$82.00 for Court costs. The landlord has also paid \$100.00 filing fee which is the rate for a claim in excess of \$5,000.00. A claim under \$5,000.00 requires a \$50.00 filing fee. Having found that the landlord has attempted to claim wear and tear or replacement items for the landlord's own purposes to move into the rental unit, I find that the landlord is entitled to recovery of \$50.00 of the filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,876.24.

This order is final and binding on the parties and may be enforced.

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: July 5, 2012.

Residential Tenancy Branch