



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the Act, sent via registered mail on May 18, 2012. Service of the evidence was also sent registered mail on July 9, 2012. Mail receipt numbers were provided in the Landlord's evidence. Based on the submissions of the Landlord I find that each Tenant was sufficiently served notice of this hearing so I proceed to hear from the Landlord in the Tenants' absence.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

The Landlord submitted copies of the following into evidence: a list outlining the items being claimed, the tenancy agreement, move in condition report, invoices, a notice of rent increase, and 17 photos.

The Landlord confirmed the parties entered into a month to month tenancy agreement that began on February 1, 2010. Rent was payable on the first of each month in the amount of \$741.00 and on January 31, 2010 the Tenants paid \$362.50 as the security

deposit. The Tenants attended the move in condition inspection on January 31, 2010 however they did not attend a move out inspection.

The Landlord advised that the Tenants contacted her on October 6 or 7, 2011 to advise they were moving out. She stated she agreed to end the tenancy as of October 31, 2011. She advised that she made several attempts to schedule the move out inspection however the Tenants would never return her calls.

The Landlord submitted that she attended the unit on October 31, 2011 to conduct the move out inspection and spoke with Tenant CB who advised the Landlord they were not able to get into their new place until November 1, 2011 so they requested to keep possession of the rental unit until November 5 or 6, 2011. The Landlord stated the Tenant agreed to call her to arrange a time for the move out inspection the following week, however she did not call. The Landlord drove by the unit on November 6, 2011 and there was no one home. She returned the following week and had a neighbour attend the unit with her and they found the house empty.

The Landlord is seeking monetary compensation for cleaning and damages caused by the Tenants. She advised the rental unit is a house which she has owned for approximately 10 – 15 years. The Landlord did not know the age of the house however after reviewing the photographs the Landlord agreed that the linoleum appeared to be from the early 1970's.

The Landlord is seeking the following amounts:

\$741.00	For November rent as the Tenants did not vacate the unit on October 31, 2012 as agreed instead they stayed in the house and the Landlord did not regain possession until November 12, 2011.
\$36.00	Labour to rake leaves, cut lawn, and remove debris from the yard
\$25.00	Labour to repair closet door at the main entrance. The door appeared to be original to house which appears to have been built sometime in the late 1960's or early 1970's, however the Landlord did not know the exact age of the door
\$30.00	Charge for the hole that was left in the carpet. The Landlord did not know the age of the carpet and confirmed she has no intention of having the hole patched or repaired and was not intending on having the carpet replaced.
\$180.00	Labour to repair all the holes in the walls and complete the touch up painting which is 15 hours x \$12.00 per hour. The Landlord did not know

	the date when the unit was last painted. This also includes labour to change the locks as the Tenants did not return the keys.
\$30.00	2 missing window blinds. The Landlord did not know the age of the blinds and has no plans to purchase replacement blinds.
\$25.00	Labour to replace the floor transition piece that was between the carpet and linoleum. The Landlord had a strip in stock and did not know the cost of the materials
\$50.00	Floor damage in front bedroom. The Landlord did not know the age of this floor and did not have the floor repaired. Instead she put down throw carpets over the damaged tiles.
\$600.00	Labour to repair the water damaged wall and floor in the bathroom. This is 30 hours x \$20.00 per hour. The Landlord confirmed that during the tenancy there was wall paper covering the wall and linoleum on the floor. She submitted that when she was cleaning the bathroom she noticed the floor was spongy and upon further investigation they found the wall beside the tub mouldy from water damage and the plywood under the linoleum floor was rotten which had to be repaired.
\$88.48	To have the carpets cleaned as supported by the invoice provided in evidence.
\$43.03	For registered mail costs to serve the Tenants the hearing documents and evidence
\$300.97	For various receipts provided in evidence. This amount includes the cost for carpet cleaning. The Landlord did not provide a detailed list indicating which items were included in this amount and was not able to provide a clear accounting of which items off of which receipts were included in this amount. The Landlord did point to several receipts that were provided into evidence that had "X" across them and some items hi-lighted on other receipts.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenants who did not appear, despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by their documentary evidence.

The evidence supports the parties mutually agreed to end this tenancy as of October 31, 2011 however the Tenants remained in the unit. The Tenants had agreed to call the Landlord when they were ready to conduct the inspection however they did not call and

simply abandoned the unit. The Landlord did not regain possession of the unit until November 12, 2011.

The *Residential Tenancy Policy Guideline #3* stipulates if a tenant remains in possession of the premises (over holds) after the tenancy ended, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. Therefore I award the Landlord **\$267.97** (11 days x \$24.36 daily rate). The balance of the Landlord's claim for November 2011 rent is dismissed.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear and return all keys to the landlord.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

As per the foregoing I find the Landlord has met the burden of proof and I award them damages as follows:

Labour costs to clean and repair the yard, the closet, walls, changing of locks, floor transition piece, for a total amount of **\$266.00** (\$36.00 + 25.00 + 180.00 + 25.00).

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

The Landlord has sought compensation of \$110.00 (\$30.00 + 30.00 + 50.00) for damages caused to the carpet, the front bedroom floor, and for two missing blinds. The Landlord did not know the age of these items nor was she intending to replace or repair them. Based on the photos provided by the Landlord it appears the carpet and flooring have exceeded their normal useful life as listed in *Residential Tenancy Policy Guideline*

40. There were no photos of the window blinds and no proof of the quality of the blinds that were taken by the Tenants.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer 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. In this case I find that the Landlord is entitled to nominal damages for the carpet, bedroom floor, and missing blinds in the amount of **\$50.00**.

The Landlord has sought \$600.00 in labour to repair / replace the bathroom sub floor and drywall around the tub and toilet. Based on the photographs and the Landlord's submissions of the extent of the damage I find this damage to be the result of numerous years of water splashing outside of the shower and not just the result of this 20 month tenancy. Furthermore, this damage would have been concealed by the wallpaper and linoleum, leaving it unnoticed for several years. Therefore, I dismiss the Landlord's claim for labour to repair the bathroom.

The evidence supports the Tenants did not have the carpets cleaned at the end of their tenancy. Therefore I approve the Landlord's claim of **\$88.48** for carpet cleaning.

The Landlord seeks recovery of \$43.03 for registered mail packages sent to the Tenants in order to file this claim. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred by choice. The Act provides for several methods of service, some of which do not incur costs. Therefore, I find the landlord has chosen to incur registered mail costs that cannot be assumed by the Tenants, and the claim is dismissed.

The Landlord claimed \$300.97 for purchases on various receipts provided into evidence; however the Landlord did not provide a detailed list indicating the item purchased and amount claimed and could not provide accurate testimony as to what was being claimed or why. Therefore, I find this portion of the Landlord's claim does not disclose the full particulars and I hereby dismiss the claim of \$300.97 for materials purchased.

The Landlord has been partially successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Over holding charges	\$267.97
Labour	266.00
Nominal damages	50.00
Carpet cleaning	88.48
Filing Fee	<u>50.00</u>
SUBTOTAL	\$722.45
LESS: Security Deposit \$362.50 + Interest 0.00	<u>-362.50</u>
Offset amount due to the Landlord	<u>\$ 359.95</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$359.95**. This Order is legally binding and must be served upon the Tenants.

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 20, 2012.

Residential Tenancy Branch