



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for compensation for losses due to damage at the rental unit, and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified they served the Tenant with the Application and Notice of Hearing by sending it registered mail on June 25, 2012. Under the Act such mail is deemed to be received five days later. The Landlord sent this mail to an address for service which the Tenant agreed to use for mail in a Provincial Court order between the parties. The Landlord submitted a copy of this order, which indicates all mail for the Tenant may be sent to the address the Landlord used, with the agreement of the Tenant. Nevertheless, the Tenant did not appear at the hearing. I find the Tenant has been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on May 27, 2008, and the parties entered into a written tenancy agreement. The monthly rent was \$2,000.00 per month. No security deposit was paid. The Landlord performed incoming and outgoing condition inspection reports. However, the Tenant did not participate in the outgoing inspection.

The affirmed testimony and the evidence provided by the Landlord shows the Tenant was ordered on September 28, 2010, by a Dispute Resolution Officer of the Branch, to vacate the rental unit for non-payment of rent.

The Tenant vacated the property on October 6, 2010. The Landlord alleges they have incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenant. The Landlord is also claiming that rent was unpaid for September and due to the condition the rental unit was left in by the Tenant it could not be rented for two additional months, while the repairs were performed.

In support of the claims, the Landlord has provided a copy of the tenancy agreement, the move in and move out condition inspection reports, a Notice to End Tenancy, copies of a decision and orders from the earlier Direct Request proceeding, numerous photographs and many receipts.

The Landlord provided evidence that prior to this tenancy the rental unit had been completely renovated, with new appliances, floor coverings and fresh paint throughout. The Tenant agreed to this in the move in condition inspection report.

The Landlord testified and submitted evidence that when the Tenant left the rental unit he broke windows in both the front and back doors, punched or kicked holes in doors throughout the rental unit, removed a door from the garage and left ruined carpets with large stains.

The Landlord testified that it appeared the carpet stains might have been caused by cups of coffee being spilled on the carpets, in several places around the unit. The Landlord testified it also appeared that fecal matter had been ground into the carpet.

The Landlord testified that the Tenant had installed a fence around the property due to having two pit bull dogs. The Landlord testified that he and the Tenant had agreed that when the tenancy ended the fence would be left there. When the Tenant left he removed the fence and left the holes from the fence posts unfilled and much debris behind. The Landlord testified and submitted evidence that the dogs had dug up many holes in the backyard. It also appears the dogs damaged several of the window blinds inside the rental unit.

The Tenant had failed to pay a gas bill and the meter had been removed by the gas company. The Landlord had to arrange to have the meter reinstalled and the gas service restored.

The Landlord further testified and submitted in evidence that there was a missing door for the garage, that the appliances had been dented, damaged and moved, that the light bulbs for the rental unit had been removed and that a baseboard heater no longer functioned. There were damaged electrical plates and switches left as well.

The Landlord testified and submitted in evidence that the Tenant had left tires, garbage and other debris at the rental unit which had to be hauled away and disposed of. The evidence of the Landlord is that the Tenant damaged floor tiles, cut holes in the drywall around the electrical panel, damaged other drywall, spray painted portions of the walls, and left a mural painting or decal on another wall.

The Landlord claims as follows:

a.	Rent for September, October and November 2010	6,000.00
c.	Repair of doors and glass	640.62
d.	Repair of yard after fence removed	616.00
e.	Estimate for fence replacement	3,600.00
f.	Estimate for painting	3,800.00
g.	Labour by the Landlord @ \$50.00 per hour	12,675.00
h.	Carpet and Flooring repairs	2,717.44
i.	Mileage claimed by Landlord	717.08
j.	Dump fees	124.00
k.	Filing fee	100.00
	Total claimed	\$32,935.35

I note that monetary claims under the Act are limited to the jurisdiction of the Provincial Court, in the amount of \$25,000.00, and the Landlord has abandoned the portion of the claim exceeding \$25,000.00.

Analysis

Based on the affirmed testimony, the uncontradicted evidence and photographs, and on a balance of probabilities, I find as follows.

In a claim for damage or loss under the Act or tenancy agreement, the Applicant making the claim, here the Landlord must provide evidence sufficient to prove:

1. That the damage or loss exists;
2. That the damage or loss occurred due to the action or neglect of the respondent in breach of the Act or tenancy agreement;

3. Verification that the amount claimed for the damage or loss is the actual amount required for compensation; and
4. That the Applicant mitigated, or minimized, the loss or damage in accordance with section 7 of the Act.

In this instance, I find the Landlord has proven that the Tenant has breached section 37 of the Act by not leaving the rental unit reasonably clean and undamaged.

I find the Landlord has verified his losses for much of the claim and that the Landlord mitigated their losses by performing much of the work themselves.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the Tenant did a significant amount of damage to the rental unit which has caused substantial losses to the Landlord. I further find the Tenant left the rental unit without cleaning it, which caused the Landlord further losses.

I allow the Landlord's claims as follows:

a.	Rent for September, October and November 2010	6,000.00
c.	Repair of doors and glass	640.62
d.	Repair of yard after fence removed	616.00
e.	Labour by the Landlord @ \$25.00 per hour	6,337.50
f.	Carpet and Flooring repairs	2,717.44
g.	Dump fees	124.00
h.	Filing fee	100.00
	Total awarded	\$17,604.77

I allow the Landlord rent for three months, as the Tenant was still in possession of the rental unit in September and failed to pay rent for the month, and due to the condition the rental unit was left in by the Tenant, the Landlord could not rent it for two more months.

I do not allow the Landlord mileage for attending at the rental unit to do the work. This is a cost of business and not compensable under the Act.

I have also reduced the hourly amount allowed to the Landlord as he had no evidence he was a professional tradesperson who could charge a tradesperson's hourly rate.

I also do not allow the estimate for the cost of replacing the fence as the Landlord cannot be put in a better position than he would have been had it not been for the Tenant building the fence, although the Landlord is compensated for the filling of holes and labour to make repairs. I also find that the Landlord has performed much of the painting in the rental unit and has been compensated for his materials and labour.

I find that the Landlord has established a total monetary claim of **\$17,604.77**, comprised of the above described amounts and the fee paid for this application. I grant and issue the Landlord a monetary order in these terms. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant has breached the Act by failing to clean the rental unit and by leaving it with significant damages. The Landlord is compensated for his proven losses in the amount of **\$17,604.77**

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: August 29, 2012.

Residential Tenancy Branch