



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 was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages to the unit;
2. For money owed or compensation for loss under the Act;
3. For a monetary order for unpaid rent; and
4. To keep all or part of the pet deposit or security deposit.

The tenants' application is seeking an order as follows:

1. Return of all or part of the pet deposit or security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the unit?

Is the landlord entitled to a monetary order for compensation for loss under the Act?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the pet deposit and security deposit?

Are the tenants entitled to the return of the pet deposit and security deposit?

Background and Evidence

The parties entered into a one year fixed term tenancy agreement which expired on February 28, 2012. On February 28, 2012, the parties entered into an extension of the fixed term tenancy agreement, which was to expire on July 31, 2012. Rent in the

amount of \$1,400.00 was payable on the first of each month. A security deposit of \$700.00 and pet damage deposit of \$500.00 were paid by the tenants. The tenancy ended on June 1, 2012. Filed in evidence are copies of the fixed term tenancy agreement and the extension of the fixed term tenancy agreement.

The parties participated in a move-in inspection. The tenant did not participate in a move-out inspection and acknowledges she received a notice of final opportunity to inspect the rental unit. The landlord completed the move-out inspection in accordance with the Act. Filed in evidence is a copy of the move-in and move-out inspection report.

Landlord's application

The landlord claims as follows:

a.	Loss of rent for June and July 2012	\$850.00
c.	Missing area rug	\$168.37
d.	Missing shower curtain and hangers	\$33.60
e.	Two missing thermostats	\$29.01
f.	Lock re-keying	\$86.28
g.	Cleaning rental unit	\$537.60
h.	Carpet cleaning	\$84.28
i.	Filing fee	\$50.00
	Total claimed	\$2,029.59

Loss of rent for June and July 2012

The landlord testified that the tenants breached the fixed term tenancy agreement as it was not due to expire until July 31, 2012, and the tenants moved from the rental unit on June 1, 2012. The landlord stated he was able to find new tenants on May 22, 2012, however, the new tenancy did not commence until June 15, 2012, and their rent was negotiated at a lower amount of \$1,300.00 per month. Filed in evidence is a copy of the new fixed term tenancy agreement.

The landlord testified he received \$650.00 from the new tenants for June 2012, rent and the difference between the two rents was \$750.00. The landlord stated he received \$1,300.00 from the new tenants for July 2012, rent and the difference between the two rents was \$100.00. The landlord seeks to recover the differences between the two rents in the amount of \$850.00.

The tenant testified that she and the landlord were both actively trying to find new tenants, however, the tenant felt the landlord could have done more to help minimize the loss.

Cracked mirror on sliding glass door

The landlord testified the tenant damaged the mirror in the sliding door, and as a result the door has to be replaced. The landlord seeks to recover \$190.39 to replace the mirrored door. Filed in evidence is a photograph of the cracked mirror.

The tenant testified that the mirror was cracked due to some blasting in the area, and should not be responsible to replace the mirror.

The landlord disputes such a claim.

Missing area rug

The landlord testified that attached to the tenancy agreement is an addendum which lists furnishing which were supplied for the rental unit at the start of tenancy. The landlords stated under no circumstances were these items to be removed for the unit. Filed in evidence is a copy of the items that were in the rental unit at the beginning of tenancy, signed by the parties.

The landlord testified at the end of the tenancy the area rug was no longer in the unit. The landlord seeks to recover the amount of \$168.37 for the missing area rug. Filed in evidence is a copy of the receipt to replace the area rug.

The tenant testified that she had the landlord permission to dispose of the rug.

Missing shower curtain and hangers

The landlord testified that tenants did not leave the shower curtain or shower hangers at the end of tenancy. The landlord seeks to recover the amount of \$33.60 to replace the curtain and hangers.

The tenant testified that both the shower curtain and hangers were left in the rental unit at the end of tenancy.

Two missing thermostats

The landlord testified the tenants removed two thermostats from the bedroom wall as they were in the way of a sliding door. The landlord stated the tenants had his permission to remove the thermostats, however, the tenants did not leave the thermostats behind so they could be reinstalled. The landlord seeks to recover the amount of \$29.01. Filed in evidence is a copy of the receipt.

The tenant testified that the thermostats were never removed as the landlord never had the thermostats installed and she covered up the holes with blank plates.

The landlord disputes the tenants claim.

Lock re-keying

The landlord testified that the tenant did not return all the keys and had to have the locks rekeyed. The landlord seeks to recover the cost of \$86.28. Filed in evidence is a receipt for have the locks re-keyed.

The tenant testified that one set of keys were left on the counter and the other set was placed through the screen window.

Cleaning rental unit

The landlord testified the tenants did not clean the rental unit and it took him twelve hours to clean the entire unit, which included the kitchen and all the appliances. The landlord stated he seeks to be paid \$537.60 as that was the estimated amount the cleaning company would charge him to clean the unit. Filed in evidence are photographs of the rental unit. Filed in evidence is an estimate from a cleaning company.

The tenant acknowledged they did not clean the rental unit. The tenant stated it should have only taken the landlord about six hours to clean the entire unit and the amount the landlord is charging is excessive.

Carpet cleaning

The landlord testified the tenants did not clean the carpets at the end of the tenancy and the carpets were stained from their pets. The landlord stated he paid to have the carpets cleaned, however, they were not able to remove the stains and he had the carpets replaced. The landlord states he was not requesting compensation for replacing the carpets, however, he seeks to recover the cost of have the carpets cleaned in the amount of \$84.28.

The tenant acknowledges the carpets were not cleaned at the end of tenancy.

Tenants' application

The tenants' claims as follows:

a.	Return of pet deposit and security deposit	\$1,250.00
	Total claimed	\$1,300.00

The tenant testified she seeks to recover the pet deposit and security deposit paid to the landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, both parties have the burden of proof to prove a violation of the Act and a corresponding loss.

Section 21 of the Act States a condition inspection report completed in accordance with this section is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Landlord's application

Loss of rent for June and July 2012

The Residential Tenancy Act states - Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(b) is **not earlier than the date specified in the tenancy agreement** as the end of the tenancy. [Emphasis added.]

I find that the tenants have breached section 45 of the Act as the earliest date they could have legally ended the tenancy was July 31, 2012, as stated in the tenancy agreement.

The Residential Tenancy Act states - Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, the parties entered into a fixed term tenancy agreement which was to expire on July 31, 2012. Both parties actively sought new tenants and on May 22, 2012, the landlord entered into new fixed term tenancy agreement which was to begin on June 15, 2012, at a reduced rent of \$1,300.00 per month.

As the new tenancy agreement did not commence until June 15, 2012, and the rent was negotiated at a lower level to minimize the loss, the landlord is entitled to recover the differences between the two rents. The landlord received a proportion of June 2012, rent from the new tenants in the amount of \$650.00, leaving a rent balance of \$750.00 owing. The landlord received \$1,300.00 from the new tenants for July 2012, rent leaving a rent balance owing of \$100.00. I find the landlord is entitled to recover the loss of rent for June 2012, and July 2012 in the amount **\$850.00**.

Cracked mirror on sliding glass door

The tenant acknowledged there was a crack in the sliding mirror door. The evidence of the tenant was the mirror was cracked by the blasting in the area. The landlord dispute the tenants claim. I find the tenant has provided insufficient evidence to support her claim. Therefore, I find the landlord is entitled to recover the cost of repairing the sliding mirror door in the amount of **\$190.39**.

Missing area rug

In this case, the addendum to tenancy agreement indicates there was an area rug provided to the tenant at the start of tenancy. The tenant claims that she had permission to dispose of the rug. I find the tenant has failed to prove that she had the landlords consent to dispose of the rug. Therefore, I find the landlord is entitled to compensation for loss under the Act in the amount of **\$168.37**.

Missing shower curtain and hangers

In this case, the evidence of the landlord was the shower curtain and hangers were removed at the end of tenancy. The evidence of the tenant was these items were left behind. The tenant did not participate in the move-out inspection and the report was completed in accordance with the Act. The report indicated the shower curtain and hangera were missing on the date the inspection was completed. Therefore, I accept the landlord testimony and documentary evidence over the tenants disputed testimony.

I find the landlord is entitled to compensation for loss under the Act in the amount of **\$33.60.**

Two missing thermostats

In this case, the evidence of the landlord was the tenants remove two thermostats. The evidence of the tenant was these thermostats were never provided by the landlord. The tenant did not participate in the move-out inspection and the report was completed in accordance with the Act. The report indicated two thermostats were missing on the date the inspection was completed. Therefore, I accept the landlord testimony and documentary evidence over the tenant disputed testimony. I find the landlord is entitled to compensation for loss under the Act in the amount of **\$29.01.**

Lock re-keying

The evidence of the tenant was that she did not provide the keys directly to the landlord. The evidence of the landlord was he did not receive all the keys to the rental unit and was required to have the locks rekeyed. I find the tenant has failed to prove the landlord received all the keys to the rental unit. The landlord was obligated to have the locks rekeyed to ensure the tenants not longer had access to the rental unit. Therefore, I find the landlord is entitled to compensation for loss under the Act in the amount of **\$86.28.**

Carpet cleaning

The tenant acknowledged the carpets were not steam cleaned at the end of tenancy.

Policy Guideline 1. Landlord & tenant – responsibility for residential premises states the tenant is responsible for steam cleaning the carpets after a tenancy of one year.

As this tenancy commenced March 2011, and exceeded one year the tenants were responsible to ensure the carpets were steam cleaned at the end of tenancy. Therefore, I find the landlord is entitled to compensation for cleaning the carpets in the amount of **\$84.28.**

Cleaning rental unit

The Residential Tenancy Act states - Leaving the rental unit at the end of a tenancy

- 37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The evidence of the tenant was they did not clean the unit at the end of tenancy. The evidence of the landlord was it took him twelve hours to clean the unit. The

photographic evidence support the landlord's claim that the tenants did not leave the rental unit reasonably cleaned as required by the Act.

I find the twelve hours it took the landlord to clean the unit reasonable, however, the amount of \$537.60 to be excessive. As a result, I will allow the landlord compensation at the rate of \$20.00 per hour. Therefore, I find the landlord is entitled to compensation for cleaning the rental unit in the amount of **\$240.00**.

I find that the landlord has established a total monetary claim of **\$1,731.93** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$1,200.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$531.93**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Tenant's application

In light of the above findings, the tenant's application to return the pet deposit and security deposit is dismissed. The tenant is not entitled to recover the filing fee from the landlord.

Conclusion

The landlord is granted a monetary and may keep the pet deposit and security deposit in partial satisfaction of the claim. The landlord is granted an order for the balance due.

The tenants' application is dismissed.

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: August 07, 2012.

Residential Tenancy Branch