



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND MNR MNDC MNSD FF

Introduction

This hearing was convened in response to an application by the landlord filed on July 12, 2012 pursuant to the *Residential Tenancy Act* (the Act), and amended September 04, 2012 for Orders as follows:

1. A Monetary Order for damages to the unit – Section 67
2. A Monetary Order for money owed or compensation for loss under the Act, regulation or tenancy agreement – Section 67
3. A Monetary Order for Unpaid Utilities – Section 67
4. To keep the security deposit – Section 38 (*balance* = \$316.90)
5. An Order to recover the filing fee for this application - Section 72. (\$100)

Both parties attended the hearing and were given opportunity to present all relevant evidence and relevant testimony in respect to the landlord's claim and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

It was identified that the security deposit in this tenancy, in part, was determined in a previous hearing involving the parties. As a result, this portion of the landlord's claim reflects the *balance* of the security deposit retained by the landlord (\$316.90) in trust.

The tenant was sent evidence by registered mail in accordance with the Act and Rules respecting evidence, but did not collect the registered mail from the local Canada Post outlet. The landlord's evidence was allowed.

The landlord's claim *on application* is as follows:

Late rent fees under agreement 24 @ \$25	\$600.00
Window(s) repairs / labour & materials	\$2000.00
Remediation of curtains/ drapery	\$840.00
Miscellaneous repairs	\$480.00
Items left by tenant	\$50.00
Removal of surface installed cables / wires	\$390.00
Unpaid utilities April 1 – June 30, 2012	\$318.07
Loss of rent revenue for July 2012	\$3397.83
Total of landlord's claim on application	\$9575.90

The onus is on the applicant to prove their claims.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed by the parties. The rental unit is a house. The tenancy started December 01, 2009 and ended June 30, 2012. The rent payable was \$3397.83 payable on the 1st. of each month. At the start of the tenancy the landlord collected a security deposit of which the landlord retains \$316.90. At the start of the tenancy the landlord *did not* engage in a mutual condition inspection, or record the condition of the rental unit, in accordance with the Act / Regulations; although, the parties agree they had a “walkthrough” of the rental unit. At the end of the tenancy the parties conducted a mutual end of tenancy condition inspection which was recorded, but the parties did not arrive at agreement as to the contents of the end of tenancy report or the administration of the security deposit. Under the tenancy agreement the tenant was contractually responsible for utilities and the parties agree the tenant owes utilities for April 01 – June 30, 2012. The tenant caused some telephone wire and media cable to be installed on the exterior of the rental unit contrary to the tenancy agreement. And, that the tenant is responsible for some damage to 2 doors, 2 door frames, and 2 vanity doors due to the use of a wheelchair during the tenancy.

The landlord provided, in part, the following document evidence.

- A claims narrative and copy of the Tenancy Agreement
- a metered utility statement for the period of April 01 – June 30, 2012,
- a Condition Inspection Report for the *end of the tenancy* completed by both parties dated June 30, 2012 – the tenant signed the report – stipulated they did not agree the report fairly represented the condition of the unit – stating the reason as “normal wear and tear”.
- A series of photographs submitted as in support of the landlord’s claims.
- Ledger and supporting bank transaction / account details indicating DEPOSIT(s) for 24 occasions – claimed to be late deposits for rent.
- A series of receipts for paint and hardware / drapery hardware

The balance of what is relevant and in dispute is as follows.

The landlord testified that during the course of the tenancy the tenant made 24 payments of rent which were late in satisfying the payment of rent in full. The landlord submitted that the tenancy agreement provided for the tenant to pay \$25 per late payment of rent for a claim of \$600.00. The tenant did not provide testimony respecting this claim.

The landlord submitted that the tenant permitted at least 3 additional occupants to reside in the rental unit contrary to the tenancy agreement, and requests a total of \$1500.00 (10 months @ \$150 as per tenancy agreement for additional occupants). As their proof the landlord provided a photograph of a piece of mail addressed to the rental unit in the name of a person unknown to the landlord, from a local high school. The tenant denies the addressee was ever an occupant of the rental unit; but rather, the addressee (purportedly an acquaintance of the tenant’s child) was given permission by the tenant to temporarily use their address for school correspondence over the summer.

The landlord testified the tenant caused extensive moisture-related damage to the rental unit windows and bathroom ceilings. The landlord claims every window in every room had damage resulting from mould or mildew and some wood windows had peeling

paint. The landlord alleges the tenant failed to take various actions or steps to minimize the presence of moisture inside the rental unit in order to prevent the occurrence of mould or mildew. The landlord testified that it was available to the tenant to employ exhaust fans or open windows, but alleges they did neither. The landlord submitted that the tenancy agreement stipulates that *the tenant must ensure that the rental unit is properly ventilated, (and that) exhaust fans are regularly used and follow reasonable housekeeping practices* - toward preventing the occurrence of mould or mildew. The landlord claims a total of \$2000.00 for labour and materials to remediate the windows. The tenant denies they were neglectful or that their conduct or lack of due diligence on their part resulted in damage to the windows. The tenant testified that the windows issues identified by the landlord were present when they moved in and that the condition of the rental unit windows at the end of the tenancy were the same as at the start and that any changes in the conditions were as the result of normal and reasonable wear and tear during the tenancy period.

The landlord claims \$840 for the remediation of curtains and drapery in the rental unit. The landlord alleges the tenant did not properly open and close the window coverings as intended by their design or hardware (pull cords); and, that this caused damage to the curtain materials and to the hanging hardware. The tenant did not recall how they routinely opened and closed the curtains, but that all window coverings received normal use during their tenancy and all window coverings were not significantly different at the end of the tenancy than at the beginning.

The landlord seeks \$230.00 for remediation of 2 doors, 2 frames and 2 vanity doors for scraping or gouging from a wheelchair, with which the tenant agreed was likely the cause of the damage.

The landlord claims they had to expend labour and materials to re-install broken shelving brackets in closets, and replace stove burner trays – for an all inclusive sum of

\$250.00. The tenant does not recall closets containing shelving, and that the stove was not new at the outset and was subjected to routine normal use.

The landlord claims the tenant left some items behind (6) when they vacated, for which the landlord requests \$50.00. The tenant did not testify to this portion of the claim.

The landlord testified that they have not yet removed any of the surface-installed wire or cable on the exterior of the house, but claims the sum of the work will amount to \$390.00.

Lastly, the landlord claims that the house was not rentable for the month following the tenant's departure (July) and half of August of 2012 due to ongoing clean-up and repairs. The landlord claims loss of rent revenue - \$3397.83. The landlord further testified the house has not been rentable after August as it has since been undergoing upgrading / improvement unrelated to the tenancy, and as a result was not /is not available for rent.

Analysis

I have considered all relevant evidence and all relevant document submissions to this claim including all relevant testimony given in the hearing. On preponderance of all the evidence in this matter, and on balance of probabilities I have arrived at a Decision.

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant (landlord) must satisfy each component of the test below established by **Section 7** of the *Act*, which 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.

Effectively, the landlord must satisfy each component of the following test:

Test For Damage and Loss Claims

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely*, of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification / proof of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

As well, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement. In such a case, the onus is on the tenant to show that the expenditure claimed by the landlord is unreasonable or unwarranted, or otherwise extravagant.

It must further be emphasized that in the Residential Tenancy Regulation – Part 3 – Condition Inspections, states as follows:

Evidentiary weight of a Condition Inspection Report

- 21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part 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.

Therefore, the claimant (landlord) bears the burden of establishing a claim on the balance of probabilities. However, the claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party (tenant). Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant must show that

reasonable steps were taken to address the situation and to reasonably mitigate the damage or losses that were incurred. An Arbitrator must also weigh the significance and relevance of the Condition Inspection Report in concert with the requirements of Part 3 of the Residential Tenancy Act Regulation.

On the face of the evidence before me, I find the landlord has sufficiently met the test for their claim of damages and loss in respect to portions of their claim.

It must be noted that all of the landlord's monetary claims for repairs or remediation are *global* – rounded to the tens, fifty, and hundred or thousand, and that any accuracy must be gleaned from elsewhere in the evidence. Some of the landlord's claims are, by their testimony, only estimates for work not done. The landlord's monetary claims for repairs or remediation all involve a component for *labour*, however, the landlord has not submitted evidence to quantify the amounts of *labour*, and the rate for labour – to prove they have done what is *reasonable* to mitigate their claims as per Section 7(2) of the Act.

I accept the parties' mutual acknowledgement in finding the landlord is owed for unpaid utilities in the amount of **\$318.07**, without leave to reapply, and I will so Order.

The landlord's document evidence states the removal of wiring and cable from the exterior of the house as already occurred, but their testimony is that the work has not occurred and the landlord's testimony did not resolve that it will, in fact, occur. In this case the tenant acknowledges they breached the tenancy agreement and therefore I accept the landlord is owed a quantum of compensation to remove the surface run wiring. In the absence of quantifiable evidence of the work / labour I am allowing the landlord a set **\$300.00** for this portion of their claims, without leave to reapply.

I accept the parties' agreement respecting the need for repair of 2 doors, 2 door frames, and 2 vanity doors due to the use of a wheelchair during the tenancy. In the absence of quantifiable evidence for labour I will allow the landlord a set **\$200.00** for this portion of their claims, without leave to reapply.

I accept the landlord's evidence that they received 24 payments during the course of the tenancy which were late in satisfying the payment of rent in full. The tenancy agreement provided for the tenant to pay \$25 per late payment of rent as an administration fee and the legislation allows for this non-refundable fee. As a result, I grant the landlord **\$600.00**, without leave to reapply.

I find I prefer the testimony of the tenant over the evidence of the landlord respecting the landlord's claim that the tenant accommodated additional occupants contrary to the tenancy agreement. I find the landlord has not provided sufficient or credible evidence to support this claim, and as a result **I dismiss** this portion of the claim, without leave to reapply.

I find that in the absence of the required *start of tenancy* Condition Inspection Report , the landlord's *end of tenancy* Condition inspection Report is in complete contrast to the tenant's evidence respecting the condition of the rental unit at the outset of the tenancy. As the burden of proof for their claims rests on the landlord, I find the landlord's *end of tenancy* Condition inspection Report – standing alone and not in accordance with the prescribed legislation – is ineffective to prove the conditions claimed at the end of the tenancy were significantly different from the start of the tenancy so as to support a claim of damage versus reasonable wear and tear. More importantly, the landlord has not proven that specific damage resulted, *solely*, from the actions or neglect of the tenant in violation of the *Act* or agreement. These claims are not aptly supported by the landlord's evidence documenting the condition of the rental unit solely at the end of the tenancy. As a result, I find the landlord has not met the test for damages in respect to the landlord's claims for window repairs, curtain / drapery repairs, and closet shelving brackets, and therefore these claims are **dismissed**, without leave to reapply.

I find the landlord has not provided evidence or proof for the requirement or cost of *new stove burner trays*. As a result, **I dismiss** this portion of the landlord's claim, without leave to reapply.

The landlord did not specifically testify as to why they claim \$50.00 for the items left by the tenant. I accept the landlord is seeking compensation for having to deal with the tenant's items in some manner. In this respect I find the landlord's claim is undisputed and is not unreasonable. Therefore, I grant this portion of the landlord's claim for **\$50.00**, without leave to reapply.

Having dismissed the landlord's claim for repairs, I find the landlord is generally not entitled to loss of revenue from the tenant for July 2012. I also find that despite any repairs to which the landlord purports may be attributable to the tenancy, the landlord has not provided evidence why the claimed repairs required seven weeks, and what reasonable efforts were made to minimize this loss. Furthermore, I find that the landlord's plans to upgrade the residential property are inconsistent with its availability as rental accommodation. I don't find it credible that in the otherwise absence of any claimed repairs the landlord would have sought a new tenancy solely for the interim prior to September 2012. As a result of all the above **I dismiss** the landlord's claim for loss of revenue for July 2012, without leave to reapply.

I find that the landlord has established entitlements in the sum of \$1468.07. As the landlord was partly successful in their claim, I have allowed the landlord recovery of their filing fee in the amount of \$100.00 for a total entitlement of **\$1568.07**. The balance of the security deposit will be offset from the award herein.

As for the Monetary Order calculation:

Late rent fee under agreement 24 @ \$25	\$600.00
Window(s) repairs / labour & materials	\$.00
Remediation of curtains/ drapery	\$.00
Miscellaneous repairs	\$200.00
Items left by tenant	\$50.00
Removal of surface run cables / wires	\$300.00
Unpaid utilities April 1 – June 30, 2012	\$318.07
Loss of rent revenue – July 2012	\$.00
Filing fee – partial	\$100.00
* <i>Security deposit balance held by landlord</i>	-\$316.90

Total of landlord's award	\$1251.17
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Conclusion

I Order the landlord may retain the balance of the security deposit in the amount of \$316.90 in partial satisfaction of this monetary award, **and I grant** the landlord a Monetary Order under Section 67 of the Residential Tenancy Act for the amount of **\$1251.17**. If necessary, this Order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: September 26, 2012

Residential Tenancy Branch