



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 the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord's agent (the agent) testified that the Residential Tenancy Branch (RTB) agreed to serve the tenant with the notice for this dispute resolution hearing because the landlord did not know the tenant's new forwarding address. I advised the agent that the applicant is responsible for serving the dispute resolution hearing package to the respondent and that there was no possibility that the RTB would have agreed to serve documents to the respondent as claimed by the agent.

As the tenant attended the hearing, I asked the tenant how he received the dispute resolution hearing package. The tenant testified that the landlord handed him a copy of the dispute resolution hearing package on August 14, 2012, at the end of the joint move-out condition inspection. The agent did not dispute the tenant's testimony as to how the tenant received the hearing package. I find that the agent was misinformed as to how the landlord's hearing package had been served to the tenant. Based on the tenant's undisputed testimony, I am satisfied that the tenant was served a copy of the landlord's dispute resolution hearing package in accordance with the *Act*.

As the agent testified that neither he nor the landlord had received the tenant's new address, I am not satisfied that the landlord has served copies of all of the written and photographic evidence package that he submitted to the RTB for consideration at this hearing. For example, two invoices dated September 11, 2012 could not have been served to the tenant as part of the original dispute resolution hearing package as these

invoices did not exist at the time that the landlord served the documents to the tenant on August 14, 2012. Similarly, the tenant could not have received the photographic evidence if these photos were taken at the end of this tenancy, given the timing of the landlord's provision of the dispute resolution hearing package to the tenant. For these reasons, I have only considered those portions of the landlord's written evidence package that could have been included in the dispute resolution hearing package provided to the tenant on August 14, 2012.

At the commencement of the hearing, I confirmed the spelling of the tenant's last name which varies from that submitted on the landlord's application for dispute resolution. With the agreement of the parties, I corrected this spelling error to reflect the spelling of the tenant's last name as set out above.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent owed for August 2012? Is the landlord entitled to a monetary award for losses and damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on August 15, 2006. Monthly rent by the end of the tenancy was set at \$1,100.00, payable in advance on the first of the month. The landlord continues to hold the tenant's \$450.00 security deposit paid on July 31, 2006. The parties agreed that this tenancy ended on the basis of the tenant's July 14, 2012 handwritten notice to end this tenancy by August 14, 2012. This notice was entered into written evidence by the landlord.

The agent testified that no joint move-in condition inspection was conducted. Although the parties agreed that the landlord and the tenant did participate in a joint move-out condition inspection on August 14, 2012, the last day of this tenancy, the agent confirmed that no report was prepared by the landlord or agent and no report has been sent to the tenant. The agent asked that consideration be given to 14 photographs entered into evidence that he said were taken at the end of this tenancy.

The landlord's application for a monetary award of \$1,400.00 included:

Item	Amount
Unpaid Portion of August 2012 Rent (\$1,100.00 - \$550.00 = \$550.00)	\$550.00
Landlord's Estimate of Damage to Rental Unit	800.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award Requested	\$1,400.00

At the hearing, the landlord testified that the tenant did pay \$50.00 towards the rent owing for the last half of August 2012. The tenant testified that he had paid \$100.00 for the rent for the last half of August 2012. He gave undisputed sworn testimony that he had a receipt for his \$100.00 payment for the last half of August 2012.

At the hearing, the landlord testified that he incurred more than \$11,000.00 in expenses in repairing and renovating the rental unit after the tenant vacated the rental unit. The agent submitted only invoices for laminated flooring and replacement of wall panelling in the amounts of \$1,713.11 and \$1,075.20 respectively.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for August 2012, the tenant would have needed to provide his written notice to end this tenancy before July 1, 2012. As the tenant's July 14, 2012 notice to end this tenancy was provided after June 30, 2012, I find that the tenant was responsible for paying a full month's rent for August 2012.

There is undisputed evidence that the tenant paid \$550.00 in rent for the first one-half of August 2012. The parties disagreed as to the amount of rent paid by the tenant for the remaining one-half of August 2012. Based on a balance of probabilities, I find it more likely than not that the tenant paid \$100.00 for the remainder of August 2012, as the agent did not dispute the tenant's sworn testimony that he had a signed receipt from the landlord for that payment.

I find that the tenant did not comply with the provisions of section 45(1) of the *Act*. As a result, I find that the landlord is entitled to a monetary award of \$450.00 for the remaining portion of the rent that was owed by the tenant for August 2012. Since this tenancy had been in place since August 2006, I find that the landlord likely had to

undertake some repairs and renovations to ready the premises for new tenants. As such, I find that it was reasonable that the landlord was not able to re-rent the premises to another tenant for the remainder of August 2012.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. The parties entered conflicting evidence regarding the condition of the rental unit at the beginning and end of this tenancy. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. In this case, I find that the absence of a joint move-in condition inspection and the failure of the landlord to create a condition inspection report for the joint move-out condition inspection limits the landlord's eligibility to claim against the security deposit for damage that the landlord claims arose.

As set out below, Residential Tenancy Branch Policy Guideline 40 identifies the useful life of items associated with residential tenancies for the guidance of Dispute Resolution Officers in determining claims for damage.

Damage(s)

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the dispute resolution officer may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

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.

Many of the items that the agent identified as requiring repair and renovation were for features of the rental unit that had not been replaced for some time. For example, the useful life of an interior paint job is set at four years in Policy Guideline 40. The agent testified that the rental unit was last painted shortly before this tenancy began in mid-2006. While the useful life of a deck is estimated at 20 years, there was conflicting evidence from the parties as to whether the reason for the deterioration of the landlord's deck resulted from the tenant's actions in watering his plants or from the effect of rain and weathering. I am not satisfied that the landlord submitted sufficient evidence to entitle the landlord to the amount of damage claimed by the landlord. The agent

testified that he undertook a major renovation of the rental unit when this six-year old tenancy ended. I do not allow the landlord's attempt to recover the portion of that renovation that the landlord was seeking in this application for a monetary award.

Section 37(2) of the *Act* also requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." Based on a balance of probabilities and after considering the oral and written evidence, I do accept that the tenant is responsible for failing to leave the rental unit in reasonably clean and undamaged condition. I also find that the condition of the rental unit at the end of the tenancy exceeded that to which would be attributable to reasonable wear and tear. For this reason, I find that the landlord is entitled to a monetary award of \$200.00 for the tenant's failure to comply with the requirements of section 37(2) of the *Act*.

I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in this decision plus applicable interest. As the landlord has been partially successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to recover unpaid rent, damage arising out of this tenancy, and the filing fee for this application, and to retain the tenant's security deposit:

Item	Amount
Unpaid Portion of August 2012 Rent (\$1,100.00 – (\$550.00 + 100.00) = \$450.00)	\$450.00
Damage to Rental Unit	200.00
Less Security Deposit (\$450.00 + \$14.60 = \$464.60)	-464.60
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$235.40

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: October 25, 2012

Residential Tenancy Branch