



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of all or part of the security deposit and pet damage deposit / and recovery of the filing fee.

The landlord's agent and legal counsel representing the landlord attended the hearing, and affirmed testimony was given by the landlord's agent.

While the application for dispute resolution and notice of hearing (the "hearing package") was served by way of registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail. The hearing package was returned to the landlord. A photocopy of the envelope containing the hearing package was submitted in evidence showing that the package was "refused" by the tenant, and showing a manual notation on the envelope which reads: "Return To Sender."

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from March 15, 2012 to March 30, 2013. Monthly rent of \$1,600.00 was due and payable in advance on the first day of each month. A security deposit of \$800.00 and a pet damage deposit of \$100.00 were both collected on March 15, 2012. A move-in condition inspection was completed with the participation of both parties, and the move-in condition inspection report bears the signatures of both parties.

The landlord issued a 1 month notice to end tenancy for cause dated May 11, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is June 30, 2012, and there are several reasons identified on the notice in support of its issuance.

Subsequently, on May 14, 2012 the tenant filed an application for dispute resolution. In addition to other things, the tenant sought to have the notice to end tenancy set aside. In response to the tenant's application a hearing was scheduled to occur on June 6, 2012. However, while the landlord appeared, the tenant did not, and the tenant's application was dismissed without leave to reapply.

The tenant vacated the unit effective July 1, 2012, and an agent representing the landlord undertook a move-out condition inspection with the participation of the tenant on that same date. Both parties signed the move-out condition inspection report.

Pursuant to certain text included on the move-in / move-out condition inspection report(s), by way of their respective signatures the parties agree as follows:

By signing our name below I/we accept the Move-In / Move-Out Checklist as part of the rental agreement and agree that it is an accurate account of the condition and contents of said premises and acknowledge receiving a copy thereof. I/we also agree to pay for any damages to the property and contents other than normal wear and tear.

The tenant provided his forwarding address to the landlord by way of the office of legal counsel representing the landlord in an e-mail dated July 9, 2012. Subsequently, the landlord filed an application for dispute resolution on July 23, 2012. As noted above, the tenant refused to take delivery of the landlord's hearing package.

Documentary evidence subsequently provided to the Branch by the landlord in support of the application was also sent to the tenant by registered mail. Evidence submitted by the landlord includes the Canada Post tracking numbers for the registered mail and the Canada Post website informs that the items were "successfully delivered."

At the end of tenancy, the landlord found the unit and shed in need of cleaning and repairs. The yard also required maintenance and discarded refuse had to be removed. The landlord testified that considerable time was required to make the unit, shed and yard suitable for new renters, who were found effective September 1, 2012.

Analysis

Based on the documentary evidence which includes, but is not limited to, affidavits, receipts, and photographs, in addition to the affirmed / undisputed testimony of the landlord's agent, the various aspects of the landlord's application and my findings around each are set out below.

\$1,600.00*: loss of rental income for July 2012. Residential Tenancy Policy Guideline # 3 speaks to "Claims for Rent and Damages for Loss of Rent," in part as follows:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

I find that considerable cleaning and repairs were required in the unit following the end of tenancy, and that the landlord undertook to mitigate the loss of rental income by attending to the cleaning and repairs, as well as securing new renters, in a timely fashion. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$700.00: property management inspection / safety move-out (\$300.00 service fee + \$400.00 "element of danger"). In light of the animosity that had developed between the parties during the tenancy, the landlord considered that it was in everyone's best interests to hire a third party to represent the landlord at the move-out condition inspection. While the landlord's view in this matter is understood, I find there is no basis in the legislation to support this aspect of the claim, and I consider that it is properly regarded as a "cost of doing business." In summary, this aspect of the application is hereby dismissed.

\$156.03*: electrical repairs. The landlord testified that the electrical panel had been tampered with during the tenancy and was required to be inspected and repaired by a certified electrician. In this regard, section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Further, section 33 of the Act speaks to **Emergency repairs**, and provides in part:

33(1) In this section, “**emergency repairs**” means repairs that are

- (c) made for the purposes of repairing
- (v) the electrical systems, or...

Following from all of the above, I find that the landlord has established entitlement to the full amount claimed.

\$800.00*: house cleaning. Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

I am satisfied that the landlord has provided documentary evidence and testimony sufficient to support this aspect of the claim. Accordingly, I find that the landlord has established entitlement to the full amount claimed.

\$900.00: yard / house / shed cleaning. Attached to the tenancy agreement are a number of “addendums.” These include, but are not limited to, certain agreements pertaining to the tenant’s responsibility for maintaining the yard and managing refuse, in part as follows:

- 6. The tenant is required to maintain their yard / lawn / pet clean up / etc., on a regular basis.

7. Tenants must also take their garbage and recycling bins to the gate / roadside each week on the designated pick-up days, and bring their own bins back to their property / rental house afterwards, or as an alternative, leave all bins at the entry gate and take garbage & recycling to the bins as needed when leaving the property.

While I am satisfied that the landlord has provided documentary evidence and testimony sufficient to establish some entitlement, in the absence of the comparative results of move-in and move-out condition inspection reports which speak more specifically to the condition of the shed and yard, I find that the landlord has established entitlement limited to **\$700.00***.

\$342.72*: drapery dry cleaning. Residential Tenancy Policy Guideline # 1 speaks to "Landlord & Tenant - responsibility for Residential Premises," and under the heading: INTERNAL WINDOW COVERINGS, provides in part:

1. If window coverings are provided at the beginning of the tenancy they must be clean and in a reasonable state of repair.
3. The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.

I find that the drapes had been cleaned immediately prior to the start of this tenancy. I further find that, after the end of tenancy, the drapes were found to be in need of cleaning, with particular attention to pet hair and stains of unknown origin. In summary, I find that the landlord has established entitlement to the full amount claimed.

\$147.84*: carpet cleaning. Residential Tenancy Policy Guideline # 1, as above, under the heading: CARPETS, provides in part:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet, he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

I find that there is sufficient evidence that the carpet required cleaning at the end of tenancy, in part as a result of pets being permitted inside (dog and cat). In short, I find that the landlord has therefore established entitlement to the full amount claimed.

\$535.00: [labour: \$355.00 + material: \$180.00] miscellaneous repairs (window insulation / wall repairs & painting / broken door handles). In the absence of a more particular breakdown of costs claimed on the documentary evidence, including receipts, I find that the landlord has established entitlement limited to \$400.00*.

\$100.00*: filing fee. As the landlord has mainly succeeded with this application, I find that the landlord has established entitlement to recovery of the full filing fee.

Following from all of the above, I find that the landlord has established entitlement to compensation in the amount of \$4,246.59. I order that the landlord retain the security deposit of \$800.00 and the pet damage deposit of \$100.00 (total: \$900.00), and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$3,346.59 (\$4,246.59 - \$900.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of \$3,346.59. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order 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 05, 2012.

Residential Tenancy Branch