



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property and for money owed or compensation for damage or loss under the *Act* regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing to the Residential Tenancy Branch and to the tenant. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on August 31, 2012, no one for the tenant attended. The landlord testified to sending the documents on that date and in that manner and orally provided the tracking number for the registered mail, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established a claim as against the tenant for damage to the unit, site or property?

Has the landlord established a claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this month-to-month tenancy began on November 1, 2002 and ended on September 30, 2011. Rent in the amount of \$1,042.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the

landlord collected a security deposit from the tenant in the amount of \$450.00 and no pet damage deposit was collected.

The landlord's agent testified that the landlord was successful in obtaining a monetary order and an Order of Possession for unpaid rent and provided a copy of the Decision for this hearing. It is dated August 19, 2011 and grants an Order of Possession in favour of the landlord on 2 days notice to the tenant, as well as a monetary order in favour of the landlord for unpaid rent. The Decision does not deal with the security deposit, and the landlord had not applied for an order to keep the deposit. The landlord's agent served the Order of Possession on the tenant by posting it to the door of the rental unit, but the landlord's agent does not recall when. The company's policy is to serve Orders of Possession as soon as they are received. Following that, another co-worker for the landlord company asked the landlord's agent to accompany him to the rental unit to change the locks, somewhere around the end of August, 2011. The pair were met at the door by a man who stated that he was a visitor of the tenant and had been there for 6 weeks. The exterior of the building was being painted at the time but the tenant's carport was full of the tenant's belongings and could not be painted. The landlord's agent asked the visitor to move the belongings and he agreed to reach the tenant. The tenant called the landlord's agent and threatened that if the landlord's agent were to touch anything or if any drops of paint were found on the tenant's motorcycle, the landlord's agent would be a dead man. The threat was reported to the police.

The tenant's visitor and two other men offered the landlord's agent 6 months of rent in cash to re-occupy the rental unit, but the landlord's agent refused the offer and did not accept the cash and the locks to the rental unit were changed.

Copies of a move-in and a move-out condition inspection report were provided for this hearing, which are on separate forms. The move-in condition inspection report is dated October 25, 2002 and contains signatures of the tenant and the landlord, which states that the condition of the unit as indicated at move-in is agreed to and inspected by both parties. It also contains a signature of the tenant on a line stating, "NO PET clause agreed to." The move-out condition inspection report is dated August 30, 2011 and is signed by an agent for the landlord only. The landlord stated that the tenant abandoned the rental unit leaving numerous items behind.

The landlord's agent further testified that the tenant or the tenant's guest broke the sliding door window, which the landlord's agents boarded up with ply-wood on September 16, 2011. The landlord claims \$467.04, although did not provide a receipt to substantiate the cost of repair or replacement.

Also, the landlord's agents found a casing broken the next night on the main entrance front door. A copy of an invoice in the amount of \$408.78 dated September 26, 2011 has been provided to substantiate the landlord's claim.

The landlord has also provided a copy of an invoice dated October 10, 2011 for removal of the tenant's belongings, in addition to a Unit Cleaning Scope of Work document and a purchase order which requests removal and storage of contents and cleaning the vacant unit as per the Scope of Work document. The invoice shows that the total amount is \$1,313.76, and another sum of \$1,173.00 has been written upon it. The landlord's agent testified that it is not certain whether the landlord is claiming \$1,173.00 or \$1,313.76. The landlord's property has a huge storage space and the company's contractors took the items to that storage.

The landlord has also provided a copy of an invoice dated October 20, 2011 in the amount of \$1,140.00 which includes HST for replacing the vanity in the bathroom which was completely broken by the tenant or the tenant's guests during the tenancy.

The landlord also claims painting the rental unit, and provided an invoice from a painting company dated September 27, 2011 in the amount of \$2,794.21, however also testified that the rental unit has not been painted since the tenancy began in 2002.

The landlord's agent further testified that the tenant installed a dishwasher, which is contrary to the agreement and the rental unit is not designed for it. A Workman's List was provided for this hearing, and the landlord's agent testified that the worker who prepared the list did not separate that part of the landlord's claim from other items which do not apply to this rental unit, and the landlord's agent is not sure what amount is applicable to this rental unit. The amount of the bill is \$617.01 and the landlord claims half, or \$308.50.

The landlord's agent also testified that all floors in the rental unit had to be replaced after the tenancy had ended. The tenant had huge dogs and a bad smell was left throughout the rental unit. The landlord claims \$3,331.13 for floor replacement and provided an invoice to substantiate the amount.

The landlord's agent testified that the tenant and/or tenant's guests have completely trashed the rental unit and provided numerous photographs which show that the entire rental unit was in need of cleaning and repair. The photographs appear to show that the tenant did not move any belongings out of the rental unit.

Analysis

The *Residential Tenancy Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of a tenancy. A tenant is required to repair any damage caused during the tenancy, and if a tenant fails to comply with that section of the *Act*, the landlord may make a claim. However, in order to be successful in a claim for damages, the onus is on the landlord to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate, or reduce such damage or loss.

Further, any monetary award in favour of the landlord for damages must not place the landlord in a better financial position than the landlord would be if the damage or loss had not existed.

I have reviewed the evidentiary material provided by the landlord, including the move-in and move-out condition inspection reports. In the circumstances, I find that the landlord has failed to establish the claim in the amount of \$467.04 for the broken sliding door. The move-in condition inspection report shows that the door was clean at the commencement of the tenancy. The move-out condition inspection report shows that the door was dirty, stained and required painting at the end of the tenancy. The report does not indicate that the door was broken, nor do any of the photographs provide any evidence of a broken sliding door. The regulations to the *Residential Tenancy Act* state that the reports are evidence of the condition of the rental unit at the beginning and the end of the tenancy, and the reports provided for this hearing do not support the claim.

With respect to the landlord's claim for the front door, the move-in condition inspection report shows that at the commencement of the tenancy the door was clean and no damage is mentioned. The move-out condition inspection report shows that at the end of the tenancy it was dirty and broken. A copy of an invoice in the amount of \$408.78 has been provided to substantiate the landlord's claim and I find that the landlord has established a claim in the amount of \$408.78.

The landlord's agent was unable to testify to the actual amount claimed for removal of the tenant's belongings and stated that the claim is either \$1,173.00 or \$1,313.76. The invoice provided is in the amount of \$1,313.76. The difference between the two amounts is \$140.76 which I find is exactly the amount of HST contained in the typewritten invoice. I am satisfied that the landlord has established a claim in the

amount of \$1,173.00 because I am not certain whether or not the landlord was required to pay HST to the contractor.

I further find that the landlord has established a claim in the amount of \$1,140.00 which includes HST for replacing the vanity in the bathroom. The move-in condition inspection report states that it was clean at the commencement of the tenancy with no indication of any damage, and the move-out condition inspection report shows that a new cabinet is needed.

With respect to the landlord's claim for painting the rental unit, the landlord's agent testified that the rental unit has not been painted by the landlord during the tenancy. I refer to Residential Tenancy Branch Policy Guideline 40 – Useful Life of Building Elements, which is not conclusive, but does give a guideline to landlords and tenants which includes interior paint. The guideline indicates that the useful life is 4 years, and a tenant is not required to pay for repainting the interior of a rental unit after 9 years of tenancy.

I accept the testimony of the landlord's agent that the tenant installed a dishwasher and the rental unit was not designed for it. However, the invoice provided states that it refers to a Purchase Order which is not provided, and the amount of the invoice is \$617.01. The landlord's agent was unable to identify what portion of that invoice actually applies to the repair required and stated that the landlord claims half, or \$308.50. I find that the landlord has failed to satisfy element 3 in the test for damages.

With respect to the landlord's claim in the amount of \$3,331.13 for floor replacement, I have reviewed the inspection reports and they show that at move-in all floors were new and some were linoleum and some were carpet. At move-out, all floors were dirty, stained and damaged. The Policy Guideline states that the useful life of flooring is 10 years, and this tenancy lasted for 9 years. I accept that the landlord is entitled to some compensation for replacement, however, I also find that it is necessary to pro-rate the compensation. The amount of \$3,331.13 divided by 10 years is \$333.11, which I find is the depreciation value per year, and the landlord is entitled to a monetary claim in that amount.

The landlord has not applied for an order permitting the landlord to keep all or part of the security deposit, and therefore, I decline to make any order respecting the security deposit.

In summary, I find that the landlord has established a monetary claim as against the tenant for \$408.78 for replacement of the front door; \$1,173.00 for removal of the tenant's belongings to storage; \$1,140.00 for replacement of the bathroom vanity; and

\$333.11 for floor replacement. The balance of the landlord's claim is hereby dismissed without leave to reapply.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,154.89.

This order is final and binding on the parties and may be enforced.

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: November 15, 2012.

Residential Tenancy Branch