



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, MNR, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background

The tenancy began on or about March 9, 2010 and ended on July 31, 2012. Rent in the amount of \$1200.00 is payable in advance on the first day of each month however that was later reduced to \$1000.00 by consent. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$600.00.

Evidence and Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the landlord must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

As the landlord is the sole applicant in this matter I will address each of his claims and my findings as follows;

First Claim – The landlord is seeking \$1000.00 for unpaid rent for the month of July 2012. The landlord was successful in a separate hearing in obtaining an order of possession for unpaid rent with an effective end of tenancy date of July 31, 2012. The tenant acknowledged the debt and does not dispute this portion of the landlord's application. I find that the landlord is entitled to \$1000.00.

Second Claim- The landlord is seeking \$75.00 for unpaid utilities for the month of August. Both parties agreed that the tenancy ended on July 31, 2012. The landlord acknowledged this as an error on his part and accordingly I dismiss this portion of his application.

Third Claim – The landlord is seeking \$756.00 for the “estimated” cost of repairing the flooring. The tenant disputes that he caused any damage. The landlord advised that he had not actually undertaken any repairs and this was solely an estimate. It was explained in great detail to the landlord several times during the hearing the criteria about making a claim. The following was explained to both parties to help assist them in understanding a monetary claim.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

- 1. Proof that the damage or loss exists,*
- 2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,*

3. *Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and*
4. *Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.*

As the landlord stated in his testimony; "I'm not out of pocket for this", accordingly I dismiss this portion of his application.

Fourth Claim – The landlord is seeking \$45.00 for the preparation of this hearing and the photocopying of his documents. It was explained that the Act does not prescribe for the recovery of litigating ones case and accordingly I dismiss this portion of the landlords claim.

Fifth Claim - The landlord is seeking \$1300.00 for loss revenue for the month of August 2012, \$3245.55 for the costs of materials to "return the house to a rentable condition", and 95 hours (landlords labour) X \$28.00 per hour plus HST=\$2979.20 for a grand total of \$7524.75 for this portion of his claim. I'm addressing these costs together as they relate to one and another as they derive from the same set of facts. The tenant adamantly disputes this portion of the landlord's application.

The tenant gave testimony in regards to this portion of the landlords claim as follows; that the house is over 30 years old, is completely original, has never had any upgrades or remodelling, the water supply is well water, the landlord did not supply any water softener which in turn caused heavy iron deposits in the toilet bowl and tub, the move in condition inspection clearly shows the deficiencies in the condition of the unit, was never offered an opportunity to conduct a move out condition inspection until October 5, 2012 which was over 2 months after he moved out. The tenant stated that he has not

seen any of the work that the landlord alleges and questions the authenticity of the landlord's documentation and photographs. The tenant disputes the dates of some of the photos as the landlord was not at the property on those days. The tenant also questions when exactly the photos of the damage were taken.

The landlord gave testimony in regards to this portion of the claim as follows; the tenant vacated the unit on July 31, 2012, left the unit and the yard very messy, left garbage everywhere, as per their tenancy agreement the tenant is responsible for maintaining the yard, the landlord discovered that the tenant had caused some damage to the floors, the bathtub, the toilet and the tiling around the bathtub, never cleaned the toilet or tub which caused the rust coloured deposits, the landlord stated that he attempted to conduct a move out condition inspection with the tenant but the tenant would stall the landlord and constantly reschedule, the landlord stated that he had rented the unit to another party for August 1, 2012 but the unit was in such bad shape that he could not give them the unit, the other party lived in a trailer for a month and then commenced their tenancy with the landlord at the subject property as of September 1, 2012, the landlord stated that he was a general contractor and did this sort of work for a living and was able to conduct almost all the repairs and cleaning on his own and seeks to be compensated for his time and expense.

The landlord submitted a large quantity of documentation for this hearing. However, much of the landlord's documentation was in direct contradiction to his own testimony. On three separate occasions the landlord stated that all of the items replaced were well beyond repair or cleaning, however he neglected to fill out the move out condition

inspection report to that effect. The landlord did provide photos but they did not depict any serious damage that would require the replacement of said items, certainly not to the level he indicated. In addition the landlord did not offer a final notice to schedule an inspection of the unit until two months after the tenant had already moved out. The Act is clear in this regard that it must be done on the day of move out or as soon as reasonably possible. In addition the inspection is to be conducted when the unit is empty of the tenant's possessions, unless the parties agree on a different time. Offering an opportunity over 2 months later with tenants already living in the unit is unreasonable.

The following are some examples of the landlords, inconsistent, disjointed, and contradictory evidence for this hearing. The landlord submitted a receipt for a bathtub that he ordered on June 23, 2012 but later testified that he was not aware of the condition of the unit until late July 2012. The landlord stated that the new tenants moved in on September 1, 2012 for a fixed term of one year; however the landlord submitted a signed tenancy agreement for a one year fixed term beginning August 1, 2012 and ending on August 1, 2012; clearly an error on the landlords part in regards to move in date and date of expiration, when it was brought to his attention the landlord stated "oops...I messed up". The landlords claim for utilities during a time when the tenant did not reside in the unit. The landlords claim for the flooring that he stated was "totally ruined" yet never actually conducted the work or was out of pocket of any money. I accept that a certain level of consideration and leniency is required in dealing with self represented parties however the numerous inconsistencies and contradictions are excessive and would be prejudicial if overlooked. The landlord bears a responsibility to

keep accurate records which in this case the landlord did not. I accept the landlord was attempting to be as forthcoming as he possibly could be but a lack of attention to detail and the carelessness in keeping those records raises more questions than it answers.

It is noteworthy to mention that the landlord provided extensive photos showing the condition of the unit on the day of move out but did not submit any photos after the repairs had been done. The landlord submitted receipts to reflect repairs to the unit that he conducted, but the landlords own condition inspection report at move in shows that many of the deficiencies were present when the subject tenant moved in. A considerable amount of time was spent discussing the condition inspection report with the landlord in regards to those very deficiencies and the importance of filing out the report clearly and concisely. The landlord advised this was the first time he had issues like this and that he was not entirely familiar with the condition inspection report.

The landlord is seeking to have the tenant financially responsible for deficiencies in the unit that were already present when the tenant moved in which is illogical and unacceptable under the Act. When I asked the landlord about those deficiencies at the start of the tenancy he replied "yes the place was original and had some things that needed fixing".

Based on all of the above I do not find that the landlord is entitled to the recovery costs of the replacement of the items as claimed. There are far too many inconsistencies from the testimony and the documentation provided. The landlord is not entitled to the recovery of loss revenue for the month of August as he has not satisfied me that the

replacement of said items was due to the negligence or wilful damage of the tenant. I dismiss the landlords' claim of \$1300.00 loss revenue.

However, based on the photos and the tenant's acknowledgement "I didn't clean the suite that good", I fully accept that the tenant left the unit dirty. The tenant did not challenge the state of cleanliness during the hearing. I find that the landlord is entitled to the recovery of some of his costs for the cleaning supplies in the amount of \$88.24. The landlord is also entitled to his labour to clean the unit and do the yardwork at a rate of \$25.00 per hour X 16 hours = \$400.00. I find that is the appropriate hourly rate and the amount of hours required to conduct the work.

As the landlord has only been partially successful in his application, I find that the landlord is entitled to \$50.00 of his filing fee.

In summary, the landlord has been successful in the following claims:

Unpaid July Rent	\$1000.00
Cleaning Supplies	\$ 88.24
Labour	\$400.00
Filing Fee	\$50.00
	\$
	\$
Total:	\$1538.24

The landlord has established a claim for \$1538.24. I order that the landlord retain the deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$938.24. This order may be 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: January 17, 2013