



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent, damage to the rental unit, and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for unpaid rent and damage to the rental unit in the amount claimed?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

A one-year fixed term tenancy commenced April 1, 2011 and the tenants paid a security deposit of \$600.00. After April 1, 2012 the tenancy continued on a month-to-month basis. The tenants were required to pay rent of \$1,200.00 on the 1st day of every month. A move-in inspection report was completed but a move-out inspection report was not. The tenants paid \$600.00 towards October 2012 rent and vacated the rental unit on October 8 or 9, 2012.

The landlord was successful in re-renting the unit for November 2012 and is seeking unpaid rent of \$600.00 from the tenants for the month of October 2012. The landlord submitted that on September 27, 2012 the tenants told her that they were moving out "a.s.a.p." to tend to the tenant's father, who was diagnosed with a life threatening illness. The landlord immediately proceeded to advertise the unit and began showing the unit to prospective tenants. On September 28, 2012 there was a dispute between the landlord and female tenant concerning the landlord entering and showing the unit. Also on September 28, 2012 the tenants indicated to the landlord that they may stay so the landlord stopped showing the unit. The tenants then paid the landlord only one-half of the month's rent on October 3, 2012 and moved out October 8, 2012.

The landlord is also seeking to recover the following costs for damage to the rental unit:

- \$453.60 to replace and install a new dishwasher as the tenants damaged the dishwasher provided to them. The dishwasher was new in February 2010.
- \$156.80 to repair and repaint the bedroom door damaged by the tenants.
- \$134.40 to re-support and caulk the under-mounted kitchen sink that came away from the countertop during the tenancy.

The tenants testified that they did not give proper notice to end the tenancy and did not pay the full month's rent for October 2012 rent because the landlord illegally entered the rental unit with prospective tenants on September 28, 2012. The female tenant submitted that the landlord did not give proper notice to enter the unit and when the landlord entered the unit the tenant was caught undressing. The tenant submitted that she no longer felt safe in the unit because of the breach. The tenant acknowledged that she did not request the landlord give written notices of entry after the alleged illegal entry occurred; nor, did the tenants otherwise notify the landlord that a subsequent breach would result in the tenant's ending the tenancy.

The landlord submitted that she had obtained the tenants' verbal consent to show the unit and had received a text message from the male tenant indicating that she could show the unit to prospective tenants on September 28, 2012. Upon enquiry, the male tenant acknowledged the landlord had sent him a text message about showing the unit to prospective tenants and he had communicated back to the landlord that it would be "ok".

The tenants acknowledged damaging the dishwasher and bedroom door. The tenants, however, denied knowledge of the sink coming away from the countertop and denied using it in an improper way. The tenants submitted that they used the sink as it was intended, for cleaning and washing dishes.

The landlord was uncertain as to how the sink became detached from the countertop but submitted it was reasonable to conclude the tenants put something very heavy in the sink. The tenant submitted that the male landlord did not point out the detached sink when he viewed the unit at the end of their tenancy and that it was possible the sink was not properly installed.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Act provides that a tenant is required to leave the rental unit undamaged. The Act further provides that reasonable wear and tear does not constitute damage. Where a tenant is held responsible for damage the award to the landlord shall reflect depreciation of the original item as awards for damages are intended to be restorative. In order to estimate depreciation of a replaced item, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40.

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to the landlord's claims against the tenants.

Unpaid rent

The terms of the tenancy agreement required the tenants to pay rent of \$1,200.00 on October 1, 2012. The Act required the tenants to give the landlord at least one full month of written notice in order to end the tenancy. The tenants failed to comply with these requirements.

Since the tenants ended the tenancy without a month's written notice I find the tenants have the burden to establish a basis for ending the tenancy without proper notice. Where a landlord breaches a material term of the tenancy, such as a breach of quiet enjoyment, it is reasonable to expect the tenant to put the landlord on notice that continued breach may result in an early end of tenancy. Alternatively, an extremely serious breach may warrant an Arbitrator ending the tenancy on a specific date.

Upon hearing from the parties, I find the tenants have failed to satisfy me that the landlord entered the unit on September 28, 2012 without prior consent from the male tenant or that the landlord's conduct was so egregious that an early end of the tenancy with extremely short notice was reasonable.

In light of the above considerations, I find the landlord is entitled to compensation for the unpaid rent of \$600.00 for the month of October 2012 and I grant this portion of the landlord's claim.

Dishwasher

The tenants undeniably damaged the dishwasher and are responsible for compensating the landlord for the depreciated value of the new dishwasher. Dishwashers have an average useful life of 10 years and since the damaged dishwasher was 2 years and 8 months old at the end of the tenancy I award the landlord the depreciated value of \$332.64 [$\$453.60 \times 7 \text{ years}, 4 \text{ months}/10 \text{ years}$].

Bedroom Door

The tenants undeniably damaged the bedroom door and I find the landlord has substantiated the cost to repair the door. Therefore, I grant the landlord claim of \$156.80.

Kitchen Sink

I accept that the landlord incurred a cost to re-support the kitchen sink in the rental unit; however, I find both parties provided me with a reasonably likely version of events that would explain the separation of the sink from the countertop especially when I consider the tenants readily acknowledged damage to the dishwasher and bedroom door. I find the disputed testimony leaves me uncertain as to whether the sink became detached due to normal use of the sink, aging, or improper installation, as suggested by the tenants; or, whether it was caused by wilful damage or improper use by the tenants, as suggested by the landlord. Since the landlord has the burden to prove her version of events is more likely than the tenants I find the landlord's claim fails.

Filing fee, security deposit and Monetary Order

As the landlord was largely successful in this application I award the landlord \$40.00 toward the filing fee she paid for this Application.

I authorize the landlord to retain the security deposit in satisfaction of the unpaid rent and provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – October 2012	\$ 600.00
Less: security deposit	(600.00)
Dishwasher	332.64
Bedroom door	156.80
Filing fee	<u>40.00</u>
Monetary Order	\$ 529.44

The Monetary Order must be served upon the tenants and may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$529.44 to serve upon the tenants and enforce as necessary.

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

Residential Tenancy Branch

