



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 was originally scheduled to be heard October 10, 2012 to deal with the landlord's application for a Monetary Order for damage to the rental unit; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the originally scheduled hearing although the landlord's Application for Dispute Resolution and notice of the hearing was sent to the tenant via registered mail at the rental unit and successfully delivered to the tenant on July 30, 2012. The landlord provided a registered mail tracking number as proof of service.

On August 1, 2012 the landlord amended her Application for Dispute Resolution to increase the monetary claim and on October 1, 2012 the landlord amended the Application again to request more time to serve the tenant with the amended Application for Dispute Resolution.

At the originally scheduled hearing of October 10, 2012 I heard that the landlord had made several attempts to serve the tenant with the amended Application and evidence in August 2012 by way of a process server who was ultimately unsuccessful locating the tenant. The landlord also testified that she had email communication with the tenant but requests to meet with him were unsuccessful. The tenant provided his forwarding address to the landlord via email on October 1, 2012 and the landlord sent the amended Application for Dispute Resolution and evidence to the tenant via registered mail on October 2, 2012. The landlord provided a registered mail tracking number as proof of service. A search of the tracking number showed that the registered mail sent October 2, 2012 was unclaimed as of October 10, 2012

Given the amended Application and evidence sent to the tenant October 2, 2012 remained unclaimed as of October 10, 2012 I adjourned the hearing in order to provide the tenant sufficient time to receive the amended Application for Dispute Resolution and evidence. Notices of Adjourned Hearing were provided to the landlord with instructions to serve one upon the tenant.

At the reconvened hearing of November 21, 2012 both parties appeared although the tenant left the hearing before it ended. The tenant stated that he had received two registered mail notice cards but that when he went to the post office to retrieve the packages the mail had already been returned to sender. The tenant confirmed that the address given to the landlord via email on October 1, 2012 was his correct mailing address; however, the tenant submitted that the reason there was a delay in going to the post office to pick up the registered mail was because both notice cards had been left in an adjacent mailbox. The tenant stated he could not recall which dates he received the notice cards and or the date he went to the post office to retrieve the registered mail.

Although it is not impossible that a notice card could be left in the wrong mail box by the letter carrier I found it highly unlikely that two notice cards delivered on two different dates would be left in the wrong mail box. I also found the tenant's inability to provide dates as to when he received the registered mail notice cards or went to the post office less than convincing.

The tenant stated that he became aware of the reconvened hearing after being served by way of a process server on November 20, 2012. The tenant submitted that he could not continue with the hearing as he had a school class to attend in the next five minutes.

The tenant was informed that I would be proceeding with the hearing as I was satisfied the landlord sufficiently served him with hearing documents on July 30, 2012 and I was satisfied the tenant was avoiding service of the subsequent documents sent by registered mail October 2, 2012. I reminded the tenant that he had been served with the original hearing documents on July 30, 2012 as evidence by his signature and that the tenant did not attend the original hearing of October 10, 2012. The tenant reluctantly admitted he was served on July 30, 2012 but then claimed he could not recall what paperwork he was served with as the landlord had given him a number of documents around that time.

After approximately five minutes the tenant voluntarily left the hearing and I continued to hear from the landlord.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit; unpaid rent or utilities; and, damage or loss under the Act, regulations or tenancy agreement in the amount claimed?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced on January 1, 2012 and ended July 31, 2012. The tenant paid a security deposit of \$337.50 and was required to pay rent of \$675.00 on the 1st day of every month. The landlord did not prepare a move-in inspection report but did prepare a move-out inspection report without the tenant present.

The landlord submitted that the tenancy ended for cause and the tenant paid only one-half of the month's rent for July 2012. However, the tenant authorized, via an email sent to the landlord, for the landlord to keep the security deposit in satisfaction of the unpaid rent for July 2012. The landlord requested the claim be amended accordingly.

The landlord also requested the claim be amended to include the cost of the bailiff hired to serve the tenant with the amended Application and the landlord's evidence in person on November 20, 2012 which was \$263.76.

Below, I have summarized the landlord's claims against the tenant as they appear on the landlord's Monetary Order worksheet and as amended during the hearing.

Item	Reason	Amount
West Bay Mechanical – to unplug pump chamber	Pump chamber plugged on two occasions. Landlord is seeking recover of charge for second service call only. Landlord advised tenant not to flush anything but human waste and toilet paper in toilet. The pump services only the rental unit.	\$ 553.75
July 2012 unpaid rent	Tenant paid one-half of the rent.	337.50 (as amended)
Less: security deposit	To be offset against July's unpaid rent.	(337.50)
Loss of rent – August 2012	Unit was not rentable due to damage caused by tenant.	675.00
Carpet cleaning	Carpets left stained with paint.	89.60
New Flooring	Carpeting left stained with paint even after professionally cleaned. Replaced with laminate flooring. Carpeting was "quite old".	262.00
Paint and supplies	Walls and trim stained with paint and then tenant attempted to cover white walls with	395.08

	peach coloured paint. Two and three coats of new paint required to cover paint stains. Last painted over five years prior but in good condition.	
Garbage removal (Alpine)	Removal of carpeting and underpad	14.00
Garbage removal (First Mate Hauling)	Removal of tenant's garbage	85.00
Sofabed	Daybed provided for tenant's use (approx. 5 years old) was left broken and the mattress was soaking wet. Replaced with new sofabed.	189.28
Cleaning	Bathroom and kitchen required additional cleaning.	125.00
Bailiff costs	Costs related to attempted and successful service of amended Application and evidence.	357.28 + 263.76 (as amended)
Filing fee		<u>50.00</u>
TOTAL CLAIM		\$ 3,059.73

As documentary evidence, the landlord provided photographs of the unit as it was left by the tenant at the end of the tenancy and garbage piled in carport; various invoices and receipts; and, numerous email communications between the parties.

Analysis

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

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.

The Act requires that a tenant leave a rental unit reasonably clean and undamaged at the end of the tenancy. Reasonable wear and tear does not constitute damage.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same position had the damage not occurred. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of

the original item. In order to estimate depreciation of an item that was replaced, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40.

Pump chamber –

The landlord provided a plumber's invoice for service calls that took place on March 6 and 7, 2012 which indicated several inappropriate items were found in the pump chamber and removed by the plumber. The landlord provided an email dated March 12, 2012 as evidence the landlord had informed the tenant of the items found in the pump chamber and instructions that the tenant flush only human waste and regular amounts of toilet paper. The landlord provided a copy of the plumber's invoice for a service call on April 1, 2012 including a listing of several more items, other than human waste and toilet paper, found in the pump chamber and drain. Included in the evidence is a written response from the tenant of April 9, 2012 denying responsibility for putting the items into the toilet and assertions the plumber did not check the full extent of the system during the March 2012 service calls.

I have relied upon the plumber's invoice of March 6 and 7, 2012 in finding that the plumber tested the system and found it to be working property on March 7, 2012. I have relied upon the plumber's invoice of April 1, 2012 in finding that the system was not working again on April 1, 2012 due to inappropriate items being flushed into the system including: pieces of mop, pieces of a rag or cloth; Q-tips, safety pin, and pieces of plastic. I find, on the balance of probabilities, that the items found in the sewer system on April 1, 2012 were flushed by the tenant after March 7, 2012 and this caused damage to the system which resulted in a loss to the landlord. I am satisfied the tenant was informed not to flush such items down the toilet. Therefore, I grant the landlord's request to recover the cost of the April 1, 2012 service call.

Carpet cleaning –

Based upon the photographs, I am satisfied the tenant left the carpeting with paint stains which does not meet the tenant's obligation to leave the rental unit reasonably clean. Therefore, I grant the landlord's request to recover \$89.60 for carpet cleaning.

New flooring –

I make no award for replacement of the carpeting as carpeting has a useful life of approximately 10 years and the carpeting appears to have been much older than that in the photographs, based upon its style and the landlord's testimony. Therefore, I dismiss this portion of the landlord's claim.

Paint and supplies –

Based upon the photographs, I accept the landlord's submission that the tenant left the walls and trim splattered with various and vibrant paint colours and in other areas the tenant attempted to cover the paint stains with a mismatched paint colour. The paint stains caused by the tenant is beyond reasonable wear and tear. As interior paint has an average useful life of four years and the unit was last painted more than four years ago I grant a portion of the landlord's claim. I accept that two to three coats of paint were required to cover the paint stains which is more than ordinarily required to cover normal wear and tear. Therefore, I award the landlord one-half of the amount claimed, or \$197.54.

Garbage removal –

I deny the claim for removal of the old carpeting and underlay as the carpeting was beyond its useful life due to its age and the cost associated with disposing of it shall be the landlord's burden. However, I accept the tenant left other garbage or abandoned possessions at the residential property based upon the photographs and the landlord's testimony. Therefore, I grant the landlord's request to recover \$85.00 as being the cost associated to having the tenant's garbage and possessions hauled away.

Sofabed –

I accept the undisputed testimony that the daybed was left broken and wet by the tenant. I find sufficient evidence the landlord replaced the item at a cost of \$189.28. However, I reduce the claim to reflect the estimated depreciation of a five year old daybed and I grant the landlord one-half of the replacement cost, or \$94.64.

Cleaning –

Based upon the photographs, receipts, and the landlord's testimony I accept that the rental unit required additional cleaning and I grant the landlord's claim of \$125.00 for cleaning.

Unpaid Rent –

I accept that the unpaid rent for July 2012 was offset by the security deposit. For further certainty, I authorize the landlord to retain the security deposit in satisfaction of the unpaid rent for July 2012.

Loss of rent –

I accept that the tenant is responsible for some of the painting, cleaning and garbage removal as a result of the tenant's actions or failure to fulfill his obligations under the Act. However, I also find the carpeting was due to be replaced due to its age and the

landlord responsible for some of the painting. Therefore, I hold the tenant responsible for one-half of the loss of rent for the month of August 2012.

Bailiff costs –

The amounts claimed represent amounts paid for the purpose of serving hearing documents upon the tenant. The Act provides for recovery of the filing fee paid for an Application for Dispute Resolution; however, other costs associated to serving documents, preparing or participating in dispute resolution proceeding are not recoverable. Therefore, I make no award for the landlord's use of a process server.

Filing fee –

I find the landlord's application to have merit and I award the \$50.00 filing fee to the landlord.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

<u>Description</u>	<u>Amount</u>
West Bay Mechanical	\$ 553.75
July 2012 unpaid rent	337.50
Less: security deposit	(337.50)
Loss of rent – August 2012	337.50
Carpet cleaning	89.60
Paint and supplies	197.54
Garbage removal	85.00
Sofabed	94.64
Cleaning	125.00
Filing fee	<u>50.00</u>
MONETARY ORDER	\$ 1,533.03

The Monetary Order must be served upon the tenant and may be enforced as necessary by filing it in Provincial Court (Small Claims) 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 \$1,533.03 to serve upon the tenant 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: December 06, 2012.

Residential Tenancy Branch

