



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:46 a.m. in order to enable him to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord's representatives attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The female landlord (the landlord) testified that the tenant was handed a 10 Day Notice to End Tenancy for Unpaid Rent on August 10, 2012. She testified that the landlord sent the tenant a copy of the landlord's amended dispute resolution hearing package by registered mail on December 21, 2012. The landlord entered into written evidence a copy of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. She also entered into written evidence a copy of the move-in and move-out condition inspection reports in which the tenant wrote his forwarding address on September 16, 2012. This is the same address where the landlord sent the dispute resolution and written evidence packages. I am satisfied that the landlord served the above documents and the landlord's written evidence package to the tenant in accordance with the *Act*.

Preliminary Issues- Issues Considered in October 18, 2012 Decision

At the hearing, the landlord confirmed that some of the issues raised in the current application were also before the Dispute Resolution Officer (DRO) who considered the landlord's previous application regarding this tenancy on October 18, 2012 (RTB File # xxxxxx). In that decision, the previous DRO issued a monetary award of \$470.00 and also ordered the landlord to retain all of the tenant's deposits. As such, the landlord

agreed that the landlord has been granted authorization to retain the tenant's deposits. Since this aspect of the landlord's current application has already been decided in the previous DRO's decision, the legal principle of *res judicata* prevents me from considering the landlord's application for authorization to retain the tenant's deposits.

***Res judicata* prevents a plaintiff from pursuing a claim that already has been decided. This legal principle prevents a litigant from obtaining another day in court after the first lawsuit is concluded by giving a different reason than she gave in the first for recovery of damages for the same invasion of her right. The rule provides that when a court of competent jurisdiction has entered a final judgement on the merits of a cause of action, the parties to the suit are bound not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. A final judgment on the merits bars further claims by the same parties based on the same cause of action. Former adjudication is analogous to the criminal law concept of double jeopardy.**

~~The landlord also agreed that the landlord's previous application sought unpaid rent owed for the months of October and November 2012, in addition to the unpaid September 2012 rent granted by the DRO in her October 18, 2012 decision. By the date of the October 18, 2012 hearing, the landlord was clearly aware that the tenant had vacated the rental unit by September 17, 2012, had advertised for a new tenant, and had a new tenant in the rental unit as of October 6, 2012. At the time of the hearing of the landlord's previous application, the landlord's rental loss for October 2012 was known to the landlord and the landlord had applied for recovery of unpaid rent and losses arising out of this tenancy, including a request for loss of rent for October 2012. I find that the landlord's current application for a monetary award for loss of rent for the first five days of October is essentially a second attempt to obtain a monetary award for the same item that was subject to the DRO's October 18, 2012 decision. For this reason, I find that the legal principle of *res judicata* prevents me from considering the landlord's application for unpaid rent for October 2012.~~

Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses and damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commencing on March 1, 2012 was scheduled to end by February 28, 2013. Monthly rent was set at \$1,100.00, payable in advance on the

first of each month. As noted above, the previous DRO's decision authorized the landlord to retain the tenant's deposits.

The landlord entered into written evidence a copy of the joint move-in condition inspection report of March 1, 2012 and a September 20, 2012 move-out condition inspection report conducted solely by the landlord. The landlord entered sworn oral testimony and written evidence that the tenant vacated the rental unit by September 17, 2012, without returning his keys or participating in a joint move-out condition inspection.

The landlord's amended application for a monetary award of \$3,496.78 included the following items:

Item	Amount
Carpet Replacement	\$1,639.68
Drape/Blind Cleaning	55.00
Liquidated Damages	300.00
Painting/Wall Repair	375.20
Key/Lock Replacement	96.25
Garbage Removal	50.00
General Suite Cleaning	170.00
Suite Contents Removal	280.00
Rental Incentive Recovery	300.00
October 1-5 Vacancy Loss	180.65
Filing Fee for this Application	50.00
Total Monetary Award Requested	\$3,496.78

Analysis

The landlord's previous application sought unpaid rent owed for the months of October and November 2012, in addition to the unpaid September 2012 rent granted by the DRO in her October 18, 2012 decision. By the date of the October 18, 2012 hearing, the landlord was clearly aware that the tenant had vacated the rental unit by September 17, 2012, had advertised for a new tenant, and had a new tenant in the rental unit as of October 6, 2012. At the time of the hearing of the landlord's previous application, the landlord's rental loss for October 2012 was known to the landlord and the landlord had applied for recovery of unpaid rent and losses arising out of this tenancy, including a request for loss of rent for October 2012.

Although the above factors might otherwise lead me to conclude that I could not consider the landlord's current claim for a monetary award for rental losses for

the first five days of October 2012, I note that the previous DRO chose to dismiss all but the landlord's claim for unpaid rent for September 2012 with leave to reapply. Since there is undisputed evidence that the landlord did in fact suffer a rental loss for the first five days of October 2012, I issue a monetary award in the landlord's favour in the amount of \$177.42 (i.e., $\$1,100.00 \times 5/31 = \177.42), the pro-rated amount of rent applicable to that period.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I have considered the landlord's current application for entitlement to a \$300.00 monetary award for liquidated damages, as per the terms of their Residential Tenancy Agreement (the Agreement), and a \$300.00 moving allowance used as a rental incentive agreement, an addendum to the Agreement. In the moving allowance agreement, the tenant committed to reimburse the landlord if he vacated the rental premises prior to completing his fixed term tenancy. Based on the landlord's undisputed evidence that the tenant signed the Addendum to the Agreement and understood that he would be responsible for returning this moving allowance if he ended his tenancy early, I find that the landlord is entitled to a monetary award of \$300.00 for the tenant's failure to comply with this term of the Addendum to the Agreement.

The landlord has also submitted a claim for a \$300.00 monetary award pursuant to the liquidated damages clause of the Agreement. The liquidated damages clause is a pre-determined amount agreed upon by the parties at the commencement of the tenancy to be invoked by the landlord if the tenancy ended early, in place of an actual calculation of the costs involved in seeking and replacing the income lost as a result of an early end to a fixed term tenancy. In this case, the landlord submitted an earlier claim for unpaid rent for September, October and November 2012, a claim considered by a previous DRO on October 18, 2012. If it were the intention of the landlord to pursue a claim for liquidated damages, I find that the correct time to have done so was in the context of the previous application for dispute resolution. By choosing to apply instead for the recovery of three month's unpaid rent or loss of rent in the previous application, the

landlord chose to seek recovery of unpaid rent and losses as opposed to any claim for liquidated damages arising out of the tenant's failure to abide by the terms of his fixed term tenancy agreement. The landlord's attempt in the current application to claim for losses in rent also reinforces the landlord's continuation of efforts to pursue compensation in accordance with the terms of the Agreement and as a continuation of the tenant's contractual obligations to the landlord. I find that the landlord has repeatedly attempted to pursue compensation for the tenant's failure to pay rent for the unmet rental provisions of the Agreement. By these actions, I find that the landlord has not set aside the terms of the contract between the parties that would entitle the landlord to a monetary award for liquidated damages. In addition, I also find that any claim the landlord may have wished to make for liquidated damages should have been made in the context of the previous application for dispute resolution. As the landlord opted at that time to seek a monetary award for unpaid rent and loss of rent for September, October and November 2012, I find that the principle of *res judicata* prevents me from considering the landlord's claim for liquidated damages. For these reasons, I dismiss the landlord's claim for liquidated damages.

Residential Tenancy Branch Policy Guideline 40 identifies the useful life of items associated with residential tenancies for the guidance of Arbitrators in determining claims for damage. According to Guideline 40, the useful life of carpeting is 10 years; the useful life of interior painting is set at 4 years.

Neither of the landlord's representatives could provide evidence as to when new carpet was last installed in the rental unit. In the absence of this evidence, the landlord has not established that the new carpet installed in the rental unit after the tenant vacated the rental unit was installed prior to the expiration of the existing carpet's useful life. Under these circumstances, I dismiss the landlord's application for a monetary award for damage to the carpets in this rental unit without leave to reapply.

The landlord's representatives testified that the rental unit was repainted at the end of this tenancy as per the landlord's standard practice to provide all new tenants with freshly painted premises. They gave undisputed testimony that the rental unit was last painted in February 2012, shortly before the tenant occupied these premises. They also said that there was damage to the walls that needed to be repaired, damage that was somewhat confirmed in the photographs entered into evidence by the landlords. The move-in and move-out condition inspection reports and the photographs reveal some damage to walls requiring repair and painting before the end of their useful life. However, I do not find that the tenant should be held solely responsible for repainting that the landlord would have conducted as a routine service that the landlord provides to new tenants in this rental property. Under these circumstances, I find that the landlord

is entitled to a monetary award of \$250.15, an amount which allows the landlord to recover 2/3 of the repainting and wall repair costs ($\$375.20 \times 2/3 = \250.15).

In order to comply with the provisions of section 25 of the *Act*, the landlord is responsible for the costs associated with the rekeying of the locks for the rental unit. As such **and based on the evidence presented**, I dismiss the landlord's application to recover these costs without leave to reapply.

I find that the landlord has provided sufficient oral, written and, particularly, photographic evidence to demonstrate entitlement to a monetary award for each of the following items listed in the amended summary of charges attached to the landlord's amended application for dispute resolution:

Item	Amount
Drape/Blind Cleaning	55.00
Garbage Removal	50.00
General Suite Cleaning	170.00
Suite Contents Removal	280.00

As the landlord has been partially successful in this application, I allow the landlord to recover \$25.00 of the filing fee for this application from the tenant.

Conclusion

I issued a monetary Order in the landlord's favour under the following terms:

Item	Amount
Loss of Rent – October 1- October 5, 2012	\$177.42
Drape/Blind Cleaning	55.00
Painting/Wall Repair	250.15
Garbage Removal	50.00
General Suite Cleaning	170.00
Suite Contents Removal	280.00
Rental Incentive Recovery	300.00
Recovery of ½ of Filing Fee	25.00
Total Monetary Order	\$1,307.57

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

In accordance with the legal principle of *res judicata*, I find that I do not have jurisdiction to consider ~~either the landlord's application to recover the tenant's pet damage and security deposits, or the landlord's claim for a monetary award for unpaid rent or loss of rent for October 2012.~~

I dismiss the remainder of the landlord's application for dispute resolution without leave to reapply.

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 09, 2013

Residential Tenancy Branch