



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, MNDC, FF, SS

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- 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 security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:50 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on November 2, 2012. He testified that on November 24, 2012, he sent the tenant a copy of his dispute resolution hearing package by registered mail to a mailing address she provided to him. He provided the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

At the commencement of the hearing, the landlord testified that he no longer required the Order of Possession as he obtained possession of the rental unit on November 12, 2012. He withdrew his application for an Order of Possession and his application to be allowed to serve the tenant documents in a way other than that required under the *Act*. His applications for an Order of Possession and a substituted service order are withdrawn.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on November 1, 2011. Monthly rent is set at \$900.00, payable in advance on the first. The landlord retains the tenant's \$450.00 security deposit paid on October 25, 2011.

The landlord testified that there was a joint move-in condition inspection on October 25, 2011. Although he said that he prepared a report of that inspection and provided a copy to the tenant, he did not enter a copy of this report into written evidence for this hearing. He testified that he made several attempts to conduct a joint move-out condition inspection with the tenant at the end of this tenancy. He entered into written evidence a copy of a Notice of Final Opportunity to Schedule a Condition Inspection (an approved Residential Tenancy Branch form) he sent to the tenant at the mailing address she provided to him. He testified that he conducted his own inspection when she failed to participate in a joint move-out condition inspection. He did not provide a copy of any report from his move-out inspection to either the tenant or to the Residential Tenancy Branch (the RTB) for this hearing.

The landlord applied for a monetary award of \$4,560.00. At the hearing, he requested the recovery of unpaid rent of \$156.31 for September 2012, \$627.87 for October 2012 and \$900.00 for November 2012. He testified that he started advertising the availability of the rental unit on two popular rental websites in the second last week of November 2012, after he determined that he could have the rental premises ready for occupation by December 1, 2012. He testified that he obtained a new tenant who took occupancy of the rental unit as of December 1, 2012, for a monthly rent of \$850.00.

The landlord's updated application and oral testimony included the following items:

Item	Amount
Bin Rental and Disposal Fee	\$318.16
Unpaid Rent Owing (Sept – Nov 2012)	1,684.18
Labour to Collect and Bag Garbage (49 hours @ \$20.00 per hour = \$980.00)	980.00

Professional Carpet Cleaning	156.80
House Cleaning and Disinfecting (18 hours @ \$20.00 per hour = \$ 360.00)	360.00
Wall Repairs (3 Hours @ \$20.00 per hour = \$60.00)	60.00
Labour and Gas Trucking Garbage to Landfill Sites (9 loads @ \$50.00 per load = \$450.00)	450.00
Waste/Tipping Fees at Landfill	75.25
Registered Mail Fee	10.68
Photo Evidence Developing Fee	8.40
Less Damage Deposit	-450.00
Recovery of Filing Fee for this Application	50.00
Total of Above Items	\$3,703.47

Analysis – Unpaid Rent

In considering the landlord's application for a monetary award for unpaid rent, I find that the landlord's oral testimony varied from the written evidence he provided with respect to the amount of outstanding rent owing from this tenancy. In his oral testimony, the landlord said that a total of \$784.18 was owing for rent for September and October 2012. However, his January 15, 2013 written evidence and his 10 Day Notice identified only \$750.00 as owing for that period. I find the landlord's written evidence on this point to be the best and most consistent evidence available. For this reason, I find that the landlord is entitled to a monetary award of \$750.00 in unpaid rent owing from September and October 2012.

There is undisputed evidence that the tenant did not pay any rent for November 2012, the last month of her tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises as soon as possible after he gained possession of this rental unit. As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenant's loss for November 2012. I find that the landlord is entitled to a monetary award of \$900.00 for unpaid rent for November 2012.

Analysis –Damage Arising out of this Tenancy

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer 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.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. While the landlord claimed that a joint move-in condition inspection occurred and a report issued, he did not enter a copy of that report into written evidence. He also failed to enter into written evidence any copy of his move-out condition inspection report.

Section 37(2) of the *Act* requires a tenant to “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.” Based on the undisputed oral, written and photographic evidence of the landlord, I find on a balance of probabilities that the tenant did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit “reasonably clean” at the end of her tenancy. The photographs reveal that the tenant left a great deal of debris, garbage and possessions behind at the end of her tenancy. I am satisfied that the landlord is entitled to recover his actual losses resulting from this tenancy.

I allow the landlord his requested monetary award for the following items, each of which were supported by invoices or receipts documenting the amount of his losses:

Item	Amount
Bin Rental and Disposal Fee	\$318.16
Professional Carpet Cleaning	156.80
Waste/Tipping Fees at Landfill	75.25

Consideration of the landlord’s claim for labour to collect and bag garbage, clean and disinfect the house, and haul garbage to the landfill site is less clear, as the landlord had no receipts to demonstrate his losses for these items.

The landlord testified that his father collected and bagged the extensive garbage left behind at the end of this tenancy and cleaned and disinfected the rental premises. Although he said that he intends to compensate his father for this work, he has not done so thus far, and has no receipt or invoice to demonstrate the accuracy of his claim. The landlord did not produce his father as a witness, nor did he submit any written statement from his father or anyone else to confirm the extent of the cleaning and clearance of debris necessary at the end of this tenancy.

Despite the lack of such documents and on the basis of the landlord's photographic evidence, I am satisfied that extensive cleaning and garbage clearance were necessary at the end of this tenancy. However, I find that a claim for 67 hours of work to clean and clear garbage from the premises seems excessive, even for the poor condition of the premises evident from the landlord's undisputed photographic evidence. For this reason, I allow the landlord a monetary award of \$960.00 for both of these items, an amount that allows the landlord to recover six full 8-hour days of work at his requested rate of \$20.00 per hour for cleaning and the collection and bagging of garbage.

The landlord testified that he made nine trips to the local landfill site, a round trip that he said required one hour of his time on each of these trips. He said that the amount claimed by the landlord was also designed to pay for his gas expenses to and from the landfill site.

In reviewing the landfill site records submitted by the landlord in support of the landlord's claim, I note that the nine trips claimed extended from September 26, 2012, sixteen days before this tenancy ended until December 6, 2012, after the new tenant had taken occupancy of the rental premises. There are also notations on these records that calls into question whether some of the items hauled to the landfill site were in fact the tenant's possessions (e.g., a refrigerated appliance). Based on a balance of probabilities, I find that the landlord did incur some losses in driving to the landfill site. However, I limit the landlord's eligibility for this item to a monetary award of \$180.00 (i.e., 9 hours at an hourly rate of \$20.00 = \$180.00), plus a \$70.00 allowance for gas to drive to and from the landfill site. This results in a total monetary award of \$250.00 for the landlord's time and gas driving to and from the landfill site.

I dismiss the landlord's applications for the recovery of the developing fee and his registered mail fee without leave to reapply, as I find that the only fee associated with this hearing that he is entitled to recover is his \$50.00 filing fee. I also dismiss the landlord's application for a monetary award to repair walls without leave to reapply. I do so as the landlord's failure to provide a copy of any joint move-in condition inspection report and a move-out condition report makes it difficult to determine whether this

damage arose during the course of this tenancy. I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. I also allow the landlord to recover the \$50.00 filing fee for this application from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, damage, losses and his filing fee and to retain the tenant's security deposit:

Item	Amount
Unpaid Rent Owing from September and October 2012	\$750.00
Unpaid Rent November 2012	900.00
Bin Rental and Disposal Fee	318.16
Professional Carpet Cleaning	156.80
Waste/Tipping Fees at Landfill	75.25
Cleaning Premises & Collecting and Bagging Garbage (48 hours @ \$20.00 per hour = \$960.00)	960.00
Labour and Gas to Travel to and from Landfill Site (\$180.00 + \$70.00 = \$250.00)	250.00
Less Security Deposit	-450.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$3,010.21

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of this Order 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. The landlord's applications for an Order of Possession and an Order regarding substituted service are withdrawn. 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: February 27, 2013

Residential Tenancy Branch

