



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for compensation under the Act, for damages to the unit and to keep all or part of the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions. However, the tenant failed to submit their evidence in accordance with the Rules of Procedure by submitting the evidence late on May 1, 2013. Therefore, the evidence of tenant is excluded as it was not submitted in accordance with the Rules of Procedure and would be prejudice to the landlord.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on May 1, 2009. Current rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$450.00 was paid by the tenant. The tenancy ended on January 31, 2013.

The parties agreed a move-in and move-out condition inspection report was not completed.

The landlord claims as follows:

a.	Loss of revenue for February 2013 & utilities	\$ 640.00
b.	Estimate blind repair	\$ 520.80
c.	Cleaning receipts	\$ 220.00
d.	Storage of Goods	\$ 120.00
e.	Filing fee	\$ 50.00
	Total claimed	\$ 1,550.08

Loss of revenue for February 2013 and utilities

The landlord testified that the tenant did not provide sufficient notice to end the tenancy. The landlord stated on January 12, 2013, he received notice to end the tenancy on January 31, 2013.

The landlord testified that he immediately advertised the unit for rent, and was able to find a new tenant commencing February 15, 2013. The landlord seeks to recover loss of revenue and the cost of utilities in the amount of \$640.00.

The tenant testified that she did not give the landlord sufficient notice due to mould.

The landlord denied that they unit contained mould. The landlord stated there was a onetime flood in the unit at the beginning of January 2013, however, the problem was immediately repaired.

Estimate blind repair

The landlord testified that the tenant's cat caused damage to the blinds and he seeks compensation for having the blinds replaced. The landlord stated the blinds were about three years old at the start of the tenancy. Filed in evidence is an estimate for the blinds.

The tenant testified the blinds were not new when she moved in and denies her cat caused damage.

The witness for the tenant testified that the cat was an indoor cat and did not use the window as a door. However, the cat would sit on the window ledge. The witness stated it is likely that the cats cause some minor damages to the blinds by bending the ends on vertical blinds.

Cleaning receipts

The landlord testified the tenant did not clean the unit at the end of the tenancy and he paid someone to clean the unit. The landlord seeks compensation in the amount of \$220.00.

The tenant testified that the rental unit was cleaned at the end of the tenancy, which included cleaning the appliances, floors and windows.

The witness for the tenant testified that the tenant left the unit reasonably cleaned and that she helped the tenant clean the rental unit. The witness stated she cleaned the windows and floors. The witness stated she did not clean the outside windows to the weather conditions at the end of January 2013.

Storage of Goods

The landlord testified that the tenant left their belongings in the rental unit until February 12, 2013 and seeks compensation for storage of those goods.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;

- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Loss of revenue for February 2013 and utilities

Section 45 of the Residential Tenancy Act states:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*
(a) is not earlier than one month after the date the landlord receives the notice, and
(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

The evidence of the landlord was the tenant gave notice to end the tenancy on January 12, 2013, with an effective vacancy date of January 31, 2013. The evidence of the tenant was the unit contained mould, however, this was denied by the landlord. I find in absent of any further evidence, such as report from a mould expert, the tenant has failed to prove the unit was not liveable due to mould. Further, a new tenant was found and the tenancy commenced 15 days later. I find if the unit was not liveable as alleged, that it would be highly unlikely the unit would have been rentable within such a short period of time.

As a result, I find the tenant has breached section 45(1) of the Act the tenant, when they failed to provide the landlord with at least one month notice to end the tenancy.

As a result of the tenant not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of revenue for February 2013, the landlord is entitled to

an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy and in this case the earliest date the tenant could have legally ended the tenancy was February 28, 2013.

However, under Section 7 of the Act the party who claims compensation for damage or loss that results from the other's party's non-compliance with the Act, or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, the evidence of the landlord was that they immediately advertised the rental unit and were able to find a new tenant commencing February 15, 2013, and were able to recover a portion of the rent. As a result, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of revenue in the amount of **\$600.00**.

The evidence of the landlord was that he is seeking to recover \$40.00 of utilities that he would not have been required to pay, had the tenant not breached the Act. The tenant did not deny that it would cost \$40.00 for utilities for a two week period. As I have previously found the tenant did breach the Act, I find the landlord is entitled to recover the cost of utilities in the amount of **\$40.00**.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Estimate blind repair

In this case, the evidence of the landlord was the tenant's cat caused damage to the window blinds. The tenant denied the landlord's claim. However, the witness for the tenant agreed that the cat likely caused minor damage when sitting on the window ledge. As a result, I find the damage was caused by the tenant's pet.

Under the Residential Policy Guideline #40, if an item was damaged by the tenant, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement. As, I have determined that the blinds had a useful life span of ten years, and the blinds were six and a half years old, the landlord is entitled to the

depreciated value of 65 percent. In this case, the landlord has filed an estimate, which indicated it would cost \$520.80 to replace the blinds. The tenant did not dispute the amount of the estimate. Therefore, I find the landlord is entitled to compensation for the depreciated cost of replacing the blinds in the amount of **\$182.28**.

Cleaning receipts

The evidence of the landlord was the tenant did not clean the unit and he was required to have the unit cleaned. The evidence of the tenant was she cleaned the unit, including all appliances, which was support by the tenant's witness.

While I accept the landlord paid for additional cleaning of the unit. I find the landlord has failed to provide sufficient evidence, such as a move-out condition inspection report or photographs of the unit to prove that the rental unit was not left reasonable cleaned by the tenant as required by the Act. The tenant is not required to pay to bring the unit to a higher standard of cleanliness. As a result, I dismiss this portion of the landlord's claim.

Storage of Goods

In this case, the landlord is claiming cost for storage of the tenant's belongings that were left in the rental unit. However, as I have found the landlord was entitled to compensation for loss of revenue for the first two week of February 2013 and this is the time period the tenant belongings remained in the unit. I find the landlord has been adequately compensation.

I find that the landlord has established a total monetary claim of **\$872.28** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$450.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$422.28**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord s granted a formal order for the balance due.

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: May 10, 2013

Residential Tenancy Branch

