



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 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 tenants' security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord testified that she handed one of the tenants (the tenant's father) a copy of her dispute resolution hearing package on March 1, 2013. She testified that she sent the tenant who attended this hearing (the tenant) a copy of her dispute resolution hearing package on March 18, 2013, by registered mail. She provided a Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed that both he and his father had received copies of the landlord's dispute resolution hearing package as claimed by the landlord. I am satisfied that the landlord served the dispute resolution hearing package to the tenants.

The landlord said that she also provided copies of her written and photographic evidence package to the tenants with her dispute resolution hearing package. The tenant said that the landlord did not provide copies of this evidence to him or his father. Although it is unclear if this evidence was in fact included in the documents provided to the tenants, for the purposes of gaining a better understanding of the landlord's claim I have taken into account her written and photographic evidence. I note that the quality of the photographic evidence is limited, as copies were provided, rather than the originals. The landlord claimed that staff of the Residential Tenancy Branch (the RTB) told her that she could not provide original photographs and that copies would be

sufficient. I find it very unlikely that staff of the RTB would refuse to accept original photographs, which are routinely requested and accepted by RTB staff.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This rental unit was for a two bedroom apartment over a restaurant also rented from the landlord. Both parties agreed that separate tenancy agreements were in place for the restaurant and the two bedroom rental unit. The landlord gave undisputed sworn testimony that the rent for the residential suite was set at \$550.00, payable in advance on the first of each month. She said that the rent for the restaurant was set at \$1,500.00 per month plus taxes. The parties agreed that the payments for the residential suite were typically made by cash and that the restaurant payment was by cheque. The tenant said that the restaurant tenancy was actually with someone else named Tony, although his father was also involved with this restaurant business.

The landlord testified that she thought the tenancy for the rental suite was in place for about three years. The tenant provided more compelling sworn testimony that the tenants moved into the rental unit in 2007, although he could not recall in which month. For the purposes of this decision, I find that the residential tenancy is separate from the commercial tenancy for the restaurant and thus falls under the *Act*. I also find that the tenancy commenced on or about July 1, 2007, the mid-point of 2007.

The tenant testified that he was also representing his father, the other tenant, at this hearing. The tenant testified that on February 1, 2013, his father told the landlord that the tenants would be vacating the rental premises by March 1, 2012. The landlord testified that the tenant's father told her on February 26, 2012, that the tenants would be ending their tenancy very soon. The parties agreed that the tenants vacated the rental unit on March 3, 2012. The landlord maintained that the tenants removed some of their belongings about 10 days later.

The landlord's application for a monetary award of \$2,950.00 included the following:

Item	Amount
Unpaid Rent March 2013	\$550.00
Damage to Two Bedrooms	300.00

Damage Caused by Pressure Cooker	125.00
Cleaning of Kitchen Stove, Oven, Fridge and Cabinets	100.00
Cleaning Supplies	50.00
Painting Preparation	1,000.00
Carpet Replacement	500.00
Paint	175.00
Damage to 2 Stair Steps and Railing	100.00
Replacement of Broken Door Lock	50.00
Total Monetary Order Requested	\$2,950.00

The landlord said that the premises were left in poor shape at the end of this tenancy and that many holes were made to the walls. She testified that a joint move-in and move out condition inspection was conducted with the tenant's father. Although she testified that she provided a copy of the move-in condition inspection report to the tenant's father, the tenant said that no such report was sent to the tenants. The landlord did not enter a copy of the joint move-in condition inspection report into written evidence and said that she did not have it with her as she was calling from California. She testified that she did not send the tenants a copy of her move-out condition inspection report as she had no forwarding address for the tenants. The tenant testified that the tenants gave her their forwarding address on the day they vacated the rental unit, although this was not in writing. The landlord said that the tenants simply handed the keys to someone else at the property for forwarding to the landlord.

The tenant said that there were two or three holes in the walls at the end of this tenancy. Otherwise, he maintained that the rental unit was left in good condition.

Analysis

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 tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Analysis – Landlord's Application to Recover Unpaid Rent March 2012

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for March 2012, the tenants would have needed to provide their notice to end this tenancy before February 1, 2012. Section 52 of the *Act* requires that a tenant provide this notice in writing.

The parties provided conflicting evidence with respect to the landlord's claim for unpaid rent for March 2012. The landlord testified that the last rent payment she received from the tenants for this tenancy was a cash payment of \$500.00 in mid-February 2012. She said that she issued a receipt for this cash payment as was her normal practice. The tenant testified that the tenants made a cash payment of \$1,100.00 for March 2012. He testified that the landlord refused to issue a receipt for this cash payment as he claimed was her normal practice during this tenancy.

I find it unlikely that the tenants would have made a payment of double their usual monthly rent as they were poised to vacate the premises, without requesting and demanding a cash receipt for their alleged \$1,100.00 payment. On a balance of probabilities, I find it more likely than not that the landlord is correct in maintaining that the tenants failed to pay any rent for this residential suite for March 2012. As such, the landlord is entitled to compensation for losses she incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act* by failing to pay their rent for March 2012. 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 she was able to do so. The tenants did not vacate the premises until March 3, 2012. The landlord provided evidence that they did not remove all of their belongings until approximately March 13, 2012, and maintained that repairs were necessary to ready the rental unit for showing the premises to prospective tenants. She said that it took approximately six weeks to repair the premises to the point where she could advertise its availability for lease. Once that occurred, she was able to rent the premises to new tenants who took occupancy on May 1, 2012. Based on the evidence before me, I am satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the tenants'

loss for March 2012. I find that the landlord is entitled to a monetary Order in the amount of \$550.00 for unpaid rent owed by the tenants for March 2012.

Analysis – Landlord’s Application for Damage and Retention of Security Deposit

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. In this case, the tenant disputed the landlords’ claim that she provided the tenants with a copy of the joint move-in condition inspection report, the landlord did not provide a copy of any such report to the RTB, and the landlord did not have the move-in condition inspection report with her at the hearing. The landlord did not send any joint move-out condition inspection report to the tenants (although she said she did not have their forwarding address), the landlord did not provide the RTB with a copy of that report, and did not have that report with her at the hearing.

Under normal circumstances, the landlord would not be able to retain the tenant’s security deposit due to the landlord’s failure to comply with the provisions of the above-noted sections of the *Act* regarding move-in and move-out condition inspections. However, the tenant confirmed that the tenants did not provide their forwarding address in writing to the landlord within one year of the end of this tenancy. This testimony was reinforced by the steps taken by the landlord to try to serve the tenants with her application for dispute resolution because she claimed to have not had the tenants’ forwarding address. Under these circumstances, section 39 of the *Act* allows the landlord to keep the tenants’ security deposit as the tenants’ right to claim against that deposit has been extinguished. For these reasons, I allow the landlord to keep the tenants’ security deposit without any corresponding deduction from the remainder of the landlord’s application for a monetary award.

In considering the landlord’s claim for damage, I find that the landlord has not provided sufficient evidence to demonstrate actual losses she incurred as a result of damage arising out of this tenancy. She provided no receipts, invoices or estimates from contractors. Her photographic evidence was for the most part blurred and unclear. In assessing her claim for damage, I have also considered the landlord’s failure to provide any move-in or move-out condition inspection reports and to produce any witnesses attesting to damage caused by the tenants.

Of the landlord's claim for \$2,400.00 in damage, fully \$1,175.00 is to repaint the rental unit. 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. The useful life of an internal paint job is set at four years. In this case, the landlord testified that the premises were newly painted when the tenancy commenced. Based on my finding that this tenancy began on or about July 1, 2007, the premises were scheduled for repainting by the end of this tenancy. As such, I dismiss the landlord's application for a monetary award to recover any of her repainting costs without leave to reapply.

Similarly, the landlord's application for the cost of recarpeting the living room of the rental unit is affected by RTB Policy Guideline 40, which sets the useful life of carpeting at 10 years. By the landlord's own admission, this carpet was at 50% of its useful life during this tenancy. Without a joint move-in condition inspection report, any evidence of carpet replacement in the living room shortly before the tenants commenced their tenancy or any receipt for new carpeting installed by the landlord after this tenancy ended, I am not satisfied that the landlord has demonstrated any entitlement to reimbursement from the tenants for damage to the landlord's living room carpet arising out of this tenancy. I also dismiss this portion of the landlord's application without leave to reapply.

Despite the absence of receipts or joint move-in and move-out condition inspection reports, 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 oral, written and photographic evidence of the parties, I find on a balance of probabilities that the tenants did not comply with the requirement under section 37(2)(a) of the Act to leave the rental unit "reasonably clean, and undamaged except for reasonable wear and tear." I find that some cleaning and repairs were likely required by the landlord after the tenants vacated the rental unit. For that reason, I find that the landlord is entitled to a monetary award of \$200.00 for general cleaning and \$150.00 for general repairs that were required at the end of this tenancy. While this is an admittedly rough estimate and not in the magnitude requested by the landlord, I find that the landlord has provided sufficient evidence to substantiate this monetary award against the tenants, as I do accept that some damage occurred and that the rental unit needed to be properly cleaned by the end of this tenancy.

As the landlord has been somewhat successful in her application, I allow her to recover her \$50.00 filing fee from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which enables the landlord to recover unpaid rent, damage and losses arising out of this tenancy and the landlord's filing fee:

Item	Amount
Unpaid Rent March 2013	\$550.00
General Cleaning	200.00
General Repairs Arising from Tenancy	150.00
Recovery of Filing Fee	50.00
Total Monetary Order	\$950.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 addition, I also allow the landlord to retain the tenants' security deposit plus applicable interest pursuant to section 39 of the *Act*. I dismiss the remainder of the landlord's application 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: June 17, 2013

Residential Tenancy Branch

