



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, and for damages to the unit.

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 and there were no disputes in relation to review of the evidence submissions

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 a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The tenancy began on August, 1, 2012. Rent in the amount of \$475.00 was payable on the first of each month. A security deposit of \$237.50 was paid by the tenant. The tenancy ended on November 30, 2012.

The landlord has returned to the tenant her security deposit by cheque. However, that cheque remains outstanding. The tenant is at liberty to cash the cheque or return the

cheque as partial payment to the landlord should the landlord be successful with their application.

The parties agreed that this was a tenant in common tenancy agreement as the tenant rented a room and shared the commons areas with other occupants who were not the owners of the property.

The parties agreed a move-in and move-out condition inspection report were not completed in accordance with the Act.

The landlord claims as follows:

a.	Unpaid rent for December 2012	\$ 475.00
b.	Cleaning, cleaning supplies and items taken	\$ 130.00
c.	Damage to wall	\$ 635.01
d.	Key	\$ 8.61
e.	Filing fee	\$ 50.00
	Total claimed	\$1,290.01

Unpaid rent for December 2012

The landlord testified in October, 2012, that the parties had agreed to mutually end the tenancy effective December 31, 2012. The landlord stated that in the middle of November the tenant stated she would be vacated the premise early and moved out on November 30, 2012, breaching that agreement and further not providing sufficient notice as required. The landlord seeks to recover unpaid rent for December 2012, in the amount of \$475.00.

The tenant testified that since they had an agreement to end the tenancy she believed she could leave at any time without providing any further notice.

Cleaning and supplies and items taken

The landlord testified the tenant did not clean the two large windows in her room. The landlord stated the tenant did not dust or vacuum her room and left belonging behind that were required to be disposed. The landlord stated that the tenant had an assigned shelf in the refrigerator and that the tenant did not make any effort to clean the shelf or dispose of the food. The landlord stated it took six hours to clean at the rate of \$15.00

per hour and \$10.00 for cleaning supplies. The landlord seeks to recover the amount of \$100.00.

The landlord testified that the tenant also took a pizza pan and almond milk which belonged to the other occupant. The landlord seeks to recover the amount of \$30.00.

The tenant stated that she would not be providing any testimony on these issues.

Damage to wall

The landlord testified that the tenant damaged the wall in her room by what appeared to be burns from a candle as the wallpaper was burnt and there was also what appeared to be wax on the wall. The landlord stated the wallpaper was required to be removed and the wall was required to be repaired and painted. The landlord stated there was also other damage to the wallpaper as it appeared the tenant used tape and when the tape was removed the wallpaper was ripped. The landlord seeks to recover the amount of \$635.01.

The tenant testified that the wallpaper was damaged when she moved into the rental unit. The tenant denied causing any damage to the wall or burning candles in her room.

Key

The landlord testified at the end of the tenancy the tenant failed to return the key. The landlord seeks compensation for the key in the amount of \$8.61.

The tenant testified that the key was left on the counter with the parking pass.

The landlord acknowledged the parking pass was returned.

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.

Unpaid rent for December 2012

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 both parties was there was an agreement to end the tenancy effective December 31, 2012. The evidence of the landlord was that the tenant provided notice in the middle of November 2013, to end the tenancy on November 30, 2013. The evidence of tenant was that she thought this was acceptable. However, under section 45(1) of the Act the tenant was required to provide the landlord with at least one month notice to end the tenancy. I find that the tenant has breached the Act as the earliest date they could have legally ended the tenancy was December 31, 2013.

As a result of the tenant not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for December 2012, 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. Therefore, the landlord is entitled to compensation for loss of rent for December 2012, in the amount of **\$475.00**.

Cleaning and supplies and items taken

Section 37 of the Residential Tenancy Act states:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

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.

The evidence of the landlord was the tenant did not wash the windows, vacuum or clean any other area that was assigned to her for her exclusive use and left items behind that were required to be disposed. The tenant did not dispute the landlord testimony and refused to provide any testimony on this issue. As a result, I accept the undisputed testimony of the landlord that the tenant failed to leave the rental unit reasonable clean. Therefore, I find the landlord is entitled to recover cleaning and material cost of **\$100.00**.

The landlord is also seeking to recover amount for items owed to another occupant for a missing pizza pan and almond milk. I find if the tenants have a dispute they are a liberty to file their own dispute in the Provincial Court (Small Claims). Therefore, I dismiss this portion of the landlord's claim.

Damage to wall

The evidence of the landlord was the tenant damage the wall. The evidence of the tenant was the damage to the wall was there when she moved into the rental unit.

In this case, both parties have provided and equally probable version of events, without further evidence, such as a move-out condition inspection report or photographs of the room at the start of the tenancy, I find the landlord has failed to prove the damage was caused by the tenant. As a result, I dismiss this portion of the landlord's claim.

Keys

The evidence of the landlord was the tenant failed to return the key to the rental unit. The evidence of the tenant was that the key and parking pass were left on the counter in the common area, which the landlord acknowledged she received the parking pass.

In this case, both parties have provided an equally probable version of events, without further evidence, such as a move-out condition inspection report, which would indicate if the keys were not returned at the end of the tenancy, I find the landlord has failed to prove that the key was not returned by the tenant leaving them in the common area. As a result, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$625.00** comprised of the above described amounts and the \$50.00 fee paid for this application. I grant the landlord an order under section 67 of the Act.

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 as set out above.

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 11, 2013

Residential Tenancy Branch

