



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties participated in the conference call hearing.

The hearing was originally convened on May 2, at which time the tenant advised that he had not received a copy of the landlord's photographs. The hearing was adjourned to be reconvened on June 17 to give the parties additional time to exchange evidence. On June 17, the tenant confirmed that he had received the landlord's photographs but had been unable to serve the landlord with his documentary evidence. The tenant acknowledged that the evidence could not be considered as it had not been submitted to the landlord. In rendering this decision, I have relied on the landlord's documents and photographs and the oral testimony of both parties.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy was set to begin in January 2012, but that the tenant's move into the unit was delayed by several weeks because the previous tenant did not vacate the unit until approximately the third week in January. They further agreed that the tenancy ended on or about November 30, 2012. They agreed that they did not inspect the unit at the beginning of the tenancy or at the end of the tenancy, although the landlord asked to inspect the unit midway through the tenancy.

The parties agreed that the tenant withheld \$200.00 of his rent in each of the months of October and November. They agreed that the landlord did not agree that the tenant could withhold any monies owing in November and agreed that in October, they engaged in an exchange of emails in which the landlord said the tenant could withhold

\$200.00 for October if he vacated the rental unit on November 30. The landlord acknowledged that the tenant vacated the unit on November 30, but testified that he left it in an unclean state and therefore the landlord believes that the agreement that the tenant could withhold monies for October was rendered null and void. The landlord seeks to recover \$200.00 in unpaid rent for each of the months of October and November.

The parties agreed that the washing machine in the rental unit overflowed on 2 occasions. On the first occasion, the tenant reported the incident to the landlord, who replaced the machine with one from his own home. The machine was tested and it seemed to work well. On the second occasion, the tenant discovered the overflow and left a message for the landlord. When the landlord returned the tenant's phone call, the tenant advised that the matter was under control.

The tenant testified that he works as a consultant in the construction industry and was aware that because it was important to contain the leak so it didn't affect the drywall, so he drilled 4 holes through the linoleum and subfloor so the water could drain into the crawl space underneath.

The landlord seeks to recover a total of \$1,825.00 for the estimated cost of replacing the 18 year old linoleum and the labour involved with removing and reinstalling trim.

The parties agreed that the tenant installed brackets on a wall to hold his television and the landlord seeks to recover \$125.00 as the cost of 5 hours of labour to patch and repaint the wall. While the tenant acknowledged that a repair was required, he estimated that the repair was not worth more than \$20.00.

The landlord testified that the unit was not adequately cleaned at the end of the tenancy and that he spent 20 hours to clean the unit as well as to rent a shampooer at a cost of \$53.18. The landlord further claimed that the tenant left garbage in and outside the rental unit, including clothing, shoes, lamps, cleaning supplies, rags, a barbeque, a child's pool, beer cans and lumber. The landlord seeks to recover \$50.00 as the cost of removing and dumping those items.

The tenant testified that he thoroughly cleaned the rental unit at the end of the tenancy, although he failed to clean paint from a railing inside the unit, and denied having left any garbage or discarded items in or outside the home.

The landlord provided a number of photographs which he claimed were taken on December 6, 2012. The tenant acknowledged that 2 of the photographs, one of the aforementioned railing and one of the wall damaged by the TV mount, were accurate

representations of the unit, but questioned when the other photographs were taken. The tenant suggested that they may have been taken prior to the time his tenancy began.

The landlord also seeks to recover the \$50.00 filing fee paid to bring his application.

Analysis

Section 26(1) of the Act provides that tenants must pay rent when it is due regardless of whether the landlord is complying with his obligations under the Act or tenancy agreement. As there was no agreement that the tenant could withhold any of the rent due in November, I find that the landlord is entitled to recover the money withheld and I award the landlord \$200.00. The parties had an agreement that the tenant could withhold \$200.00 for October if the tenant vacated the rental unit on November 30. I find that the tenant vacated the rental unit on November 30 and therefore the landlord is not entitled to recover the money withheld for October and I dismiss that part of the claim.

When the washing machine overflowed, the tenant had the obligation to inform the landlord and make reasonable attempts to contain the flow of water. I find that the tenant did not have the right to drill holes into the floor as I am not satisfied that this is a reasonable means of containing the water as the tenant had not exhausted or apparently even attempted other means of extracting the overflow.

I find that the landlord is entitled to recover the losses incurred as a result of this incident. However, the landlord is not entitled to the replacement value but the value of what was lost. I find it likely that the linoleum was near the end of its useful life and its actual value was minimal. I find it appropriate to apply an 80% depreciation to the \$1,825.00 claim and I award the landlord \$365.00.

I find that the landlord is entitled to recover the cost of repairing the wall on which the TV was mounted. The landlord provided no evidence as to the age of the paint and as paint has a useful life of 4 years and the unit was not painted after the previous tenant vacated in January, I find it appropriate to apply a 50% depreciation to the \$125.00 of filling and painting. I award the landlord \$62.50.

The landlord had an obligation to conduct a move-out inspection of the rental unit and work together with the tenant to produce a written report. The advantage of such a report is that it gives the parties an opportunity to view the unit together to determine the extent of any deficiencies.

The landlord failed to produce such a report and took only a limited number of photographs. I accept that the photographs were taken at the end of the tenancy as I find no reason to disbelieve the landlord's testimony on this point. The only thing I am able to conclude from the photographs is that the carpet and railing required cleaning. As the landlord did not dispute that the blue discolouration was caused by fingerprint, I find that the cleaning of the railing would have taken very little time and therefore does not attract compensation. I find that the landlord is entitled to recover the \$53.18 cost of carpet cleaning and I award him that sum. I dismiss the claims for the remainder of the cleaning and garbage removal as the tenant disputed the landlord's characterization of the condition of the unit and I am not satisfied on the evidence that these charges are warranted.

As the landlord has enjoyed some success in his claim, I find that he is entitled to recover the \$50.00 filing fee and I award him that sum.

Conclusion

The landlord has been awarded the following:

November rent	\$200.00
Linoleum replacement	\$365.00
Drywall repair and paint	\$ 62.50
Carpet cleaning	\$ 53.18
Filing fee	\$ 50.00
Total:	\$730.68

I grant the landlord a monetary order under section 67 for \$730.68. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 18, 2013