



Dispute Resolution Services

Page: 1

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 for a Monetary Order for unpaid rent, damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the landlord initially sent the hearing documents to the tenant via registered mail using her last known address. The registered mail was not picked up so the landlord had a friend serve the documents upon the tenant at her place of employment on July 4, 2013. The person who served the documents on July 4, 2013 provided a signed "Proof of Service" attesting to the service. I was satisfied the tenant has been sufficiently served with notice of this proceeding and I continued to hear from the landlord in the absence of the tenant.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation in the amounts claimed for unpaid rent; damage to the unit; and, damage or loss under the Act, regulations or tenancy agreement?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

A co-tenancy commenced in early 2008 and the tenants paid a security deposit of \$488.75. The co-tenants separated and a new tenancy agreement was entered into with the female tenant. The original rent of \$977.50 was reduced to \$960.00 per month starting in April 2010. The tenant fell behind in the rent for February and March 2012. On March 27, 2012 the tenant notified the landlord over a voice mail that she had moved out of the rental unit. The landlord went to the rental unit to find it very dirty, garbage left behind, the toilet plugged and water leaking under the kitchen sink.

The landlord is seeking a total of \$3,839.30 from the tenant. I have summarized the landlord's claims below.

Unpaid and Loss of rent –

The tenant provided a cheque in the amount of \$260.00 for the month of February 2013. The cheque was returned for insufficient funds and the landlord incurred a \$5.00 bank fee due to the returned cheque.

The tenant paid only \$300.00 for the month of March 2012. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on March 10, 2012 indicating rent of \$660.00 was outstanding.

The tenant vacated the unit on March 27, 2012; however, the landlord suffered a loss of rent for the month of April 2012 in the amount of \$960.00. The landlord submitted that the loss of rent for April 2012 was due in part to the lack of sufficient notice to end the tenancy; the tenant's breach of the tenancy agreement, and the condition the unit was left.

Advertising –

The landlord spent \$47.25 to advertise the unit for rent.

Missing property –

The landlord asserted that the following items were provided to the tenant and were missing at the end of the tenancy. The landlord is claiming the replacement cost of the following items.

Electrical cord in garden	\$ 33.58
Toilet Plunger	6.15
Sink strainer	26.87
Jerry can for lawnmower gas	10.07
Door stops (6)	<u>17.66</u>
Total	\$ 94.33

Keys –

The landlord asserted the tenant did not return the keys to the landlord. The landlord had more keys cut at a cost of \$5.35.

Damage, repairs and cleaning –

Water leak

The landlord asserted that the tenant did not report a leaking drain pipe under the kitchen sink. Rather, the tenant placed layers of newspaper over the bottom of the cabinet and permitted the leak to continue. As a result, the water eventually leaked through the cabinets and under the laminate floor. Mould was present in the cupboards and under the laminate flooring. The landlord had to replace the leaking pipe, treat the mould with mould spray, and repair the laminate flooring.

Plugged toilet

The landlord discovered the toilet was full of feces and not flushing. After attempts to plunge the toilet were unsuccessful the toilet was “snaked” and eventually removed from the floor. A glass jar lid was found lodged in the toilet.

Walls

The walls were dirty and encrusted with food. The landlord had to clean the walls and then paint the unit. The unit was last painted just prior to the start of the tenancy in early 2008.

Shower head

The shower head was not working properly and was replaced.

Power-washing exterior

The landlord rented a power washer to clean the exterior areas including the carport/entry area which was splashed with mud and had cobwebs.

Grass cutting

The tenant was responsible for cutting the grass. The landlord had to purchase gas for the lawnmower to cut the grass.

Dump fees

The landlord had to take the tenant's garbage to the dump.

Labour

The landlord is seeking \$1,350.00 for her time to clean the entire unit since the tenant did not clean anything; perform yard work; make repairs; paint the unit, go to the hardware store on multiple occasions; and, go to the dump. The landlord provided a detailed breakdown of 67.5 hours spent performing the above tasks and charged her time at \$20.00 per hour.

Analysis

Upon consideration of the evidence before me, I provide the following findings and reasons with respect to the landlord's claims against the tenant.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Unpaid and/or Loss of Rent –

A tenant is required to pay rent when due in accordance with their tenancy agreement and the Act. The Residential Tenancy Regulations also provide that a landlord may recover bank fees charged to the landlord as a result of a tenant's returned cheque.

Based upon the bank advise supplied as evidence I am satisfied the tenant's partial rent cheque for \$260.00 was returned for insufficient funds in February 2012 and the landlord was charged a \$5.00 service fee by her bank as a result.

I found the receipt for payment of \$300.00 and the 10 day Notice indicating \$660.00 was outstanding for March 2012 satisfied me that the tenant failed to pay \$660.00 in rent for March 2012.

The Act provides that in order for a tenant to end a month-to-month tenancy the tenant must give at least one full month of written notice to the landlord. I am satisfied that the tenant did not do so in this case. Not paying rent is not a means to avoid this requirement. Therefore, I am satisfied the tenant's breach of the tenancy agreement and the Act resulted in the landlord suffering a loss of rent for the month of April 2012.

In light of the above, I grant the landlord's request to recover unpaid rent and loss of rent, plus a bank fee, in the amounts claimed. The landlord is awarded \$1,885.00 [\$260.00 + \$660.00 + \$960.0 + \$5.00].

Advertising –

A landlord should expect month-to-month tenancies to end from time to time and the cost to find new tenants is an ordinary cost of doing business as a landlord. Therefore, I deny this portion of the landlord's claim.

Missing property –

Based upon the landlords undisputed evidence testimony I accept that the tenant was provided with use of the items listed as missing at the end of the tenancy. I find the landlord has provided sufficient evidence to show these items were subsequently replaced by the landlord after the tenancy ended. However, I find it appropriate to reduce the landlord's claims by depreciation as the landlord did not provide evidence that would indicate the missing items were very new. As the landlord did not provide an approximate age of the items that were missing I have estimated depreciation at 50%.

In light of the above, I grant the landlord \$47.17 [$\$94.33 \times 50\%$].

Keys –

The Act requires that at the end of the tenancy the tenant must return all keys or to the landlord. I accept the undisputed evidence that the tenant failed to meet this obligation. Therefore, I grant the landlord's claim to recover \$5.35 for key cutting.

Damage, Repairs and Cleaning –

A tenant is required to leave rental unit undamaged and reasonably clean at the end of a tenancy. A tenant is required to repair damage they have cause by way of their actions or negligence. Normal wear and tear is not considered damage under the Act.

Awards for damages are intended to be restorative. Accordingly, where an item has a limited useful life it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: Useful Life of Building Elements.

Water leak

Drain pipes leak may be due to damage or from deterioration due to aging and use. In order to succeed in a claim against the tenant to replace the pipes, the landlord must prove the tenant damaged the pipes. In this case, the landlord did not present evidence that the tenant caused the drain pipes to leak and I do not award the landlord compensation to repair the pipes.

Where a tenant becomes aware of a repair issue I find that a reasonable person would notify the landlord of such, especially when the issue has great potential to cause further damage, such as water leaks do. As I heard the landlord found multiple layers of newspaper under the leaking drain pipe I accept that the tenant was aware of the leaking water and was negligent in not notifying the landlord of such. Therefore, I hold the tenant responsible for the costs associated to remediating the mould and laminate floor damage as claimed by the landlord.

Based upon the landlord's receipts and spreadsheet I calculate that \$92.35 is attributable to mould remediation and laminate flooring repair [$\$34.37 + \$38.02 + \$19.96$]

Plugged toilet

I accept the landlord's undisputed testimony that the toilet was plugged at the end of the tenancy and that after considerable efforts were made, an object was found lodged in the toilet. I find, on the balance of probabilities, this object was placed or fell into the toilet during the tenancy and I hold the tenant responsible for the landlord's costs to remove the object and reinstall the toilet.

Based upon the submitted receipts and the landlord's spreadsheet I calculate that \$45.07 was expended on the toilet repair [$\$16.99 + 23.52 + 4.56$].

Walls

Residential Tenancy Policy Guideline 1 provides that landlords are expected to paint rental units at reasonable intervals. Residential Tenancy Policy Guideline 40 provides that interior paint has an estimated useful life of four years. Given the rental unit was last painted in early 2008 I find the rental unit was due for repainting and this maintenance is the landlord's responsibility. Nor did the landlord make any submissions that would demonstrate the filling and taping of areas on the wall was due to damage caused by the tenant. Therefore, I deny the landlord's claims for prepping and painting the walls the unit except for cleaning. Time spent cleaning is included in a section below.

Shower head

I find I was not provided sufficient evidence to conclude the shower head was not working properly due to damage caused by the tenant as opposed to aging or normal wear and tear of this item. Therefore, I deny this portion of the landlord's claim.

Power-washing

I accept the landlord's undisputed testimony that the carport and entry way needed to be cleaned of mud and cobwebs. I find the tenant responsible for removal of mud but not cobwebs. Therefore, I estimate a reasonable award to the landlord to be 50% of the amount claimed or \$23.69 $[(\$38.50 + \$4.05 + \text{tax}) \times 50\%]$

Grass cutting

I accept the landlord's undisputed testimony that the tenant was responsible for grass cutting as a term of tenancy. However, considering the tenancy ended in March 2012 and the landlord purchased the gas for lawn cutting May 12, 2012 I find it likely that the grass cutting was required due to grass that grew after the tenancy ended. Therefore, I do not hold the tenant responsible for the purchase of lawnmower gas or yard work performed in May 2012.

Dump fees

I accept the landlord's undisputed evidence that the landlord had to take the tenant's garbage to the dump and I grant the landlord's claim to recover \$16.50 from the tenant.

Labour

I find the landlord's hourly rate of \$20.00 for cleaning and repairs to be reasonable. However, the landlord's claim of 67.5 hours relates to time spent on several repairs that I have found not to be the tenant's responsibility. Therefore, I have allowed the labour for the repairs and cleaning the tenant was obligated to perform.

I grant the landlord labour for the following activities:

Cleaning and treating mould from water leak	2.5 hours
Cleaning of walls, floors, kitchen, bathroom, etc.	14 hours
Floor repair	8 hours
Toilet repair	6 hours
Power washing (50%)	.75 hours
Garbage removal	2 hours
Total hours awarded to landlord	33.25 hours

At \$20.00 per hour the landlord is awarded compensation of \$665.00 for her time spent repairing and cleaning the unit where such activities were found to be the responsibility of the tenant.

Filing fee –

As the landlord's claim has merit, I award the landlord the \$50.00 filing fee paid for this application.

Security deposit –

I authorize the landlord to retain the security deposit in partial satisfaction of the amounts awarded to the landlord.

Monetary Order –

In light of the above findings, the landlord is provided a Monetary Order calculated as follows:

Unpaid and/or Loss of Rent	\$ 1,880.00
Bank fee for NSF cheque	5.00
Missing property	47.17
Keys	5.35
Damage, repairs and cleaning	
Water damage	92.35
Toilet repair	45.07
Power washing entry	23.69
Dump fees	16.50
Labour for cleaning and repairs	665.00
Filing fee	50.00
Less: security deposit	<u>(488.75)</u>
Monetary Order	\$ 2,336.03

To enforce the Monetary Order it must be served upon the tenant. The Monetary Order may be filed in Provincial Court (Small Claims) as necessary to enforce as an Order of the court.

Conclusion

The landlord was partially successful in this application. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,336.03

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: August 16, 2013

Residential Tenancy Branch

