



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 was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served in person to the tenant on June 15, 2013.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords entitled to recover unpaid rent?
- Are the landlords permitted to keep the security deposit?

- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlords attending testify that this tenancy started on February 01, 2012 for a month to month tenancy for a fully furnished unit. Rent of \$2,200.00 per month was due on the 1st day of each month. The tenant paid a security deposit of \$1,100.00 on February 01, 2012.

The landlord's testify that the tenant did not provide a forwarding address for the reminder of the landlords' evidence to be sent to the tenant. The tenant was however sent this evidence by e-mail to the tenant and to the tenants sponsor at the consulate as the tenant is a foreign student living and working in Canada. The landlords' testify that this is the tenants e-mail and they have communicated with the tenant and the tenant sent them an e-mail from this address the day before the hearing date so the e-mail address is still active.

The landlord testifies that the tenant sent the landlord an e-mail on April 30, 2013 stating that this was the tenants last month and the tenant would be moving out in a few days. The landlord responded to that e-mail and informed the tenant that he was obligated to provide a month's notice and must pay rent for May. The tenant responded and said he would be moving on May 10 as that was the day he paid rent each month. The landlord responded and informed the tenant that rent was actually due on the 1st day of each month and the tenant had just paid rent late each month on the 10th day. The tenant responded and informed the landlord that he should not have to pay rent after he has moved out and the tenant has found another tenant to move into the unit and that tenant will hire a company to come in and clean the unit.

The tenant moved out at an undetermined date and the landlord seeks to recover unpaid rent for May, 2013 of \$2,200.00. No other tenant moved into the unit. The landlord testifies that due to the condition that the tenant left the unit in, it took the landlord well over a month to have the unit cleaned, repainted and areas of damage repaired before the unit could be advertised and re-rented. The landlords testify that some repairs are still required however they managed to re-rent the unit for July 01, 2013. The landlords therefore seek a loss of rent for June, 2013 of \$2,200.00. The landlords have provided evidence to support their claim of the condition of the rental unit.

The landlords seek to recover the cost incurred to clean, paint and repair the unit. The landlords testify that they were shocked at the condition that the tenant left this fully furnished unit in. The landlords did an initially list of cleaning and damages and met with the tenant on June 15, 2013 at the building. The list of damages was given to the tenant. The tenant had his girlfriend with her and while the tenant said relatively little about the cleaning and damages his girlfriend disputed some of the items on the landlords list. The tenant agreed at that time to pay some partial compensation of \$12,971.00 and a new list was drawn up with the items the tenant agreed to pay for.

This list included:

Rent for May - \$2,200.00

Excess on the Strata insurance for the broken window - \$250.00

Broken stove top - \$868.00

Replacement of damaged blinds – 700.00

Repairs to some blinds – 285.00

Replacement beds - \$1,300.00

Damage to floor - \$1,600.00

Cleaning and painting the unit - \$4,700.00

Damage to kitchen counter top - \$1,000.00

Damage to ottoman - \$800.00

Key fobs - \$150.00

Keys - \$100.00.

The landlords and tenant agreed that the tenant could pay this reduced amount for the landlords claim by September 24, 2013 in installments. If this amount was paid by September 24, 2013 then the landlords would not pursue the remainder of their claim through the Residential Tenancy Office. The landlords testify that to date the tenant has made one e-mail transfer of \$571.00 on September 25, 2013. No other amounts have been received by the tenant so the landlords seek to proceed with this hearing to claim all the damages from the tenant above and beyond what the tenant agreed to.

The landlord testifies that:

- The blinds were damaged in all rooms. Some blinds could be repaired but some had to be replaced. The landlords therefore seek to recover \$727.65 for the replacement blinds and \$285.60 for the repaired blinds. Receipts and photos have been provided in evidence
- The tenant broke a large window in the condo. This was replaced by the Strata under their insurance however the landlords have had to pay a deductible of \$250.00.
- The carpets in two bedrooms and an area rug were left in a disgusting condition. The tenant had been smoking in the unit and the carpets had gum and ground in ash on them as well as general dirt. The landlords had the carpets cleaned at a cost of \$90.00. The area rug will also need to be replaced as after cleaning it was found to have many burn marks. The landlords have not yet replaced this rug but have estimated its replacement costs of \$160.00. The landlords have provided photos and receipts for cleaning the carpets in evidence.
- The unit was left in a disgusting condition throughout including the walls which were covered in what looked like spills from drinks, smoke and debris. The walls all had to be washed and repainted throughout the unit including the ceilings. The tenant had left a large amount of garbage in the unit and balcony. All the garbage

had to be removed by the landlords. The landlord then spent three days doing an initial clean of the unit before professional cleaners were called in. The landlord then returned to the unit and spent another 20 hours finishing off the cleaning. The landlord seeks \$4,725.00 for painting and for the cleaners this does not include the landlords time or labour. The landlord has provided photos of the condition of the unit at the start and end of the tenancy and an invoice for the painting and cleaning.

- The landlords seek to recover the cost for replacement light bulbs and cleaning supplies. The landlords have provided receipts for \$41.00, \$148.58 and \$35.93 in evidence.
- The tenant failed to return the keys or fobs to the unit and building and the condo had to be rekeyed at a cost of \$99.75. New fobs had to be purchased at a cost of \$150.00 and three sets of three keys had to be cut at a cost of \$57.12. The landlord has provided receipts and an invoice for this work.
- The unit had two beds, one a double and one a queen size. Both bed mattresses were left in a dirty and torn condition. These beds were less than a year old and had been provided with mattress pads and linens. The beds had to be disposed of and the landlords seek to recover \$1,305.92. The landlords have provided photos and invoices.
- The fridge was left damaged with a large dent and a broken handle. The landlords turned the fridge off to clean it and when the new tenants moved in on July 01, 2013 they informed the landlords that the fridge was not working. The landlords had to replace the fridge and seek to recover the cost of \$587.16. The landlords have provided photos of the damage and an invoice for the replacement fridge.

- The kitchen counter top had burn marks and was badly cut and scratched where it appeared that someone had been cutting food on it without a board. The landlord has provided an estimate for the replacement of this counter top as the work has not yet been done. This estimate is for a like for like counter top and is for \$1,056.00. The landlords have provided photos of the damage and the estimate in evidence.
- The laminate flooring throughout the unit has been damaged. This flooring has some burn holes and a larger melted area which appears as if it was made by the tenants Hooky pipe that was found in the unit. The floor has also been scratched, some of which are deep. No areas of the floor can be saved as the colour cannot be matched. The entire floor will require replacement. However the landlords cannot afford to do this work yet so have obtained an estimate for a low end laminate for \$3,380.00. This cost includes the removal of the damaged floor and installation of the new floor. The landlords have provided photos and an estimate in evidence.
- The landlord testifies that the unit was provided with bedding including pillows, pillow covers, sheets, mattress pads and comforters. One comforter was left in the unit all ripped and smelling badly, one pillow was found dirty and one mattress pad was found with broken glass wrapped up in it. The remaining bedding was not found. The landlords seek to recover the cost of replacing these items of \$198.20 and \$50.14. Copies of receipts have been provided in evidence.
- The kitchen light fixture consisted of five lights. One of these lights had been smashed and as just this light could not be replaced the landlords had to replace the entire light fixture. The landlords have provided a copy of the invoice and photos of the damaged light.

- The unit came supplied with all kitchen utensils and tools including a set a plates, a kettle and blender. Some of the tools were missing and some were left in such a disguising condition that they could not be cleaned; the kettle was left badly melted, the blender was filthy with congealed food and the plates were missing. The landlords had to replace these items with low end items and seek to recover \$193.65 and \$33.44 for the plates. The landlords have provided photos and receipts for these costs.
- The landlords seek to recover \$24.25 for the cost of processing the photographs used to provide evidence for this hearing.
- The shower head and bar were left broken. The landlords had to find a matching set due to the pre-existing holes drilled in the tiles. The landlords seek to recover \$106.95 and have provided photos and an invoice in evidence.
- The unit came equipped with a laminate flooring mop however this was no longer at the unit at the end of the tenancy. The landlords seek to recover the cost for the mop of \$98.28 and have provided evidence of its purchase.
- The unit had a large round ottoman which was only a year and a half old. This was left stained and smoke damaged. The landlord attempted to scrub the ottoman clean and the carpet cleaner also tried to clean it. However the stains and smell of smoke remain. The landlords have not yet replaced this item but have been looking for a replacement in clearance items. The landlords estimate from other ottomans they have seen that it will cost \$800.00 to replace, the landlords have provided photos of the ottoman at the start and end of the tenancy but no estimate has been provided.
- The tenant caused severe damage to the dressers drawers. The dresser was only one and half years old and the landlords have estimated the cost of

replacing this dresser to be \$400.00 for a like for like replacement. The landlords have provided photos of the damaged dresser but no estimate.

- The landlord had left a decorative towel in the bathroom at the start of the tenancy. This towel was missing from the unit and the landlord testifies that this will cost \$10.00 to replace. The landlords have provided a photo of the towel on a rail in the bathroom at the start of the tenancy.
- There was damage to an outdoor patio chair. The seat of the chair has a large rip in it and the landlords have estimated that it will cost \$30.00 to replace the chair. The landlords have provided a photo of the chair but no estimate for replacement.
- The glass stove top was left in a filthy condition with a large crack across the glass. The landlords have repaired this stove top but have omitted to provide the receipt of \$850.00 plus tax. The stove top was only one and a half years old. The landlord has provided photos showing the dirty and cracked stove top in evidence.

The tenant was sent a warning letter from the Strata about noise in 2012. The landlords were not given a copy of that letter at the time. However the tenant was sent another letter from the Strata about noise again in March, 2013 and the tenant was fined \$200.00, the tenant did not pay this fine and the Strata has now pursued the landlords for \$200.00 and provided a copy of the letter sent to the tenant. The landlords have not yet paid this fine and seek to recover this amount from the tenant. A copy of the letter has been provided in evidence.

The landlords seek an Order to permit the landlords to keep the security deposit of \$1,100.00 to offset against their claim. The landlords also seek to recover the \$100.00 filing fee from the tenant.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me.

With regard to the landlords claim for unpaid rent for May, 2013; I refer the parties to s. 45(1) of the *Act* which 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 landlords have testified that the tenancy agreement states that rent is due on the first day of each month. However the tenant would continually pay late on the 10th day of the month as that was when the tenant got paid. The tenant did not therefore provide one clear months written Notice. The tenant has also agreed in writing and signed a document to say he will pay Mays rent but has defaulted on this agreement.

Consequently, I am satisfied that the landlords have established a claim to recover unpaid rent for May of **\$2,200.00**.

With regard to the landlords claim for a loss of income for June, 2013; I refer the parties to the Residential Tenancy Policy Guidelines #3 in this matter to provide further guidance on a loss of income. This guideline states that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant; the landlord is entitled to claim damages for loss of rent. I have considered

the evidence before me and find that the unit was left in a disgusting condition that required extensive time and effort to clean, repaint, and repair damage caused by the tenant. Consequently, I am satisfied that the landlords have established a claim for a loss of rental income for June, 2013 of **\$2,200.00**

With regard to the landlords claim for damage to the unit, site or property; the landlords have provided extensive photographs showing the condition of the unit at the start of the tenancy and the condition the unit was left in at the end of the tenancy. The landlord has stated that the tenant did not leave a forwarding address for this evidence to be sent, but it has been sent by e-mail to the tenant and to the tenants sponsor at the consulate. I therefore find that the inclusion of this evidence will not be prejudicial to the tenant as e-mail has been the common method of communication between the parties up to and including the day before the hearing date.

I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of

the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind and with the inclusion of the signed agreement between the parties concerning some aspects of this damage, I find the tenant has agreed that he caused damage and will pay the cost of damage as agreed on the written agreement drawn up on June 15 and shown above.

Therefore as the tenant has already signed an agreement for these damages I uphold the landlords claim for these damages and find that now the landlords have had some of this work done I will allow the actual amounts of the invoices or where the work has just been estimated I will allow that cost for the:

Broken window - \$250.00

Stove top - \$850.00

Replacement blinds - \$727.65

Repaired blinds - \$285.60

Replacement beds -\$1,305.92

Damage to the floor – 3,380.00

Cleaning and painting the unit- \$4,725.00

Damage to the counter top - \$1,056.00

Damage to the ottoman - \$800.00

Keys fobs - \$150.00

Three sets of three Keys - \$57.12.

Total amount - \$13,587.29

With regard to the reminder of the landlords claim for damage; I have considered the landlords claim and evidence provided; I find from this evidence and the testimony of the landlords that the tenant was responsible for extensive damage to the unit and the landlords' belongings in the unit. The landlords' evidence determines that the unit and items in the unit were in a good condition at the start of the tenancy. The landlords photograph evidence shows the appalling condition and total disregard the tenant had

for the unit and the landlords belongings. These were left filthy and damaged. Consequently, I find the landlord has met the burden of proof that the damage and loss exists; that the tenant was responsible for this damage and loss through the tenants actions and neglect; clarification of the actual amount required to compensate for the claimed loss or to rectify the damage in most items; and that the landlords have taken steps to mitigate or minimize the loss or damage by repairing items where possible and where not possible by replacing them with either a like for like item or with a lower value item. As the items were all relatively new at the start of the tenancy I have not made any deductions for depreciation of the items.

Consequently I am satisfied with the landlords claim to recover further costs for the following items:

Carpet cleaning – \$90.00

Light bulbs and cleaning supplies – \$225.51

Fees to re-key the locks – \$99.75

Fridge - \$587.16

Bedding and pillows - \$248.34

Kitchen light fixture - \$97.57

Kitchen items and plates - \$227.09

Broken shower head and bracket - \$106.95

Flooring mop - \$98.28

Total amount - \$1,780.65

I have considered the landlords claim for the broken dresser, missing towel, outdoor patio chair and to replace the living room rug. The landlord has shown that these items are damaged by the tenant however the landlord has not provided written estimates of the actual replacement costs. I therefore must limit the landlords claim for these items as they were clearly damaged or missing. Consequently, I award the landlord the flowing amounts:

Broken dresser - \$250.00

Towel - \$7.00

Outdoor patio chair - \$20.00

Living room rug - \$100.00

Total amount - \$377.00

The landlords have applied for the cost of photo processing for the photos used in evidence. There is no provision under the Act for an award of this nature to be made. This section of the landlords claim for \$24.25 is therefore dismissed.

It is my decision that the tenant is responsible for his own actions and that of any guests while he is a tenant in the unit and the Strata fined the tenant \$200.00 after an initial warning letter was sent to the tenant concerning noise. The tenant disregarded the warning letter about noise and more noise incurred from the tenants unit. I therefore find the landlords are entitled to a monetary award to cover the cost of the Strata fine against the tenant of **\$200.00**.

As the landlord has been largely successful with this claim I find the landlords are entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the Act.

As the tenant has paid **\$571.00** towards the rent and damages as per the agreement signed on June 15, 2013 I will deduct this amount from the landlords claim.

The landlords are entitled to keep the security deposit of **\$1,100.00** pursuant to s. 38(4)(b) of the Act. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for May	\$2,200.00
Loss of rental income for June	\$2,200.00
Damages to the unit and property	\$15,744.94
Strata Fine	\$200.00
Subtotal	\$20,344.94

Plus filing fee	\$100.00
Less amount already paid by tenant	(-\$571.00)
Less security deposit	(-\$1,100.00)
Total amount due to the landlord	\$18,773.94

Conclusion

I HEREBY FIND largely in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$18,773.94** pursuant to s. 67 and 72(1) of the *Act*. The order must be served on the respondent and is enforceable through the Provincial Court 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: September 26, 2013

Residential Tenancy Branch

