



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Realty Executives Eco-World
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, 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 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 tenant's pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:32 a.m. in order to enable him to connect with this teleconference hearing scheduled for 11:00. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She testified that she sent a copy of the landlord's dispute resolution hearing package, as well as her written and photographic evidence to the tenant's new residence by registered mail on July 15, 2013. She testified that she is certain that the tenant resided at that address at that time as she watched him park his truck in the driveway and enter the residence. She testified that she saw his truck in that driveway frequently when she drove by that address. She also testified that she observed that he had also placed his boat, which had been stored at the dispute address during this tenancy, at his new residence. She provided the Canada Post Tracking Number to confirm this mailing and gave sworn testimony that Canada Post's Online Tracking System showed that the tenant signed for receipt of the hearing package on July 25, 2013. In accordance with sections 89(1)(c) and 90 of the *Act*, I find that the landlord has demonstrated that the tenant was deemed served with the above packages on July 20, 2012, the fifth day after their registered mailing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses or damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on April 1, 2012. When the term ended, the tenancy continued as a periodic tenancy until the tenancy ended on June 28 or June 29, 2013, after the landlord obtained an Order of Possession for unpaid rent. Monthly rent was set at \$2,200.00, payable in advance on the first of each month, plus hydro and heat. The landlord continues to hold the tenant's \$1,100.00 security deposit paid on March 6, 2012, and \$200.00 pet damage deposit paid on March 25, 2012.

The parties conducted a joint move-in condition inspection on March 23, 2012. The landlord entered into written evidence a copy of the report of that inspection. The landlord testified that the tenant would not agree to conduct a joint move-out condition inspection and abandoned the rental unit without leaving his keys to the premises. Although the landlord conducted her own condition inspection, she did not prepare a report of that inspection so was unable to provide the tenant with a copy of a report of her move-out condition inspection.

When an Arbitrator appointed under the *Act* issued the Order of Possession to the landlord on June 26, 2013, he also issued a monetary Order in the landlord's favour in the amount of \$2,200.00 for unpaid rent owing from June 2013.

The landlord's current application for a monetary Order of \$2,600.00 included the following items listed in her Monetary Order Worksheet and an accompanying document she entered into written evidence:

Item	Amount
Loss of Rent July 1- July 14, 2013	\$1,100.00
Lock Replacement	231.84
Wall Repair and Painting, Junk and Garbage Removal, Basement Door Installation and General Repairs	799.44
Cleaning (12 hours @ \$20.00 per hour)	240.00
Mailbox Lock Replacement	32.48
Estimate for Repair of Damage to Dryer Panel , Labour and Taxes	197.05

Total of Above Items	\$2,600.81
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The landlord also requested the recovery of the \$50.00 filing fee from the tenant.

Analysis

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 month-to-month (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 July 2013, the tenant would have needed to provide his notice to end this tenancy before June 1, 2013. Section 52 of the *Act* requires that a tenant provide this notice in writing. As this tenancy ended on the basis of an Order of Possession issued for the tenant's non-payment of rent, I find that the landlord is entitled to compensation for losses incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for July 2013. 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 for July 2013, as soon as she was able to gain occupancy of the rental unit. Repairs and cleaning were necessary at the end of this tenancy, which took time to complete after the tenant yielded possession of the rental unit to the landlord. The landlord was able to mitigate her losses by obtaining a new tenant who took occupancy of the rental unit as of July 15, 2013. As such, I am satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the losses from this tenancy to the extent possible. Consequently, I issue a monetary award in the landlord's favour in the amount of \$1,100.00 for loss of rent for the first two weeks of July 2013.

The landlord testified that the landlord would typically rekey locks at the end of a tenancy. In this case, the landlord did have a set of keys for the locks that were rekeyed at the end of this tenancy. Although I have given the landlord's request for the recovery of costs associated with lock replacements careful consideration, I find that section 25(1)(b) of the *Act* requires the landlord to assume these types of costs at the end of a tenancy. I dismiss the landlord's application for lock replacements (including the mailbox) without leave to reapply.

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

I have considered a July 10, 2013 invoice submitted by the landlord for various repairs totalling \$799.44. I am satisfied that the landlord has demonstrated eligibility for the recovery of all of the expenses identified in this invoice with the exception of a \$150.00 claim for repairing and painting walls in the “small yellow room.” The landlord testified that this room was last painted by the previous tenant who lived in this rental unit in or about January 2012. According to Residential Tenancy Branch Guideline 40, the useful life of an internal paint job in a tenancy is estimated at four years (48 months). In this case and after hearing the landlord’s sworn testimony and reviewing the photographic evidence, I accept that repainting of the small yellow room was necessary 18 months after it was last repainted. Based on this estimate, the landlord would only be entitled to recover 62.5% $\{(48-18)/48 = 62.5\%$ of the repainting costs for this room. By estimating that the repairs and painting were equally time-consuming, I find that the landlord’s application for a monetary award of \$799.44 is to be reduced by \$28.12 $(1.00 - .625 = .375) \times \$75.00 = \$28.12$). I find that the landlord’s eligible claim for this item is \$771.32 $(\$799.44 - \$28.12 = \$771.32)$.

Based on the sworn testimony, written and photographic evidence, I find that the landlord is entitled to a monetary award of \$240.00 for cleaning at the end of this tenancy.

As the landlord has not actually repaired the dryer and her claim is based on estimated costs of repair only, I find that the landlord has not demonstrated that there have been actual losses arising out of this tenancy. Without these repairs, the landlord is still obtaining the same monthly rental that was paid by the tenant during his tenancy. I dismiss this portion of the landlord’s claim without leave to reapply.

I allow the landlord to retain the tenant’s deposits plus applicable interest in partial satisfaction of the monetary awards issued in this decision. No interest is payable over

this period. As the landlord has been successful in this application, I also allow the landlord to recover the filing fee from the tenant.

Conclusion

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

Item	Amount
Loss of Rent July 1- July 14, 2013	\$1,100.00
Wall Repair and Painting, Junk and Garbage Removal, Basement Door Installation and General Repairs	771.32
Cleaning (12 hours @ \$20.00 per hour)	240.00
Less Pet Damage & Security Deposits (\$1,100.00 + \$200.00 = \$1,300.00)	-1,300.00
Filing Fee	50.00
Total Monetary Order	\$861.32

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

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: October 16, 2013

Residential Tenancy Branch

