



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on July 17, 2013, a Canada post tracking number was provided as evidence of service. The landlord's agent stated that the Canada post track history indicated the tenant signed for the package on July 19, 2013. I find that the tenant has been duly served in accordance with the Act.

The landlord's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on August, 1, 2012. Rent in the amount of \$925.00 was payable on the first of each month. A security deposit of \$462.50 was paid by the tenant.

The landlord claims as follows:

a.	Unpaid rent for June 2013 and late fee	\$ 960.00
b.	Damages to unit at move-out	\$ 960.00
c.	Filing fee	\$ 50.00
	Total claimed	\$1,970.00

The landlord's agent testified that the tenant had not paid rent for June 2013, and on June 5, 2013, they posted a 10 Day Notice to End Tenancy. The landlord's agent stated that they had no response from the tenant and on June 20, 2013, they discovered the tenant had abandoned the rental unit. The landlord seeks to recover unpaid rent for June 2013, in the amount of \$935.00.

The landlord's agent testified that under the term of the tenancy agreement they are entitled to recover a late fee. The landlord seeks to recover the amount of \$25.00.

The landlord's agent testified that the tenant did not clean the stove, fridge or kitchen countertops/sink. The landlord's agent stated there were also stains in the living room floor. The landlord's agent stated that they had to pay their staff to clean these items. The landlord seeks to recover the amount of \$95.00.

The landlord's agent testified that they also had to replace a light bulb in the bathroom and seek to recover the amount of \$5.00.

The landlord's agents testified that the bathroom and second bedroom venetian blinds were broken and they seek compensation in the amount of \$75.00. The landlord's agent stated he does not know the age of the venetian blinds.

The landlord's agent testified that the living room and first bedroom track blinds were broken and they seek to recover the amount of \$180.00. The agent stated the blinds were at least two years old, but does not know the actual age of them.

The landlord's agent testified that the tenants were heavy smokers and they had to scrub all the walls in the rental unit. The landlord's agent stated they paid their staff to do the cleaning. The landlord seeks to recover the amount of \$200.00.

The landlord's agent testified that when they determined the rental unit was abandoned on June 20, 2013, that they found the tenant had left a large amount of garbage, this included a couple of couches, night stand, bean post and bed frame. Also left behind were bags of garbage. The agent stated they had to pay 4 men, \$25.00 per hour for the 4 hours that it took them to remove and dispose of the garbage. The landlord seeks to recover the amount of \$400.00.

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 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

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.

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The undisputed evidence of the landlord's agent was the tenant did not pay rent owed for June 2013. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent and the late fee in the amount of **\$960.00**.

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. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, the undisputed evidence of the landlord was that the tenant did not clean the appliances or countertop/sink at the end of the tenancy as required. Under the Residential Tenancy Branch Policy Guidelines, the tenant at the end of the tenancy must clean the stove top, elements and oven, and defrost and clean the refrigerator. I find the tenant has breached section 37 of the Act, when they failed to leave the appliance cleaned. I further find the tenant breached the Act, when they failed to clean the counter top/sink or remove the stains from the living room floor. I find the tenants action caused losses to the landlord when the landlord had to have these items cleaned. Therefore, I find the landlord is entitled to compensation for the cost of their staff cleaning the above items in the amount of **\$95.00**.

The undisputed evidence of the landlord's agent was that the tenant was a heavy smoker and that the tenant did not clean the walls at the end of the tenancy. The evidence of the landlord's agent was that they had to pay their staff to scrub the rental unit walls. Under the Residential Tenancy Branch Policy Guidelines, the tenant at the end of the tenancy must clean scuff marks, finger prints etc. off the wall, unless the texture of the wall prohibited wiping. I find the tenant has breached section 37 of the Act, when they failed wash the nicotine from the walls as this is not normal wear and tear. Therefore, I find the landlord is entitled to compensation for the cost of having the walls cleaned in the amount of **\$200.00**.

The undisputed evidence of the landlord's agent was that the tenant had left a large amount of garbage, this included a couple of couches, night stand, be post and bed frame. Also left behind were bags of garbage. The agent stated they had to pay four men, \$25.00 per hour for four hours to remove and dispose of the garbage. I find the tenant has breached the Act, when they failed to remove all their belongings and garbage from the rental unit. Therefore, I find the landlord is entitled to compensation for the cost of having the garbage removed and disposed of the amount of **\$400.00**.

The undisputed evidence of the landlord's agent was that the tenant did not replace a burnt out light bulb in the bathroom. Under the Residential Tenancy Branch Policy Guidelines, the tenant is responsible for replacing light bulbs during the tenancy. I find the tenant has breached section 37 of the Act, when they failed to replace the burnt out

light bulb in the bathroom. Therefore, I find the landlord is entitled to compensation for the cost of the light bulb in the amount of **\$5.00**.

The undisputed evidence of landlord's agent was that the bathroom and second bedroom venetian blinds were broken. The evidence of the landlord's agent was the tenant also damaged the living room and bedroom track blinds.

While I accept the undisputed evidence of the landlord's agent that the tenant caused damage to the blinds. However, when an item is damaged by the tenant, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement.

In this case, the landlord's agent was not able provide the actual age of the track or venetian blinds. As a result, I am unable determine the depreciated value to calculation the cost the tenant would be responsible for, if any. Therefore, I find the landlord has provided insufficient evidence to support this portion of their claim.

I find that the landlord has established a total monetary claim of **\$1,710.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord(s) retain the security deposit and interest of **\$462.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,247.50**.

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 and may keep the of the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 22, 2013

Residential Tenancy Branch

