



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 landlords for an order of possession, for a monetary order for unpaid rent, for damages to the unit, for money owed or compensation for damage or loss, and an order to retain the security deposit in partial satisfaction of the claim.

The landlords 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 landlords testified the Application for Dispute Resolution, Notice of Hearing and evidence were sent by registered mail sent on July 4, 2013 to the forwarding address provided by the tenant. Filed in evidence is an email of the tenant's forwarding address. Filed in evidence is two Canada post tracking numbers.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act. Refusal or neglect to pick up the package is not grounds for a review.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy which began on August 1, 2012 and was to expire on July 31, 2013. Rent in the amount of \$1,400.00 was payable on the first of each month. A security deposit of \$700.00 and a pet damage deposit of \$700.00 were paid by the tenant. Filed in evidence is a copy of the fixed term tenancy agreement

On May 18, 2013, the parties signed an extension of the fixed term agreement which was to expire on January 31, 2014. Filed in evidence is a copy of the extension of the tenancy agreement.

The landlords claim as follows:

a.	Unpaid rent for June and unpaid utilities	\$ 1,547.74
b.	Loss of rent for July (\$1,400.00 -\$1,100.00)	\$ 300.00
c.	Carpeting	\$ 1,866.93
d.	Paint	\$ 89.90
e.	Landscaping repairs & supplies	\$ 512.54
f.	Repair expenses	\$ 365.02
g.	Dump/recycling expenses	\$ 36.61
h.	Change of locks	\$ 80.70
i.	Our labour	\$ 1,750.00
j.	Travel expense, gas, accommodation, food, ferries	\$ 1,418.18
k.	Filing fee	\$ 100.00
	Total claimed	\$ 8,067.62

Unpaid rent for June and unpaid utilities

The landlords testified that three days prior to June 1, 2013, the tenant sent them an email that she was moving out of the rental unit. The landlords stated that the tenant then placed a stop payment on the rent cheque for June. The landlords stated on June 2, 2013, the tenant was still residing in the rental unit and was served with a 10 day notice to end the tenancy for unpaid rent. The tenant vacated the rental unit on June 4, 2013.

The landlords testified that the tenant breached the fixed term agreement when they failed to pay rent for June 2013, as set out in the tenancy agreement. The landlords stated that the tenant further breached the fixed term agreement when they vacated the unit on June 4, 2013.

The landlords testified that the tenant failed to pay the utilities as required by the tenancy agreement. The landlord seeks to recover \$147.74. Filed in evidence is Statement of user rates.

Loss of rent for July (\$1,400.00 - \$1,100.00)

The landlords testified that due to the tenant breaching the fixed term agreement they are requesting loss of rent for July 2013. The landlords stated that in order to get a new tenant on such short notice that they reduced the rent from \$1,400.00 to \$1,100.00 and were able to find a new tenant for July. The landlords seek to recover the difference between the rent collected for July from the new tenant and the rent the tenant was required to pay under the fixed term agreement, the loss in rent was \$300.00.

Carpeting

The landlords testified that the tenant damage the carpets in the living room, master bedroom and the child's bedroom. The landlords stated as a result of the damage the carpets were required to be replaced. The landlords seek to recover the amount of \$1,866.93. Filed in evidence is a receipt for carpet replacement and installation.

The landlords testified that the living room carpet was stained by what appear to be animal urine. The landlords stated the carpet and under lay had to be removed. The landlords stated that the urine had soaked into the subfloor and that they had to seal the subfloor with a special paint. The landlord stated the living room carpet was two years old. The Filed in evidence are photographs of the living room carpet.

The landlords testified that the master bedroom carpet had a rust spot which appeared may have been from a piece of furniture. The landlords stated the rest of the carpet was stained badly and it appeared it may have been from dog feces, but are uncertain. The landlords stated the carpet was six years old. Filed in evidence are photographs of the master bedroom carpet.

The landlords testified that the child's bedroom carpet was damaged as there were many stains, which also may have been from animal urine or feces. The landlords stated that there was also pink marker or paint staining the carpet. The landlords stated the carpet was also six years old. Filed in evidence are photographs of the child's bedroom carpet.

Paint

The landlords testified that the rental unit had been freshly painted at the start of this tenancy, and that they were required to paint the unit at the end of the tenancy as the tenant had put in a lot of plugs/screws in the walls, which had to be filed, sanded and painted. The landlords stated that the tenants also marked the walls, by outlining the pictures that they had hung.

The landlords testified that there was what appeared to be a gate installed on one wall and when removed by the tenant it left large scratches in the paint and a screw had to be removed. The landlords stated that there were other various chips and marks on the

walls that were required to be repaired and painted. Filed in evidence are photographs of the walls.

The landlords testified that the child had also scribbled on the side of a cupboard with crayon and the railing separating the living/dining room was scribbled on with felt pen and both of these required to be sealed with special paint and then painted. Filed in evidence are photographs of the cupboard and the railing.

The landlords testified the child's room walls were damaged with crayon, kids paint, nail polish, and the paint was torn off due to the child placing and removing stickers from the walls. The door of the child's room also required painting as it was covered in crayon/kids paint.

The landlords testified they did the painting to mitigate their loss and seek to recover the cost of the paint in the amount of \$89.90. Filed in evidence is a receipt for paint.

Landscaping repairs & supplies

The landlords testified as a term of the tenancy agreement that the tenants were required to maintain the yard, which included mowing the grass, weeding the gardens and cleaning the pond. Filed in evidence are photographs of the yard at the start of the tenancy.

The landlords testified that at the end of the tenancy the grass was dead and destroyed by the tenant's dog. The landlords stated that the gardens were not maintained and were overgrown and full of weeds. The landlords stated they had to bring in soil and seed to repair the grass. The landlord stated that they also hired someone to help them repair the damage to the lawn and get the gardens back to reasonable standard. Filed in evidence are after pictures of the lawn and gardens. The landlords seek to recover the amount of \$634.47.

Repair expenses

The landlords testified that there are addition expenses related to damages. The master bedroom door had a huge hole that went right through the door and the door needed to be replaced. The vanity drawer in the bathroom was ripped off and sink was chipped had these had supplies were purchased to make the repaired. The plug for the both the bathtub and sink were missing and had to be replaced, and there were various lights burnt out. The landlords seek to recover the cost of these expenses in the amount of \$365.02. Filed in evidence are receipts and photographs.

Dump/recycling expenses

The landlords testified that the tenant did not remove all the garbage and were required to dispose of the items. The landlords seek to recover the amount of \$36.61. Filed in

evidence are photographs of items left behind. Filed in evidence is a receipt for garbage disposal.

Change of locks

The landlords testified the tenant did not return all the keys at the end of the tenancy and because of this they were required to have the locks changed. The landlord seeks to recover the amount of \$80.70. Filed in evidence is a receipt.

Our labour

The landlords testified that they seek to be compensated for their labour as it took two of them a total of 70 hours each to bring the rental unit to a reasonable state. The landlords stated that the amount they are charging is \$12.50 per hour. The landlords seek to recover the amount of \$1,750.00 in labour.

The landlords testified that this amount includes their hours for having to fill holes and paint the damage caused by the tenants. It also included painting the subfloor due to pet urine prior to having the carpets installed to prevent the pet urine seeping into the new carpets.

The landlords testified that they had to clean the garage, which the garage floor had to be scrubbed as it was covered in dog feces and urine. The landlord stated the tenant's dog also caused damage to the left side of the man door, by being locked in the garage and trying to get out, which had to be repaired. The landlord stated the tenant left behind shelves that had to be removed from the garage walls. Filed in evidence are photographs of the floors, damage by door, and shelving.

The landlords testified that they had to clean the windows, window tracks which contained mold and all the blinds in all the bedrooms. The kitchen cabinet and cupboard were dirty inside and out, the stove top and exhaust fan were dirty. The refrigerator had a stained on the top with something moldy and the kick plate was filthy and the tenant did not clean under either the stove or the fridge. The microwave was not cleaned. The landlord stated they also had to rewash all the floors as it appeared the tenants had used a wet dirty mop.

The landlords testified that they had to repair the front yard grass and back yard as it had not been maintained and need to be seeded. The landlord stated none of the gardens were maintained and had many weeds as well as being overgrown. The yard also had dog feces left behind including a bucket full of dog feces.

The landlords testified that if they had to pay someone to complete the above labour it would have cost far more than the \$12.50 per hour they seek to be reimbursed.

Travel expense, gas, accommodation, food, ferries

The landlord testified that they incurred travel expenses to attend the rental unit as they do not live in the province. The landlord seeks to recover the amount of **\$1,133.71**.

Letters filed as evidence

A letter signed by the tenant dated June 2, 2013, which in part reads:

“...have my permission to keep my security deposit of \$700 as well as my pet deposit of \$700. This is because of unfortunate circumstances that have led me to vacate the premises before the date listed on our lease agreement. They can put the total amount of \$1400 towards any money I may owe.”

[Reproduced as written]

A letter signed on July 4, 2013, by (KG) Real Estate agent, which in part reads;

“I was the listing realtor on the subject property in the summer of months of 2012, the property was in absolutely in immaculate condition at the time.” “....they decided that the best thing to do, would be to rent...”

“I was invited to the property at the beginning of June 2013, to witness what the tenants did during their stay for the last ten months previous. What I observed on my arrival was nothing short of shocking.”

“I saw the exterior grass, shrubs and flowerbeds completely destroyed by what appears to be by a dog being tided in the yards. I also observed mounds of garbage and broken toys, tools ect, all over the property. On the inside, I observed urine, feces and other spills and stains all over the rugs and the laminate floors were scratched. The walls were covered in scuffs, paints, markers and general dirt and grime. The appliances were all filthy and dirty and the cupboards were not cleaned at all.”

[Reproduced as written]

A letter signed on July 1, 2013, by (BM) and (SK), which in part reads;

“We have been to their home (resident number of rental unit) many many times and know how clean and well looked after it was. We were shocked when we went over to their home after the tenannt moved out. The following are all the things we saw. Living room carpet had many big (2ft X 2ft) dog urine stains, unknown stains in other carpeted rooms, laminate flooring had very long deep scratches,cupboards in the kitchen and bathroom were stained and dirty. Vanity in bathroom had drawer missing, towel rack off wall, tub drain missing, chip in sink. The spare room was missing curtains, crayon and felt on walls, unknown stain of door....master bedroom door had HUGE hole in middle, frame

broken...Backyard was very overgrown, grass was gone, plants dead or done, bucket of dog poop. Garbage all over. Front yard grass was dead and yard very overgrown. Garage had dog urine smell. Overall the house was not looked after at all. It took (landlords names) 2 weeks of hard work to get their home back to it looked when rented."

[Reproduced as written]

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 landlords have 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.

Unpaid rent for June and unpaid utilities

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 landlords was the tenant did not pay rent owed for June 2013 and vacated the rental unit on June 4, 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 landlords. Therefore, I find the landlords are entitled to recover unpaid rent for June 2013, in the amount of **\$1,400.00**.

The undisputed evidence of the landlords was the tenant failed to pay the utilities as required by the tenancy agreement. In support of the landlord position is the tenancy agreement, which indicated utilities were not included in rent and a statement of user rates. I find the tenant breach the tenancy agreement and the Act, when they failed to pay utilities. Therefore, I find the landlords are entitled to recover unpaid utilities in the amount of **\$147.74**.

Loss of rent for July (\$1,400.00 -\$1,100.00)

Section 45 of the Residential Tenancy Act states:

45 (2) A tenant may end a fixed term 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,
(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
(c) is the day before the day in the month, or in the other period on which the tenancy is based,

In this case, the evidence of the landlords was that the tenant breached the fixed term tenancy by ending the tenancy prior to the expiry of the fixed term agreement.

However, under the Act the tenant was not entitled to end the tenancy prior to the date specified in the tenancy agreement. I find the tenant has breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was January 31, 2014 as stated in the extension agreement.

As a result of the tenant not complying with the terms of the tenancy agreement or the Act the landlords suffered a loss of rent for July 2013, the landlords are entitled to an amount sufficient to put the landlords in the same position as if the tenants had not breached the tenancy agreement or Act. This includes compensating the landlords the difference between what they would have received from the defaulting tenant and what they were able to re-rent the premises for.

The undisputed evidence of the landlords was that they immediate advertised the rental unit, which included lowering the rent by \$300.00 to attract a new tenant as soon as possible. As a result of their actions they were able to find a new tenant commencing July 2013. I find the landlords made reasonable efforts to minimize the loss. Therefore,

I find the landlords are entitled to recover the difference between the two rents. Therefore, I find the landlord is entitled to recover loss of rent in the amount of **\$300.00**.

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.

Carpeting

The undisputed evidence of the landlords was that the living room, master bedroom and child's bedroom were stained by pet urine/feces, rust, paint and markers and were required to be removed. The photographs support the carpets were stained. I find that the tenant has breached section 37 of the Act, when they failed to clean and repair the carpets at the end of the tenancy and this has caused losses to the landlord.

Under the Residential Policy Guideline #40, if an item was damaged by the tenant, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement.

As, I have determined that the carpet had a useful life span of ten years, and the living room carpet was two years old, the landlord is entitled to the depreciated value of 80 percent. The evidence of the landlords was it cost \$589.05 to replace the living room carpet. Therefore, I find the landlord is entitled to compensation for the cost of replacing the living room carpet in the amount of **\$471.24**.

As, I have determined that the carpet had a useful life span of ten years, and the bedroom carpets were six years old, the landlord is entitled to the depreciated value of 40 percent. The evidence of the landlord's agent was it cost \$703.01 to replace the bedroom carpets. Therefore, I find the landlord is entitled to compensation for the cost of replacing the bedroom carpets in the amount of **\$280.96**.

Further, the landlord also paid \$574.87 for installation of the carpets. I find the landlord is entitled to recover a portion of the installation cost. Therefore, I find the landlord is entitled to recover half of the installation cost In the amount of **\$287.43**.

Therefore, the total amount awarded for the cost of replacing the carpets is **\$1,039.63**.

Paint

The undisputed evidence of the landlord was that they were required to purchase paint, and repaint walls and doors that were damaged by the tenants. The photographs support that paint was required. I find the tenant breach the Act, when they failed to paint the damage that they caused, and this has caused losses to the landlord.

Therefore, I find the landlords are entitled to recover the cost of the paint in the amount of **\$89.90**

Landscaping repairs and repairs

The undisputed evidence of the landlords was that the tenant did not maintain the yard or gardens as required by the term of the tenancy agreement. The evidence was that the lawn was dead and destroyed by the dog. The gardens were overgrown and full of weeds. The landlord has submitted before and after pictures to support their position. Also the letters filed as evidence further support that the damage was caused by the action and neglect of the tenant. I find the tenant has breached the tenancy agreement and has breached section 37, when they failed to maintain the landscaping during the tenancy and when they failed to repair the damage they caused to the landscape and this has caused losses to the landlord. Therefore, I find the landlords are entitled to recover the cost of have the landscaping repaired in the amount of **\$512.54**.

Repair expenses

The undisputed evidence of the landlords was that there were addition expensed related to damages. The master bedroom door had a huge hole that went right through the door and the door needed to be replaced. The vanity drawer in the bathroom was ripped off and the chip in the sink had to be repaired. The linen closet door was off. The plug for the both the bathtub and sink were missing, and there were various lights were out. The landlords' position is supported by the letters filed in evidence, the photographs and the receipts. I find the tenant has breached the section 37, when they failed to replace or repair the damaged items and this has caused losses to the landlords. Therefore, I find the landlords are entitled to recover the cost of have replacing the above items in the amount of **\$365.02**.

Dump/recycling expenses

The undisputed evidence of the landlords was that the tenant did not remove all their garbage at the end of the tenancy. The photographs and the receipts support the landlords' position.

I find the tenant has breached section 37, when they failed to remove their garbage when they vacated the rental unit and this has caused losses to the landlord. Therefore, I find the landlords are entitled to recover the cost of have the garbage disposed in the amount of **\$36.61**.

Change of locks

The undisputed evidence of the landlords was the tenant did not return all the keys at the end of the tenancy and because of this they were required to have the locks changed. I find the tenant has breached the Act, when they failed to return all keys to the rental unit when they vacated the rental unit and this has caused losses to the

landlord. Therefore, I find the landlords are entitled to recover the cost of have the locks changed in the amount of **\$80.70**.

Our labour

The evidence of the landlords was that they seek compensation of 70 hours each at the rate of \$12.50 per hours, totaling \$1,750.00. The hours of work included repairing walls, painting the walls, subfloors and doors that were damaged. The hours of work also included cleaning the unit, the garage and repairing the damage to the landscaping. I find the rate of \$12.50 per hour reasonable. The photographs and the letters filed in evidence support the landlords' position.

While the total amount at first appears high, after considering the task performed by the landlord, I find it would have cost the landlords more if they had hired painters, cleaners and gardeners to clean and repair the rental premises. Therefore, I find the landlords are entitled to recover their labour costs in the amount of **\$1,750.00**.

Travel expense, gas, accommodation, food,

In this case, the landlords are seeking compensation for having to travel to their rental unit as they live out of province. I find there are no provisions under the Act that would allow compensation for travel cost as this is an expense the landlord would not incur if they lived in the area in which the rental unit is located. Therefore, I dismiss this portion of the landlords claim.

I find that the landlords have established a total monetary claim of **\$5,822.14** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit (\$700.00) and pet damage deposit (\$700) of **\$1,400.00 in** partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$4,322.14**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlords are granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlords are 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

