



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for compensation under the Act and the tenancy agreement, for damage and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue

Under the rules to the Act, both parties were required to submit evidence to the branch five business days prior to the hearing. The Tenant submitted a package of evidence four business days before the hearing and the Landlord submitted a second package of evidence three days before the hearing. As these were submitted late for the hearing, both of these evidence packages were excluded from the hearing.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on February 15, 2007, with the parties entering into a written tenancy agreement. The initial term of the tenancy agreement was one year, and the parties entered into two additional one year terms in 2008 and 2009. The tenancy then

continued on a month to month basis. At the outset of the tenancy the rent was \$1,550.00 and at the end of the tenancy the rent was \$1,615.00. The Tenant paid the Landlord a security deposit of \$775.00 on February 8, 2007. Interest in the amount of \$22.19 has accumulated at the statutory rate on the deposit and the security deposit held by the Landlord now totals **\$797.19**. I note the Tenant confirmed during the hearing that he has authorized the Landlord to retain the deposit and interest toward outstanding rent.

The Tenant gave the Landlord a Notice to End Tenancy on or about July 16, 2013, with an effective date of August 1, 2013. The Tenant paid the Landlord \$900.00 in rent for August 2013, and the Landlord claims for the balance of August rent in the amount of **\$715.00**.

The Tenant vacated the property on or about August 2, 2013; however, the Landlord claims they incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenant.

The Landlord claims as follows

a.	Unpaid rent for August 2013	\$715.00
b.	Repair of kitchen cabinets	\$1,260.00
c.	Repair estimate	\$156.80
d.	Replacement of oven racks	\$104.81
e.	Repair of hardwood floor	\$446.25
f.	Repair of frosted light fixture	\$50.00
g.	Cost to move and reinstall washer/dryer	\$50.00
h.	Professional cleaning of window blinds	\$94.50
i.	Cleaning under washer/dryer	\$25.00
g.	Filing fee	\$100.00
	Total claimed	\$3,002.36

The Landlord testified and submitted in evidence that at the outset of the tenancy he explained to the Tenant that he could not drill holes or use large hooks in the rental unit. The Landlord testified that he carefully explained section 14 of the tenancy to the Tenant which sets out that the Tenant must seek approval from the Landlord for affixing anything to the rental unit property. When the Landlord inspected the rental unit with the Tenant in July of 2013 the Landlord discovered the Tenant had drilled holes and attached a knife holder and a paper towel holder into the wooden kitchen cabinets. The Landlord had an estimate of repairs done in the amount of **\$156.80**, but decided not to use this company as he found another company to do the work at a lesser cost. The Landlord used the service of this company which charged him **\$1,260.00** for the repairs to the wooden cabinets, and an invoice has been submitted in evidence for this repair.

The Landlord claims the Tenant used the self cleaning feature on the stove but failed to remove the oven racks when he cleaned the oven. The Landlord testified he had given

the Tenant the manuals for the stove and the Tenant failed to follow the instructions for self cleaning which indicate the racks should be removed from the stove when using this method of cleaning. The Landlord claims **\$104.81** for the replacement of the racks. An invoice for this amount was submitted in evidence.

The Landlord alleges the Tenant damaged the hardwood floors in the rental unit and claims **\$446.25** for these repairs. The Landlord testified that in 2006 he had the floors professionally refinished in the rental unit. The Landlord testified that the Tenant was the first renter to occupy the rental unit after the refinishing was done. In evidence the Landlord has submitted photographs of the floor and an invoice for the repairs.

The Landlord alleges the Tenant damaged a frosted light fixture in the rental unit. The Landlord alleged that the Tenant must have caused grease or some other substance to discolour portion of the glass fixture that covers the light. The Landlord claims **\$50.00** for re-frosting the glass in the light fixture.

The Landlord claims **\$50.00** for moving the washer and dryer in order to access and repair some of the holes that the Tenant drilled into the cabinets. The Landlord testified the washer and dryer had to be disconnected and reinstalled due in order to access the holes drilled by the Tenant. The Landlord has submitted a bill from a handyman for this work.

The Landlord claims the Tenant failed to clean the window blinds in the rental unit and requests **\$94.50** for the cleaning of these blinds. The Landlord claims the Tenant was required to do this cleaning under the policy guidelines to the Act. An invoice was submitted in evidence for this work.

The Landlord claims **\$25.00** for cleaning under the washer and dryer and for cleaning a light fixture in the island.

In reply to the Landlord's claims the Tenant testified that the Landlord did not submit into evidence the incoming condition inspection report for the rental unit. The Tenant acknowledged one was performed, but stated it was not in evidence to prove the condition of the rental unit at the outset of the tenancy.

The Tenant testified that he drilled about six holes into the kitchen cabinets in order to install a paper towel holder and a knife rack. The Tenant testified the Landlord was charging too much for these repairs and that he had an estimate for less money for these repairs, although I note this estimate was in his excluded evidence. The Tenant testified he tried to repair these holes and that the cabinet was not in perfect condition when he moved in.

The Tenant objected to having to pay for the estimate for these repairs. The Tenant argued that the Landlord could have kept bringing in different people to do estimates and argued he should not have to pay for this.

The Tenant argued that the Landlord is merely speculating that he cleaned the oven with the oven racks inside. The Tenant acknowledged he used the oven and the discolouration of the racks was just from normal wear and tear of cooking in the oven. In any event, the Tenant denied using the self cleaning oven feature.

The Tenant argued that the hardwood floors were not damaged by him. He argued that a close examination of the photos of the floor show varnish was applied over the scratches. He argues that this indicates the damage was done and simply revarnished prior to him moving into the rental unit.

The Tenant denied damaging the frosted glass light fixture. He testified he has no idea how this damage could have occurred when he never touched the fixture or removed it from the light.

The Tenant denies that the Landlord had to move the washer and dryer in order to repair holes he drilled. He testified that these holes were small and did not need to be repaired.

The Tenant argues that he sufficiently cleaned the window blinds. He estimated he spent two hours cleaning each blind. He testified that the rental unit is located on a busy street and if a window was left open the blinds would be black with dirt in very little time. He argued that the tenancy agreement did not require him to clean these in any event.

The Tenant argued he should not have to be responsible for moving and then reinstalling the washer and dryer in order to clean under these. He testified these must weigh 300 pounds and he would have been unable to easily remove these, particularly since they had to be unhooked and then reinstalled.

In his summation, the Tenant argued that the Landlord is simply trying to do renovations in the rental unit and it is not right that the Landlord wants him to pay for these.

Analysis

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 sections 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.

In this instance, the burden of proof is on the Landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Landlord has been partially successful in proving his claims. I find the Tenant has breached section 26 of the Act by failing to pay all of the rent for August, as he gave late notice to end the tenancy, and I find he has breached section 37 of the Act by failing to return the rental unit to the Landlord in a reasonable clean and undamaged state, save for reasonable wear and tear.

I allow the Landlord **\$715.00** for unpaid August rent. The Tenant did not give the Landlord the required one month notice to end the tenancy and the Landlord was therefore entitled to all of the rent for August 2013.

Based on the evidence of the Landlord and the testimony of the Tenant, I find the Tenant damaged the cabinets by drilling holes into these. The cabinets appear to be solid wood or a fine veneered wood, and of a higher quality than basic particle board cabinets. I accept the testimony of the Landlord that this was explained to the Tenant at the outset of the tenancy and it is clear in the tenancy agreement that the Tenant should not have drilled these holes in the cabinets. I find these actions caused the Landlord to suffer a loss of **\$1,260.00** for repairs.

I do not allow the Landlord's claims for the estimate for repairs from the company who did not perform these repairs. The Landlord testified he went with a lesser amount from another company in order to save the Tenant some money for these repairs. If the estimate was allowed it would amount to having the Tenant pay the higher amount that the estimate set out in the first place, when combined with the actual cost incurred.

I also do not allow the Landlord's claims for repairs to the hardwood floors, the replacement of the oven racks or the repair of the frosted light fixture. There was insufficient evidence from the Landlord that the Tenant damaged the hardwood floors, such as the completed condition inspection report to indicate the condition of the floors at the outset of the tenancy. I also find the Landlord had insufficient evidence to show

the Tenant used the self cleaning feature of the oven and caused the discolouration of the racks. It was just as likely these could be discoloured through use of the oven. I also find the Landlord had insufficient evidence to prove the Tenant damaged the light fixture. It was unclear from the testimony and evidence of the Landlord what, if anything, the Tenant did to cause the frosting to peel in small areas.

I find the Tenant did not clean the window blinds, which was required of him in a tenancy of this length, under policy guideline 1 to the Act. I allow the Landlord **\$94.50** for this.

I accept the claim of the Landlord that it cost **\$50.00** to move the washer and dryer in order to make repairs to damages caused by the Tenant. However, I do not allow the Landlord the cost for cleaning under these, as the Tenant should not be expected to have to clean under these when these are so difficult to remove to clean under.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Therefore, I allow the Landlord the following amounts claimed:

a.	Unpaid rent for August 2013	\$715.00
b.	Repair of kitchen cabinets	\$1,260.00
c.	Cost to move and reinstall washer/dryer	\$50.00
d.	Professional cleaning of window blinds	\$94.50
e.	Filing fee	\$100.00
	Total allowed	\$2,219.50

I order that the Landlords may retain the deposit and interest of **\$797.19** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$1,422.31**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord has been partially successful as described above. The Landlord is awarded \$2,219.50 for the claims, may keep the security deposit and interest in partial satisfaction of the amounts due, and is granted a monetary order for the balance owed of **\$1,422.31**

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 20, 2013

Residential Tenancy Branch

