



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MND, MNR, FF.*

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for repairs and painting of the rental unit. The tenant applied for the return of the security deposit, and compensation. Both parties applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

This application was originally heard on September 03, 2013 and the tenant was awarded a monetary order. The landlord applied for a review of this decision and in a decision dated October 24, 2013 the reviewing Arbitrator set aside the original decision and the landlord was granted a review hearing which was scheduled for this date.

Issues to be decided

Is the landlord entitled to a monetary order for repairs and painting of the rental unit? Is the tenant entitled to the return of the security deposit and compensation?

Background and Evidence

The tenancy started on June 15, 2011 and ended on May 11, 2013. The monthly rent was \$1,800.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$925.00.

The tenant testified that sometime in January 2013, the landlord informed the tenant that the tenancy would end in March. The tenant stated that the landlord contacted him again in April and asked him to move out as soon as possible as she wanted to move in. Both parties agreed that there was no formal notice to end tenancy served to the tenant.

The landlord denied having asked the tenant to move out so that she could move into the rental unit. She stated that she was in a fixed term tenancy herself which would terminate at the end of June 2013 and therefore she had no reason to move into the rental unit. The landlord filed a copy of her tenancy agreement to support her testimony that she was in a fixed term tenancy agreement that would end on June 30, 2013. The landlord stated that on April 26, 2013, the tenant gave verbal notice to end the tenancy. The tenant further testified that in early May, the parties mutually agreed to end the tenancy on May 13, 2013.

The landlord stated that in early May, the tenant provided the landlord with a receipt for plumbing work he had done in February 2013. The tenant stated that he called the landlord once but did not leave a message. He stated that the work was urgent in nature and consisted of a leaking faucet. Since the tenant was unable to contact the landlord he hired his own plumber and had the faucet replaced.

The landlord stated that she was notified of the problem three months after it had taken place. The landlord contacted her own plumber and visited the rental unit to assess the situation. The plumber stated that the faucet installed was not of good quality and the workmanship was poor as the faucet was wobbly. Later, the landlord found that the wood under the counter top had rotted away and there was considerable water damage to the kitchen counter top and the cupboards.

The landlord filed an estimate to replace the counter top in the amount of \$3,300.00 and also filed a claim with her insurance company. The insurance company informed the landlord that no coverage would be provided "*because the damage is as a result of an unattended leak which caused damage over time. If the leak was repaired, the mould and rot would not have appeared*"

The landlord stated that at the end of the tenancy there was considerable damage to the walls and filed photographs to support her testimony. The landlord stated that the rental unit was painted just prior to the start of the tenancy. The tenant agreed that the unit was painted and also agreed to cover \$300.00 of the cost of painting. The landlord incurred a cost of \$1,458.00, but stated that she would accept \$600.00.

The landlord stated that the tenant made a hole in one of the interior doors and it cost her \$150.00 to replace. At first the tenant stated that there was no hole in the door at the end of tenancy. Upon reviewing the photographs with the tenant, the tenant contradicted his own testimony by stating that that there was a hole in the door but it was there from the start of tenancy.

The landlord stated that she had purchased a stove just prior to the start of tenancy and filed a copy of the receipt. The tenant agreed that he or his family members had put stickers on the stove and in trying to remove them, the stove got scratched. The tenant stated that the stain and scratches were from normal wear and tear. The photographs indicate that the stove though functional had considerable damage to its appearance.

The landlord also filed photographs of broken blinds in the living room and oil stained blinds in the kitchen. The tenant stated that this was the condition of the blinds at the start of tenancy. The landlord stated that the rental unit is four years old and prior to this tenancy, the landlord herself had occupied the unit. She testified that she kept the unit clean and the blinds definitely did not have oil stains. The quantity of oil on the blinds over time made it impossible to clean and the landlord had to replace the blinds at a cost of \$200.00. The chains and cords required to operate the living room blinds were broken and the landlord replaced the blinds at a cost of \$250.00.

The landlord is claiming the following:

1.	Cost of paint	\$1,458.00
2.	Replace door	\$150.00
3.	Loss of value of stove	\$375.00
4.	Blinds	\$450.00
5.	Kitchen countertop	\$3,300.00
6.	Filing fee	100.00
	Total	\$5,833.00

The tenant is claiming the following:

1.	Compensation	\$1,800.00
2.	Security deposit	\$925.00
3.	Filing fee	\$50.00
	Total	\$2,775.00

Analysis

Landlord's application:

1. Cost of paint - \$1,458.00

The landlord filed adequate evidence to support her claim of damage to the walls. S. 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item.

I will use this guideline to assess the remainder of the useful life of the interior paint. As per this policy, the useful life of interior paint is four years. The landlord painted the rental unit just prior to the start of the tenancy in 2011 and therefore by the end of the tenancy in May 2013, the paint had approximately two years of useful life left. Accordingly, I find that the landlord is entitled to half the cost that she incurred, but since she agreed to accept \$600.00, I grant her this amount.

2. Replace Door - \$150.00

Pursuant to section 40 of the *Residential Tenancy Policy Guideline* the useful life of doors is 20 years. The rental unit is only four years old. Based on the photograph, I find that the hole in the door is not a result of normal wear and tear. The landlord incurred a cost of \$150.00 to replace the door and based on s. 40, I find it appropriate to award the landlord \$120.00 towards the cost of replacing the door.

3. Loss of value of stove - \$375.00

The evidence filed by the landlord indicates that the stove was purchased in May 2011 just before the start of the tenancy. The photographs show that the stove was left in a scratched, stained and damaged condition. The tenant agreed that the stove was stained and scratched but stated that this was from normal wear and tear.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. I find that the tenant did cause the stain and scratches which are not just from normal wear and tear. Since the stove is still functional and the damage is cosmetic in nature, I award the landlord a nominal award of \$150.00 towards the loss of value of the stove.

4. Blinds - \$450.00

Pursuant to section 40 of the *Residential Tenancy Policy Guideline* the useful life of blinds is 10 years. The rental unit is only four years old and therefore at the end of the tenancy had six years of useful life left. Based on the photographs, I find that damage to the blinds was not from wear and tear and therefore I award the landlord \$270.00 toward the cost of replacing the blinds.

5. Kitchen Counter top - \$3,300.00

Based on the documentary evidence and testimony of both parties, I find that the damage to the counter top was caused by a leaking faucet.

This problem was not corrected for a considerable period of time, which was the primary cause of the damage to the counter top. The tenant testified that he made just one call to the landlord but did not leave a message. I accept the landlord's evidence that she was informed of the leak at the end of tenancy when the tenant presented her with a plumber's bill. I find that, had the tenant taken action at the time the leak started, the damage to the wooden underside of the counter top could have been avoided.

I find that the tenant did not notify the landlord and did not have the leak repaired in a timely manner and therefore is responsible for the damage to the counter top.

Pursuant to section 40 of the *Residential Tenancy Policy Guideline* the useful life of a countertop doors is 25 years. The landlord filed an estimate to support the cost of the replacement in the amount of \$3,300.00. I find it appropriate to award the landlord \$1,500.00.

6. Filing fee - \$50.00

The landlord has proven the majority of her claim and is therefore entitled to the cost of filing her application.

Overall the landlord has established a claim of:

1.	Cost of paint	\$600.00
2.	Replace door	\$120.00
3.	Loss of value of stove	\$150.00
4.	Blinds	\$270.00
5.	Kitchen countertop	\$1,500.00
6.	Filing fee	100.00
	Total	\$2,740.00

Tenant's application:

1. Compensation - \$1,800.00

Section 51 states that a tenant who receives a notice to end a tenancy under section 49 (*landlord's use of property*) is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case, the tenant did not receive a notice under section 49. Even if I accept his testimony that he was served a verbal notice, I find that the tenant also testified that he agreed to end the tenancy in a phone conversation with the landlord.

Due to the contradictory testimony of both parties and in the absence of a formal notice to end tenancy in the legislated two page format, I find that the tenant is not entitled to compensation and therefore his claim is dismissed.

2. Security Deposit - \$925.00

The tenant is entitled to the return of the security deposit.

3. Filing fee _ \$50.00

The tenant has not proven his claim for compensation and therefore must bear the cost of filing his own application.

Overall the tenant has established a claim of \$925.00. The landlord has established a claim of \$2,740.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$1,815.00, which consists of difference between the established claims of both parties. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$1,815.00**.

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: December 12, 2013

Residential Tenancy Branch

