



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and for the breach of a material term of the Residential Tenancy Agreement (the Agreement) pursuant to section 55;
- a monetary order for unpaid rent, 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 security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that one of the landlords handed him a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on February 2, 2013. The tenant also confirmed that he received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on November 6, 2013. Both parties also confirmed that they received one another's written evidence packages. I am satisfied that both parties served the above documents to one another in accordance with the *Act*.

At the commencement of the hearing, the landlords confirmed that the tenant vacated the rental unit by February 12, 2013, the effective date cited on the 10 Day Notice. The tenant testified that he moved out of the rental unit on February 7, 2013, leaving the keys for the landlords on the table and in another location known to the landlords. As the landlords gained possession of this rental unit by mid-February 2013, the landlords withdrew their applications for an Order of Possession for unpaid rent and for breach of a material term of the tenancy agreement. The landlords' application for an Order of Possession is hereby withdrawn.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to a monetary award for damage arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, documents, receipts, invoices, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around each are set out below.

On July 18, 2012, the tenant and a co-tenant signed the fixed term Agreement for a tenancy that was to take effect on August 1, 2012 and last until July 31, 2013. One of the landlords (JL) signed this Agreement on August 9, 2012. Monthly rent was set at \$900.00, payable in advance on the first of each month, plus a portion of the utilities. The landlords continue to hold the \$450.00 security deposit for this tenancy paid on July 18, 2012.

The parties agreed that they conducted a joint move-in condition inspection at the commencement of this tenancy on August 9, 2012. The landlords entered into written evidence a copy of the signed joint move-in condition inspection report, a copy of which was provided to the tenant. The landlords testified that they could not conduct a joint move-out condition inspection with the tenant because he abandoned the rental unit without leaving them his forwarding address. Landlord GD conducted her own move-out condition inspection and provided the tenant with a copy of her report of that inspection as part of the landlords' written evidence package for this hearing.

The landlords' application for a monetary award of \$2,350.12 included the following items as set out in the landlords' monetary order worksheet entered into written evidence by the landlords:

Item	Amount
Unpaid February 2013 Rent	\$900.00
Loss of Rent March 2013	900.00
Suite Showings	35.00
Locks	100.76
Installation of Locks	112.00
Light Bulb Replacement	20.47

Bathroom Damage	13.75
Suite Cleaning	112.50
Cleaning Supplies	35.64
Carpet Cleaning	61.60
Landfill Fee/Truck Use	58.40
Total Monetary Order Requested	\$2,350.12

Analysis – Unpaid Rent and Loss of Rent

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. I find that the tenant was in breach of his fixed term tenancy Agreement because he vacated the rental premises without paying rent that became owing as of February 1, 2013, and prior to the July 31, 2013 date specified in that Agreement. As such, the landlords are entitled to compensation for losses in rent they incurred as a result of the tenant's failure to comply with the terms of their Agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for February 2013, the last month of his fixed term tenancy, and March 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.

The landlords entered undisputed sworn testimony and written evidence regarding their efforts to locate new tenants for this rental unit. Although the tenant testified that he was willing to seek out sub-tenants for the remainder of his Agreement or share living space with other sub-tenants, he did not identify specific individuals who were interested in subletting any portion of the premises from him. He also did not submit any written request to the landlords to sublet space in this rental unit for the remaining portion of his Agreement. The landlords entered undisputed written evidence and sworn testimony that they secured a new tenant who took occupancy of the rental unit as of April 1, 2013, for a one-year fixed term tenancy, at the same \$900.00 monthly rent as was being paid by the tenant who ended his tenancy in February 2013. Based on the evidence presented, I accept that the landlords did attempt to the extent that was reasonable to re-rent the premises for February and March 2013. As such, I am satisfied that the landlords have discharged their duty under section 7(2) of the *Act* to minimize the tenants' loss arising out of the remainder of this tenancy.

For the reasons outlined above, I issue a monetary award in the landlords' favour in the amount of \$900.00 for each of February and March 2013.

Analysis – Damage, Security Deposit and Filing Fee

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 landlords 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 find on a balance of probabilities that the landlords have demonstrated that they did incur some losses to conduct showings of the rental suite after the tenant ended his fixed term tenancy prematurely. As I find the landlords' written evidence regarding these very limited re-leasing expenses very reasonable, I allow the landlords a monetary award in the amount of \$35.00 for suite showings.

Section 25(1) of the *Act* establishes that a landlord bears all costs of rekeying or otherwise changing the locks so that a former tenant does not retain access to a rental unit. I heard undisputed evidence that the landlords had keys to enter the rental unit. The landlords located at least some of the tenant's keys when they took possession of the rental unit on February 12, 2013. As these premises were to be re-rented to a new tenant, the landlords' costs in rekeying and installing new locks are not eligible for a claim by the landlord against the tenant. As discussed at the hearing, I dismiss the landlords' claim for new locks and the installation of new locks without leave to reapply.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. The joint move-in condition inspection report of August 9, 2012, entered into written evidence by the landlords showed a mixed range of conditions within the rental unit when this tenancy began. The landlords admitted that the rental unit was not in uniformly good condition, but testified that they have not attempted to recover expenses arising out of damage or conditions that were in place prior to the commencement of this tenancy. Although the landlords entered into written evidence a copy of the move-out condition inspection conducted by Landlord GD at the end of this tenancy and photographs she said she took shortly after February 12, 2013, the landlords did not demonstrate that they issued the tenant two opportunities for a joint move-out condition inspection before this tenancy ended.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 36(1) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

36 (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
(a) does not comply with section 35 (2) [2 opportunities for inspection],...

Although the landlords did not provide two opportunities for inspection of the rental premises, I find undisputed evidence that the tenant abandoned the rental unit. As such, the landlords' right to claim against the security deposit has not been extinguished by section 36 of the *Act*.

Section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. The tenant maintained that some of the items in the landlord's claim were left in the same or better condition than when he moved into the rental in August 2012.

Based on the oral, written and photographic evidence of the parties, I find on a balance of probabilities that the tenant did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean and undamaged." I find that cleaning was likely required by the landlords after the tenant vacated the rental unit. I also find that some damage arose during this tenancy that extended beyond what would be reasonable wear and tear.

Based on my comparison of the joint move-in condition inspection report with the move-out report conducted by Landlord GD at the end of this tenancy and the written evidence and sworn testimony of the parties, I allow the landlords to recover \$ 20.47 for the replacement of light bulbs that were not functioning by the end of this tenancy. There is no notation on the joint move-in condition inspection report that light bulbs were not working at that time, so I can only conclude that these light bulbs failed during this tenancy and the tenant did not replace them.

As the tenant confirmed that a light fixture was damaged during this tenancy, I also allow the landlords' claim for a monetary award of \$13.75 for damage to the bathroom. primarily to the light fixture in that room.

There is at least some evidence in the joint move-in condition inspection report provided by the landlords that the rental unit was not totally clean when this tenancy began. The tenant and his assistant, his father, provided sworn testimony and written evidence that the rental unit was left in an equivalent or better level of cleanliness at the end of this tenancy as compared to the condition at the start of this tenancy. However, the landlords' photographs also reveal that cleaning was necessary at the end of this tenancy. The tenant left items behind, some of which could not possibly have remained during the entire length of this tenancy. Under these circumstances, I allow the landlord a monetary award of \$100.00 for general cleaning that was required at the end of this tenancy. In addition and as I find that the carpets were not properly cleaned by the end of this tenancy, I allow the landlords' claim for a monetary award of \$61.60 for carpet cleaning.

There remains some question as to whether all of the items that required removal to the landfill site arose during this tenancy or, as claimed by the tenant, remained from the previous tenancy. As such, I allow the landlords a monetary award of \$29.20, representing one-half of the landlords' costs to dispose of items at the landfill site and to use a truck for this purpose.

I allow the landlords to retain the security deposit for this tenancy plus applicable interest in partial satisfaction of the monetary award issued to the landlords. No interest is payable over this period. As the landlords have been successful in their application, they are allowed to recover their filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to obtain a monetary award for unpaid rent, loss of rent, damage and the filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid February 2013 Rent	\$900.00
Loss of Rent March 2013	900.00
Suite Showings	35.00
Light Bulb Replacement	20.47
Bathroom Damage	13.75
General Cleaning	100.00

Carpet Cleaning	61.60
Landfill Fee/Truck Use	29.20
Less Security Deposit	-450.00
Filing Fee	50.00
Total Monetary Order	\$1,660.02

The landlords are 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.

The landlords' application for an Order of Possession is withdrawn.

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: January 20, 2014

Residential Tenancy Branch

