



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

On July 23, 2013, the landlord's application was dismissed for failure to attend at a hearing on July 23, 2013.

On August 9, 2013, the landlord made an application for review consideration, which was granted on the basis that they were unable to attend at the original hearing because of circumstances that could not be anticipated and were beyond their control. The arbitrator ordered the parties to participate in a new hearing, and the original decision was suspended. The arbitrator at the new hearing may confirm, vary or set aside the original decision.

This new hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit, for money owed or compensation for damage or loss under the Act and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave 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.

Preliminary matter

On October 10, 2013, the tenant requested an adjournment, the tenant stated that he was served on October 4, 2013, with the Notice of Hearing and due to short notice he was unable to notify his witnesses.

As a result, I find it is appropriate to adjourn this matter to give the tenant a fair opportunity to notify their witnesses.

Issues to be Decided

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

Is the landlord entitled to a monetary order for damages to the unit?

Is the landlord entitled to a monetary order for money owed or compensation for loss?

Background and Evidence

The tenancy began on November 1, 2012. Rent in the amount of \$575.00 was payable in advance on the last day of each month. A security deposit of \$290.00 was paid by the tenant. The tenancy ended on May 3, 2013.

The landlord claims as follows:

item		
1.	Unpaid rent for May 2013	\$ 575.00
2.	Cleaning rental unit	\$ 240.00
3.	Cleaning material and light bulbs	\$ 40.00
4.	Cleaning Carpets	\$ 180.00
5.	Damage bedroom doors, paint and labour	\$ 410.00
6.	Change locks	\$ 65.00
7.	Replace refrigerator handle and lint screen in dryer	\$ 68.00
8.	Replace exterior	\$ 350.00
9.	Clean shed –garbage removal and disposal	\$ 80.00
10.	Replace blinds	\$ 45.00
11.	Replace area rug	\$ 60.00
12.	Repair laminate flooring	\$ 35.00
13.	Repair washing machine	\$ 325.00
14.	Vehicle storage	\$ 100.00
	Filing fee	\$ 50.00
	Total alleged	\$ 2,593.00

Item 1

The landlord testified on April 30, 2013, he went to collect the rent as it was due under the term of the tenancy agreement and when he attended the rental unit the tenant was in the process of moving. The landlord stated he had not received any notice from the tenant that he was ending the tenancy. Filed in evidence is a copy of the tenancy agreement.

The tenant testified that on May 1, 2013, he was told to leave by the landlord or the locks would be changed the next day as he did not have the rent money that was due. The tenant stated as a result he should not be required to pay rent for May 2013.

The witness (CC) for the tenant testified they had been looking for a place to move. (CC) stated that the landlord called on May 1, 2013, and then attended the rental unit at about 8:00 – 8:30 pm that evening. The witness stated that the tenant was told that he would have to move out of the rental unit or the locks would be changed at midnight. (CC) stated they started to pack their belongings.

The witness (CF) testified that on May 1, 2013, the tenant received a telephone call from the landlord and the tenant told him that he was going to be kicked out for failing to pay rent. The witness stated that when the landlord attended the rental unit the tenant told him that he could pay rent within the next few days. However, the landlord did not accept that and told the tenant to be out that night. The witness stated the landlord did not give the tenant any legal notice to kick him out.

The landlord argued that the rent was overdue. The landlord stated he never told the tenant that he was kicking him out or changing the locks and they are simply making up a story.

Items 2 and 3

The landlord testified that the tenant did not clean the rental unit at the end of the tenancy, and the stove/oven and refrigerator had to be cleaned. The landlord seeks to recover the cost of having the unit cleaned in the amount of \$240.00. Filed in evidence are photographs of the unit.

The landlord testified that at the end of the tenancy the tenant removed all the light bulbs and left the ones that were burnt out. The landlord seeks to recover the cost of the light bulbs and cleaning supplies in the amount of \$40.00. The landlord stated he did not take any photographs of the empty light sockets or burnt out bulbs.

The tenant acknowledged they did not clean the refrigerator or oven at the end of the tenancy.

The tenant denied taking out any light bulbs and admits there was one burnt out light bulb in the bathroom.

Item 4

The landlord testified that that tenant did not clean the carpets at the end of the tenancy and he had to pay to have all three rooms and the area rug professional cleaned. Filed in evidence are photographs of the carpets. The landlord seeks to recover the amount of \$180.00.

The tenant testified that they cleaned the carpets at the end of April 2013, prior to the landlord kicking them out as they were planning to move in the near future. Filed in evidence is a photograph of the carpet and area rug.

Item 5

The landlord testified that the tenant caused damage to two bedroom doors and the inside entry door and seeks compensation for having three new doors installed. Filed in evidence is a photograph of a bedroom door. The landlord seeks to recover the cost of \$190.00.

The landlord testified that he seeks to recover the cost of the paint and the labour for painting the doors. The landlord seeks to recover the amount of \$220.00.

The tenant testified that they agreed they damaged the main bedroom door, when they were moving furniture and agreed to pay the landlord the sum of \$63.33 as that is 1/3 of the cost of the doors. The tenant denied damaging the other two doors. The tenant stated the photograph of the door submitted by the landlord shows the door was filled with some type of putty, however, that was there at the start of the tenancy. The tenant stated there is no photograph of the other door.

The tenant testified that he should not be responsible for the cost of painting or labour associated with the two doors as they were in the same condition as when the tenancy commenced.

Item 6

The landlord testified that the tenants failed to return the keys at the end of the tenancy and he was required to change the locks. The landlord seeks to recover the amount of \$65.00.

The tenant testified he left the keys to the rental unit on the porch when he vacated the rental property.

The landlord argued that he found no keys on the porch.

Item 7

The landlord testified the tenants broke the refrigerator handle and the lint screen for the dryer. The landlord seeks to recover the amount of \$48.00 for the handle and \$20.00 for the lint screen.

The tenant testified that the handle to the refrigerator was loose at the start of the tenancy and simple fell off, and the handle was left on top of the refrigerator. The tenant stated the lint screen was broken, however, the landlord could have simple screwed the plastic pieces together, rather than purchasing a new screen.

The landlord argued that the lint screen was plastic and it would be impossible to fix by adding a screw. The landlord stated the screen that was purchased was second hand and not new. The landlord denied the refrigerator handle was left behind by the tenants

and stated the tenant did not notify him at any time during the tenancy that the handle was lost and fell off.

Item 8

The landlord testified that the outside door and the door frame had to be replaced as it was damaged by someone kicking at the door in an attempt to gain access. The landlord stated the cost of the door was \$350.00.

The tenant testified that the outside door was damaged four months prior as a result of someone attempting to steal their belongings. The tenant stated the landlord repaired the door by installing a metal kick plate.

Item 9

The landlord testified that the tenant left a large amount of garbage in the shed and it took him three hours to clean. The landlord stated the tenant also left a couch behind and all these items had to be taken to the dump. The landlord seeks to recover \$45.00 for his labor and \$35.00 for dumping fees.

The tenant admitted a couch was left inside the rental unit. The tenant stated they should not be held responsible for any garbage left in the shed as it was left behind by the previous renter.

Item 10

The landlord testified that the living room and hallway blinds were damaged by the tenants, as the vertical slats were broken. The landlord stated he had no photographs of the damage and seeks to recover the cost of \$45.00.

The tenant denied that they damaged any blinds and stated that they were in the same condition as when the tenancy started.

Item 11

The landlord testified that the tenant damaged the area rug as it was heavily stained and those stains would not come out when cleaned. The landlord stated he has not submitted a photograph of the damage area rug. The landlord seeks to recover \$60.00 for the damage rug.

The tenant denied that they damaged the area rug and stated the rug was in the same condition as when the tenancy started.

Item 12

The landlord testified that the tenant damaged the laminate floor as there was a hole in the flooring. The landlord stated that they seek to recover the cost of \$35.00 to repair the floor. Filed in evidence is a photograph of the floor.

The tenant denied that he caused any damage to the floor and stated there was a hole in the flooring at the start of the tenancy.

Item 13

The landlord testified that he seeks compensation for the washing machine repair as the transmission was burnt out as a result of the tenant overloading the machine. The landlord seeks to recover the amount of \$325.00.

The tenant denied that he caused any damage to washing machine.

Item 14

The landlord testified that he seeks compensation for storing two vehicles that were left behind at the end of the tenancy by the tenant for a period of eleven weeks. The landlord stated one vehicle was sent to the scrap yard approximately ten weeks after the tenancy ended as the vehicle had no engine and was of no value. The landlord stated the other vehicle was returned to the tenant when it was claimed, approximately eleven weeks after the tenancy ended. The landlord stated he seeks to be compensated \$100.00 as reasonable cost to store the vehicles.

The tenant testified that the landlord took the keys from the car because they failed to pay rent and he refused to give the key back. The tenant stated they did not contact the police or make an application for dispute resolution seeking the return of his personal belongings.

The landlord denied that he took any keys and argued that the tenant still has not paid rent and simply is making up a story.

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 alleged 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 alleged.

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.

Item 1

Section 26 of the Act states that 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 evidence of the both parties was the tenant did not pay rent when due under the terms of the tenancy agreement. I find the tenant has breached section 26 of the Act when they failed to pay rent and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$575.00**.

Damages

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

Items 2 and 3

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is generally expected to clean the appliances, pulling them out and cleaning behind and underneath at the end in the tenancy.

In this case, the tenant did not clean any of the appliances as required. I find the tenant breach section 37 of the Act, and this caused losses to the landlord. While the landlord failed to file a receipt to prove the actual amount of compensation. I find a reasonable amount for compensation for cleaning and supplies is **\$100.00**.

The landlord further claim for light bulbs, I find the landlord has provided insufficient evidence to support that the light bulbs were taken, such as photographs or the actual cost of the light bulbs. Therefore, I dismiss this portion of the claim.

Item 4

I accept the evidence of the landlord over the tenant because the tenant's photographs do not show the carpets clean, as the bedroom carpet has garbage laying on the floor and the living room carpet is covered with an area rug and couch and it appears only to be vacuumed. Further, the tenant has provided no receipt for cleaning. I find the tenant has breached section 37 of the Act, when they failed to clean the carpets. Therefore, I find the landlord is entitled to compensation for the cost of having the carpets cleaned.

The landlord claimed he paid \$180.00 to have the carpets cleaned, that amount seems reasonable based on the size of the home. Therefore, I find the landlord is entitled to compensation for cleaning the carpets in the amount of **\$180.00**.

Item 5

The tenant agreed that they damaged the main bedroom door and agreed to pay the amount of \$63.33. Therefore, I find the landlord is entitled to recover the cost of the door in the amount of **\$63.33**.

The tenant denied damaging the other two doors. In this case, the landlord has not proved a move-in condition inspection report or any photographs of the doors prior to the tenancy commencing. I find the landlord has provided insufficient evidence to support that the damage was caused by the tenant. Therefore, I dismiss the landlord's claim for the other two doors.

I further find the landlord has provided insufficient evidence for the cost of the paint as no receipt was submitted. However, I will allow the landlord a nominal award for having to paint the door. Therefore, I grant the landlord compensation in the amount of **\$20.00**.

Item 6

The evidence of the tenant was that he left the keys to the rental unit on the porch. The evidence of the landlord was that he did not receive or find any key and was required to change the locks.

Under section 37(2) (b) of the Act, the tenant is responsible to give the landlord all the keys. I find the tenant breached the Act, when he left the keys on the porch, rather than

to give the keys directly to the landlord. As a result the landlord suffered a loss, when he changed the locks.

The landlord claimed he paid \$65.00 to have the locks changed, I find that amount reasonable, therefore, I find the landlord is entitled to compensation for changing the locks in the amount of **\$65.00**.

Item 7

The evidence of the tenant was the refrigerator handle had fallen off and it was left in the rental unit and that the lint screen on the dryer was broken but could have been fixed by screwing the pieces together.

Under section 32(3) of the Act, a tenant must repair damage to the rental unit that was caused by their action or neglect. I find the tenant breached the Act, when they failed to have the handle on the refrigerator reinstalled and when they failed to repair the broken lint screen as these items are likely not to break under reasonable use.

I accept the evidence of the landlord that he did not find the refrigerator handle in the rental unit and purchased a new handle to make the necessary repair. I also accept that the plastic lint screen was not fixable by adding a screw and a used lint screen was purchased.

The landlord claimed he paid \$48.00 for the refrigerator handle and \$20.00 for the used lint screen. I find those amounts to be reasonable; therefore, I grant the landlord the compensation in the amount of **\$68.00**.

Item 8

The evidence of the tenant was the exterior door was damaged earlier in the tenancy and it was repaired by a metal kick plate. The tenant denied that the door was required to be replaced.

I find that the landlord has provided insufficient evidence that the exterior door was required to be replaced because it would have been reasonable to have the door replaced when the damage occurred, rather than to add a metal kick plate when the original damage occurred. Therefore, I dismiss this portion of the claim.

item 9

The evidence of the tenant was that the items in the shed belonged to the previous renter and should not be responsible for those items. The tenant acknowledged leaving a couch behind in the rental unit.

I find without a move-in condition inspection report, that the landlord has failed to prove the condition of the shed at the start of the tenancy as the tenant would not be

responsible for the removal of items that were left behind by a previous renter. However, I find the tenant did breach the Act, when they left a couch behind in the rental unit, which had to be removed and disposed by the landlord. As a result, I grant the landlord compensation for removing and disposing of the couch in the amount of **\$10.00**.

Items 10 thru 13

The landlord alleged the tenant damaged the blinds, area rug, laminate floor and washing machine. The tenant denied causing damage to any of the items. I find the landlord has failed to provide sufficient evidence to support the damage was caused by the tenant, such a move-in condition report or any other documentary evidence to support the condition of the rental unit at the start of the tenancy. Therefore, I dismiss this portion of the landlords claim due to insufficient evidence.

Item 14

The tenant left two vehicles behind on the landlord's property after the tenancy ended. The landlord stored those vehicles in excess of 60 days. After the sixty day period the landlord had one vehicle removed and disposed as the vehicle had no engine and had no value. The other vehicle was store until it was claimed by the tenant. Under the regulation the tenant must reimburse the landlord for his reasonable cost.

In this case, the landlord stored the vehicles for approximately eleven and seeks to recover the amount of \$100.00 as reasonable cost of storing the vehicles on his property, I find the amount claimed by the landlord is reasonable, as it is highly likely that the cost would have been significantly greater if the landlord had the vehicles towed and stored in a commercial storage facility. Therefore, I find the landlord is entitled to recover storage cost in the amount of **\$100.00**.

I find that the landlord has established a total monetary claim of **\$1,231.33** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$290.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$941.33**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As a result, of the above finding, the original decision made on July 23, 2013, is set aside.

Conclusion

The original decision made on July 23, 2013, is set aside.

The landlord is granted a monetary and may keep 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: January 28, 2014

Residential Tenancy Branch