



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67;
- b) An Order of Possession;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

The tenants did not attend. The landlord gave sworn evidence that they served the Notice to End Tenancy for unpaid rent on December 2, 2013 and the Application for Dispute Resolution by registered mail. It was verified online that the Application was available for pickup, notices were left but the tenant refused it. I find the tenants are deemed to be served with the Application. I find the later amendment was served by registered mail; it was verified online as successfully delivered. I find that the tenant is served with the documents according to sections 88 and 89 of the Act.

Preliminary Issues:

On the amendment, the landlord requests that her claim be increased to \$12,710 based on the contractor's estimate and two and one half months of unpaid rent. I find the tenant was served with this request but did not respond. **I hereby grant the amendment to the application to increase the claimed amount to \$12,710.**

The landlord also requested the addition of another tenant's name to the Application. **I decline this request as I find this tenant was never served with the Application and the evidence is that she was no longer a tenant when the damage occurred.**

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant owes rent and that they did damages to the property, that they were beyond reasonable wear and tear and the cost to cure the damage? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Only the landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on September 1, 2013 on a fixed term lease to August 31, 2014, a security deposit of \$600 and a pet damage deposit of \$600 was paid and rent is \$1200 a month. The landlord claims the tenant owes \$160 for December 2013 and \$1200 for each of January and February 2014. The landlord said that the tenants were still in residence in February as witnessed by them and the strata personnel. The landlord said the tenants were also persistently late in paying rent and requests late payment fees of \$200. The tenants submitted no documents in dispute.

The property is 6 years old and the landlord said they put new carpets in it and repainted in 2010 when they bought the unit. The landlord provided an estimate to fix the damages dated February 11, 2014 and also provided a typed cost of repair noting some damages that were not on the invoice and for which no invoice was provided. The landlord said that there was a fire which did extensive damage to the kitchen, much cleaning was required and carpet replacement due mainly to pet feces and damage. The estimate is for \$5848.50 and the revised amount noted by the landlord is \$7900 as she includes plumbing repairs and lost keys which are not supported by invoice. The tenants did not provide documents to dispute the amount owing; in evidence is a signed agreement dated August 30, 2013 from them promising payment for the fire damage.

Invoices in evidence include one from a contractor, one from the Fire Department and one from the Strata. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

I find the landlord entitled to \$2560 for unpaid rent and \$125 in late fees. Although the landlord claimed \$200 in late fees, I find section 7 of the *Residential Tenancy Guideline* limits late charges to \$25 a month; the evidence in this case is that the tenant was late in payments in October, November, December, 2013 and January and February 2014.

I find the landlord also entitled to an Order of Possession pursuant to sections 46 and 55 of the Act to be effective two days from service. There is unpaid rent and the tenant has not paid the rent or disputed the amount.

Monetary Order for Damages:

The onus of proof is on the landlord to prove that the tenant did damage to the property, that it was beyond reasonable wear and tear and the amount it cost to cure the damage. I find the preponderance of the evidence is that these tenants caused a fire in the kitchen which did considerable damage. I find the Fire Department investigation and the note written by the tenants supports the landlord's claim. I find the landlord entitled to recover the following amounts as invoiced:

1. \$120 to remove damaged cabinet and range hood, \$160 to dispose of range, hood microwave, \$60 to repair garbage disposal, and \$160 to do a basic clean.
2. \$648.31 for the Fire Department investigation.

Strata fine \$100 per letter dated October 13, 2013 which was levied due to tenant behaviour. Although other letters from the strata threatening fines for breach of Bylaws were enclosed, I find only one letter actually levied the fine of \$100. I find no invoices or written estimates supporting the cost of keys and fobs; therefore I find the landlord has not provided sufficient evidence to support recovery of any amounts claimed for replacement keys and fobs.

In respect to the other items claimed, I find the *Residential Policy Guidelines* provides for a useful life of items in residential premises which is designed to account for reasonable wear and tear. I find the unit was painted 4 years ago and the Guidelines provide for a useful life of only 4 years for paint so I find the landlord not entitled to recover costs of repainting as the paint was at the end of its useful life.

Stoves are assigned a useful life of 15 years; the evidence is that this stove had 9 years(or 60%) of useful life remaining so I find the landlord entitled to recover **\$510** of the stove cost of \$850. Microwaves are assigned a useful life of 10 years so I find the landlord entitled to recover **\$248** (or 40%) of its cost of \$620 for the 4 years of useful life remaining. Cabinets are assigned a useful life of 25 years so I find the landlord entitled to recover **\$342** of the cost of \$450 for the 76% of their useful life remaining. Carpets are assigned a useful life of 10 years and I find the landlord's evidence credible that the carpet was replaced 4 years ago. Therefore, I find the landlord entitled to recover **\$780** or 60% of its replacement cost of \$1300; I find the weight of the evidence is that much of the floor and carpet damage was caused by the pets of the tenant although some stains were noted in the move-in condition report which are accounted for in the deduction of 40% of its replacement cost.. I also find the landlord entitled to recover **\$250** for the repair of the laminate floor.

Although the landlord claimed that plumbing and other damage was caused by the tenant, I find insufficient evidence to support this perhaps due to the landlord's increased difficulty in accessing the unit and getting keys or fobs returned. Therefore, I

give the landlord leave to reapply within the legislated timelines for amounts to cure other damages and replace keys and fobs when they have obtained invoices or written estimates of the costs to cure these damages.

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to retain the security and pet damage deposits to offset the amount owing and to recover filing fees of \$100 paid for this application. I give the landlord **leave to reapply** for further damages and rental loss within the legislated timelines when written estimates and invoices have been obtained.

Calculation of Monetary Award:

Rent arrears	2560.00
Late fees	125.00
Item 1 above re. removal and disposal: 120+160+60+160	500.00
Fire Investigation per invoice	648.31
Strata fine	100.00
Stove allowance	510.00
Microwave range hood allowance	248.00
Cabinet allowance	342.00
Carpet allowance	780.00
Repair laminate	250.00
Filing fee	100.00
Less security and pet damage deposits (no interest 2013-14)	-1200.00
Total Monetary Order to landlord	4963.31

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: February 19, 2014

Residential Tenancy Branch

