



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNSD, MNR

Introduction

This is a request for a Monetary Order in the amount of \$2975.00 and a request for recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence, photo evidence, digital evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Has the applicant established a monetary claim against the respondents in the amount of \$2975.00?

Background and Evidence

The applicant testified that:

- This tenancy began on May 1, 2013 for a fixed term of six months, with an expiry date of October 31, 2013.
- The monthly rent was set at \$1600.00 per month, a security deposit of \$800.00 was collected on April 4, 2013, and a pet deposit of \$300.00 was collected on July 20, 2013.
- The tenants vacated on September 30, 2013, prior to the end of the fixed term, without giving the required Notice to End tenancy.
- Due to the condition in which the unit was left, they were unable to re-rent the unit for the month of October 2013 and as a result lost the full rental revenue of \$1600.00.
- As can be seen on the move-in inspection report, there was no damage to the rental unit and the beginning of the tenancy however at the end of the tenancy there was significant damage as follows:
 - There were excessive nail holes throughout the unit that required extensive filling, sanding and repainting.
 - The bedroom window sill had been scratched by the tenants pet and needed to be repaired.
 - There were moldings broken off of the fireplace which had to be replaced and repaired.
 - The hardwood flooring, although quite old, had some large new scratches which have cause permanent damage.
 - The vegetable crisper drawer in the refrigerator was broken.
 - There was a significant amount of garbage left behind throughout the yard that had to be removed.

- The tenants had moved a wall cabinet and as a result it had to be moved back and reinstalled.
- The tenants had removed some steppingstones in the garden and they had to be replaced.
- They had to replace a garden hose valve that had been moved and damaged by the tenants.

The applicant is therefore requesting a monetary order as follows:

October 2013 lost rental revenue	\$1600.00
Patch all nail holes and repaint, plus repair windowsill	\$1100.00
Repair fireplace moldings	\$50.00
Repair scratched flooring	\$200.00
Reinstall cabinet	\$150.00
Replace the concrete slabs in the yard	\$20.00
Fix a garden faucet	\$20.00
Damage to vegetable crisper	\$25.00
Garbage removal	\$30.00
Filing fee	\$50.00
Total	\$3245.00

The respondents testified that:

- They decided to move early because the landlord was in the yard of the property on a nearly daily basis and they found this to be a disruption of their quiet enjoyment.
- They did put numerous holes in the walls of the rental property, however they were all very small finishing nail size, and they believe that they should be considered normal wear and tear. Also some of the holes shown in the landlord's evidence were there when they moved in.

- They don't dispute the damage to the windowsill, as that was the exit and entrance for their cat.
- They do dispute the claim for damage to the fireplace, because one of the moldings was already loose when they moved in and the other molding was still in place when they vacated.
- They also dispute the claim for damage to the hardwood floor. This was a very old floor in poor condition, and although it may have been scratched by one of their chairs, there were no scratches made of the size indicated in the landlord's evidence. There was nothing beyond normal wear and tear.
- They don't know whether the crisper was broken when they moved in or whether it was broken during the tenancy, however this was a 25-year-old fridge and if it did break during the tenancy it should be considered normal wear and tear.
- They did not leave any junk in the house itself, and if any was outside it would have been a very small amount as they had done what they thought was a good cleanup of the yard. Some of the garbage in the landlord's photos was the landlord's garbage.
- They did move the wall cabinet and therefore they don't dispute this portion of the claim as it would have to be replaced.
- They did move some steppingstones as well and forgot to move them back.
- The landlord moved one of the hose valve handles and therefore in order to use it they moved one from another hose valve, to the one where the landlord had removed it.

In response to the tenant's testimony the landlord testified that:

- She was not in the tenant's yard on a daily basis and she always made arrangements with the tenants when she wanted to meet with them.
- You can see from the video evidence and photo evidence provided to the nail holes were excessive and were not just pinholes.
- The tenants never notified me the fireplace molding was off.

- The vegetable crisper drawer was not damage from the tenants moved in. The refrigerator is approximately 10 years old.
- I gave the tenants extra time to clean out the garbage that they still left a lot of garbage behind. I am not claiming for the toilet or drywall.
- The tenants moved a tap handle and now it has to be replaced.

Analysis

October 2013 rent

It's my finding that the parties signed a fixed term tenancy agreement with an end of tenancy date of October 31, 2013 and the parties are bound by that agreement.

The tenants claim they vacated the rental unit early due to loss of quiet enjoyment, however it is just there word against that of the landlords and that is insufficient to meet the burden of proving their claim.

The tenants therefore are liable for the \$1600.00 lost rental revenue for the month of October 2013.

Damages

It is my finding that the landlords have shown that the tenants put an excessive number of nail holes in their walls of the rental unit and therefore I allow the landlords claim for the cost to fill, and repaint those walls. I do not accept the tenants claim that they were just pin hole size.

The tenant does not dispute the claim for repair to the windowsill and therefore I also allow that portion of the claim.

It's also my finding that the tenants are liable for the cost to repair to the fireplace molding, as there is nothing in the move-in inspection report to show that any damage existed on move-in; however I find the amount claimed for this repair to be excessive, and therefore I will only allow \$25.00.

I deny the claim for damage to the hardwood floor, this was an older floor, and some damage can be expected due to normal wear and tear.

The tenants have admitted that they moved a cabinet and therefore I allow the cost of replacing the cabinet back from where it came.

The tenants also admit that they removed some concrete slabs, and forgot to replace them and therefore I also allow that portion of the claim.

The tenants also admit that they moved a handle on one of the faucets and therefore I find it most likely that the damage to the valve was caused by the tenants. I therefore allow that portion of the landlords claim.

I deny the claim for garbage removal, because I am not convinced that the garbage at the rental unit was garbage left by the respondents.

I also deny the claim for damage to the vegetable crisper in the refrigerator, as this was a very old refrigerator and as a result the damage may be the result of normal wear and tear.

Therefore the total amount of the claim that I have allowed is as follows:

October 2013 lost rental revenue	\$1600.00
Repair nail holes in walls and repair windowsill	\$1100.00
Repair fireplace molding	\$25.00

Repair hardwood flooring	\$0.00
Vegetable crisper damage	\$0.00
Garbage disposal	\$0.00
Reinstall cabinet	\$150.00
Replace concrete slabs	\$20.00
Fix Garden Faucet	\$20.00
Filing fee	\$50.00
Total	\$2965.00

Conclusion

I have allowed \$2965.00 of the applicants claim, and I therefore Order that the landlord may retain the full security/pet deposit of \$1100.00 and I've issued a monetary order in the amount of 1865.00.

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: January 16, 2014

Residential Tenancy Branch

