



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

1. For a monetary order for money owed or compensation under the Act;
2. To provided services or facilities required by law;
3. To have the landlord comply with the Act; and
4. To recover the cost of filing the application.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for damages to the unit; and
3. To recover the cost of filing the application.

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 at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision

Preliminary and procedural matters

January 21, 2014

On October 18, 2013, the tenant filed their application for dispute resolution, however they did not filed their evidence until January 15, 2014, which does not comply with the Residential Tenancy Branch Rules of Procedures. The principles of natural justice require that a person be informed and given full particulars of the claim against them. Therefore the tenant's evidence was excluded from the hearing.

On January 21, 2014, I was not required to hear the tenant's claim to have the landlord provided services or facility required by law or the claim to have the landlord comply with the Act, as the tenant had vacated the rental unit on November 30, 2013.

On January 21, 2014, the tenant's application was concluded and the matter was adjourned to my next available date to hear the landlord's application.

March 18, 2014

On February 7, 2014, the tenant filed evidence, although neither party were give permission to file additional evidence as the hearing had commenced. This evidence was available for the tenant to obtain prior to the hearing.

I have excluded the tenant's additional evidence due to the above, and because it was not sent to the landlord until February 21, 2014, by mail and appears to be an attempt by the tenant not give the landlord sufficient time review and to respond to their evidence and it would be administratively unfair to the landlord to have this matter delayed any further. Further, the landlord objected to the evidence being reviewed.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation or loss under the Act?
Is the landlord entitled to a monetary order for unpaid rent or damages to the unit?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?
Are either party entitled to recover the cost of the filing fee from the other party?

Background and evidence

The parties entered into a fixed term tenancy which began on July 31, 2013 and was to expire on January 31, 2014. Rent in the amount of \$575.00 was payable on the first of each month. A security deposit of \$288.00 was paid by the tenant. This tenancy is a tenancy in common as the tenant rents a room and shares the common areas with other renters under a separate tenancy agreement.

The parties agreed a move-in and move-out condition inspection report was completed.

Tenant's application

The tenant claims as follows:

a.	Mould damage	\$ 155.00
b.	Hotel for 1 night	\$ 50.00
c.	2 days without heat	\$ 37.00
d.	Mileage to tenancy branch	\$ 15.00
e.	Time @\$20.00 per hour	\$ 200.00
f.	Compensation	\$ 300.00
g.	Filing fee	\$ 50.00
	Total claimed	\$ 807.00

Mould damage

The tenant testified that she seeks compensation for the loss of a clock, 2 pillows and a painting that were damaged because of mould. The tenant stated these items were stored behind a chair that was located in the corner of the room. The tenant stated she left a note for the landlord to remedy the problem immediately.

The landlord testified that she received the tenants note and immediately went to investigate the problem. The landlord stated it was not mould, it was likely mildew and that she cleaned it up within ten minutes and there were no further problems. The landlord stated she never saw or was shown any ruined items.

Hotel for 1 night

The tenant testified that she seeks compensation for having to stay at a hotel due to the mould issue and because when she contacted the landlord, the landlord was very abrupt and hung up the phone in mid sentence. The tenant stated she was not comfortable returning to the rental unit due to her hostile response and the unhealthy nature of the mould.

The landlord testified there was no mould issue and that she rectified the situation within ten minutes. The landlord stated the tenant mother was in town and she stayed at the hotel because of that.

2 days without heat

The tenant testified that there was two days that she did not have sufficient heat, due to lock box's being installed and the temperature was set at 12 degrees. The tenant stated she went to talk to the landlord about this issue and landlord was hostile and shut the door on her face and the next day the landlord filed a police complaint for disturbing her peace.

The landlord testified the tenant had plenty of heat and that there was never a lock box place on the thermostat in the tenant's room. The landlord stated there was one lock box in a room, however, that room was not rented by the tenant and is not part of the common area.

Compensation

The tenant did not provide any testimony on the issue of compensation as she was unable to remember how she arrived at that amount.

The landlord was not required to respond as no evidence was present by the tenant.

Landlord's application

The landlord claims as follows:

a.	Door paint – handle repair	\$ 50.00
b.	Cleaning 2 hours	\$ 50.00
c.	Replace 4 burnt out light bulbs	\$ 40.00
d.	Couch repair	\$ 75.00
e.	Unpaid rent for December 2013, and January 2014	\$ 1,150.00
f.	Filing fee	\$ 50.00
	Total claimed	\$ 1,415.00

Door paint – handle repair

The landlord testified that the tenant caused damage to the door by tying a rope around the handle and tying the end of the other rope to another door. The landlord stated the tenant was ordered to remove the rope as this is the only fire exit between the two floors. The landlord stated the action of the tenant caused damage to the door handle as the screws were stripped and the handle required to be replaced. The landlord

stated that she did not purchase a new handle as she had a spare one at home. The landlord stated the door was also scratched by the rope, which required to be painted.

The tenant testified that she does not deny tying the rope to the door handle. The tenant stated that she did this because the door did not have its own lock and she did not want the landlord entering the common areas. The tenant denied causing any damage to the door handle or the door.

Cleaning 2 hours

The landlord testified that the tenant did not clean the stove, fridge or garbage can, when she vacated the rental unit. The landlord stated she spent two hours and seek compensation in the amount of \$50.00.

The tenant testified that these appliances are used by all the renters and that she did clean what she felt she was responsible for.

Replace 4 burnt out lights bulbs

The landlord testified the tenant did not replace the burnt out light bulbs in her room, when she vacated the rental unit.

The tenant testified that she does not deny this portion of the landlord's claim.

Couch repair

The landlord testified that she seek compensation for the damage couch. The landlord stated she does not know if the damage was caused by the tenant.

The tenant testified that she did not damage the couch.

Unpaid rent for December 2013 – January 2014

The landlord testified the tenant breached the fixed term tenancy agreement, when she vacated the rental premises on November 30, 2013. The landlord stated she advertised the rental on several popular websites and at two local universities. The landlord stated she was not able to find a new renter until March 2014. The landlord seeks to recover loss of revenue for balance of the fixed term in the amount of \$1,150.00.

The tenant testified that she did vacate the rental premises prior to the date in the tenancy agreement. The tenant stated she provided the landlord with notice. The tenant stated she felt that she was harassed, false accusations were made and the unhealthy living condition of mould was a breach of a material term their tenancy agreement.

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 claimed 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 claimed.

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 each party has the burden of proof to prove their respective 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.

Tenant's application

Mould damage

In this case, the tenant alleged several items were damaged as a result of mould. Even if I accepted the tenant's position, I find the tenant has not proven a violation of the Act, by the landlord as the landlord immediately rectified the problem as soon as they were notified. Further, even if I found a breach of the Act, by the landlord (which I do not), I would have found the tenant failed to prove the actual amount required for compensation as the tenant did not provide any estimate for fair market value. Therefore, I dismiss this portion of the tenant's claim.

Hotel for 1 night

The evidence of the tenant was that she stayed in a hotel because of the mould and because of the landlord's hostile attitude. However, the landlord immediately investigated and rectified the problem. I find the tenant has failed to prove a violation of the Act, by the landlord. Therefore, I dismiss this portion of the tenant's claim.

2 days without heat

In this case, both parties have both provided a different version of events. I find without further evidence, the tenant has failed to prove that they had insufficient heat for two days. Therefore, I dismiss this portion of the tenant's claim.

Mileage to tenancy branch

The tenant writes that they seek to recover their vehicle mileage for attending at the Residential Tenancy Branch. However, there is no provision under the Act that would allow the tenant to recover mileage for driving to the Residential Tenancy Branch. Therefore, I dismiss this portion of the tenant's claim.

Time @\$20.00 per hour

The tenant writes that they seek to recover their time at the rate of \$20.00 for phone time and for attending the Residential Tenancy branch and for preparing documents for the hearing and contacting the police. However, there is no provision under the Act that would allow the tenant to recover their time for preparing for a hearing. Therefore, I dismiss this portion of the tenant's claim.

Compensation

In this case, the tenant could not remember why she was seeking compensation and provided no testimony on this issue. Therefore, I dismiss this portion the tenant's claim.

In light of the above, the tenant's application is dismissed. As the tenant was not successful with their application they are not entitled to recover the cost of the filing fee from the landlord.

Landlord's application

Door paint – handle repair

In this case, the tenant tied a rope around two interior door handles, that action is likely to cause damage to the door handles as described by the landlord. Therefore, I find on the balance of probability that the tenant cause damage to the door handle. The evidence of the landlord was that she used a door handle that she currently onsite and has claimed the amount of \$50.00 for the handle and the repair, however, no estimate or comparison was provided for me to determine if \$50.00 is a reasonable amount for compensation. I find the landlord has provided insufficient evidence to support this portion of the landlord's claim. Therefore, I dismiss this portion of the landlord's claim.

Cleaning 2 hours

Under the Residential Tenancy Policy Guideline #1 the tenant is responsible for cleaning the appliances at the end of the tenancy.

In this case, the landlord seeks compensation for cleaning the stove, refrigerator and garbage can. Under normal circumstances the tenant is responsible to ensure that they clean the appliances at the end of the tenancy.

However, in this case, the tenancy is a tenancy in common and other renters use these appliances. As a result, I am unable to determine what portion, if any, that the tenant would be responsible for as the tenant is not responsible for cleaning associated with other renters. I find the landlord has failed to prove a violation of the Act, by the tenant. Therefore, I dismiss this portion of the landlord's claim.

Replace 4 burnt out lights bulbs

Under the Residential Tenancy Policy Guideline #1 the tenant is responsible for replacing light bulbs during their tenancy.

In this case, the tenant does not deny that there were 4 burnt-out light bulbs. I find the tenant breached the Act, when she failed to replace the light bulbs during her tenancy and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover the cost of the light bulbs in the amount of **\$40.00**.

Couch repair

In this case, the couch is located in the common area that is used by other renters. I find the landlord has failed to prove the damage was caused by the tenant. The tenant is not responsible to pay for any damages that may have been caused by another renter as their tenancy agreements are separate and the tenant would have no obligation under the Act to repair damages that were caused by another renter under a separate agreement. Therefore, I dismiss this portion of the landlord's claim.

Unpaid rent for December 2013 – January 2014

Section 45 of the Residential Tenancy Act states:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
(a) is not earlier than one month after the date the landlord receives the notice,
(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
(c) is the day before the day in the month, or in the other period on which the tenancy is based,

In this case, the evidence of the tenant was that she provided notice to end the tenancy for breach of a material term of the tenancy agreement; however, there is no evidence to support that a breach occurred as I have dismissed the tenant's application.

Under the Act the tenant was not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenant has breached section 45(2) of

the Act as the earliest date they could have legally ended the tenancy was January 31, 2014, as stated in the tenancy agreement.

As a result of the tenant not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for December 2013, and January 2014, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

However, under section 7 of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

In this case, the evidence of the landlord was that she commenced advertising the rental unit in October 2013, on several local popular websites and was not able to find a new renter until March 2014.

As a result, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover unpaid rent to the date the tenant could have legally ended the tenancy, January 31, 2014. Therefore, the landlord is entitled to recover the amount of **\$1,150.00**.

I find that the landlord has established a total monetary claim of **\$1,240.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord(s) retain the security deposit and interest of **\$288.00** in partial satisfaction of the claim and I grant the landlord(s) an order under section 67 for the balance due of **\$952.00**.

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

Conclusion

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: March 28, 2014

Residential Tenancy Branch

