



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC

Introduction

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

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on December 13, 2013, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to 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.

Issues to be Decided

Are the landlords entitled to a monetary order for damages to the unit?
 Are the landlords entitled to monetary compensation for loss?
 Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy which began on April 1, 2013 and was to expire on March 31, 2014. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant.

A move-in inspection report was completed, the tenant did not participate in a move-out inspection and no forwarding address was provided at that time.

The landlords claim as follows:

a.	Loss of rent for December 2013 and January 2014	\$1,425.00
b.	Damages to the rental unit	\$1,963.17
c.	Filing fee	\$ 50.00
	Total claimed	\$3,438.17

Loss of rent for December 2013 and January 2014

The landlord testified that the tenant breached the fixed term agreement, by failing to pay rent and as a result the tenant was evicted from the rental premises on November 16, 2013. The landlord stated that they immediately advertised the rental unit at the same rent and in late December 2013, they were able to find a new renter and that tenancy commenced on January 15, 2014. The landlords seek to recover loss of revenue for December 2013 and half of January 2014, in the amount of \$1,425.00.

Damages to the rental unit

The landlord testified that the handle of the kitchen tap was snapped off and this damage would not have been caused by normal wear and tear. The landlords seek to recover the amount of \$29.56 to repair the kitchen tap. Filed in evidence is a photograph of a broken kitchen tap.

The landlord testified that the tenant removed two interior doors and they were found with large holes smashed through them. The landlord stated that the cost to purchase

new doors and have them installed was \$224.00. Filed in evidence are photographs of the doors.

The landlord testified the exterior door locks had to be changed as the tenant failed to return the key when they vacated the rental unit. The landlord seeks to recover the amount of \$36.95.

The landlord testified that the tenant took the dining room curtain and curtain rod that was provided at the start of the tenancy. The landlord seeks to recover the cost to replace the two panels and the curtain rod in the amount of \$105.00.

The landlord testified that the tenant left garbage that had to be removed and taken to the dump. The landlord seeks to recover the dump fees of \$62.00. Filed in evidence are photographs of items left behind.

The landlord testified the living room blind was damaged and the cord mechanism was broken. The landlord stated the blind was there when they purchased the property in 2009. The landlords seek to recover the amount of \$50.00.

The landlord testified that the paint and supplies that they purchased to repair the damage was \$180.66, which includes the graffiti primer in the amount of 11.99.

The landlord testified that the tenant took almost every light bulb out of the rental unit and they had to replace approximately 12 light bulbs. The landlord stated the tenant also removed the two smoke detectors. The landlord stated these items and cleaning products cost approximately \$150.00. Filed in evidence are receipts light bulbs, smoke detectors and cleaning products.

Labour

The landlord testified that the tenant failed to clean the rental unit and they were required to clean it from the ceiling to the floors. The landlord stated the window, window tracks had to be cleaned, the laminate floor had gum and other food items stuck to the floor that had to be scraped, swept and washed. The landlord stated none of the appliances were cleaned.

The landlord testified that the entire unit had to be painted as the tenant's child had used crayon and purple permanent marker on the walls, which had to be covered with a graffiti sealer and then painted. Filed in evidence are photographs of the walls, which support the landlords.

The landlord testified the tenant also had an excesses amount of holes in walls which they attempt to fill with filler, however this was not normal wear and the entire wall was required to be painted. Filed in evidence are photographs of the walls which support the landlords.

The landlord testified that a spindle on the stair case was cracked and they had to glue it together and repaint. The landlord stated the bathroom cabinet was covered with child's toothpaste that had dried and when she attempted to wash it off, it caused damage to the finish and the wood cabinet had to be painted.

The landlord testified that the tenant also left garbage outside and that they had to pick up the garbage and take it to the dump.

The landlord testified they spent 75 hours cleaning and making repairs that were cause by the tenants neglect and they seek to be compensated at the rate of \$15.00 per hour for a total compensation of \$1,125.00.

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 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-complying 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.

Loss of rent for December 2013 and January 2014

Section 45 of the Residential Tenancy Act states: (fixed term)

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 landlord was that the tenant breached the fixed term tenancy by failing to pay rent, and was evicted from the rental unit on November 16, 2013, prior to the expiry of the fixed term agreement.

As a result of the tenant not complying with the terms of the tenancy agreement or the Act the landlords suffered a loss of rent for December 2013 and January 2014. The landlords are entitled to an amount sufficient to put the landlords in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlords for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy which was March 31, 2014.

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 they immediately advertised the rental unit and they were unable to find a new renter until late December 2013, and the

tenancy commenced on January 15, 2014. I find the landlords made reasonable efforts to minimize the loss. Therefore, I find the landlords are entitled to recover loss of rent for December 2013 and half of January 2014, in the amount of **\$1,425.00**.

Damages to the rental unit

Section 37 of the Residential Tenancy Act states:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, I accept the undisputed testimony of the landlord that the tenant caused damage to the rental, I find the tenant breached the Act, when they failed to repair the kitchen tap, when they failed to replaced the two smashed doors, when the failed to return the keys, when they took the dining room curtain and curtain rod, and when they failed to remove all garbage. This action caused losses to the landlord. Therefore, I find the landlords are entitled to recover the amount of **\$475.51**.

The evidence of the landlord was a living room blind that was broken, however, as the blind was in the rental unit when the landlords purchased the property in 2009. I find the landlord has failed to provide sufficient evidence to support the age of the blind for me determine if the tenant should be responsible to pay the depreciated value. Therefore, I dismiss the landlords' claim for compensation for the living room blind.

The evidence of the landlord was that the tenant failed to clean the rental unit and cleaning supplies were required to be purchased. The evidence of the landlord was that tenant took the majority of the light bulbs and removed two smoke detectors. I find the tenant breached the Act, when they failed to clean the unit, when they removed the light bulbs and smoke detectors and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover the cost of light bulbs, smoke detectors and cleaning products in the amount of **\$150.00**.

The evidence of the landlord was the cost for painting supplies was \$180.66, which included the amount of \$11.99 for graffiti sealer. The evidence of the landlord was that the rental unit was painted in 2009.

Under the Residential Policy Guideline #40, if an item was damaged by the tenant, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement. As, I have determined that the paint had a useful life span of four

year, and the paint was approximately four years old. I find the useful life span of the paint as expired and the tenant is not responsible for the cost of the paint or supplies.

However, I find the graffiti seal is not a normal product which would be required to purchase. Therefore, I find the landlords are entitled to recover the amount of **\$11.99**.

I further accept the landlords' testimony, that they spent 75 hours cleaning the rental unit and repairing the damage caused to the doors, walls and cabinet. I find the rate of \$15.00 reasonable. I find the landlords are entitled to recover their time for cleaning, for repair the walls by having to paint the walls that were damaged by the tenant's child using crayon and permanent mark as this is not normal wear and tear, rather neglect by the tenant. Therefore, the landlords are entitled to recover the amount **\$1,125.00**.

I find that the landlords have established a total monetary claim of **\$3,237.50** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlords retain the security deposit and interest of **\$500.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$2,737.50**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are 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: April 10, 2014

Residential Tenancy Branch

