



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MND, NSD, MNDC, FF

Introduction

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

The tenant's application is seeking orders as follows:

1. To cancel a notice to end tenancy for non payment of rent; and
2. To recover the cost of filing the application.

The landlords' application is seeking orders as follows:

1. For an order of possession for unpaid rent;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

Tenant's application

This matter was set for hearing by telephone conference call at 11:30 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 11:40 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenant's application without leave to reapply.

Landlords' application

The landlords 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 stated their Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on February 19, 2013, to the service address provided by the tenant in the tenant's application. The landlord stated the package was returned unclaimed by the tenant. A Canada post tracking number was provided as evidence and a copy of the Canada post track history 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. Refusal or neglect to pick up the package is not grounds for review.

Preliminary Matter

At the outset of the hearing the landlord indicated that the tenant vacated the rental premises on March 8, 2014, and an order of possession is no longer required.

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?

Background and Evidence

The tenancy began on June, 1, 2013. Rent in the amount of \$1,275.00 was payable on the first of each month. A security deposit of \$637.50 was paid by the tenant. The tenancy ended on March 8, 2014.

The landlords claim as follows:

a.	Unpaid rent for February and March 2014	\$ 2,550.00
b.	Damages	\$ 719.11
c.	Cost of registered mail	\$ 40.32
d.	Filing fee	\$ 50.00
	Total claimed	\$ 3,319.11

Unpaid rent for February and March 2014

The landlord testified that the tenant failed to pay rent for February and March 2014. The landlord seeks to recover unpaid rent in the amount of \$2,550.00.

Damages

The landlord testified that the tenant left the deck dirty and it needed to be power washed at the end of the tenancy. The landlord stated the deck was power washed at the start of the tenancy and that they paid the tenant's father-in-law the amount of \$150.15 to clean the deck. The landlord stated that it took them approximately one and a half hours to power wash the deck. However, they should be entitled to the same amount they paid the tenants father-in-law. The landlord seeks to recover the amount of \$150.15.

The landlord testified that it took two people four hours to clean the rental unit. The landlord stated the tenant did not clean the windows or window tracks as they were full of mould and the blinds were left dusty. The landlord stated that the kitchen cupboards had to be cleaned, and the refrigerator was left dirty. The landlord stated the floors had to be vacuumed and washed. The bathrooms required cleaning. The landlord seeks to recover the amount of \$200.00.

The landlord testified that the carpets were cleaned at the start of the tenancy and their tenancy agreement stipulates that the carpets must be cleaned at the end of the tenancy. The landlord stated the tenant failed to clean the carpets at the end of the tenancy and cost to have the carpets cleaned is \$131.25.

The landlord testified that the tenant left three old chairs on the roadside and they had to be removed and then taken to the dump. The landlords seek to recover the dump fee in the amount of \$12.60. Filed in evidence is a copy of a billed transaction in the amount of \$12.60.

The landlord testified that the tenant did not return the keys to the rental unit at the end of the tenancy and the locks were required to be changed. The landlord seeks to recover the amount of \$44.79. Filed in evidence is a receipt.

The landlord testified that her husband spent three hours of his time, running to the dump to dispose of the furniture, cleaning the yard and replacing the locks. The landlords seek to recover the amount of \$90.00.

The landlord writes in their application that they seek to recover the cost of sending the hearing packages by registered mail in the amount of \$40.32.

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 landlords have 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.

Unpaid rent for February and March 2014

Section 26 of the Residential Tenancy Act states:

26 (1) 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 landlord was the tenant did not pay rent owed for February and March 2014. The evidence of the landlord was the tenant vacated the rental unit on March 8, 2014. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlords. Therefore, I find the landlords are entitled to recover unpaid rent in the amount of **\$2,550.00**

Damages

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.

The undisputed testimony of the landlord was the tenant left the deck dirty and it required to be power washed. I find the tenant breached the Act, when they failed to clean the deck at the end of the tenancy and this caused losses to the landlords.

In this case, the landlords seek compensation in the same amount that they paid the tenant's father in-law. However, upon my review of the invoice it would appear that this was a company and paying taxes. Therefore, I find the landlord is not entitled to be compensated at the same rate. Therefore, I will grant the landlord compensation at the rate of \$25.00 per hour for the one and a half hours it took to clean the deck. Therefore, I find the landlords are entitled to recover the amount of **\$37.50**.

The undisputed evidence of the landlord was that the tenant failed to clean the windows, window tracks, refrigerator and cupboards at the end of the tenancy. I find the tenant breached the Act, when they failed to clean these items and this caused losses to the landlord. Therefore, I find the landlords are entitled to recover the cost of cleaning in the amount of **\$200.00**.

The undisputed evidence of the landlord was that the tenant failed to clean the carpets at the end of the tenancy. I find the tenant breached the tenancy agreement, when they failed to clean the carpets and this caused losses to the landlord. Therefore, I find the landlords are entitled to recover the cost of carpet cleaning in the amount of **\$131.25**.

The undisputed evidence of the landlord was the tenant left three chairs outside and they had to remove the chairs and taken them to the dump. I find the tenant breached the Act, when they failed to have these items removed at the end of the tenancy and this caused losses to the landlord. Therefore, I find the landlords are entitled to recover the dump fees in the amount of **\$12.60**.

The undisputed testimony of the landlord was the tenant failed to return the keys to the rental unit. I find the tenant breached the Act, when they failed to return the keys and this caused losses to the landlord. Therefore, I find the landlords are entitled to recover the cost of having to change the locks in the amount of **\$44.79**.

The undisputed testimony of the landlord was that her husband spent three hours, cleaning, taking the chairs to the dump and changing the locks. As I have found previously that the tenant breached the Act, I find this caused further losses to the landlord. While that landlord is claiming \$90.00 for three hours, I find the hourly rate high. Therefore, I grant the landlord compensation at the rate of \$25.00 per hour for the three hours in the total amount of **\$75.00**.

The landlord further seeks compensation for having to send the hearing packages by registered mail, however, there is no provisions under the Act, that allow the landlord compensation for service fees. Therefore, I dismiss this portion of the landlords' claim.

I find that the landlords have established a total monetary claim of **\$3,063.64** 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 **\$637.50** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$2,426.14**.

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

Conclusion

The tenant's application is dismissed.

The landlords are granted a monetary 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 1, 2014

Residential Tenancy Branch