



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNR, MNSD, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for unpaid rent, loss of income, the cost of repairs and painting and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied for the return of the security deposit, for compensation for the loss of her belongings and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent, loss of income, the cost of repairs and painting and for the filing fee? Is the tenant entitled to the return of the security deposit and to the recovery of the filing fee?

Background and Evidence

The tenancy started on July 15, 2013 for a fixed term of one year. The tenant moved out on February 27, 2014. The monthly rent was \$975.00 due on the first of each month. The tenant paid a security deposit of \$487.50.

Move in and move out inspections were conducted and the landlord filed a copy of the report. The tenant participated in the move in inspection, but did not participate in the move out inspection. The landlord filed copies of the text messages between the two parties, which indicate that the landlord waited for the tenant up to 8:30 pm and the tenant did not show up. The tenant wanted to do the inspection at 10:00pm and the landlord told her that it was too late.

The move in inspection report was filled in by the tenant and two discrepancies were noted. The balance of the report indicates that everything was in good condition. The move out inspection was filled out by the landlord and indicated that the unit was left in a dirty condition, a closet door was missing, there were holes in the exterior wall, the window frame was damaged, one wall needed painting, the bedroom and living room curtains were missing, the bedroom door lock was damaged and the oven and countertop were not cleaned by the tenant.

The landlord testified that the tenant owed \$225.00 for rent for February. The tenant agreed that she had paid only \$750.00 for February but stated that the landlord allowed her a deduction of \$225.00 for problems with the rental unit. The landlord denied agreeing to a reduced rent for February and is claiming the balance of \$225.00.

The tenant testified that on February 02, 2014, she gave the landlord notice by email to end the tenancy effective the end of February. The landlord immediately advertised the availability of the rental unit and the tenant agreed that she showed the unit at least ten times to prospective renters. The landlord found a tenant for April 01 and is claiming loss of income for March 2014.

The landlord is claiming the following:

1.	Unpaid rent for February 2014	\$225.00
2.	Loss of income for March 2014	\$975.00
3.	Repairs	\$1,680.00
4.	Replace closet door	\$159.04
5.	Filing fee	\$50.00
	Total	\$3,089.04

The tenant stated that due to leaks in the rental unit, there was a buildup of mould in the unit and her box spring was damaged from the moisture in the flooring. The tenant is claiming \$100.00 as compensation for the loss of her box spring plus \$200.00 for the cost of replacing several of her belongings damaged by mould.

Analysis

Landlord's application:

1. Unpaid rent for February 2014 - \$225.00

The tenant agreed that she deducted \$225.00 from her rent for February but stated that the landlord agreed to allow her to do so.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the landlord denied having agreed to allow the tenant a rent deduction and in the absence of any additional evidence to support her claim, I find that the tenant has not met the burden of proof and accordingly, I award the landlord \$225.00

2. Loss of income for March 2014 - \$975.00

Section 45(2) of the *Residential Tenancy Act* states that 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 on which the tenancy is based that rent is payable under the tenancy agreement.

In this case the tenant gave the landlord inadequate notice to end the tenancy and therefore was non compliant with the terms of the tenancy agreement. Section 7 of the *Residential Tenancy Act* addresses liability for not complying with this Act or a tenancy agreement. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The tenant testified that she had at least 10 showings in response to the landlord's advertisement. Despite efforts to find a new tenant, the landlord was unsuccessful and therefore suffered a loss of income for March 2014. I find that the landlord is entitled to the loss of income in the amount of \$975.00.

3. Repairs - \$1,680.00

The landlord has filed an invoice for this amount for various repairs. Based on the testimony of both parties, I find as follows:

3(a) Replace window frame - \$30.00 and repair exterior wall - \$100.00

The tenant stated that in September 2013, the window started leaking and she informed the landlord about the problem.

The landlord responded by placing newspaper to soak up the water that had entered the rental unit. Based on the testimony of both parties, I find that the leakage was not due to negligence on the part of the tenant and therefore the tenant is not responsible for the cost to fix the window or repair the exterior wall.

3(b) Fix lock - \$50.00

The landlord testified that the lock on the bedroom door was broken. I find that the tenant is responsible for the cost of fixing the lock.

3(c) Paint living room wall - \$700.00

The tenant stated that she attempted to fix existing damage to the wall. Based on the testimony of both parties, I find that the unit was painted just prior to the start of tenancy and therefore the tenant is responsible for the cost of painting the wall. However, I further find that \$700.00 is excessive for the cost of painting one wall and therefore I find it appropriate to award the landlord \$200.00.

3(d) Curtains for the living room and bedroom - \$350.00

The tenant agreed that she had removed the curtains but also added that they were in such poor condition that upon washing them they got destroyed. The landlord stated that the curtains were approximately 3 years old.

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the curtains. As per this policy, the useful life of curtains is ten years. Therefore, by the end of the tenancy, the curtains had approximately six years of useful life left. Accordingly, I award the landlord \$210.00 which is the approximate prorated value of the remainder of the useful life of the curtains, at the end of the tenancy.

3(e) Cleaning oven and counter top - \$100.00

The tenant agreed that she did not clean the stove and therefore I award the landlord \$100.00 towards the cost of cleaning.

4. Replace closet door - \$159.04

The landlord filed a separate receipt for the cost to replace a closet door. The tenant stated that the closet did not have a door at the start of the tenancy. The landlord stated that the door was approximately 10 years old and he replaced it with a mirrored door. Based on the testimony of both parties, I find that the landlord replaced the 10 year old plain door with a new mirrored door. Therefore I dismiss the landlord's claim for the cost to replace the door.

The landlord has proven most of his claim and therefore I award him the recovery of the filing fee.

Overall the landlord has established a claim of:

1.	Unpaid rent for February 2014	\$225.00
2.	Loss of income for March 2014	\$975.00
3.	Repairs	\$560.00
4.	Replace closet door	\$0.00
5.	Filing fee	\$50.00
	Total	\$1,810.00

Tenant's claim

The tenant has not provided sufficient evidence to support her claim of \$300.00 for the loss of her box spring and other personal items and therefore her claim for these items is dismissed. The tenant must also bear the cost of filing her own application.

I order that the landlord retain the security deposit of \$487.50.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1,322.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord may retain the security deposit of \$487.50. I grant the landlord a monetary order in the amount of \$1,322.50.

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: June 24, 2014

Residential Tenancy Branch

