



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD DRI RR FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for rental loss due to insufficient notice to end tenancy and for damages to the property;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) A rent refund for an illegal rent increase contrary to section 43;
- e) For a return of the security deposit pursuant to section 38;
- e) Compensation for unreasonable disturbance during the tenancy; and
- f) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

The tenant vacated the unit on March 29, 2014. Has the landlord proved on the balance of probabilities that they are entitled to a monetary order for rent due to insufficient notice? Have they proved on the balance of probabilities that the tenant did damage to the property, that it was beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Has the tenant proved on the balance of probabilities that he is entitled to a rent refund, to the return of the security deposit, to compensation for unreasonable disturbance and to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in January 2013, that rent per the lease was \$750 a month and a security deposit of \$375 and a pet damage deposit of \$375 were paid on January 17, 2013. It is undisputed that the tenant vacated on March 29, 2014 without providing a Notice to End Tenancy.

It is undisputed that the landlord lived upstairs with his spouse, children and two dogs and the tenant lived alone downstairs with one dog. Apparently in March 2013, he and a friend were doing a training course for a job and his friend lived with him for 5 days for convenience but the tenant said his friend lived in his own place and only visited sometimes after that. The landlord said the significant problems arose in this formerly friendly relationship as the result of the friend and the tenant parking three vehicles which caused complaints from the neighbours. The tenant said the landlord gave him an ultimatum concerning his friend 'living there' and he found another place and moved without giving a month's notice.

The landlord claims as follows:

1. \$75 cleaning fee; invoice and photos provided. The tenant states he left the place clean but forgot about the oven.
2. \$55.99: smoke detector removed and taken, invoice supplied. The tenant said he left it in the garage but the landlord said it was not there or anywhere else and the tenant had said on leaving that it was in his stuff somewhere and he would return it.
3. \$75: wall repair and painted by landlord. The tenant said he had a drywaller friend repair the wall.
4. \$15: to clean up dog waste from yard. The tenant said the landlords had dogs too and the responsibility was shared but he had to leave in a hurry.
5. \$45: dryer repair because the filter was jammed. The tenant said the dryer was used and he advised the landlord several months prior of a problem with it but nothing was done.
6. \$31.64: Lawn repair items. The tenant pointed out that the landlord had dogs also and any damage to the lawn was not caused by his dog necessarily. He also noted that he had to walk over the lawn as it was the only access to his suite and that would be reasonable wear and tear. The landlord said he tried to apportion the costs between them.

7. \$15: lawn repair labour
8. \$35: pressure washer estimated rental but landlord used his own.
9. \$30: labour by landlord to pressure wash driveway. The tenant said the landlord made no mention of cleaning it to him at the time.
10. \$450: -made up of \$375 rent for insufficient notice, \$25 for storage fee and \$50 filing fee. The tenant said he was given ultimatum to move and the 'fee' was an illegal rent increase.

In the tenant's cross application, he claims as follows:

1. \$750 for return of his security deposits.
2. \$400 for rent from April 1-15 for he was forced to move after paying a month's rent on March 15.
3. \$368 for an illegal rent increase. The landlord said he increased the rent by \$50 a month in March 2013 as the tenant wanted storage and extra yard space for his dog. The tenant denies this and says the landlord was entering politics, realized he needed to register the suite, it was costing him \$600 so he tried to increase the rent by \$75 and they settled on \$50. There was no written agreement and he was unhappy but did not want to move after a three month tenancy so he has paid the extra \$50 a month for a year (\$50 x 12).
4. \$300 for unreasonable interference with his peaceful enjoyment. He submitted 3 text messages where he pointed out inappropriate comments by the landlord (the landlord said he was joking as they were friends) and described one incident where the female landlord banged on his door about 3 a.m. to borrow a cigarette. The female landlord said that the tenant was often up late and she did not think she would be disturbing him. She pointed to a text message where the tenant invited them all to go to the pool later as evidence there was no hard feelings.

In evidence is a memory key with video, a DVD, several statements of the parties, text messages, and photographs.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

The onus is on each applicant to prove on a balance of probabilities their claim. I find the weight of the evidence is that the tenant moved out without sufficient notice.

Sections 44 and 45 of the Act state that the tenant must give a full month's notice to the landlord in order for a month to month tenancy to end. As the tenancy was not legally ended when the tenant vacated on March 29, 2014, I find he is responsible to

compensate the landlord for rent until a notice would take effect which would, at the earliest, be May 14, 2014; any notice served after March 15, 2014 would not be effective until May 14, 2014. However, the landlord mitigated his damages as he is obliged to do by re-renting for May 1, 2014. Therefore, I find the landlord entitled to rent of \$375 for April 15 to April 30, 2014.

I find the landlord entitled to the cleaning fee of \$75. While the tenant showed video of his good job cleaning, he did admit he forgot the oven, he had never cleaned it and the photo showed an extremely dirty oven. I find it reasonable that the cleaner would need to spend considerable time on it. I also found her emails concerning cleaning some dog hair and marks on the walls were persuasive and supported the landlord's evidence. In respect to the smoke detector, I find the landlord's evidence credible that it disappeared along with the tenant as the tenant did agree that he had removed it. I find insufficient evidence to support the tenant's statement that he left it in the garage.

In respect to the wall repair, the tenant noted he had had work done by a professional drywaller and indicated that it would need repainting. The paint was one year old at move-out and the Residential Tenancy Policy Guidelines assign a useful life of 4 years to paint to account for reasonable wear and tear; this paint had 3 years of useful life remaining so I find the landlord entitled to recover \$56.25 for the labour to repaint.

The landlord claimed for a number of items related to dog waste and lawn repair. I find the landlord had 2 dogs also and I find insufficient evidence that cost of cleaning of dog waste or lawn repair should be allocated to the tenant. Therefore I find the landlord not entitled to his claim for \$15 to clean dog waste and \$31.64 and \$15 for lawn repair. I find the tenant's evidence credible that the lawn was the access to his suite, there was no separate path so some wear on it is reasonable wear and tear. I find the landlord not entitled to \$35 for rental of a pressure washer as he did not rent one and I decline to assign the same cost for use of his own. In respect to dryer repair, I find insufficient evidence that the tenant did this damage. There was no condition inspection report on move-in, the tenant said it was a used machine and already had problems so I find the landlord not entitled to compensation to repair the dryer.

I find the weight of the evidence is that the driveway had to be cleaned; the photograph supported the landlord's evidence. I find the landlord entitled to compensation of \$30 for driveway cleaning. Although the tenant contended the landlord never made an issue of it, I find the evidence is that the tenant's or his friend's vehicles did drop a considerable amount of grease and oil in the driveway.

On the tenant's application, I find him not entitled to a refund of half a month's rent for the reasons stated above concerning when a tenancy ends. Although he claims he had to move because of an ultimatum, I find he had other recourse under the Act such as bringing an Application to permit access to his guests and to restrain the behaviour of the landlord that might have been interfering with his peaceful enjoyment.

I find there was an illegal rent increase after three months into the tenancy. Although the landlord claimed it was for storage and use of the yard, I find the tenant's evidence more credible; the landlord's statements agreeing he found he had to register the suite about the same time as the rent increase with an additional cost of about \$600 supported the tenant's evidence. The parties entered into a lease for a rent of \$750 a month and the landlord increased it to \$800 three months later contrary to the provisions of section 43 of the Act. If the landlord was providing extra amenities for this, he had the option of putting this into an agreement in writing but he did not. I find the tenant entitled to recover \$360 for monies he paid to the landlord over the 12 month period.

In respect to the tenant's claim for compensation of \$300 for unreasonable disturbance of his peaceful enjoyment contrary to section 28 of the Act, I find insufficient evidence of ongoing disturbance prior to March 2014. However, I find the inappropriate text and the banging on his door at 3 a.m. would be sufficient to disturb some of his peaceful enjoyment in March. I find him entitled to recover 2 days of rent for the two incidences or \$48.38 ($750/31$ times 2 days).

I find the tenant entitled to the return of his security and pet damage deposits. However, they will be used to offset amounts owing to the landlord.

Conclusion:

I find the parties entitled to compensation as calculated below and to recover filing fees paid for their applications. I find the landlord entitled to recover \$642.24 and the tenant \$1208.38. When offset, the balance is \$566.14 in favour of the tenant and a monetary order is issued to the tenant in this amount.

Calculation of Monetary Award:

To landlord; cleaning fee	75.00
Replace smoke detector	55.99
Painting allowance/wall repair	56.25
Driveway cleaning labour only	30.00
Rent due to insufficient notice	375.00
Filing fee	50.00
Compensation to landlord total	642.24

<i>Tenant; security deposits</i>	<i>750.00</i>
Tenant: illegal rent increase	360.00
\$48.38 for two days re. disturbance	48.38
filing fee	50.00
Compensation to Tenant	1208.38

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: July 15, 2014

Residential Tenancy Branch

