



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MND, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord for a monetary order for unpaid rent, damage to the unit and loss of revenue, and to retain the security deposit in partial satisfaction of their monetary claim, inclusive of the filing fee.

Both parties participated in the hearing with their submissions, document evidence and testimony. The parties were provided with an opportunity to settle their dispute. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence they wished to present. The parties were apprised that only *relevant* evidence would be considered.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The *undisputed* relevant testimony and document evidence in this matter is that the tenancy started November 01, 2012 and ended February 28, 2014. The agreed monthly rent payable under the tenancy agreement was \$825.00. At the start of the tenancy the landlord collected a security deposit of \$400.00 which the landlord retains in trust. The parties conducted mutual *start* and *end* of tenancy condition inspections. The tenant received a copy of the *start of tenancy* inspection report soon after, but did not receive a copy of the *end of tenancy* inspection report until mid-June 2014 subsequent to the landlord filing their application for dispute resolution. The landlord acknowledged they made additions, and otherwise augmented the *end of tenancy* portion of the condition inspection document *after* the tenant signed the document.

The tenant agrees they did not pay \$400.00 of rent for the last month of occupancy, and further, agrees they did not provide the landlord with a written notice to end the tenancy as prescribed by the Act. However, the parties executed a Mutual Agreement to End a Tenancy document on February 19, 2014 to legally end the tenancy and the tenant vacated the unit on February 28, 2014 in accordance with the agreed date of the Agreement. The landlord seeks the unpaid rent for February 2014 in the amount of \$400.00. The landlord claims that the lack of a written notice from the tenant to end the tenancy in accordance with the Act caused the landlord a loss of revenue for the following month of March therefore they seek the rent for March 2014.

The landlord seeks \$20.00 for the cost of cleaning an oil spill in the parking lot, with which the tenant agrees.

The landlord seeks \$100.00 for the replacement of a door which the tenant agrees they damaged.

During the hearing the landlord, without prejudice, orally *withdrew* their claim respecting costs for a *deadbolt, plate and exterior door repair*; and, it must be noted that if the tenant makes application *related* to these same items, the landlord has leave to reapply for this portion of their claim.

The landlord claims that the tenant left the rental unit unclean and damaged beyond reasonable wear and tear, and relies on the *end of tenancy* condition inspection report, receipts, and a series of photographs to support their claim. The tenant argued that they left the unit *reasonably clean* and undamaged, other than a damaged door and the interior of the refrigerator was left unclean. They claim that despite their signature on the end of tenancy condition inspection report, they did not receive their copy of it until 3 ½ months later and that it had been significantly augmented from the version they signed. The landlord agreed they effectively altered the document after it had been signed off – filing in some of the codes boxes, and adding comments to the report. The landlord sought compensation in the aggregate of \$378.00, comprised of their labour for filing imperfections on walls and painting the unit, carpet cleaning, and general (“excessive”) cleaning. The landlord provided photographs of a marked wall, including residual tape or adherent marks for a poster, scuffed flooring, and unclean carpeting with purported tar spots. The landlord also claims the walls were dirty and it was easier to repaint them. The tenant denies they compromised the walls or left them unclean, or that they damaged the flooring. The tenant argued the landlord’s claims amount to an excessive response to reasonable wear and tear, for which they are not responsible. The tenant specifically denied they caused tar spots in the carpeting.

Analysis

Under the *Act*, the party claiming damage or a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *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.*

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

The following Sections of the *Act* and Regulations are also relevant to this matter.

Section 26 of the *Act*, in relevant part, states as follows:

Rules about payment and non-payment of rent

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.

Section 37 of the *Act*, in relevant part, states as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

Section 21 of the *Regulations* to the Act states as follows:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

On preponderance of the evidence in this matter I find as follows.

Rent for February 2014 was not paid in full and therefore I find it is owed to the landlord in the amount of **\$400.00**.

I find the parties agree the tenant owes the landlord \$120.00 for remedying an oil spill and a damaged door. Therefore, I grant the landlord these claims in the sum of **\$120.00**.

I find the landlord altered the *move out / end of tenancy* condition inspection report after mutually agreed by both parties. As such I find it does not represent a condition inspection report completed in accordance with the Act or Regulation and without the tenant's agreement is rendered unreliable as evidence in this proceeding for it to support the landlord's claims respecting the condition of the unit at the end of the tenancy. I place minimal evidentiary weight on the report as an instrument to support the landlord's claims for all cleaning and damage. I also find the landlord's claims of the condition of the walls and hardwood flooring as depicted by their photographs are not sufficient to support a claim of damage. Rather, I prefer the testimony of the tenant that the photographs depict reasonable wear and tear. I accept the tenant's testimony they left the refrigerator interior unclean. As a result of all the above, I grant the landlord a nominal **\$50.00** for cleaning the refrigerator and **I dismiss** the balance of the landlord's claims for cleaning and damage, without leave to reapply.

The tenant, in fact, did not provide the landlord with the required notice to end the tenancy in accordance with the Act. However, I find that on February 19, 2014 the parties then entered into a Mutual Agreement to End the tenancy on February 28, 2014. Effectively, the parties agreed to *legally end* the tenancy agreement and terminate the contractual obligations between them on February 28, 2014. The signed Mutual Agreement specifically states this fact. As a result, the parties agreed the tenancy

would legally terminate on February 28, 2014 along with the obligation to pay rent after February 28, 2014. As a result, I find that the landlord is not entitled to rent beyond February 28, 2014 therefore I must **dismiss** the landlord's claim of lost rent revenue for March 2014, without leave to reapply.

The landlord is entitled to recover their filing fee, and the security deposit will be off-set from the award made herein.

Calculation for Monetary Order

unpaid rent for February 2014	\$ 400.00
damaged door	100.00
oil spill cleaning	20.00
cleaning	50.00
filing fee	50.00
<i>less security deposit held by landlord</i>	- 400.00
monetary award to landlord	\$220.00

Conclusion

I Order that the landlord may retain the security deposit of \$400.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$220.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 21, 2014

Residential Tenancy Branch

