



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's Application: MND, MNDC, FF, O

Tenant's Application: ERP, MNDC, OLC, RPP, RR, FF, O

Introduction

This hearing dealt with cross applications over two hearing dates. The landlord applied for monetary compensation for damage to the rental unit and damage or loss under the Act, regulations or tenancy agreement. The tenant applied for a variety of remedies including monetary compensation for loss of quiet enjoyment and damage to her personal property. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

As the tenancy had already ended I found it unnecessary to consider the tenant's request for emergency repair orders; orders for compliance; or, a reduction of rent payable. I also confirmed with the tenant that her personal property has been returned to her and I found it unnecessary to further consider orders for return of personal property.

All documentary, photographic and digital evidence provided by the parties has been accepted and considered in making this decision with the exception of one document for the following reasons. At the originally scheduled hearing, the landlord pointed to a letter written by the tenant's father that was included in the tenant's evidence binder. The landlord requested that I provide a "subpoena" requiring the tenant's father to attend the hearing so that he may be cross-examined about the content of the letter. An Arbitrator has the discretion to issue a "Summons to Testify" and in deciding whether to issue a summons the Arbitrator will consider the importance of the evidence the summonsed person may provide, whether there is another way to obtain the necessary information, among other factors. I determined that there was another way to deal with the concerns raised by the landlord and I advised the tenant that if she intended to rely upon the letter written by her father she should request that her father attend the

adjourned hearing so as to provide the landlord an opportunity to question the tenant's father about the content of his letter. At the adjourned hearing the tenant indicated that she had not asked her father to participate in the hearing and she indicated the letter written by her father was not critical to her case. In light of these circumstances, I did not issue a "Summons to Testify", and I have not given any evidentiary weight to the letter written by the tenant's father.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for the items claimed?
2. Has the tenant established an entitlement to compensation for the items she claimed?

Background and Evidence

The parties entered into a tenancy agreement for a tenancy set to June 1, 2013 although the tenant was provided occupation of the rental unit starting May 18, 2013. The tenant vacated the rental unit on July 17, 2013. The monthly rent was \$900.00. The security deposit and landlord's claims for unpaid and/or loss of rent have been disposed of by way of a previous dispute resolution proceeding.

The move-in inspection report was prepared by the tenant rather than the landlord. The landlord was not present for the move-in inspection. The tenant gave the inspection report that she prepared to the landlord. The tenant explained that she did not sign the inspection report because it was not completed in full and because her intention was to sign it when the landlord gave her a copy of it, which he did not. Nevertheless, the tenant confirmed that the move-in inspection report provides a fair representation of the condition of the rental unit on or about May 17, 2013.

The move-out inspection report was prepared by the landlord without the tenant present on July 17, 2013. The Arbitrator of the previous dispute resolution hearing made a finding that the landlord failed to give the tenant two opportunities to participate in the move-out inspection as required by the Act and the Regulations.

Landlord's Application

The landlord is seeking compensation from the tenant in the sum of \$4,061.53 for damage, cleaning and other costs. Although I heard several hours of testimony, I have summarized the landlord's claims against the tenant and the tenant's responses below.

Damage to carpeting

The landlord is seeking the estimated cost of \$2,995.00 to replace the carpeting on the main floor of the rental unit due to permanent stains and pet urine odour. The landlord submitted that the carpeting on the upper floor was “relatively new” at the start of the tenancy. Most of the written documentation points to the carpets being installed approximately one year prior.

The landlord pointed to photographs of a greasy stain by the back door and a paint stain in the bedroom. The landlord also pointed to a written statement from a carpet cleaner and called a witness to testify as to the smell of urine in the rental unit after the tenancy ended. The landlord had the carpeting on the main floor cleaned August 29, 2013. The carpet cleaner’s invoice notes that the urine odour “may be permanent”. The landlord submitted that cleaning the carpeting only temporarily masks the odour. As a result, the odour will return and the landlord will have to clean the carpeting more frequently to manage the odour; however, in doing so, the useful life of the carpeting will be diminished. The landlord acknowledged that he has not replaced the carpeting as he cannot afford to do so.

The tenant acknowledged the paint stain in her daughter’s bedroom did not come out despite her attempts to clean it. The tenant agreed there was an area of visible wear and tear by the back door.

The tenant denied that her dogs urinated on the carpet or that the unit smelled of pet urine at the end of the tenancy. The tenant suggested the “urine” odour was coming from the black mould in the house. The tenant pointed to photographs of mould in the basement and under the window in one of the bedrooms. The tenant submitted information about black mould including its characteristic “musty” odour or “urine-like” smell.

The tenant stated that she had two dogs reside with her at the rental unit but her dogs spent much time staying at her parent’s house during her brief tenancy. The tenant acknowledged working long hours and explained that when she went to work she put the dogs in the bathroom. The landlord was skeptical of the tenant’s submission given the bathroom was small and the large breed of one of the dogs. The tenant retorted that the bathroom is bigger than a dog crate or kennel.

The tenant submitted that the rental unit has been re-rented to a women with cats any current urine smell may be attributable to the current tenant having pets.

Carpet cleaning

The landlord is seeking recovery of the \$241.50 cost to clean the carpets on August 29, 2013.

The tenant acknowledged that she did not have the carpets cleaned at the end of the tenancy and explained that this was because the carpets had not been cleaned before she moved in. The tenant left the carpets vacuumed.

General cleaning

The landlord is seeking \$175.00 for general cleaning and garbage removal. The landlord stated that he spent over 17 hours cleaning the house and he is seeking compensation of \$10.00 per hour. The landlord also stated that he removed dog feces from the carpeted areas of the basement by removing the carpet downstairs. The landlord pointed to written statements of the carpet cleaning company, the electrician and the witness testimony in support of his position that dog feces was found in the basement after the tenancy ended.

The tenant pointed to her video and photographs taken on the last day of the tenancy to show how clean she left the house. The tenant acknowledged that she spent most of her effort focused on the main floor but the tenant stated she walked through the basement to ensure it was in the same condition in which she acquired the property. The tenant did not observe any dog feces in the basement. The tenant stated that the smell in the basement was because of the mould that was present.

Labour: yard cleaning, dump run

The landlord requested \$200.00 as compensation for cleaning the garbage and cigarette butts left in the yard. The landlord claimed he went to the city dump which costs \$6.00 by way of a meter drop box. The landlord provided photographs of cigarette butts, food wrappers, a drink cup, lumber, among other things, left in the yard. The landlord also submitted that the tenant did not mow the lawn during the tenancy.

The tenant acknowledged that she did not cut the grass but explained that this was because the landlord had taken her lawn mower and locked it up at his house and when he returned it to her it no longer worked. As such, the tenant was not agreeable to paying for lawn cutting. The landlord acknowledged taking her lawn mower, among other things, and locking them up at this house but claimed she could have retrieved them by asking for them but she did not ask for them.

The tenant acknowledged that she had neglected to pick up some garbage and cigarette butts, a box, rocks collected by her children, among other minor things. The

tenant also stated that she had placed a headboard on the road for the garbage company to pick up but acknowledged the garbage company may not have taken this item. However, the tenant pointed to other items which did not belong to her such as pieces of lumber that were from the renovation projects or items that were there before she moved in.

Missing towel warmer

The landlord seeks \$180.00 for a towel warmer that was taken by the tenant. The landlord pointed to an electrical outlet over the toilet as evidence the towel warmer was part of the rental unit.

The tenant stated that she had purchased the towel warmer during the tenancy and that she had talked to the landlord about installing it, for which he agreed to pay her; however, the towel warmer was too large for the bathroom and she did not install it. Nor, did she collect reimbursement from the landlord. As a result, she took it when she moved out because it was her personal property. The tenant described where she purchased the used towel warmer, with whom, and how much she paid for it.

Upon further enquiry, the landlord stated that he could not recall where or when he acquired the towel warmer

Electrical Report, Carpet Report and Mold Kits

The landlord is seeking to recover \$126.00; \$84.00; and, \$59.95 from the tenant for the costs of the above reports. The landlord explained that the tenant had asserted that the rental unit had electrical problems and mould so he incurred costs to obtain reports to disprove her allegations. Further, the landlord paid for a carpet report to corroborate his position that urine odour in carpeting is often permanent and cleaning is often not sufficient.

The tenant responded by stating the electrician's report corroborates her position that there were electrical issues at the rental unit. The landlord did not produce mould reports as evidence and one does not need a report to confirm the presence of mould when it is plainly visible by looking at it, as seen in the photographs she provided. Finally, the tenant maintained her position that her dogs did not urinate on the carpeting and she is not liable for paying for a carpet report.

Tenant's Application

The tenant sought compensation against the landlord in the amount of \$2,550.00. Below, I have summarized the tenant's claims against the landlord and the landlord's responses.

Loss of use and quiet enjoyment

The tenant is seeking \$1,800.00 or the equivalent of two months of rent from the landlord. The tenant submitted that she suffered diminished use and enjoyment of the rental unit due to the following circumstances:

1. The rental unit was undergoing renovations and akin to a construction zone throughout her tenancy. More specifically, the bathroom backsplash had been removed but not replaced; the proper bathroom mirror had been removed but not replaced; there were no cupboard doors on the upper kitchen cabinets; there were no baseboards on the main floor of the rental unit. Further, there had been alterations to the electrical system that had not been completed, leaving uncovered electrical outlets, outlets that did not work properly, and light fixtures that did not work.
2. The tenant was unable to enjoy the basement area beyond that of a storage area given the repeated water leaks and mould.
3. Mould found under the window in her children's bedroom.
4. The landlord was often in the rental unit without first giving the tenant notice or gaining the tenant's consent.
5. The landlord would obtain labour from men living in a nearby half-way house, including convicts. These issues left the tenant feeling unsafe for herself and her children.

The tenant pointed to photographs and video, as well as numerous text messages exchanged between the parties in support of her position.

The tenant explained that she arrived at the sum of \$1,800.00 as she only had use of one half of the house given all of the above issues and she has been held responsible for paying or compensating the landlord rent through to the end of August 2014 by way of the last dispute resolution proceeding.

The landlord acknowledged the rental unit was a "work in progress" but denied entering the unit illegally. The landlord was of the position the tenant caused mould to form on the basement wall by piling wet clothes against the drywall. The landlord denied bringing men from the half-way house into the rental unit.

Moving costs

The tenant seeks compensation of \$500.00 for moving. The tenant stated she had to move out of the rental unit because of the issues described in the section above.

The landlord submitted that the reason the tenant moved out was not because of the issues she raised but because she had not paid rent that was due to him and because she wanted to move in with her boyfriend.

The tenant did not provide any receipts to substantiate the amount claimed.

Lawnmower replacement

The tenant seeks \$200.00 to compensate her for damage to her lawnmower. The tenant described how the landlord took her lawnmower and stored it at his house. When the landlord finally returned it to her it appeared well used and was no longer working. The tenant then disposed of the lawn mower. I noted that the tenant did not provide a receipt for the purchase of the lawnmower or a replacement. Nor, was I provided any specifics as to the make or model of the lawn mower. The tenant submitted that she purchased the lawnmower new in 2012 for \$250.00.

The landlord acknowledged taking and storing the tenant's lawnmower but denied using it as he owns a better lawnmower.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to each of the Applications before me.

Landlord's Application

Damage to carpeting

I accept the preponderance of evidence that there was a smell of urine in the house after the tenancy ended. I also accept the tenant's photographic evidence that there was mould in the house. The difficulty in this case is determining the source of the urine smell. Both parties put forward different explanations for the smell and I find both explanations are plausible given the evidence before me.

I noted that in the electronic communications the landlord sent to the tenant after the tenancy ended the landlord indicated that he was going to pull up the carpets and check for urine stains underneath; however, I was not provided any evidence that this was done or whether any stains were apparent on the underside of the carpet.

If I were to accept the landlord's position that the carpets had been urinated on by the tenant's dogs, I find the landlord provided little evidence that the offensive smell remained or returned after the carpets were cleaned. The carpet cleaner indicated the urine smell may be permanent. The landlord stated the odour was masked after the cleaning but that masking of the odour is only temporary. If the masking is temporary the landlord did not provide any evidence to suggest that the carpets had to be cleaned again despite the passage of nearly nine months. Although the landlord indicated the carpets will require another cleaning soon, I also heard the current tenant has pets in the unit; thus, I find it difficult to attribute any current smell of urine to the tenant given the amount of time that has passed.

In light of all of the above, I find the landlord did not provide sufficient evidence to show that despite the carpet cleaning, the carpets are permanently damaged by urine and that they require replacement to rectify damage caused by the tenant's pets. Therefore, I deny the landlord's claim for compensation to replace the carpeting.

As I am satisfied there is a permanent stain in the bedroom that was caused by the tenant's child, in recognition of diminished value of the carpeting, I award the landlord a nominal award of \$100.00.

I find the tenant provided a reasonable explanation that the area of carpeting by the back door is a high traffic area and the landlord did not provide evidence that this area was not sufficiently rectified by cleaning. Therefore, I make no further award for damage to this area of the carpeting.

Carpet cleaning and stain removal

It was undisputed that there was at least one stain in the bedroom and a dirty looking area by the back door. It was also undisputed that the tenant had two dogs in the rental unit, albeit for a short period of time. However, Residential Tenancy Policy Guideline 1 provides that tenants who have uncaged animals in the rental unit will generally be held responsible for carpet cleaning costs, regardless of the length of their tenancy. Therefore, I grant the landlord's request to recover \$241.50 for carpet cleaning and deodorizing.

General cleaning

The Act requires that a tenant leave a rental unit "reasonably clean" at the end of a tenancy. Upon review of the video provided as evidence by the tenant I find the tenant did leave the main floor of the rental unit reasonably clean at the end of the tenancy, with the exception of carpet cleaning for reasons given above.

I note that the tenant's video shows the basement as being very dark due to a lack of working light switches or fixtures. The person taking the video was able to turn on the basement bathroom and utility room lights only and attempted to use his cell phone to illuminate other areas of the basement. After seeing the video I appreciate that the presence of any feces may not have been readily visible to the tenant at the end of the tenancy given the darkness of the basement at that time. Nevertheless, the removal of feces left by her pets is the tenant's responsibility.

The landlord claims he removed a section of carpet in the basement to dispose of the feces; however, considering the water leaks in the basement and the apparent age of the carpeting that is evident in the landlord's photographs, I find it likely that disposal of this carpeting was not a loss any significance.

Given the above, I find the landlord failed to satisfy me that 17 hours of labour were required to bring the rental unit to a "reasonable clean" level due to actions or neglect of the tenant. Therefore, I dismiss this portion of the landlord's claim.

Yard cleaning and dump run

The tenant acknowledged that she left behind some small items and she did not deny neglecting to pick up cigarette butts and a couple of food containers in the yard. However, I find the landlord has included items in his evidence that are not the responsibility of the tenant such as the random pieces of lumber left on the property by the landlord or previous tenants.

With respect to lawn cutting, I find the landlord contributed to this issue by taking the tenant's lawn mower and locking it up at his house. While the landlord suggested that

the tenant merely needed to ask him for access to her lawn mower, a tenant should not have ask the landlord for access to her lawnmower before she can cut the grass. I also note that the landlord did not communicate any dissatisfaction with her level of yard care either. Further, from the video evidence provided to me, I did not observe overly long grass. Rater, I saw evidence of some over-grown plants next to the sidewalk which would not be the tenant's responsibility.

Finally, the tenant's video shows that other maintenance work was required at the property including repair of the shed doors for which the tenant was not responsible.

Considering all of the above, I find much of the landlord's effort to clean up the yard was to deal with matters that are the landlord's responsibility and I find his claim for \$200.00 to be largely exaggerated. Therefore, I award the landlord a limited award of \$56.00 [\$50.00 labour plus \$6.00 for dump fee] as compensation to pick up and dispose of the small pieces of garbage, cigarette butts and headboard left by the tenant.

Missing towel warmer

I was provided disputed evidence as to whether the towel warmer was supplied by the landlord with the rental unit or acquired by the tenant at her own cost during the tenancy. I found the tenant's detailed description as to where and when she purchased it over the landlord's lack of knowledge about its acquisition satisfied me that the towel warmer was likely the property of the tenant. Therefore, I deny the landlord's claim for compensation for a missing towel warmer.

Electrical report, carpet report and mould kits

I find these costs are not recoverable by the landlord under the Act. Under the Act, the only recoverable costs associated to preparing for or participating in a dispute resolution proceeding is the filing fee. Other costs incurred to acquire evidence for a proceeding such as photocopies, photographs, reports, and the like, and not recoverable costs.

Furthermore, where a tenant puts a landlord on notice that there are repair issues, it is expected the landlord take sufficient and appropriate action to investigate and remedy the issue. In this case, the landlord's electrician confirmed that there were electrical issues at the rental unit. I find the need for the mould report to be questionable since the mould was readily visible and any information such a report would provide was not obtained by the landlord. Finally, the carpet report was acquired for the purpose of proving the landlord's case against the tenant for carpet damage and as stated above, such costs are not recoverable.

In light of the above, the landlord's claims for recovery of the costs for these reports are denied.

In summary, the landlord has been awarded a total of \$397.50 for the permanent carpet stains, carpet cleaning, and some yard/garbage cleanup.

Tenant's application

Loss of use and quiet enjoyment

Under section 28 of the Act, a tenant is entitled to quiet enjoyment of the residential property and the rental unit. Quiet enjoyment includes freedom from unreasonable disturbance and significant interference, as well as reasonable privacy. A landlord's right to enter a rental unit is also restricted under section 29 of the Act so as to afford the tenant privacy and quiet enjoyment.

The Act provides that a landlord must repair and maintain a rental unit and I accept that at times the landlord entered for the purpose of repairing or maintaining the property; however, that does not exempt the landlord from his obligation to gain the tenant's consent to enter or give a written notice of entry as required under section 29. The only exemption to gaining a tenant's consent or giving a written notice of entry is where an emergency exists and entry is appropriate to protect life or property, due to events such as a fire or flood.

Illegal entry by a landlord may be a basis for finding breach of a tenant's right to quiet enjoyment. Where a landlord breaches a tenant's right to quiet enjoyment and privacy, the tenant may be entitled to receive compensation from the landlord for the loss. It is important to note that awards are intended to be compensatory and not punitive.

I have reviewed numerous emails and/or text messages exchanged between the parties and I find the electronic communications support the tenant's position that the landlord was in the rental unit on a number of occasions without first obtaining the tenant's consent or giving the tenant proper written notice 24 hours in advance. Therefore, I find the tenant has satisfied me that the landlord breached the Act with respect to entering the unit.

While I accept that there were breaches of the Act on part of the landlord with respect to improper entry, the tenant, as any applicant, bears a burden to take reasonable steps to mitigate her loss of privacy. In reviewing the numerous text messages and emails, I find very little evidence to suggest the tenant requested that the landlord stop entering the rental unit or give her a written 24 hour notice of entry. Rather, it appears that she

thanked the landlord for his efforts on a number of occasions. Therefore, I am unsatisfied the tenant took reasonable effort to mitigate her loss and I make no monetary award to the tenant for these breaches.

Upon review of the photographs and considering the landlord's testimony, I accept that the rental unit was in need of repairs and finishing of the renovation project that started before this tenancy. Repairs should be expected by a tenant from time to time; however, a tenant may be entitled to compensation in circumstances where the landlord was negligent in having the repair made in a reasonable amount of time or there was a loss of use of an area of the rental unit.

I find, based upon the photographs and video taken by the tenant at the end of the tenancy, several of the repairs noted at the time of moving in remained outstanding when the tenant moved out. I am satisfied this was an unreasonable length of time and like caused the tenant to suffer a loss of use and enjoyment. However, I find the tenant was provided some compensation for the loss at the beginning of the tenancy. I make this finding based upon email the landlord sent to the tenant on May 18, 2013 where he indicates that there are still repairs to complete and that the tenant would not be charged rent for the period of May 18 – 31, 2013. Therefore, I find the tenant has already been compensated the equivalent of \$377.42 toward unfinished renovations and repairs that were known at the outset of the tenancy.

Further repair issues arose during the tenancy, such as repeated water leaks in the basement and mold in the basement and bedroom that were not anticipated or contemplated at the outset of the tenancy and the tenant has not been compensated for those issues. As stated previously, tenants should expect to encounter repair issues from time to time and are not ordinarily compensated for those issues unless the repairs are not made in a timely manner or there is a loss of use beyond a temporary nature. In this case, the tenant notified the landlord about mould in early July 2014 and the landlord's responses focused on unpaid rent. Given the passage of time during which the landlord did not complete repairs or renovations identified at the beginning of the tenancy, coupled with the landlord's lack of response to complaints of mould, I find the tenant has demonstrated that the landlord did not take sufficient and timely action to remedy other repair issues that arose during the tenancy. I find the tenant's request for compensation of \$1,800.00 to be excessive in the circumstances. Therefore, I find it appropriate to award the tenant a further \$400.00 for the landlord's failure to investigate and make sufficient repairs in a timely manner.

Moving costs

I make no award for this portion of the tenant's claim as the tenant did not substantiate the amount claimed. Nor, am I satisfied that the tenant moved out solely because of the issues she identified. Rather, from the text messages and emails it is clear that there was a dispute involving unpaid rent and an undisputed 1 Month Notice to End Tenancy for Cause. Further, the evidence suggests that part of the tenant's decision to move was so that she could move in with her boyfriend.

Lawnmower replacement

I make no award for this portion of the tenant's claim as the tenant did not provide sufficient evidence to substantiate the amount claimed. Nor, was I satisfied by the disputed testimony that the landlord's actions caused the lawnmower to stop working.

In summary, the tenant has been awarded compensation of \$400.00.

Off-set and Monetary Order

Having awarded the landlord \$397.50 and the tenant a sum of \$400.00, I completely offset these awards pursuant to section 72 of the Act and provide neither party with a Monetary Order.

Both parties shall bear their own costs with respect to their claims against the other.

Conclusion

The landlord was awarded a total of \$397.50 and the tenant was awarded \$400.00. The awards have been completely off-set and I do provide either party with a Monetary Order.

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 12, 2014

Residential Tenancy Branch

