



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR, MND, MNDC, O, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for landlord's use of the property; for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on March 03, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testified that this month to month tenancy started in January 2005. Rent for this unit was \$600.00 per month and was due on the 1st of each month.

The landlord testified that the tenant failed to pay rent for November and December, 2013. As the landlord had served the tenant with a Two Month Notice to End Tenancy effective at the end of January, 2014; the tenant was not required to pay rent for January. The landlord seeks to recover unpaid rent of \$1,200.00.

The landlord testified that they had provided the tenant with a washing machine for their use during the tenancy. At the end of the tenancy the landlord found that the lid was broken and the motor did not work. The landlord testified that the tenant was still using this machine up to the end of the tenancy and the machine was only three years old. The landlord testified that they had to replace this machine and seek to recover the amount of \$450.36 as shown on the invoice provided in documentary evidence.

The landlord testified that in October, 2013 the landlord replaced the kitchen cupboards and counter tops. At the end of the tenancy the landlord found that some of the cupboard doors had been ripped off and one of the counter tops had been damaged. The landlord refers to their photographic evidence showing the damage to the counter top in an area close to the stove. The landlord testified that the top layer of the counter top has been taken off and it appears as if it was burnt. The counter top and cupboard doors had to be repaired and replaced and the landlord seeks to recover the sum of

\$1,000.00 as shown on the invoice provided in documentary evidence after the hearing had concluded.

The landlord testified that there was damage to the drywall in the unit. There was a chunk missing from the wall in the living room and on the wall behind the door, there was a hole in the living room ceiling and a hole in the bedroom wall. The landlord testified that they had to have the wall and ceiling repaired at a cost of \$1,013.25 and the invoice for this work has been provided in documentary evidence.

The landlord testified that the tenant changed the locks to the unit without the landlord's knowledge or permission. The tenant did not provide a key for the new lock and so the landlord had to purchase a new lock at a cost of \$22.39. The landlord has provided an invoice for this lock in documentary evidence.

The landlord testified that a bedroom door was left with a hole in it. The door had to be replaced and the landlord seeks the amount of \$102.14 as shown on the invoice provided in documentary evidence.

The landlord testified that the tenant had ripped off the toilet seat. The landlord replaced the entire toilet and fittings at a cost of \$205.01 as shown on invoice provided in documentary evidence.

The landlord testified that the tenant left garbage all over the living room and bedroom floors. The landlord had to pay to have someone remove this garbage and clean the unit as the tenant failed to leave the unit reasonably clean. The cleaners had to clean windows, walls, the washroom, the kitchen and the blinds. The cleaners charged the landlord \$300.00 for this work and the landlord seeks to recover this amount. A detailed invoice has been provided in documentary evidence.

The landlord testified that after the tenant had moved out on or about January 26, 2014 the landlord could smell burning coming from the rental unit. The landlord looked

through the window and found that the tenant had left all the stove burners on and inflammable items close to the stove. The landlord could not get into the unit as the tenant had changed the locks so the landlord called the police. The police arrived and told the landlord to gain entry by breaking a window to prevent a fire. The landlord had to have this window replaced and seeks to recover the deductible paid to the landlord's insurance company of \$150.00. The landlord has not provided documentary evidence of this charge.

The landlord testified that the tenant had cut the corners of the carpet where it was joined to the tile in the living room. The landlord testified that the carpet was 10 years old and a new carpet was purchased for \$1,400.00 including installation. The landlord seeks to recover this amount from the tenant.

The landlord testified that there is no further claim for a Monetary Order under money owed or compensation for damage or loss. The landlord does seek to recover the \$100.00 filing fee from the tenant.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me.

With regard to the landlord's claim for unpaid rent, I am satisfied from the undisputed evidence before me that the tenant failed to pay rent for November and December, 2013 of **\$1,200.00**. I therefore uphold the landlord's claim to recover this amount.

With regard to the landlord's claim for damage to the unit; I am satisfied from the undisputed evidence and testimony before me that the tenant caused damage to the washing machine in the unit. The landlord has sufficient evidence to show that a new machine was purchased for \$450.36; however, as the damaged machine was three

years old I must make a deduction for depreciation of that machine in accordance with the Residential Tenancy Policy Guidelines #40. This guideline show the useful life of a washing machine as being 15 years; as a result I have deducted \$90.07 from the landlord's claim for three years of depreciation. I therefore award the landlord the amount of **\$360.28**.

With regard to the landlord's claim for damage to the kitchen cupboards and counter top; I am satisfied from the undisputed testimony before me that the tenant did cause damage to the cupboard doors and one counter top. As the kitchen was fitted in October, 2013 I find there are no deductions for depreciation required. I therefore award the landlord the sum of **\$1,000.00** to repair the cupboard doors and replace one of the counter tops.

With regard to the landlord's claim for damage to the drywall, I am satisfied with the undisputed evidence before me that the tenant made holes in the walls and ceiling. I refer the parties to s. 32(3) of the *Act* which states that:

A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Consequently, I find in favour of the landlord's claim to recover the cost of having the walls and ceiling repaired at **\$1,013.25**.

With regard to the landlord's claim for a new lock; I refer the parties to s. 31(2) and 31(3) of the *Act* which states:

(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered the change.

I am satisfied with the undisputed evidence before me that the tenant did change the lock without permission and did not provide a key for this lock to the landlord. Consequently, I uphold the landlord's claim to recover the amount of **\$22.39**.

I am satisfied with the undisputed evidence before me that the tenant damaged a bedroom door which they did not repair or replace at the end of the tenancy. Consequently, I uphold the landlord's claim to replace this damaged door at the cost of **\$102.39**.

With regard to the landlord's claim that the toilet had to be replaced due to the tenant ripping off the toilet seat; The landlord has not meet the burden of proof that by the tenant actions in ripping of the toilet seat that this caused damage to the toilet itself. The landlord could have just replaced the toilet seat and mitigated the loss in this matter. I therefore reduce the landlord's claim to take into consideration that it was just the toilet seat that was removed by the tenant. As I have no evidence to show the replacement costs for a new toilet seat I award the landlord a nominal sum of **\$20.00**.

With regard to the landlord's claim for cleaning and garbage removal; I am satisfied from the evidence before me that the tenant failed to remove garbage and other items abandoned in the unit. Furthermore, I find it is unlikely that the tenant cleaned the unit due to the amount of garbage and items left in the unit; I therefore uphold the landlord's claim for cleaning costs of **\$300.00**.

With regard to the landlord's claim to recover the insurance deductible for the replacement window; I am satisfied from the undisputed evidence before me that the tenant left the elements on the stove top burning at high heat. Whether or not this was done with malice and intent or was done accidentally is difficult to prove. However, as

the tenant had changed the locks and had not provided the landlord with a key, the landlord testified that they had to affect entry to the unit by breaking a window to prevent a potential fire breaking out in the unit. The landlord has testified that he had to pay a deductible of \$150.00 to his insurance company in order to have the window replaced; however, the landlord has provided no supporting evidence to show that a deductible was paid. I therefore find the landlord's claim to recover \$150.00 is dismissed.

With regard to the landlord's claim for replacement carpet; I am not satisfied from the evidence before me that the landlord has sufficient evidence to show that the carpet had been cut and left damaged. Furthermore, the landlord testified that the carpets were at least 10 years old. The useful life of carpeting is 10 years; consequently, I must dismiss this section of the landlord's claim for \$1,400.00.

As the landlord has been partially successful with their claim I find the landlord is entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Unpaid rent	\$1,200.00
Washing machine	\$360.28
Kitchen repairs	\$1,000.00
Walls and ceiling repair	\$1,013.25
Replacement lock	\$22.39
Replacement door	\$102.39
Toilet seat	\$20.00
Cleaning	\$300.00
Filing fee	\$100.00
Total amount due to the landlord	\$4,118.31

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,118.31**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

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 19, 2014

Residential Tenancy Branch

