



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

These two hearings dealt with the Landlord's Application for Dispute Resolution, seeking monetary orders against the Tenant for alleged damages to the rental unit, to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

Only the Landlord, her spouse, and an Agent for the Landlord attended the hearings. They testified at the first hearing that they served the Tenant in person with the Notice of Hearing and their Application and evidence, on March 26, 2014, at his place of work, since the Tenant provided no forwarding address. Despite this the Tenant did not appear at the hearing. I find the Tenant was duly served with the Notice of Hearing and other documents.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matter

At the middle of the first hearing the telephone of the Landlord stopped working. At the second hearing the Agent for the Landlord explained that they had experienced a power failure and their phone stopped working.

I adjourned the first hearing and both parties were notified by mail by the branch of the reconvened hearing time and date. An Interim Decision was made adjourning the matter, which should be read in conjunction with this Decision.

Introduction

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on May 1, 2013, with the parties entering into a six month, fixed term tenancy agreement. The parties agreed that at the end of the tenancy, on October

31, 2013, the Tenant would vacate the rental unit. I note the parties had one prior tenancy agreement for a fixed term of one year, starting on May 1, 2012.

At the end of the tenancy, the rent was \$2,500.00, and the Landlord is still holding the security deposit of \$1,250.00, which was paid on May 1, 2012. No interest is payable on deposits held since 2009.

At the outset of the tenancy the Landlord performed an incoming condition inspection report, which the Tenant agreed with.

The Tenant vacated the property at the end of the term. The Agent for the Landlord testified that they met with the Tenant for the outgoing condition inspection report; however, the Tenant did not agree with the Landlord as to the alleged cleaning and damages, and informed the Landlord he was leaving the rental unit as it was and did not sign the outgoing report.

The Landlord is now claiming for losses they have incurred or will incur, to clean and repair the rental unit due to the condition it was left in by the Tenant.

The Landlord claims the Tenant removed and disposed of carpets in the rental unit. The Landlord alleges the Tenant had a dog and suspects the dog damaged the carpet and that is why the Tenant removed these. The Landlord testified that the Tenant did not have permission to have a dog in the rental unit.

The Landlord testified that the carpet was only six months old when the Tenant moved into the rental unit. The carpet was in the dining room, living room, hallway and on the stairs. The carpet left in the master bedroom had significant stain on it, according to the testimony of the Landlord. The Landlord supplied two quotes for the carpet and is claiming for the lesser of the two, in the amount of **\$2,200.00**, for replacement of the carpets. The Landlord also claims **\$21.97** for replacing the threshold which was missing from the living room.

The Landlord claims the Tenant removed a heat register cover and a washroom door from the master bedroom, and did not replace light bulbs. The Landlord claims \$10.00 for the light bulbs, \$17.98 for the cover, \$32.36 for the washroom door and \$50.00 for the labour to install the door, totalling **\$110.34**. Invoices have been supplied for these items. The Landlord testified that when they asked the Tenant why he removed the washroom door, he did not reply.

The Landlord claims **\$38.97** to replace a damaged blind in one bedroom, and **\$54.97** to replace blinds damaged in a different bedroom.

The Landlord has claimed **\$900.00** toward replacing custom made curtains that the Tenant allegedly removed from the Living room, dining room and master bedroom. The Landlord has supplied two quotes for the custom curtains, one for \$1,612.00 and one for \$2,300.00. The Landlord is unsure why the Tenant removed the curtains, but again,

suspected these were damaged by the Tenant's unauthorized pet dog. The Landlord testified these curtains were four years old at the start of the tenancy and that is why they reduced the amount claimed.

The Landlord testified that the Tenant did not clean the oven and claims **\$50.00** for the two hours to clean this, due to the condition the Tenant left it. The Landlord also claims **\$5.96** for a missing cabinet door knob in the kitchen.

The Landlord also claims for two missing ceiling tiles in the kitchen in the amount of **\$94.39**, and to replace the kitchen counter top, which was damaged by water, in the amount of **\$400.00**.

The Landlord claims for a missing storm/screen door in the amount of **\$248.00**. The Landlord claims the Tenant removed this door.

The Landlord claims **\$100.00** for repainting a wall and a door in one bedroom. In evidence the Landlord supplied pictures of the wall and door which had stickers and writing on them.

The Landlord claims **\$199.98** to replace two baseboard heaters which had the covers removed and were damaged and no longer working.

The Landlord claims **\$39.98** to replace two shelves that they allege the Tenant removed from the rental unit.

Lastly, the Landlord claims **\$517.66** to replace the shower door and frame, which they allege the Tenant removed from the washroom. The Landlord estimated the door and frame were 7 years old.

In support of the above the claims, the Landlord provided the condition inspection report, photographs of the rental unit before and after the Tenant had occupied it, photographs of the damaged areas and places where items were missing (carpets, door, shower doors etc.), invoices, bills, quotes and the tenancy agreement.

The Tenant did not supply any evidence.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

Based on all of the above, the undisputed evidence and testimony, and on a balance of probabilities, I find as follows.

Under section 37 of the *Act*, the Tenant was required to return the rental unit to the Landlord reasonably clean and undamaged, except for reasonable wear and tear.

I find the Tenant breached section 37, as he did not clean portions of the unit, or make necessary repairs, or replace items he had damaged and removed from the rental unit without permission to do so, and these actions have caused financial losses to the Landlord.

Section 7 of the *Act* states:

(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.

[Reproduced as written.]

Policy guideline 40 sets out that,

“When applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement."

[Reproduced as written.]

I find that the Landlord has shown that the carpets were nearly new when the Tenant moved in, and that since the Tenant removed these completely there can be no remaining useful life for the carpets to the Landlord due to the actions of the Tenant. Therefore, I find that the Landlord is entitled to the entire replacement cost of the carpets. Likewise, except for the shower door and frame, I find that the other items claimed by the Landlord should not be reduced either.

I do reduce the replacement of the shower door and frame, as these were 7 years old and I find it is appropriate to reduce the amounts award just for these particular items. As the door and frame were approximately one third of their useful life of 20 years, I allow the Landlord **\$341.66** for their replacement.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

I find that the Landlord has established a total monetary claim of **\$4,856.22**, comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the Landlord retain the security deposit of **\$1,250.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$3,606.22**.

This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant breached the Act by failing to clean portions of the rental unit and by failing to repair or replace items damaged or removed (without permission), from the rental unit.

The Landlord is awarded \$4,856.22 in total compensation, and I allow the Landlord to retain the security deposit of \$1,250.00 in partial satisfaction of the claim, and grant the Landlord an order for the balance owed by the Tenant in the amount of **\$3,606.22**

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: August 22, 2014

Residential Tenancy Branch

