



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

Preliminary and procedural matters

At the outset of the hearing, the landlord asked to amend their application by adding the co-owner BD as a landlord. As a result I have allowed the amendment and the style of cause was amended to add the BD as a landlord.

The landlords attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlords testified the Application for Dispute Resolution and Notice of Hearing were served on the tenant JS, in person on February 22, 2014, which was witnessed. I find that the tenant JS, has been duly served in accordance with the Act.

The landlords testified that although they attempted to serve the tenant JR, in person, on February 22, 2014, the tenant JR refused to attend the door. The landlord stated that they then sent the Application for Dispute Resolution and Notice of Hearing by registered mail sent on February 26, 2014, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant JR, has been duly served in accordance with the Act.

The landlords appeared gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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

Issues to be Decided

Are the landlords entitled to monetary compensation for damages?
Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on April 20, 2013. Rent in the amount of \$1,650.00 was payable on the first of each month. Although the tenants were required to pay a security deposit of \$800.00, the tenants only paid \$400.00.

On September 23, 2013, the landlords received a monetary order and an order of possession by way of Direct Request Proceedings as the tenants had failed to pay rent for September 2013. The tenants vacated the rental premises on September 29, 2013.

The landlords claim as follows:

a.	Replace and install dishwasher	\$ 577.49
b.	Damage to walls, door and flooring	\$ 905.00
c.	Cleaning 26 hours	\$ 675.00
d.	Drapery	\$ 80.62
e.	Garbage removal and disposal fee	\$ 77.00
f.	Broken mirror and chair	\$ 105.99
g.	Photo printing, registered mail cost	\$ 36.06
h.	Filing fee	\$ 50.00
	Total claimed	\$2,507.16

Replace and install dishwasher

The landlords testified that the male tenant caused damage to the dishwasher by kicking the bottom plate and the door and this caused the control panel not to function properly and caused the dishwasher to leak. The landlords stated the dishwasher was two years old at the time. The landlord seeks to recover the amount of \$336.00. Filed in evidence is a photograph of the dishwasher and a receipt for replacement of the dishwasher, which support the landlords claim.

The landlords testified that although her husband installed the dishwasher the estimated value of this service was \$241.49 based on the installation flyer submitted as evidence.

The landlords stated that the removal of the damaged dishwasher and installation of the new dishwasher took approximately three and a half hours.

Damage to walls, door and flooring

The landlords testified that the tenants caused damage to the rental unit as the male tenant kicked the bedroom door causing a large hole. The landlord stated the male tenant also caused damage to the walls as there were two holes which appear to be from a hammer or the end of a broom stick that went through the drywall. The landlord stated that the laminate flooring in the bedroom also had to be repaired as there were several small holes and scratches. The landlords seek to recover the amount of \$905.00. Filed in evidence are photographs of the door, walls and flooring. Filed in evidence is a receipt for repairs, which support the landlords' testimony.

Cleaning 26 hours

The landlords testified that tenants did not attempt to clean the rental unit at the end of the tenancy and they spent 26 hours cleaning. The landlords stated every room required cleaning, which included all the kitchen cupboards, appliances, floors, bedrooms and bathroom. The landlords stated that there was also some type of sparkle that was sprayed on the floor which took a considerable amount of time to remove. The landlord seeks compensation in the amount of \$675.00. Filed in evidence are photographs of the rental unit at the end of the tenancy.

Drapery

The landlords testified that they are not proceeding with this portion of their claim.

Garbage removal and disposal fee

The landlords testified that the tenants left a large amount of garbage which filled the back of a truck. The landlords stated they paid someone \$40.00 to load and take the garbage to the dump and the dump fee was \$37.00. Filed in evidence are two receipts which support the landlords' testimony.

Broken mirror and chair

The landlords testified that the tenants broke the wall mount mirror and the cost to replace the mirror was \$55.99. The landlords testified that the tenants also borrowed an antique chair that was used in the tenants' child room; however, the male tenant damaged the chair by kicking during a fit of rage. The landlords stated that she paid \$75.00 for the chair, however, is only seeking to recover the amount of \$50.00. The landlord seeks compensation in the total amount of \$105.99. Filed in evidence are photographs of the wall mount mirror and the chair, both photographs supports the landlords' testimony. Filed in evidence is an estimate for the wall mount mirror.

Photo printing, registered mail cost

The landlords seek to recover the cost of photo printing and registered mail costs.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 37 of the Act, the tenants are required to return the rental unit to the landlords reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Replace and install dishwasher

In this case, the evidence supports that the tenants caused damage to the dishwasher by kicking. As a result I find the tenants breached the Act, when they failed to repair the damage to the dishwasher when they vacated the rental premise and this caused losses to the landlord.

Under the Residential Policy Guideline #40, if an item was damaged by the tenants, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement. As, I have determined that the dishwasher had a useful life span of ten years, and the dishwasher was two years old, the landlord is entitled to the depreciated value of eighty percent. The evidence of the landlords was it cost \$336.00 to replace the dishwasher. Therefore, I find the landlords are entitled to compensation for the depreciated cost of replacing the dishwasher in the amount of **\$268.80**.

Further, the landlord husband spent three and a half hours removing the old dishwasher and installing the new dishwasher. While the landlord has claimed the amount \$241.49 as that is the amount they would have had to pay if they hired a corporate company for the installation, I find that amount high as that equals an hourly rate of \$68.99. Therefore, I will allow the amount of \$20.00 per hour for removal of the damaged dishwasher and installation of the new dishwasher. Therefore, I find the landlords are entitled to compensation for their labour in the total amount of **\$70.00**.

Damage to walls, door and flooring

In this case, the evidence supports that the tenants caused damage to the; bedroom door by kicking; to the walls by putting two holes in the drywall; and by putting holes and scratches in the bedroom floor. As a result I find the tenants breached the Act, when they failed to repair the damage caused to these items when they vacated the rental premise and this caused losses to the landlord. Therefore, I find the landlords are entitled to compensation for the repairs of the above items in the amount of **\$905.00**.

Cleaning 26 hours

I accept the undisputed testimony of the landlords that the tenants failed to clean the unit at the end of the tenancy. This is supported by photographs. As a result I find the tenants breached the Act, when they failed to leave the rental unit reasonable cleaned and this caused losses to the landlord.

While the landlords have claimed the amount of \$675.00, I find that amount high as that equals an hourly rate of \$25.96. Therefore, I will allow the amount of \$15.00 per hour for cleaning. Therefore, I find the landlords are entitled to compensation for cleaning in the amount of **\$390.00**.

Drapery

The landlord withdrew this portion of their claim at the start of the hearing.

Broken mirror and chair

I accept the undisputed testimony of the landlords that the tenants broke the wall mount mirror and the chair as this is support by photographs. As a result I find the tenants breached the Act, when they failed to repair the broken mirror and the chair at the end of the tenancy and this caused losses to the landlord. Therefore, I find the landlords are entitled to compensation for the broken mirror and chair in the amount of **\$105.99**.

Garbage removal and disposal fee

I accept the undisputed testimony of the landlords that the tenants left garbage in the rental unit as this is support by photographs. As a result I find the tenants breached the Act, when they failed to remove their garbage from the rental unit at the end of the tenancy and this caused losses to the landlord. Therefore, I find the landlords are entitled to compensation for the garbage removal and disposal cost in the amount of **\$77.00**.

Photo printing, registered mail cost

In this case, the landlord seeks to recover the cost of photo printing and registered mail cost. However, there is no provisions under the Act, that a party is entitled to recover the cost that are associated with the hearing other than the file fee. Therefore, I dismiss this portion of the claim.

I find that the landlords have established a total monetary claim of **\$1,816.79** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$400.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$1,416.79**.

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

Conclusion

The landlords are granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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 09, 2014

Residential Tenancy Branch

