



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

The landlord applies for a monetary award for unpaid rent, loss of rental income, liquidated damages under the tenancy agreement and compensation for repair and cleaning. The tenant Ms. L. did not attend the hearing though duly served. Mr. L. confirmed she was aware of the hearing but was at work.

The attending tenant Mr. L. requested an adjournment for a week to permit him an opportunity to find photos he had taken of the premises and to obtain witness statements. The landlord opposed the request pointing out that she had provided all her materials to the tenants in May 2014. I declined to grant the adjournment. The tenants have had sufficient time to prepare. To require the landlord to come back another day would be unjust in the circumstances.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlord is entitled to any of the items claimed?

Background and Evidence

The rental unit is a three bedroom main floor of a house. There are two other rental units in the house. This tenancy started October 1, 2013 for a fixed term ending September 30, 2014 at a monthly rent of \$1650.00. The landlord received and still holds an \$825.00 security deposit and a \$555.00 pet damage deposit.

The tenants failed to pay rent for February 2014 and on or about February 3rd, the landlord served a ten day Notice to End Tenancy for unpaid rent. The tenants vacated the premises on or about February 14th. They did not attend a scheduled move-out inspection on February 19th.

The landlord presented her claim in the form of nineteen items described in a page attached to the application. The attending tenant admits to responsibility for items 1) February rent of \$1650.00, and 2) a late fee of \$25.00. As well he acknowledges owing for item 17) Wall repairs and 3 doors painting, and item 19) Driveway cleaning. In total, the tenant admits to the amount of \$1845.00.

The landlord went through each remaining item of the claim and referred to related photos taken February 20, 2014 and invoices.

In response, the tenant Mr. L. testified that the damaged hose the landlord seeks the replacement cost for did not occur during his tenancy and, in any event, it could have been repaired for \$3.00.

He says that the refrigerator racks the landlord claims for were missing at move in. Thought the landlord did repair the crisper in the fridge.

He claims there was a wet spot on a bedroom ceiling from a leak in the suite above and that a pile of drywall paper lying of the floor just fell off the ceiling.

He claims that one of the landlord's photos shows "black mould" on a window ledge and that is why his children were sick.

The tenant says he has shown photos of the rental unit's flooring to persons familiar with hardwood flooring and they say it is very old flooring. He says that the areas of the wood floor where his dogs urinated should not have been discoloured as a result and were only damaged because the flooring had not been properly sealed by the landlord or her workmen with five or six coats of varathane.

The tenant acknowledges that the green paint on the wooden flooring shown in the landlord's photos was the kind of paint he used in his business and probably came from there but he can't explain how it ended up on the flooring.

Analysis

This analysis will follow the order of the remaining, disputed items claimed.

Item 3, March Lost Rental Revenue

I allow this item. The evidence shows that the tenants, by not paying February rent, breached their fixed term tenancy and caused their own eviction. The landlord properly put them on notice she would be claiming the lost rent for the unexpired portion of the lease and, I find, she made reasonable efforts to restore the premises to rentable condition and to find new tenants without delay. Nevertheless, she was unable to locate new tenants until April 1st, and even then at a rent \$100.00 less that she was receiving under this tenancy agreement. The tenants are responsible for the loss of March rental income and I award her \$1650.00 as claimed.

Items 4, 5, 6 and 7 Hydro and Water Bills

The landlord demonstrated that the tenancy agreement required the tenants to pay one-half the utilities. She testified that each of the four bills was tendered to the tenants with a demand for payment and that she received nothing. The attending tenant disputed these items of the claim but offered no evidence or argument to refute them. I allow all four items for a total of \$1368.24.

Item 8, Lease Break Fee

I allow this item of \$500.00. The lease contemplates liquidated damages of \$500.00 for landlord efforts to re-rent the premises caused by a tenant's early termination. That event has occurred here and so the clause has been activated. The attending tenant did not offer any evidence or argument regarding this item but to say that he disputed it.

Item 9, Loss of Rental Revenue

I allow this item. The landlord secured new tenants for April 1st but a \$100.00 reduced rent. She therefore lost \$500.00 in rental income she would have had if these tenants had not breached their lease. The attending tenant did not offer evidence or argument against this item but to say that he disputed it.

Item 10, Garbage Bill

I allow this item of \$132.00 as presented. The landlord's photos show the tenants left a number of discarded items of furniture and general waste on the property. \$132.00 is a reasonable cost for its removal. The attending tenant offered no evidence or argument against it.

Item 11, Suite Cleaning

I allow this item as presented at \$325.00. The landlord's evidence shows the premises to be far below the standard of "reasonably clean" imposed by s. 37 of the *Residential Tenancy Act*. It is the landlord's undisputed evidence that this cost, paid to her daughter and a friend, was significantly below that charged by a professional cleaner. The attending tenant presented no evidence to oppose this item.

Item 12, Fridge Racks

I allow this item as presented at \$58.63. The tenant's evidence that the racks were not there on move-in is not credible. The landlord's photos show one of the broken racks lying on a shelf in the fridge at the end of the tenancy.

Item 13, Home Depot Bills

I allow this item as presented at \$258.62. It is the landlord's fair cost to replace curtains and blinds damaged during the tenancy, likely by the tenants' pets. The attending tenant did not present evidence to contradict the landlord's testimony about this item.

Item 14 Hardwood Floor Repairs.

The landlord testified that the wood floors were refinished about three years ago. She presented photographs to show the floors to now be extremely worn, scratched and stained with paint and with numerous dark patches. Her uncontradicted evidence is that the dark patches were the result of dog urine. She presents a quote of \$2990.00 for a refinishing of the floors. She says she hired the quoting contractor but he failed to complete the job and so she and her husband rented or otherwise obtained the necessary sanding and finishing equipment and completed the job themselves.

It is not disputed that the tenancy agreement permitted the tenants to have two dogs and a cat, yet they arrived at the premises with an additional six Labrador puppies,

which they kept penned or loose in the home from October 1 until the last of the puppies found a new home in December.

The move in condition report shows the flooring to have been “satisfactory” at the start of the tenancy. In my view, had the floors displayed even a fraction of the wear, scratching and staining apparent at the end of the tenancy, it would have been referred to in the report. It is most likely that the considerable floor damage apparent in the landlord’s photos came during this tenancy. The damage is to such an extent as to warrant a complete refinishing and so I award the landlord \$2990.00 as per the quote. The fact that the landlord and her husband completed the refinish job themselves does not detract from that cost. It only means that their labour contributed to it rather than the paid labour of the contractor.

Item 15, Ceiling Repair

I allow this item as presented at \$60.00. I do not accept as likely the tenant’s assertion that a portion of the bedroom ceiling simply fell to the floor as the tenants were moving out. Rather, I consider it more likely that portions of the ceiling were pulled away during move out to fall onto the floor in an effort to accentuate the tenants’ past assertions that there was a wet spot at that area of the ceiling.

Item 16, Floor Tiles

I allow this item as presented at \$100.00. Had this damage occurred before the tenancy it would likely have been noted in the move in report. It is not and I conclude the tiles were cracked and damaged during this tenancy. These tenants are responsible for the repair and \$100.00 is a reasonable repair cost.

Item 18, Lumber World Bill

I allow this item as presented at \$92.37. The cleaner liquid was used as part of the general cleaning. In regard to the hose, it is clear from the landlord’s email that the hose was damaged during this tenancy. The tenants were certainly entitled to repair the hose at a lesser cost than replacement and hope it was acceptable. They didn’t. The landlord is not to be assumed to be a “do it yourself” or “home handyman” person. She was acting reasonably in replacing the hose and is entitled to recover her cost for doing so.

The attending tenant alleges that some dark spotting shown on a window ledge in one of the landlord’s photos was mould and, in particular “black mould.” He does not relate

any particular claim or defence in that regard. He has not brought his own claim for compensation, nor has he established that the mould issue was somehow the cause of the ending of the tenancy. In result, I consider the mould allegation to have little if any relevance to the landlord's monetary claim.

Conclusion

I grant the landlord a monetary award totalling \$9879.86, as claimed, plus recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$825.00 security deposit and the \$555.00 pet damage deposit in reduction of the amount awarded. There will be a monetary order against the tenants jointly and severally for the remainder of \$8599.86.

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: September 19, 2014

Residential Tenancy Branch

