



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, MNR, MND, FF.

Introduction:

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, cost of painting, cleaning and repairs, the filing fee and to retain the security deposit in satisfaction of the claim. The tenant applied for the return of the security deposit and for compensation for loss under the *Act*.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order? Is the tenant entitled to the return of the security deposit and compensation?

Background and Evidence

The tenancy started on September 01, 2013 and ended on December 01, 2013. The tenants consisted of several family members and their rent was paid individually by cheques from Social Services directly to the landlord.

The landlord stated that the monthly rent was \$1,850.00 payable on the first of each month and that prior to moving in the tenant paid a security deposit of \$700.00. The tenant stated that the rent was \$1,800 and that she had paid a security deposit of \$900.00. Neither party filed a copy of the tenancy agreement. The landlord could not recall the total amount of rent he received every month in multiple cheques from Social Services.

The landlord stated the following:

On November 30, 2013, as he drove by the house, he noticed that the front door was open. He attempted to call the tenant without success. He knocked on the open door and when no one answered, he entered to find that no one was home and that it appeared as if the tenant was in the process of moving. Most of the tenant's belongings were gone. Some furniture and a pool table remained inside the home. The landlord took photographs and filed them into evidence.

The tenant stated that she gave the landlord verbal notice sometime in October 2013 and started moving out mid November 2013. She stated that the landlord entered the unit on November 30 without notice and put the remainder of her belongings outside in the rain. The tenant stated that she moved out on December 01, 2013 and gave the landlord her forwarding address in writing on December 08, 2013.

The landlord argued that he did not move the tenant's belongings and place them outside the home. The landlord stated that the neighbour told him that the tenants returned later that day and packed a vehicle but left some items behind, outside the home. The landlord stated that a few days later all the items were gone.

The landlord testified that the home was left in a dirty condition and required repairs. He stated that the tenants put their unwanted belongings in the yard and he incurred an expense to have them taken to the dump for disposal. The landlord did not file any photographs of the yard, but did file photographs of the condition of the carpets, the items left behind in the home and a kitchen sink, that were taken on November 30, 2014

The photographs of the carpet show some white patches in several places. The landlord stated that it was paint and could not be removed. The carpet was two years old at the start of tenancy and had to be replaced. The landlord filed a copy of an invoice for the cost of replacing the carpet.

The landlord also stated that the toilet seat and sink were broken but did not file any photographs to support his testimony. The landlord filed a copy of an invoice to replace these items and to replace the kitchen sink. The tenant denied having cause damage to any of these items.

The landlord stated that he carried out the repair and cleaning of the house and started advertising the availability of the rental unit on line, on December 15, 2013. The landlord testified that despite his efforts to find a new tenant immediately, he was unable to find a new tenant before January 15, 2014. The landlord stated that he incurred a loss of income and is claiming this loss.

The landlord is making the following claim:

1.	Loss of income	\$1,850.00
2.	Replace carpet	\$5,376.00
3.	Painting	\$1,964.00
4.	Yard and House Cleaning	\$942.00
5.	Plumbing	\$920.00
6.	Loss of wages	\$750.00
7.	Filing fee	\$100.00
	Total	\$11,902.00

The tenant stated that her furniture and other belongings were ruined because they were placed outside the home. The tenant testified that a friend who was at the rental unit when the landlord came in on November 30, 2014 witnessed the landlord and the neighbour move the tenant's belongings outside. The tenant stated that the witness was unable to attend the hearing to provide testimony of what he observed that day.

The tenant is claiming the following:

1.	Leather sofa and table lamps	\$3,449.00
2.	Pool table	\$200.00
3.	Deep Freezer	\$180.00
4.	Clothing	\$500.00
5.	Dolly	\$200.00
6.	Sledge Hammer	\$45.00
7.	Damage deposit	\$900.00
	Total	\$5,474.00

The tenant leased most of her furniture and filed a copy of the lease.

Analysis

The parties did not agree on the amount of rent and security deposit. A tenancy agreement was not filed into evidence. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case in the landlord was unable to recall the amount of rent that he received in multiple cheques. In the absence of a written agreement I accept the tenant's testimony that the rent was \$1,800.00 per month and the security deposit paid was \$900.00.

Landlord's application:

1. Loss of income - \$1,850.00

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I find that the tenant did not provide the landlord with adequate written notice and therefore I accept the landlord's evidence in respect of the claim. The tenant moved out on December 01, 2014 and the landlord made efforts to find a new tenant by advertising the availability of the unit after the repairs were done. The landlord was unable to find a tenant for December and therefore is entitled to recover the loss of income he incurred.

I have determined that the rent was \$1,800.00 per month and accordingly, I find that the landlord is entitled to this amount.

2. Replace carpet - \$5,376.00

The landlord has filed photographs that show multiple white patches on the carpet and an invoice for the replacement of the carpet. I accept the landlord's testimony that the white spots were paint spills and were not removable.

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the carpet. As per this policy, the useful life of a carpet is ten years. The landlord stated that the carpet was two years old at the start of tenancy and therefore by the end of the tenancy, the carpet had approximately 7.5 years of useful life left. Accordingly, I find that the landlord is entitled to \$4,000.00 which is the approximated prorated value of the remainder of the useful life of the carpet.

3. Painting - \$1,964

The landlord testified that the walls had scratches and scuffs. Based on the photographs and the testimony of both parties, I find that the landlord has not proven that the damage to the walls is greater than normal wear and tear.

4. Yard and house cleaning - \$942.00

The landlord did not file any photographs that show the tenant left unwanted items in the yard. Based on the photographs and the tenant's testimony, I find that the landlord has not proven his claim for the cost of cleaning.

5. Plumbing - \$920.00

The landlord stated that the toilet seat and two sinks were left in a broken condition. The tenant denied having caused damage to these items and the landlord filed one photograph of the kitchen sink to support his claim. From this photograph, I am unable to determine if there is damage to the sink. In the absence of photographs to show damage to the toilet seat and washroom sink and based on the tenant's testimony, I find that the landlord has not proven his claim for the cost of plumbing.

6. Loss of wages - \$750.00

The tenant is not responsible for the landlord's loss of wages.

7. Filing fee - \$100.00

The landlord has proven a portion of his claim and therefore I award the landlord the recovery of the filing fee.

Overall the landlord has established a claim as follows:

1.	Loss of income	\$1,800.00
2.	Replace carpet	\$4,000.00
3.	Painting	\$0.00
4.	Yard and House Cleaning	\$0.00
5.	Plumbing	\$0.00
6.	Loss of wages	\$0.00
7.	Filing fee	\$100.00
	Total	\$5,900.00

Tenant's application:

Based on the testimony of both parties, I find that the tenant has not proven that the landlord placed her belongings outside the rental unit. Therefore I find that I must dismiss the tenant's claim for a monetary order for compensation for the loss of her belongings.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. The tenant provided her forwarding address in writing, to the landlord on December 08, 2013 and the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address.

Therefore, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

I have determined that the landlord currently holds a security deposit of \$900.00 and is obligated under section 38 to return double this amount along with the accrued interest of \$0.00. Therefore I find that the tenant has established a claim of \$1,800.00.

Overall the landlord has established a claim of \$5,900.00 and the tenant has established a claim of \$1,800.00. I will use the offsetting provisions of section 72 of the Act to grant the landlord a monetary order in the amount of \$4,100.00 which consists of the difference in the established entitlements of both parties.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$4,100.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord may retain the security deposit of \$900.00 and I grant the landlord a monetary order in the amount of **\$4,100.00**.

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 10, 2014

Residential Tenancy Branch

