



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

This tenancy started on May 01, 2010 with the tenant taking possession of the unit on May 05, 2010. Rent for this unit started at \$1,400.00 per month but was reduced to \$1,250.00 per month during the tenancy. Rent was due on the 1st day of each month. The tenant paid a security deposit of \$700.00 and a pet deposit of \$700.00 on May 01, 2010. Both parties attended a move in condition inspection at the start of the tenancy but the tenant failed to attend the move out inspection despite two opportunities to attend. The tenant provided a forwarding address in writing on April 09, 2014 and the tenancy ended on May 03, 2014.

The landlord testified that the tenant gave a late notice to end tenancy on April 09, 2014 which states the tenant was giving 30 day notice to vacate the unit. The tenant failed to pay rent for May, 2014 of \$1,250.00. The landlord testified that the tenant's rent cheque for May was for \$1,000.00 and was returned as there were insufficient funds. The tenant was served with a 10 Day Notice to End Tenancy for unpaid rent on May 02, 2014. This Notice had an effective date of May 10, 2014 and was posted on the tenant's door and deemed served three days later. The landlord testified that no rent was received from the tenant within five days of the Notice being deemed served and the landlord seeks a Monetary Order to recover the unpaid rent of \$1,250.00.

The landlord testified that the tenant left damage in the unit. The landlord has revised their claim for damages to \$6,941.70 comprised of the following:

Item 1. Deadbolt on entrance door	\$96.30
Item 2. Damaged door casings	\$86.97
Item 3. Damaged flooring	\$427.44
Item 4. Labour for removal and replacement of flooring	\$672.00
Item 5. Carpet replacement	\$1,711.50
Item 6. Garbage removal including removal of carpets	\$616.00
Item 7. Lawn mowing and yard work	\$168.00

Item 8. Replacement of doors	\$285.00
Item 9. Interior painting, labour costs	\$1530.00
Item 10. Paint	\$442.07
Item 11. air freshener	\$12.26
Item 12. Screen repair	\$10.86
Item 13. Bathroom fan motor	\$78.35
Item 14. Cleaning	\$270.00
Item 15. Labour for repairs	\$360.00
Item 16. Baseboards and sander for door fitting	\$174.95
TOTAL	\$6,941.70

The landlord testified that the tenant had changed the deadbolt at the entrance door without the landlord's permission and did not provide the landlord with a key and the door knob had been badly chewed by the tenant's dog.

A number of door casings were badly scratched by the tenant's dog. The engineered wood flooring was also left with many scratches and due to the nature of the flooring these could not be sanded down. The flooring also smelt badly of dog urine where the tenant's dog had defecated and urinated on the floor. The urine soaked through to the sub floor and the flooring and subfloor had to be replaced. The landlord attempted to mitigate the loss by replacing the flooring with a cheaper laminate floor. The original invoice for this was for \$516.97 and the landlord received a refund of \$89.53 which has subsequently reduced the landlord's claim. The landlord seeks to recover the handyman's costs for the removal of the engineered floor and the installation of the laminate floor.

The landlord testified that the carpets were in a good condition at the start of the tenancy and were five years old when the tenant moved in. at the end of the tenancy

the carpets were nine years old but had been left heavily stained with dirt, animal feces and urine. The carpets were so stained they could not be cleaned.

The landlord testified that the tenant left a great deal of garbage in the unit which the landlord had to remove to the dump. The fee for this work also included the disposal of the carpet. The landlord testified that in accordance with the tenancy agreement the tenant was responsible for the yard work. The yard was left in an overgrown condition and the shrubs and lawn had not been cared for. The landlord had to pay for yard services to get the shrubs cut and the grass mown.

The landlord testified that there was a missing door and a damaged door in the unit. The tenant had also replaced another door with a door that was the wrong size and this also had to be changed. The new doors had to be painted including the new door frames.

The landlord testified that the interior of the house was left in a poor condition. Many walls had suffered from excessive scratching and the whole house smelt of animals. The house had been freshly painted at the start of the tenancy; however, due to the damage and the smell of the house the landlord had to repaint the house. The landlord also had to purchase an air fresher to mask the smell in the house for viewings even after the house had been painted and new carpeting and flooring installed.

The landlord testified that the back door screen had been damaged. The landlord had to purchase materials for this screen repair. The landlord's husband repaired the screen and the screen spline. The bathroom fan was not working. The tenant had never notified the landlord that it did not work and the landlord found it was full of dust and grime which prevented it working. The landlord cleaned the dust and grime out but the fan would not work and it had to be replaced. If the tenant had maintained reasonable cleanliness in the home this would have prevented the damage to the fan.

The landlord testified that the house was left in an unclean condition. The landlord spent approximately 22.5 hours cleaning the home which included the bathtub, windows and frames, the oven, the carport and the outside patio. The tenant had used the self-clean function in the oven but had not cleaned the carbon deposits out. The landlord has claimed \$12.00 an hour for this work.

The landlord testified that her husband did many of the repairs in the house. This included fixing the doors, the casings, changing the doors, replacing the baseboards, the locks and the screen door. The landlord testified her husband spent 12 hours completing repairs and seeks to recover \$30.00 an hour for this work. The landlord testified that the baseboards had to be replaced as the old ones had to be removed when the flooring was replaced and could not be saved and reused. The sander was used to sand the door fitting.

The landlord refers to the move out inspection report detailing the damage and cleaning required in the unit and the detailed photographic evidence showing repairs required and photographs showing the unit after repairs were made.

The landlord seeks an Order to be permitted to keep the security and pet deposit of \$1,400.00 and seeks to recover the \$100.00 filing fee.

The tenant testified that she now knows that she gave the landlord late notice and that she was supposed to pay the rent for May. The tenant testified that she had informed the landlord that she would pay the rent around May 14, 2014 but then the landlord gave the tenant a 10 Day Notice to End Tenancy on May 02, 2014 with an effective date of May 10, 2014.

The tenant agreed that she changed the deadbolt and did not give the landlord a key but testified that as there were two locks on that door the landlord could have still gained entry to the unit. The tenant agreed her dog did chew the door knob.

The tenant agreed that her dog did cause some damage to some door casings but disputed that all the door casings shown in the landlord's photographic evidence were damaged by the dog. The tenant testified that some of these photographs show door casings where the paint is simply peeling off the casing and are not damaged through the dog scratching them.

The tenant disputed that the flooring needed to be replaced and testified that the scratches were no more than normal wear and tear. The tenant refers to an email from the landlord's floor installer in which he has stated that he did not believe that the current floor needed to be removed. The tenant testified that the landlord wanted to sell the house and wanted to replace the floor for that purpose.

The landlord disputed the tenant's claims. The landlord testified that the floor installer did not mean that the engineered floor did not need to be replaced. His email refers to him stating that the engineered floor did not have to be removed as he could lay the laminate floor on top of this. The landlord testified that this would have made the floor too high and it would not have removed the smell left by the tenant's animals under the engineered floor.

The tenant testified that she did not have the carpets cleaned at the end of the tenancy as the landlord had already mentioned to the tenant in February that the landlord was going to replace the carpets. The tenant testified that the landlord's photographic evidence showing the stained carpets is of the stairs and landing. The tenant testified that she had cleaned the carpets throughout her tenancy; however, as there was a drainage problem in the back yard the water drained down onto the patio and when the tenant's dogs went out into the yard they would bring in the dirt and traipse that through onto the carpets.

The landlord testified that she did not tell the tenant that the carpets were going to be changed. The carpets had been steam cleaned prior to this tenancy.

The tenant does not dispute that she left garbage at the unit. The tenant testified that the landlord had informed the tenant that she had to be out on May 10, 2014 so the tenant was only able to take some garbage away. The tenant does not dispute this section of the landlord's claim.

The tenant disputed the landlord's claim for yard work. The tenant testified that due to the drainage problem in the backyard they had trouble mowing the lawn. The tenant testified that towards the end of the tenancy she did not mow the lawn or trim the shrubs. The tenant testified that when they moved in the lawns had not been mown. The landlord testified that the lawns had been mown at the start of the tenancy. The landlord disputed the tenant's claim that a drainage problem prevented the tenants' mowing the lawn as the previous tenant and the landlords did not have any trouble mowing the lawn when they lived at the unit.

The tenant testified that the missing door was one out of the bathroom and the tenant had taken it off and put it in the carport. The tenant agreed that she replaced another door with the wrong sized door but testified that the third door was damaged at the start of the tenancy.

The landlord disputed the tenant's claims the landlord testified that they did not find a door in the carport and the other damaged door was not damaged at the start of the tenancy or it would have been documented on the move in report. This door appears to have been damaged by the tenant's dog as well. The landlord testified that the doors were all about 10 years old.

The tenant disputed the landlord's claim for painting. The tenant testified that not all the walls were damaged and all other walls were in a good condition with the exception of the walls at the top of the landing. The tenant disputed the landlord's claim that the house was left smelling badly and claims that this smell could have been coming from outside the unit. The tenant agreed that the screen was damaged during the tenancy and does not dispute the landlord's claim for this repair.

The tenant disputed the landlord's claim for the bathroom fan motor. The tenant testified that this was broken when they moved into the unit and they did not mention it to the landlord as they thought the landlord already knew about it. The tenant disputed the landlord's claim for cleaning the unit. The tenant testified that the bathtub was old and there were spots that had no glaze which prevented it being cleaned successfully. The tenant testified that she did clean the windows but did not clean the window frames and did not clean up the outside area as the tenant claims she ran out of time. The tenant testified that she left the kitchen spotless.

The landlord refers to her photographic evidence showing the bathtub and testified that the tub could easily have been cleaned with Vim and CLR. The landlord used these products and the tub came up clean overnight as shown in the landlords after photographs.

The tenant testified that she does not dispute the landlord's claim for her husband's labour with the expectation of the baseboards, one door and some of the casing replacement and painting. The tenant does dispute the landlord's claim for new baseboards and the sander. The tenant testified that the landlord's husband may have already had a sander.

The tenant does not dispute the landlord's claim to keep the security and pet deposits and had written to the landlord saying the landlord could keep the deposits. The tenant testified that she had lived in the house for four years; originally with her husband who moved out around a year and a half ago. The tenant testified that the landlord has not provided photographic evidence showing how clean the rooms were and the landlord only wanted to paint the house to sell it. The tenant testified that she should not have to pay for the landlord's renovations to help the landlord sell their house.

The landlord testified that only the interior of the house required painting. The landlord refers to the letter from a witness in which the witness describes how bad the house smelt that required the flooring to be changed and the house to be painted. The landlord

also refers to documentary evidence from the carpet fitter who has stated that the carpets were saturated with dog feces and urine.

The landlord has provided invoices and receipts for all work claimed and goods purchased in documentary evidence.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim to recover unpaid rent for May; I refer the parties to s. 45(1) of the *Residential Tenancy Act (Act)* which states:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I am satisfied with the evidence before me that the tenant did not comply with s. 45(1) of the *Act* and the Notice given to the landlord has not received until April 09, 2014. This means that the earliest the tenant could legally end the tenancy would be May 31, 2014 and the tenant would be responsible for the rent for May even when the landlord has served the tenant with a 10 Day Notice to End Tenancy for unpaid rent. Consequently, it is my decision that the landlord has established a claim to recover unpaid rent for May of **\$1,250.00**.

With regard to the landlord's claim for damages to the unit, site and property; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I have considered the evidence before me and am satisfied that on a balance of probabilities that the tenant did not repair damage to the unit or leave the unit in a reasonably clean condition at the end of the tenancy as required under s. 32 of the *Act*. Therefore with regard to the following items I find:

Item 1. The tenant is not entitled to change the locks on the unit without permission of the landlord. I therefore find in favour of the landlord's claim to replace the lock. I further find the door knob has been damaged and the landlord is entitled to recover costs to replace the door knob. The landlord has established a claim for **\$96.30**.

Item 2. I am satisfied with the evidence before me that the door casings have been damaged. I am not satisfied with the tenant's explanation that the paint is peeling off some of the casings and while some of the landlord's photographic evidence shows some areas of peeling paint; from the other evidence presented I find it is likely the tenant's dog or dogs has contributed to the damage to the door casings as shown in the photographs. However, as the door casings are 10 years old I must reduce the landlord's claim due to depreciation of the door casings. I refer the parties to the Residential Tenancy Policy Guidelines # 40 which provides for the useful life of building elements and I refer to this guide throughout this analysis. I find the useful life of door casings is 15 years and I limit the landlord's claim accordingly. I therefore find the landlord has established a claim for **\$21.74**.

Items 3 and 4. I am satisfied with the evidence before me that the floors were damaged beyond normal wear and tear. I am also satisfied with the landlord's explanation concerning why the floors were removed and not simply laid over with new laminate. This would have caused an increase in floor height and would not have removed the smell from any urine or animal feces settling into the subfloor; however, as the flooring was 10 years old I have reduced the landlords claim due to depreciation and find the useful life of engineered flooring is 20 years. I therefore find the landlord has established a claim for **\$213.72** and **\$672.00** for the labour involved.

Item 5. I am satisfied from the evidence before me that the carpets were left in an extremely stained condition. The landlord's evidence shows an obvious disregard for the carpets on the part of the tenant by allowing them to get into this level of staining. I am further satisfied that the carpets were also left stained with dog feces and urine as described in the carpet fitters email; however, as the useful life of carpets is considered to be 10 years I have made some deductions due to the age of the carpets I therefore find the landlord has established a claim to replace the carpets of **\$300.00**.

Item 6. The tenant does not dispute the landlord's claim for garbage removal. I therefore find in favour of the landlord's claim to recover **\$616.00**.

Item 7. I am satisfied from the evidence before me that the tenant was responsible for yard maintenance. The landlord's evidence clearly shows that the grass is very overgrown at the front and rear of the house and the shrubs are also overgrown through neglect. The tenant argued that the back grass could not be mown due to drainage issues, yet at some time the tenant must have mown the grass during the tenancy of four years or the grass would have been in a much worse condition than shown in the landlord's photographic evidence. I therefore find the landlord has established a claim for yard work of **\$168.00**.

Item 8. I am satisfied with the evidence before me that the landlord had to replace three doors in the Unit; however, as the useful life of doors is considered to be 20 years and the doors are likely to be 10 years old I have made some deductions for depreciation and have limited the landlord's claim. I do; however, find that these doors and casings had to be painted by the landlord and I therefore find the landlord has established a claim for **\$142.50**.

Items 9 and 10. I am satisfied that the landlord had to do some painting in the unit; the landlord's photographs only show two walls as being damaged beyond normal wear and tear and no evidence that the rest of the house suffered in this manner. The landlord has claimed the entire house had to be painted to get rid of the smell of the tenant's animals; however, I am not sure that drywall can be affected by the smell of the animals unless those animals had urinated against the walls. I have no evidence to show that the landlord has met the burden of proof in this matter that all the walls required painting. Furthermore a landlord is required to paint a unit at regular intervals. As the unit was last repainted in 2010 and the useful life of interior paint is four years I must limit the landlord's claim for painting and paint to **\$493.15**.

Item 11. I am satisfied that the house suffered with smells that had to be masked for viewings taking into consideration the condition of the carpets alone and how the smell of pet urine can permeate into a house. I therefore find the landlord has established a claim for an air freshener of **\$12.26**.

Item 12. The tenant does not dispute the landlord's claim for the screen repair. I therefore find the landlord has established a claim for **\$10.86**.

Item 13. With regard to the bathroom fan motor; I am not satisfied from the landlord's evidence that the tenant is responsible for the replacement costs of the bathroom fan due to the tenant's actions or neglect. The landlord has not met the burden of proof that the tenant's actions or neglect caused the fan motor to break down and that it was not simply at the end of its useful life. This section of the landlord's claim is dismissed.

Item 14. I am satisfied with the evidence before me that the tenant did not leave the rental unit in a reasonable standard of cleanliness. The landlord has met the burden of proof regarding the stained condition the bathtub was left in and the move out report is sufficient evidence to show other areas were left unclean. I therefore find the landlord has established a claim for cleaning of **\$270.00**.

Item 15. The tenant does not dispute the landlord's claim for repairs made by the landlord's husband. I therefore find the landlord is entitled to recover **\$360.00**.

Item 16. I am satisfied that the landlord would have had to remove the existing baseboards in order to lay new flooring. As the landlord has established a claim for new flooring I therefore find in favour of the landlord's claim for new baseboards. As the baseboards only had to be replaced due to the damage to the flooring I am will not make any deductions for depreciation of the baseboards. The landlord has also claimed for a sander for the door. As I have found that the landlord has established a claim for new doors I find the landlord is also entitled to recover the cost of a sander for the fitting of the doors. I therefore find the landlord has established a claim for **\$174.95**.

The tenant agreed in writing and at the hearing that the landlord may keep the security and pet deposit of \$1,400.00 in partial satisfaction of the landlord's claim. I am not therefore required to make a decision in this matter and have deducted the security and pet deposit from the landlord's monetary claim.

As the landlords claim has merit I find the landlord is entitled to recover the **\$100.00** filing fee for this application pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amounts:

Unpaid rent for May	\$1,250.00
Damages, cleaning and garbage removal	\$3,551.48
Filing fee	\$100.00
Subtotal	\$4,901.48
Less security and pet deposits	(-\$1,400.00)
Total amount due to the landlord	\$3,501.48

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 **\$3,501.48**. The Order must be served on the respondent. If the respondent fails to pay the Order, the Order is enforceable 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: September 23, 2014

Residential Tenancy Branch

