Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage the rental unit or property; unpaid rent; and, damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

In filing this Application for Dispute Resolution, the landlord indicated she was seeking compensation totalling $18,114.00, comprised of $3,114.00 in unpaid rent and an estimated cost to clean and repair the property of $15,000.00. Although the landlord did not provide a detailed breakdown of the cleaning and repair costs or a Monetary Order Worksheet, the evidence package included invoices and/or estimates for painting, carpet replacement, and vinyl flooring replacement totalling $11,552.07. The landlord's legal counsel confirmed that the claim was limited to the sum of $11,552.07 plus unpaid rent of $3,114.00. I also found the tenant had responded to each of the claims and I was satisfied she was not prejudiced by a lack of a detailed breakdown or Monetary Order Worksheet. Therefore, I proceeded to hear the landlord's monetary claim, as amended to the lesser amount of: $14,666.07 [calculated as $11,552.07 plus $3,114.00].

The landlord sent additional evidence to the tenant via courier on August 25, 2014, which does not comply with service requirements of section 88; however, the tenant confirmed receipt of the evidence and I deemed the tenant sufficiently served pursuant to the authority afforded me under section 71 of the Act.

This matter was heard over several hours on two different dates. I was provided a considerable amount of submissions by both parties, all of which I have considered;

however, with a view to brevity I have summarized the parties' respective positions in writing this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for unpaid rent?
2. Has the landlord established an entitlement to compensation for damage to the rental unit in the amounts claimed?

Background and Evidence

The tenancy started in July 2010 on a month to month basis. The monthly rent of $1,500.00 was payable on the 1st day of every month and at some point the monthly rent was increased to $1,557.00 per month. The landlord did not prepare move-in or move-out inspection reports.

I was provided inconsistent testimony as to whether a written tenancy agreement was prepared. The landlord initially testified that a written tenancy agreement was prepared but that she could not locate it. The tenant testified that a written tenancy agreement was not prepared by the landlord but that emails were exchanged between the parties in 2010 showing the terms of tenancy agreed upon by the parties. The tenant provided copies of the emails in her evidence package. The landlord subsequently testified that she could not recall if a written tenancy agreement was prepared.

The parties were in dispute as to whether a security deposit was paid by the tenant. The landlord testified that a security deposit was not paid. The tenant testified that a security deposit of $750.00 was paid and pointed to the emails exchanged between the parties in 2010 including the requirement to pay a security deposit of $750.00. The landlord's legal counsel pointed out that the tenant did not produce a proof of payment such as a cancelled cheque. The tenant indicated the proof of payment could be obtained but that it is old documentation that would have to be retrieved from the bank's archives.

The parties were in dispute as to how and when the tenancy ended. The landlord submitted that possession of the rental unit was regained on May 5, 2014 when it was discovered that the rental unit was vacant. The tenant testified that she vacated the rental unit on April 26, 2014 and was of the position the tenancy ended at the end of April 2014 pursuant to her notice to end tenancy.

Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

Unpaid rent

The landlord is seeking to recover unpaid rent of $3,114.00 in unpaid rent for the months of May 2014 and June 2014 due to insufficient notice to end tenancy. The landlord submitted that the tenant had not given any notice or indication that she was moving out and that the rental unit was discovered to be vacant when a courier was sent to deliver a document to the tenant and the courier reported that the rental unit appeared vacant. The landlord testified that she commenced advertising efforts on July 15, 2014 after cleaning up the property and the unit was re-rented starting August 15, 2014.

The tenant testified that she received a Notice of Rent Increase on March 21, 2014 which, combined with an on-going rat problem, prompted her to end the tenancy. The tenant testified that on March 22, 2014 she wrote a notice to end tenancy to be effective at the end of April 2014 and mailed it to the landlord on March 23, 2014 using the landlord's office address, where she conducts business as a landlord, and as identified as the landlord's service address on a previous Application for Dispute Resolution. The tenant was certain she mailed the notice on March 23, 2014 while she was out shopping for groceries, as supported by her receipt for groceries purchased on that day.

The tenant also pointed out that in filing this Application for Dispute Resolution the landlord used the tenant's service address that she included in the notice to end tenancy she served upon the landlord in March 2014. The landlord's legal counsel countered that position by stating that he was aware of the tenant's new work address which is the tenant's service address that appears on the Landlord's Application for Dispute Resolution.

The landlord stated she did not receive a notice to end tenancy and the landlord's legal counsel submitted that using the landlord's office address was improper as the tenant had been instructed to serve documents upon the landlord's legal counsel. The landlord's legal counsel pointed to several emails exchanged between him and the tenant in April 2014 concerning an exterminator attending the property whereby the tenant makes no mention that she is moving out. The tenant responded by pointing out that in the emails she requested a Notice of Entry before the exterminator could enter with the exception of April 28, 2014 when the exterminator may enter at any time. The tenant explained that it had been her intention to finish cleaning the rental unit on April 28, 2014 and give up possession of the property on that date.

The tenant acknowledged that she had been provided contact information for the landlord's legal counsel and she had exchanged emails with him with respect to the rat problem but the tenant was of the position that she had a tenancy agreement with the landlord and was obligated to serve the landlord with her notice to end tenancy. The tenant was of the position the landlord's office was the landlord's place of doing business for tenancy related matters and other business and that using the office address was appropriate for purposes of sending the notice to end tenancy to the landlord.

The tenant also submitted that the landlord's residence is adjacent to the rental property and the landlord likely would have seen the tenant's moving truck at the rental unit at the end of April 2014. The landlord denied that she can see the driveway of the rental unit from her residence or when she drives by the property.

The landlord initially stated that the tenant did not return the keys to the rental unit. The tenant testified that she left them on the counter top. During the second hearing date, the landlord's legal counsel acknowledged the keys were left on the kitchen counter.

Painting

The landlord seeks compensation of $6,844.00 for painting the rental unit. The landlord produced an estimate dated May 9, 2014 to "repair and re-paint all surfaces" in the amount of $6,844.00. The landlord testified that painting was required because the walls were dented, marked, scratched and clawed at the end of the tenancy and that the rental unit had been previously painted in June 2010, as indicated in the painter's estimate.

The landlord's witness was called and he testified that entered the rental unit after the tenancy ended, although he was uncertain which date, and he observed holes, some larger than others, on the walls likely from hanging things on the walls.

The tenant acknowledged that she hung pictures and shelves in the rental unit but pointed out she had permission to do so and the landlord did not give her specific instructions as to how to hang items on the walls.

The tenant referred to the photographs provided by the landlord as evidence and pointed out that there are no dents, marks, scratches or claw marks visible in the landlord's photographs. The tenant also pointed to the photographs she took in the rental unit and they show there is no damage to the walls.

The tenant also submitted that the rental unit was inspected by an agent for the landlord in July 2013 and that he commented that the property “didn’t look too bad” and the photographs reflect that. I noted that the landlord had included photographs in the landlord’s evidence package that were purportedly taken on July 8, 2013 and wall damage is not evident in those photographs.

The tenant pointed out that the rental unit was last painted nearly four years prior and the landlord’s claim does not take into account normal wear and tear.

The tenant also testified that she observed the exterior of the rental house had been painted shortly after the tenancy ended and questioned whether the paint job included exterior painting. The landlord stated that it did not.

The tenant also questioned whether the landlord actually suffered a loss as previous costs related to flooding were paid by the landlord’s business and the tenant pointed out that the landlord had not produced an invoice from the painting that took place in June 2010. The tenant also suggested that the contractors used by the landlord are provided very good deals on the vehicles they purchase from the landlord and that the contractors would write what is requested of them by the landlord. The tenant explained that she has knowledge of the landlord’s practices as she had been employed by the landlord’s business as an accountant.

Carpet replacement

The landlord seeks compensation of $2,612.63 for the supply of new carpeting and $1,396.71 for carpet installation, totalling $4,009.34. In support of this claim the landlord had provided a copy of an invoice dated May 21, 2014 in the amount of $2,612.63 for the supply of carpet and underpad; however, the invoice does not indicate the rooms where the carpeting is to installed, although the document provides space for this information, or the quantity supplied. The landlord also provided an invoice dated May 20, 2014 in the amount of $1,396.71 for removal of the old carpeting, installation of carpeting and underpad in the quantity of “142.8” plus the staircase.

The landlord testified that new carpeting had been installed in the rental unit in June 2010 and pointed to a copy of an invoice dated June 24, 2010. The invoice indicates laminate flooring was installed in the family room along with carpeting in the living room, dining room and upper hallway only.

The landlord testified that the rental unit stunk of dog and pointed to pictures of piles of dog hair in the rental unit at the end of the tenancy. When asked specifically if the rental unit smelled of urine the landlord testified that it appeared that the tenants dogs

had urinated on the carpeting as the carpets were stained but that the unit smelled more like dog than urine.

The landlord pointed to a letter on the carpet supplier's letterhead dated May 9, 2014. The statement indicates the rental unit "stinks of dogs", that there was a "mat of dog hair over everything", that the carpeting was stained thoroughly, that there were runs in the carpeting, and that a 3" x 9" section of carpeting had been cut away.

The landlord acknowledged that she did not try cleaning the carpeting to deal with the smell or staining, pointing out that the carpeting also had runs and a section cut away.

The landlord's witness testified that he attended the rental unit after the tenant moved out although he was uncertain of the exact date. He described piles of dog hair accumulated up the sides of the walls and stained carpeting that had not been cleaned. The witness also pointed to an area that was cut out of the carpeting. In his opinion, the carpeting could not be cleaned. The witness was specifically asked to comment about odour to which he responded that he has a poor sense of smell and could not comment on any odour. The tenant asked the landlord's witness to confirm his relationship with the landlord. The witness confirmed that he has worked for the landlord's business since 1989 and babysits the landlord's children.

The tenant acknowledged that she did not vacuum the carpeting before leaving the rental unit for the last time. She acknowledged that there were piles of dog fur at the edges of the wall that had accumulated behind furniture. The tenant acknowledged that her older dog shed a lot especially in the spring time and that the last time she had vacuumed was March 21, 2014 when she was preparing for a party. The tenant pointed to photographs that were taken during her tenancy and the party to demonstrate the condition in which she kept the rental unit.

The tenant acknowledged that her son's bedroom carpeting was stained; likely by drinks being spilled, but denied that her dogs urinated in the house.

The tenant submitted that not all of the carpeting had been replaced in June 2010, as indicated by the landlord, and that the downstairs bedrooms had older carpeting. The tenant submitted that there was a run in the older carpeting that was supposed to be replaced by the landlord but it was not. The tenant ended up cutting the run out so that it would not spread.

The tenant provided numerous written statements by persons who attended her rental unit in March 2014 and previous occasions and her sons. The tenant stated the

witnesses were available to testify; however, the landlord's legal counsel indicated that it was unnecessary to call the witnesses as the landlord did not dispute that the tenant maintained the rental unit up until March 2014. The landlord's legal counsel submitted that the tenant apparently neglected to do any more housecleaning once she decided she was going to move out.

As with the painter's estimate, the tenant questioned the legitimacy of the carpet supplier's letter as the landlord supplies vehicles to local businesses, including the carpet supplier. The tenant explained that she had formerly worked for the landlord's car business as an accountant.

Kitchen flooring

The landlord seeks compensation of $698.73 to replace the kitchen vinyl flooring. The landlord provided a copy of an invoice indicating vinyl flooring was supplied and installed at the rental unit on May 23, 2014 although the room(s) or quantity of vinyl flooring was not indicated on the invoice.

The landlord testified that the vinyl flooring had to be replaced due to cuts in the flooring below the edge of the countertops, and as supported by the letter written May 9, 2014 by the carpet/vinyl flooring supplier. The landlord testified that she did not have photographs to show the condition of the damaged flooring as the flooring was taken up before photographs could be taken.

The tenant testified that the vinyl flooring in the kitchen and bathroom was old and had pre-existing cuts and burn marks, as evidenced by photographs the tenant took at the start of the tenancy. The tenant was of the position the damage described by the landlord was pre-existing.

Cleaning and Yard work

The landlord did not include a claim for cleaning or yard work but referred to photographs in support of the landlord's position that the tenant stopped maintaining the property. The landlord's photographs show that the unit was in need of cleaning at the end of the tenancy and there was very long grass and weeds in the garden.

The tenant acknowledged that there was more cleaning to be done but then she stopped cleaning and left in disgust upon discovering rat feces in the cupboard on April 26, 2014 and she did not return on April 28, 2014 to finish cleaning as planned. The tenant acknowledged that she had stopped cutting the grass because it was very dangerous given the numerous rodent holes in the yard, as seen in her photographs,

and because she was instructed to stop maintaining the property during the previous dispute resolution proceeding.

The tenant was of the position that the landlord did not adequately maintain the property and the landlord never attended the rental unit once during the entire tenancy. The tenant pointed to photographs of dead trees, fence panels where boards fell off, and numerous rodent holes in the yard.

The landlord's legal counsel responded by stating the landlord affords her tenants a high degree of privacy. It was undisputed that an agent or a contractor would attend the rental unit on the landlord's behalf.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 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.

The burden of proof is based on the balance of probabilities. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Awards for damages are intended to be restorative. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements.*

Upon consideration of everything before me, I provide the following findings and reasons with respect to the landlord's claims against the tenant.

Painting

The Act requires that a tenant repair damage that they, or persons they permit on the property, cause by way of their actions or neglect. The Act also provides that reasonable wear and tear is not damage. Residential Tenancy Policy Guideline 1 provides that a landlord is responsible for interior painting at reasonable intervals. Residential Tenancy Policy Guideline 40 provides that interior paint has a normal life of 4 years. Policy Guideline1 also provides that it is expected that tenants will put up pictures and that a tenant will be responsible for wall repairs if there is an excessive number of nail holes or large holes, or the tenant failed to follow the landlord's specific instructions with respect to hanging things on the wall.

In the absence of condition inspection reports, I found the best evidence as to the condition of the walls of the rental unit to be from photographs and testimony provided by the parties and the witness. I found the unsigned letter from the painting company to be much less compelling considering the tenant questioned the reliability of the letter, the author of the letter was not called to testify or subject to cross examination; and, the letter was apparently emailed to the landlord but the emails were not included in evidence.

I find the landlord's claim for interior painting in the amount of $6,844.00 to be extremely high and unsupported considering the following:

1. I have reviewed the photographs provided by the landlord and I find they do not demonstrate the presence of damage beyond a bit of scratched trim work.
2. The landlord did not provide evidence that she had given the tenant specific instructions on how to hang items on the walls.
3. The landlord's witness testified that he saw holes from hanging things on the walls, which the tenant acknowledged she did; however, the witness did not indicate there was an excess number of holes or excessively large holes.
4. The rental unit was last painted in June 2010 and Residential Policy Guideline 40 provides that interior paint has a typical useful life of four years meaning the interior paint was nearing the end of its useful life at the end of the tenancy.

In light of the above, I dismiss the landlord's claim of $6,844.00 for painting.

Carpeting

I find the best evidence as to the condition of the carpeting to be the photographic evidence and the testimony of the landlord, tenant and witness. I have given little evidentiary weight to the unsigned letter of the carpet supplier since the tenant called

the reliability of the letter into question considering the carpet supplier was not called to testify or subject to cross examination.

Under the Act, the tenant has an obligation to leave the rental unit undamaged and reasonably clean and where a tenant has uncaged pets the tenant is expected to have the carpets cleaned at the end of the tenancy. Based upon the photographic evidence and the testimony of the landlord, tenant and witness, it is undeniable that the rental unit needed further cleaning at the end of the tenancy, including the accumulation dog fur and stains on the bedroom carpet.

The condition of carpets that are stained and contain odour may be improved by deep cleaning, including deodorization techniques, but the landlord did not attempt this approach and proceeded to replace the carpeting. Deciding to replace the carpeting is the landlord's prerogative; however, the landlord seeks to hold the tenant responsible for 100% of the removal and replacement cost which is where, I find, the landlord's case is much weaker when I consider:

1. By making a monetary claim against the tenant, the landlord must demonstrate that reasonable steps were taken to mitigate damages and loss. I find it is uncertain as to whether the odour and stains would have been effectively removed by way of appropriate cleaning efforts as this was not attempted and the landlord sought the opinion of a carpet supplier but not a carpet cleaner. Therefore, I find the landlord's efforts to mitigate are questionable.

2. It is appropriate to reduce replacement cost by depreciation of the items that were replaced. I accept that in June 2010 new carpeting was installed in the rental unit; but, only in some rooms as submitted by the tenant. I find the tenant's position that only some of the carpeting was new in June 2010 was supported by the invoice for carpeting from June 2010 which provided for installation of new carping in the living room, dining room and upstairs hall. Further, from the photographs of the cut section of carpeting I accept the tenant's position that this was the older carpeting. Thus, I find it difficult to calculate the depreciation of the former carpeting with any degree of accuracy given I was not provided the age of the older carpeting or the sizes of the rooms which were carpeted.

Rather than dismiss the landlord's claim for replacement of carpeting outright in light of the above described reservations, I find it reasonable and appropriate to recognize that the carpeting was likely damaged to some extent by staining and odour by awarding the

landlord a nominal amount of $500.00. I make this award based upon a reasonable approximation of costs to deep clean the carpeting.

Vinyl flooring

The landlord seeks to hold the tenant responsible for damage to the kitchen flooring; however, the tenant submitted that the kitchen flooring had pre-existing damage. In the absence of condition inspection reports, photographic evidence by the landlord to show damage to the kitchen flooring at the end of the tenancy, and in the absence of evidence form the landlord to show the age and condition of the kitchen flooring at the start of the tenancy, I find the landlord has not demonstrated that she suffered a loss of $698.73 due to actions of the tenant. Therefore, I dismiss this portion of the landlord's claim.

Unpaid rent

Under the Act, a tenant must give the landlord one full month of written notice to end a periodic tenancy. The parties were in dispute as to whether the tenant gave the landlord a notice to end tenancy. The tenant provided a copy of a notice to end tenancy she wrote; however, the landlord denied receiving the notice.

A tenant must serve documents upon a landlord using one of the methods of service provided under section 88 of the Act. Regular mail is an acceptable method of service for a notice to end tenancy under section 88(c) which provides for service:

> (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> [my emphasis provided]

With respect to this issue, I must determine: (i) is the landlord's office address an "address at which the landlord carries on business as a landlord" and (ii) whether the tenant sent a notice to end tenancy to the landlord.

Under the Act, the landlord is required to include the landlord's serve address in the tenancy agreement. One of the many reasons for requiring the landlord to provide such an address is so that the tenant has an address in which to deliver to the landlord a notice to end tenancy. In this case, the landlord did not produce a copy of a tenancy agreement and given the inconsistent testimony of the landlord with respect to the existence of a tenancy agreement I am inclined to accept the tenant's testimony that a written tenancy agreement was not prepared.

The landlord submitted that the tenant had been instructed to use the address of the landlord's legal counsel as a service address and pointed to the previous dispute resolution decision in support of this position. The previous dispute resolution decision reflects that beginning in January 2013 the tenant was instructed to communicate with the landlord's lawyer with respect to tenancy related matters. However, I note the Notice of Rent Increase signed by the landlord on March 20, 2014 provides a mailing address for the landlord that is different from her lawyer's office. Further, the tenant had used the landlord's office address in filing her Application for Dispute Resolution against the landlord, which the landlord received and no issues with respect to the landlord's service address were noted in the decision for that proceeding. Finally, I note that the painter had used the landlord's business name and the landlord's office email address in providing the estimate. Therefore, I find the landlord has provided various contact information for tenancy related matters and I accept that in using the landlord' office address the tenant used "an address at which the person carries on business as a landlord" in addressing the notice to end tenancy.

Having accepted that the tenant used an address for the landlord that complies with section 88, I proceed to consider whether I am satisfied the tenant sent the notice to end tenancy to the landlord. While it is possible the tenant sent the notice and the landlord did not receive it due to a service issue with Canada Post, I find that scenario is unlikely and my decision upon what is more likely than not.

I have essentially been provided with disputed verbal testimony to consider and I find, upon hearing from both parties and considering all of the other evidence before me, that I find the tenant to be more credible and reliable than the landlord. I make this finding upon considering the following:

1. The landlord provided inconsistent testimony as to the existence of a tenancy agreement.
2. The landlord provided incomplete and misleading testimony that the carpeting in the rental unit was last installed in June 2010 despite evidence from the tenant and the invoice showing that only some of the carpeted rooms had new carpeting installed in June 2010.
3. The landlord testified that she started advertising the rental unit in mid-July 2014 after cleaning up the rental unit; yet, the invoices provided by the landlord indicate the rental unit had flooring installed on May 21, 2014. If the rental unit was painted on the interior I find it likely this would have been done before the new flooring was installed. Therefore, I find the landlord's testimony that the

rental unit was not in a condition to be shown until July 15, 2014 unsupported by the evidence she submitted.

4. The tenant was forthcoming and readily acknowledged that the rental unit was in need of additional cleaning, including dog hair and stains on the carpeting, she cut a small section of carpeting out, and that she had created holes in the walls by hanging pictures and installing shelves.
5. I found the landlord's claims for damage to be excessive and largely unsupported.

In light of the above, I accept the tenant's testimony that she sent the notice to end tenancy to the landlord on March 23, 2014. The notice to end tenancy dated March 22, 2014 that was provided as evidence is compliant with notice to end tenancy requirements and I find the tenant effectively ended the tenancy with sufficient notice. Therefore, I deny the landlord's claim for unpaid rent due to insufficient notice.

Filing fee

As the landlord had very limited success in her claims against the tenant, I make no award for recovery of the filing fee.

Monetary Order and Security Deposit

In recognition of the landlord's award, the landlord is provided a Monetary Order in the amount of $500.00 to serve and enforce.

Although I heard testimony from both parties with respect to whether the tenant paid a security deposit, the Act provides that I must resolve issues identified on the Application for Dispute Resolution before me. Since the landlord did not request authorization to retain a security deposit, as the landlord was of the position one was not paid, and the tenant did not file an Application for Dispute Resolution seeking return of a security deposit, the disposition of a security deposit was not an issue before me. Therefore, I make no finding, award or order with respect to the security deposit.

The parties remain at liberty to resolve the satisfaction of the Monetary Order provided to the landlord with this decision and disposition of the security deposit, if one was collected; however, if the parties cannot reach a mutually agreeable resolution, the tenant remains at liberty to file her own Application for Dispute Resolution to seek return of the security deposit within the time limit for doing so.

Conclusion

The landlord has been awarded compensation of $500.00 and the balance of the landlord's monetary claims against the tenant were dismissed. The landlord has been provided a Monetary Order in the amount of $500.00 to serve and enforce as necessary.

This decision does not include any finding, award or order with respect to a security deposit.

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: December 16, 2014

Residential Tenancy Branch