



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MNR, MND, MNDC, 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 repairs, and the filing fee. The tenant applied for a monetary order for the return of double the security and pet deposits and for the filing fee.

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.

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in the making of this decision. As this matter was conducted over 61 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Is the landlord entitled to a monetary order? Is the tenant entitled to the return of double the security and pet deposits?

Background and Evidence

The tenancy started on April 15, 2011. The monthly rent was \$1,700.00 due on the 15th of the month. Prior to moving in, the tenant paid a security deposit of \$850.00 and a pet deposit of \$200.00.

These parties attended a hearing on July 04, 2014 in response to an application by the tenant to dispute a notice to end tenancy and for an order directing the landlord to carry out repairs. The Arbitrator granted the landlord an order of possession.

Based on the day rent is due, the effective date of the end of tenancy was determined to be July 16, 2014. The tenant overstayed and moved out on July 20, 2014. A move out inspection was conducted on July 21, 2014 at which time the tenant handed over the keys to the landlord and provided the landlord with a forwarding address.

The move out inspection report indicated that there was some damage that the tenant was responsible for. The parties attempted to negotiate a settlement but were unsuccessful. On August 08, 2014, the tenant applied for the return of the deposits and also applied for the doubling provision that is triggered if the landlord has not returned the deposit or made a claim against it within the legislated 15 day timeframe.

On September 22, 2014, the landlord responded with an application of his own for rent, loss of income, cost of repairs and the filing fee.

The tenant stated that starting in December 2013; he informed the landlord that the kitchen faucet was leaking and that it sprayed hot water on the hand of the user. The tenant filed copies of correspondence between the parties On January 07, 2014; the landlord responded by email acknowledging the issue and agreed to fix it. In May 2014, the tenant informed the landlord of a broken stair inside the home which caused a child some injury. The landlord responded by email asking for details of the child's injury, the witnesses and the contact information for the parents of the child.

As of June 2014, the landlord had not fixed the faucet or the stair and the tenant went ahead and carried out repairs and deducted the cost of repairs from rent that was due on June 15, 2014. The landlord is claiming the return of this deduction in the amount of \$566.20.

The landlord stated that the tenant was given up to July 18 to move out and accordingly he scheduled a contractor to carry out some work inside the unit on July 19, 2014. The tenant moved out on July 21, 2014 and therefore the work could not be carried out as scheduled. The landlord stated that he started advertising the availability of the unit online on July 21, 2014, but did not provide any evidence to support his testimony. The landlord also stated that he posted a lawn sign indicating that the unit was available for rent. The tenant stated that he passed by the house everyday on his way to drop his children to school and he only saw the lawn sign after the middle of August.

The landlord stated that due to the delay he was unable to find a tenant for August 01 or August 15 and is claiming the loss of income in the amount of one month's rent. The landlord stated that a new tenant was found for September 01, 2014 and later changed it to October 01, 2014.

Both parties agreed to the amount that the tenant owed for overstaying and utilities.

The landlord stated that the carpet in the lower level was heavily stained and he rented a steam machine to clean the carpet. He was unable to remove the stains and therefore had to replace the carpet. The landlord is claiming the cost of renting the steamer and for the cost of replacing the carpet. The carpet was replaced on September 22, 2014. The landlord was unable to provide information on the age of the carpet. He stated that he purchased the home in April 2002 and the carpet was already installed. The landlord stated that he has not replaced the carpet since then.

The landlord stated that he had to hire a maid to clean and provided a receipt in the amount of \$178.24 for cleaning done on August 13, 2014.

The landlord stated that the stainless steel refrigerator was about six years old and in good condition. At the end of the tenancy, the outer surface was dented. The appliance is in good working condition. The landlord has applied for the cost of replacing the refrigerator as the dent cannot be fixed. The landlord has not yet replaced the refrigerator but has filed a quotation of the cost to do so.

The landlord also stated that the tenant broke the cover of a light in the kitchen and is claiming the cost of replacing it. The tenant stated that the landlord broke the cover himself while he repaired the light. The light is approximately 10 years old.

The landlord is claiming the following:

1.	Cost of repair deducted off rent	\$566.20
2.	Unpaid rent and utilities	\$628.22
3.	Loss of income	\$1,700.00
4.	Cleaning	\$178.24
5.	Rental of steam cleaner	\$42.14
6.	Replace carpet	\$709.59
7.	Replace refrigerator	\$671.99
8.	Replace kitchen light	\$132.00
9.	Filing fee	\$50.00
	Total	4,678.38

Analysis

Landlord's application:

1. Cost of repair deducted off rent - \$566.20

Based on the testimony of both parties, I find that the tenant informed the landlord about the leaking faucet in December of 2013 and about the broken stair on May 19, 2014. In addition a cracked stair was also noted in the move in inspection report. The landlord responded by agreeing to fix the faucet. The landlord requested information on the incident that occurred in May 2014 but did not make arrangements to repair the broken stairs.

In June 2014 the tenant carried out the repairs and provided a receipt for the expense he incurred to do so. Since the tenant made a deduction off rent without the approval of the landlord, the landlord is applying for the cost of repairs.

Sec 32 Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant.

In this case, I find that the landlord did not repair the leaking faucet or the two damaged stairs in a timely manner. The repairs were required to prevent bodily injury to the occupants of the home. The landlord argued that the damage to the faucet was deliberate and due to negligence on the part of the tenant. The landlord also provided a letter from a plumber to confirm his testimony. The tenant denied causing deliberate damage to the faucet. Based on a balance of probabilities, I find that it is more likely than not that the tenant did not cause deliberate damage to the faucet and that the damage to the faucet was from wear and tear.

Even though the tenant went ahead and carried out the repairs and made a deduction off rent, without approval from the landlord or an order from the Residential Tenancy Branch, I find that the landlord is responsible for the cost of the repairs which should have been carried out prior to any incidents of injury. Accordingly the landlord's claim to be reimbursed for repairs to the rental unit which are his responsibility is dismissed.

2. Unpaid rent and utilities - \$628.22

The parties agreed that the tenant owed \$560.61 for outstanding rent (\$329.08), gas (\$51.10) and Hydro (\$129.33 +\$51.10).

3. Loss of income - \$1,700.00

The landlord was granted an order of possession on July 04, 2014. The landlord stated that he started advertising for a new tenant on July 22, 2014 on line, but did not provide any documentary evidence to support his testimony. The landlord painted and cleaned the unit and recoated the tub in August and replaced carpet on September 22. The landlord contradicted his own testimony regarding the date the new tenant moved in. During the hearing he confirmed that the new tenant moved in on October 01, 2014.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non –compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

Based on the evidence and testimony of both parties, I find that the landlord had the unit professionally cleaned on August 13, and had the unit painted on August 15, 2014. The landlord testified that he replaced the carpet on September 22, 2014 and found a new renter for October 01, 2014.

Since the tenant moved out on July 21, 2014, the landlord had opportunity to paint and clean the unit prior to August 01, 2014, thereby making the unit available for a new tenant on August 01, 2014. The landlord had the unit fully ready for a new renter only on September 22, 2014. Accordingly I find that the landlord did not do whatever is reasonable to minimize the loss and therefore the landlord's application for loss of income is dismissed.

4. Cleaning - \$178.24

The tenant moved out on July 21, 2014. Based on the testimony and evidence filed by both parties, I find as follows:

- a) Other than a dirty carpet, the move out inspection report does not indicate that the unit was left in an unclean condition.
- b) The receipt filed by the landlord indicates that the unit was professionally cleaned on August 13, 2014, which is approximately three weeks after the tenant moved out.
- c) The tenant stated that he cleaned the unit prior to moving out.

Based on the above, I find that the landlord's claim for the cost of cleaning is dismissed.

5. Rental of Steam cleaner - \$42.14

The tenant agreed to cover the cost of the rental of the steam cleaner. Accordingly, I grant the landlord his claim of \$42.14.

6. Replace carpet - \$709.59

Section 40 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 carpet is 10 years. The landlord stated that he purchased the home in 2002 and had not replaced the carpet. Therefore by the end of the tenancy, the carpet had outlived its useful life of 10 years and would have had to be replaced anyways at the landlord's cost. Accordingly the landlord's claim for the cost of replacing the carpet is dismissed.

7. Replace refrigerator - \$671.99

The landlord filed photographs of the refrigerator that show a dent in the stainless steel surface. The landlord stated that this dent could not be repaired and provided a quote to replace the refrigerator. The landlord stated that the refrigerator is in good working condition. The refrigerator has not been replaced by the landlord and is currently in use by the new tenant. Therefore I find that the refrigerator is functional and the damage is cosmetic. The landlord has filed a quotation for the replacement of the refrigerator. I find that while the surface has a dent in it, this damage does not affect its functionality. However, the dent has reduced the value of the refrigerator and I will award the landlord an arbitrary amount towards this loss of value.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Based on the estimate filed by the landlord, the age of the refrigerator (6 years) and the useful life of a refrigerator as per *Residential Tenancy Policy Guideline #37* (15 years), I award the landlord a minimal award of \$100.00.

8. Replace kitchen light - \$132.00

Based on the testimony of both parties, I am unable to determine who caused the crack to the cover of the kitchen light. Both parties blamed the other. The landlord filed evidence to show what a similar light cover would cost to replace but did not provide an invoice or receipt to show that he had incurred this expense.

Residential Tenancy Policy Guideline #1 addresses Landlord & Tenant – Responsibility for Residential Premises and provides that the tenant is not responsible for reasonable

wear and tear to the rental unit. Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

The landlord stated that the fixture was approximately 10 years old. Based on the above, I find on a balance of probabilities that it is more likely than not that the crack to the cover of the lighting fixture was a result of wear and tear and not from negligence. Accordingly the landlord's claim is dismissed.

9. Filing fee - \$50.00

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

Overall the landlord has established a claim as follows:

1.	Cost of repair deducted off rent	\$0.00
2.	Unpaid rent and utilities	\$560.61
3.	Loss of income	\$0.00
4.	Cleaning	\$0.00
5.	Rental of steam cleaner	\$42.14
6.	Replace carpet	\$0.00
7.	Replace refrigerator	\$100.00
8.	Replace kitchen light	\$0.00
9.	Filing fee	\$50.00
	Total	\$752.75

Tenant's application:

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.

In this case, the tenant gave the landlord his forwarding address in writing on July 21, 2014. I find that 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 and is

therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposit. The landlord currently holds \$850.00 for a security deposit and \$200.00 for a pet deposit. Accordingly, the landlord must return \$2,100.00 to the tenant. Since the tenant has proven his case he is also entitled to the recovery of the filing fee of \$50.00. Overall the tenant has established a claim of \$2,150.00.

Conclusion

The landlord has established a claim of \$752.75 and the tenant has established a claim of \$2,150. 00. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of **\$1,397.25**, which consists of difference between the established claims of both parties. This order may be filed in the Small Claims Court and enforced 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: February 27, 2015

Residential Tenancy Branch

