



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF; MNDC, MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the Act for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

The tenants did not attend this hearing, although I waited until 1356 in order to enable the tenants to connect with this teleconference hearing scheduled for 1330. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that she served the tenants with the dispute resolution package (including all evidence before me) on 20 January 2015 by registered mail. The landlord provided me with a Canada Post tracking number that showed the same. On the basis of this evidence, I am satisfied that the tenants were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Preliminary Issue – Disposition of Tenants' Application

Rule 10.1 of the Rules of Procedure provides that:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the tenants and in the absence of the tenants' participation in this hearing, I order the tenants' application dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 October 2013 and ended 4 January 2015. The tenants and landlord entered into a written tenancy agreement on 1 October 2013. Monthly rent of \$1,300.00 was due before the first of the month. The landlord testified that she continues to hold the tenants' security deposit in the amount of \$450.00, which was paid at the beginning of the tenancy.

The landlord testified that the tenants left the stove very dirty. The landlord testified that the tenants had "punched in" the control panel for the oven. The landlord provided me with photographs of the oven that confirm her testimony: The control panel portion of the oven is shown displaced from its position. The landlord testified that the oven was not repairable. The landlord testified that the oven that was damaged was purchased in 2013. The landlord testified that she replaced the oven with the same type as the one that was damaged.

The landlord provided me with a receipt from a department store. The receipt was dated 1 December 2014. That receipt shows that the replacement oven was \$449.25.

The landlord testified that the tenants had seven cats living in the rental unit. The landlord testified that the cats' urine stained the carpet and underlay. The landlord provided me with several photographs that show carpet staining. The landlord testified that a specialist told her that the urine was impossible to clean and that the only solution was to replace the flooring. The landlord testified that the carpets were new as of 2013. The landlord testified that she was provided an estimate of \$2,300.00 to replace the carpet and underlay. The landlord determined that this was too expensive given the uncertainty of being able to collect from the tenants and decided to replace the flooring with linoleum.

The landlord provided me with two receipts from a flooring company: one for material and one for labour. The receipts are dated 13 November 2014. The two receipts total \$1,187.97.

The landlord testified that the tenants' paid \$375.00 towards November's rent. The landlord testified that she did not receive rent for December or January; however, the landlord testified that she was only claiming for the portion of November's rent that remains unpaid, that is \$925.00.

The landlord provided me with a written statement from her maintenance person. The maintenance person makes the following relevant statements:

The control panel on the new stove had been smashed...

It looks like the residence has never been cleaned.

The landlord provided me with a written statement from her new tenant. The new tenant notes that the stove had the "computer punched in".

The landlord provided me with a copy of the move-in inspection report that was completed 1 October 2013. There is nothing remarkable about the report.

The landlord provided evidence of other damage to the property, but as this damage was not claimed for on the original application, it is not relevant.

The landlord seeks a monetary order in the amount of \$2,562.22:

Item	Amount
Floor replacement	\$1,187.97
Stove replacement	449.25
November rent arrears	925.00
Total Monetary Order	\$2,562.22

Analysis

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

I find that the landlord has proven, on a balance of probabilities, that the tenants have caused damage to the stove by causing the control panel to become displaced and damage to the carpets by allowing their cats to urinate on the flooring. Further, there is no evidence that the landlord did not act in such a way to mitigate her losses.

Residential Tenancy Policy Guideline "40. Useful Life of Building Elements" provides me with direction in determining damage to capital property. This guideline sets out that the useful life expectancy of carpet is ten years and the useful life expectancy of a stove is fifteen years.

The landlord has testified that both the carpet and stove were approximately fourteen months old. I am exercising my discretion to award the full amount of the cost of the replacement flooring, as the landlord chose to replace the flooring with a less costly alternative. The landlord is entitled to recover \$1,187.97 from the tenants. The life expectancy of the stove is 180 months. The tenants' actions caused the landlord to lose 92% of the useful life of the stove. Accordingly, the landlord is entitled to recover \$414.31 for the cost of replacing the stove prematurely.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord has provided sworn and uncontested testimony that the tenants failed to pay \$925.00 of November's rent. As the tenancy did not end until 4 January 2015, the landlord was entitled to full rent for November. The landlord has proven her entitlement to \$925.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

The landlord testified that she continued to hold the tenants' \$450.00 security deposit, plus interest, paid on 1 October 2013. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Conclusion

The tenants' application is dismissed without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$2,127.28 under the following terms:

Item	Amount
Unpaid November Rent	\$925.00
Damage to Carpet	1,187.97
Damage to Oven	414.31
Recovery of Filing Fee for this Application	50.00
Less Retained Security Deposit	-450.00
Total Monetary Order	\$2,127.28

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 17, 2015

Residential Tenancy Branch

