



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for damages to the unit and to recover the filing fee from the tenant.

The landlord’s agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified that the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on November 4, 2014, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord’s agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?
Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The tenancy began on September 1, 2012. Rent payable is established by BC Housing. No security deposit was paid by the tenant .

A move-in condition inspection was completed with the tenant. The move-out condition inspection was completed in the absent of the tenant, as the rental unit was determined abandoned. Filed in evidence is a copy of the move-in condition inspection report and the move-out condition inspection report.

At the outset of the hearing the landlord's agent withdrew their claim for the cost of the flooring.

The landlord claims as follows:

a.	Unpaid rent for December 2014, January 2015	\$1,150.00
b.	Garbage removal and disposal	\$ 417.77
c.	Cleaning	\$ 120.00
d.	Carpet Cleaning	\$ 99.75
e.	Painting	\$ 894.10
f.	Filing fee	\$ 50.00
	Total claimed	\$2,731.62

Unpaid rent for December 2014 and January 2015

The landlord's agent testified that in late December 2014, they discovered that the tenant had abandoned the rental unit. The agent stated that the tenant did not pay any rent for December 2014 and did not inform the landlord that they were leaving. The landlord seeks to recover unpaid rent for December 2014, in the amount of \$575.00.

The landlord's agent testified that because the tenant did not give any notice to end the tenancy BC Housing was unable to find another renter for any portion of January 2015. The landlord seeks to recover loss of rent for January 2015, in the amount of \$575.00.

Garbage removal and disposal

The landlord's agent testified that the tenant left a couch, large chair, mattress, and other items behind, which had to be removed and disposed. The agent stated that the total cost for this service was \$417.77. Filed in evidence are photographs and a copy of the invoice, which support the landlord's claim.

Cleaning

The landlord's agent testified that the tenant made no attempt to clean the rental unit prior to vacating the premises and all the cupboards, floors, and appliances had to be cleaned. The agent stated that their staff spent 12 hours cleaning; however, they are only seeking compensation for 6 hours as these hours are what were required to bring the unit to a reasonable cleaning standard. The other 6 hours are what their staff would normally do before a new renter moved in to rental unit to ensure a higher standard of cleaning. The agent stated that they seek to recover six hours at the rate of \$20.00 per hour. The landlord seeks to recover cleaning costs in the amount of \$120.00.

Carpet Cleaning

The landlord's agent testified that the tenant did not have the carpets shampooed or steam cleaned at the end of the tenancy. The landlord seeks to recover the amount of \$99.75. Filed in evidence is a receipt for carpet cleaning.

Painting

The landlord's agent testified that the rental unit was freshly painted at the start of the tenancy. The agent stated that they were required to repaint the rental unit as the walls were scratched and dent, which was beyond normal wear and tear. The agent stated the cost to repaint the rental unit was \$1,340.90; however, they have depreciated the value in consideration of the Residential Tenancy Branch Policy Guidelines. The landlord seeks to recover the depreciated value for painting in the amount of \$894.10.

The move-in condition inspection report filed in evidence support that the rental unit was freshly painted at the start of the tenancy. The move-out condition inspection report filed in evidence support the rental unit required painting at the end of the tenancy. Filed in evidence is an invoice for painting.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;

- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Unpaid rent for December 2014 and January 2015

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

...

The evidence of the landlord's agent was the tenant did not pay any rent owed for December 2014. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for December 2014, in the amount of **\$575.00**.

How to end a tenancy is defined in Part 4 of the Act.

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

...

In this case, the evidence of the landlord's agent was the tenant did not give any notice to end the tenancy and it was in late December 2014, when they discovered that the tenant had abandoned the rental unit. Under section 45(1) of the Act the tenant was required to provide the landlord with at least one month notice to end the tenancy. I find that the tenant has breached the Act, when they vacated the rental premises without informing or giving the landlord proper notice under the Act.

Since the tenant failed to comply with the Act by not given the landlord any notice to end the tenancy. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy. Therefore, I find the landlord is entitled to recover loss of rent for January 2015, in the amount of **\$575.00**.

Damages

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Garbage removal and disposal

I accept the undisputed testimony of the landlord's agent that the tenant left furniture and other items in the rental unit when they vacated the premises. This is supported by the photographic evidence. I find the tenant breached the Act, when they failed to remove all their personal items from the rental unit and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of garbage removal and disposal in the amount of **\$417.77**.

Cleaning

I accept the undisputed testimony of the landlord's agent that the tenant failed to leave the rental unit reasonably clean at the end of the tenancy. This is support by the

photographic evidence. I find the tenant breached the Act, when they failed to leave the rental unit reasonable cleaned at the end of the tenancy and this caused losses to the landlord. I find the amount claimed by the landlord to be reasonable. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount of **\$120.00**.

Carpet Cleaning

I accept the undisputed testimony of the landlord's agent that the tenant did not have the carpets cleaned at the end of the tenancy.

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is generally expected to clean the carpets if vacating after a tenancy of one year.

As this tenancy exceeded one year, I find the tenant breached the Act, when they failed to have the carpets cleaned at the end of the tenancy and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost for cleaning the carpets in the amount of **\$99.75**.

Painting

I accept the undisputed testimony of the landlord's agent that the rental unit was freshly painted at the start of the tenancy and was required to be repainted at the end of the tenancy, due to scratches and dents in the walls. This is support by the move-in and move-out condition inspection reports. I find the tenant breached the Act when they failed to repair the damage that they caused to the walls, which required the rental unit to be repainted and this caused losses to the landlord.

Under the Residential Tenancy Policy Guideline 40, which defines the useful life of building elements, if the tenant damaged an item, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement.

In this case, the landlord paid the amount of \$1,340.94, to have the rental unit repainted and the landlord has calculated the tenant's portion that they are responsible to pay. I have reviewed the landlord's calculation and I have determined the amount calculated is corrected based on the policy guideline. As I have determined the useful life of paint to be four years and the paint was 16 months old at the end of the tenancy. Therefore, I find the landlord is entitled to recover the depreciated value of painting in the amount of **\$894.10**.

I find that the landlord has established a total monetary claim of **\$2,731.62** comprised of the above described amounts and the \$50.00 fee paid for this application. I grant the landlord an order under section 67 of the Act. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order in the above described amount.

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: May 15, 2015

Residential Tenancy Branch

