



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, 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; 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 and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, although the tenant's three page evidence package was not received by the Arbitrator prior to the hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

The parties agreed that this tenancy started on January 01, 1990. Rent for this unit was \$900.00 per month due on the last day of each month in arrears. There was no written tenancy agreement between the parties and no security deposit was asked for at the start of the tenancy. There were three tenants living in the unit as a family.

The landlord testified that the tenant was repeatedly late paying rent and had caused damage to the unit. The tenant was served with a One Month Notice to End Tenancy for cause in person on October 31, 2012. The landlord gave the tenants an extra month to move out and the effective date of the notice was December 31, 2012. The landlord testified that the tenants vacated the unit without notice on November 23, 2012. The tenants did not provide a forwarding address and it has taken the landlord nearly two years to locate the tenants in order to serve them with the hearing documents.

The landlord testified that the tenants failed to pay rent for November, 2012 when it was due at the end of November. The tenants had paid rent on October 31, 2012 and this was applied to October's rent. The landlord seeks to recover the rent for November, 2012 of \$900.00. The landlord testified that the tenants left the unit in a condition that required many repairs. This rendered the unit un-rentable for December, 2012 and the landlord seeks to recover a loss of rent for December, 2012 of \$900.00.

The landlord testified at the start of the tenancy the unit was brand new. The landlord did not complete a move in condition inspection report at that time. The landlord found the following damage in the unit:

Holes in the walls in the living room, hallway and bedrooms; the walls had to be repaired and repainted; holes in the wall between two bedrooms in the closet where wires had been run between the rooms; 1 bedroom carpet had cigarette burns and cuts and this had to be replaced; a bedroom light was damaged and left hanging from the ceiling; three window blinds were missing; there were four holes in a bedroom ceiling which had to be repaired and repainted; the tenants did not return the keys to the unit and the front door lock, the entrance lock, two bedroom locks and a sliding door lock all

had to be replaced; the tenants removed the living room light and replaced it with a fanlight. The original light had to be refitted at the end of the tenancy; the hallway door had been removed and when the tenants returned it, it had a hole in it; the closet doors were dented; the tenants replaced the landlord's new kitchen faucet with an older one. This was not fitted properly and caused water to go under the taps and soak into the countertop which caused damage to the countertop. The tenants did replace the kitchen faucet at the end of the tenancy but the landlord had to pay to have this fitted to the new countertop; The carpets in the unit were left in a filthy condition; the tenants left an old freezer at the unit without the landlord's permission and this had to be stored then removed and disposed of.

The landlord testified that the total bill for the labour completed at the property came to \$1,425.00. The landlord also seeks to recover the amounts paid to: replace the carpet in the bedroom at \$667.52, to have the other carpets cleaned at \$165.00; to replace three window blinds at \$123.37 and to replace a bedroom light at \$50.75; for a can of paint at \$31.99; to replace two entrance locks at \$106.33 and five interior locks at \$134.99; to replace the kitchen countertop at \$448.00; storage for the tenants' freezer at \$1.25 a day for November and December at \$76.25; and to remove and dispose of the freezer at \$150.00. The landlord has provided a copy of the invoice for the repair work, receipts for the replacement items; an itemized list of the work completed; a list of the additional work completed but not charged to the tenants; and a list showing the items the tenants did return or replace. Along with this the landlord has provided a number of photographs showing the damaged areas of the property.

The landlord testified that his claim exceeded \$5,000.00; however, the landlord has limited his claim to \$5,000.00.

The tenant testified that the landlord gave the tenants two months to vacate the rental unit and they moved out ahead of time on November 23, 2012. The tenant testified that rent was paid for November, 2012 on October 31, 2012 as agreed. The tenant agreed that the rent was always paid late but testified that it was all paid and the landlord and

tenants had a mutual understanding concerning the rent. The tenant disputed the landlord's claim to recover unpaid rent for November, 2012 and a loss of rent for December, 2012.

The tenant disputed the landlord's claim for damages. The tenant testified that they had lived in the unit for 22 years. Any damage was caused through normal wear and tear. The carpets had never been changed for 22 years and would be showing signs of wear and tear. The holes in the closet were made to run computer wires and is the size of a wire. The tenant testified that the counter top was damaged because the landlord's faucet was leaking. The tenants replaced the landlord's original faucet and this was fitted correctly. Any damage is normal wear and tear to the counter top. The tenant agreed that they did not clean the carpets at the end of the tenancy.

The tenant testified that she did not see any damage to the bedroom light and the original blinds were replaced due to wear and tear and these were given to the landlord. The tenant disputed that there were burns or cuts in the bedroom carpets and there were no holes in the bedroom ceiling. The tenant testified that the keys were returned to the landlord. One was left on the kitchen counter and the others were all put in the mailbox and the landlord was informed of this.

The tenant agreed that they did replace the living room light with a fan light and testified that the landlord replaced this light himself at the end of the tenancy and did not pay someone to do it. The tenant testified that she gave the freezer to the landlord when they moved out as the landlord's wife wanted to keep it.

The landlord asked the tenant if she said the freezer was in working order yet the picture taken of the freezer shows it is rusty and has caused damage to the floor. The tenant responded that it was in good running order. The landlord asked the tenant why the tenant did not return the keys directly to the landlord and did the tenant speak to the landlord. The tenant responded that the landlord was not available so the keys were left at the unit. The landlord asked the tenant why they replaced a new kitchen faucet. The

tenant responded that there was something wrong with it so they replaced it. The landlord asked the tenant how the ceiling and light could have been damaged through normal wear and tear. The tenant responded that there were no holes in the ceiling.

The landlord testified that he had informed the tenants that they were not to do any repairs or alterations and to inform the landlord if anything needed to be done in the unit. The tenants did not have permission to put wires in, change lights or faucets or remove doors.

The tenant declined the opportunity to cross examine the landlord.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for damage to the unit, site or 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.

The landlord testified that this was a new unit at the start of the tenancy in 1990. I must therefore keep in mind that there would be some normal wear and tear that occurred in a unit over a period of 22 years. However, I must also take into account the damage caused that could not be attributed to normal wear and tear such as damage to the ceiling, the lights, the removal of doors, holes in closet doors and one other door. The damage to one bedroom carpet, the removal of window blinds, the removal of the kitchen faucet without the landlord's permission, the condition the carpets were left in at the end of the tenancy, and the freezer left at the property without the landlord's permission.

Taken these things into consideration I find the repairs and repainting would likely be warranted through normal wear and tear after a tenancy of 22 years. A landlord is required to repaint a rental unit at regular intervals throughout a tenancy and no mention was made at the hearing as to when the unit was last painted. This section of the landlord's claim is therefore dismissed.

With regard to the costs to replace the bedroom carpet; While I am satisfied there is sufficient evidence to show that the carpet was damaged through the tenant's actions or neglect I must consider the life of the carpet. The landlord testified that it was new in 1990. This makes the carpet 22 years old. The useful life of a carpet is considered to be 10 years in accordance with the Residential Tenancy Policy Guidelines # 40. I therefore find the life of the carpet far exceeded its useful life and the landlord would not be entitled to recover costs to replace the carpet. This section of the landlord's claim is dismissed.

With regard to carpet cleaning; I am satisfied that the carpets were left in a filthy condition at the end of the tenancy. The Policy Guidelines #1 states, in part, that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable

standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy. Consequently, the tenant did not dispute that the carpets had not been cleaned at the end of the tenancy and it appears that they had not been periodically cleaned during the tenancy; I therefore uphold the landlord's claim for carpet cleaning of **\$165.00.**

I am satisfied that the bedroom light was damaged and had to be replaced at a cost of \$50.75. However the useful life of light fixtures is considered to be 15 years. As this light fixture was 22 years old I find it exceeded its useful life and therefore the landlord's claim to replace it is dismissed.

With regard to the landlord's claim for the replacement kitchen countertop; I have reviewed the photographic evidence that shows the countertop suffered damage around the sink area. The landlord testified this was caused because the tenants replaced the original faucet without the landlord's permission and did not fit the faucet correctly which caused water to leak under the tap and damage the counter top. The tenant agreed they did replace the faucet. The damage to the countertop is substantial and I am satisfied that this damage may not have occurred if the tenants had not replaced the original faucet. The tenants should have notified the landlord if there was a problem with the original faucet and not taken it upon themselves to replace it; however, the useful life of a kitchen countertop is considered to be 25 years. This countertop was 22 years old. I therefore must reduce the landlord's claim to take into account the depreciation of the countertop over its life span. Consequently, I find the landlord is entitled to recover the amount of **\$53.76** for the countertop.

With regard to the landlord's claim for replacement locks; the parties' testimony is contradictory regarding the return of the keys; however, I find the landlord's testimony more compelling as if the keys had been returned as stated by the tenant the landlord

would not have had to change the external and internal locks. I am therefore satisfied that the tenant did not return the keys to the unit at the end of the tenancy and I uphold the landlord's claim for replacement locks to a total amount of **\$241.32**.

With regard to the landlord's claim for window blinds; the tenant testified that she had replaced the blinds; however, the tenant has insufficient evidence showing this occurred. The landlord testified that there were three blinds missing. I am satisfied from the evidence presented that there were three blinds missing; however, the useful life of blinds is 10 years. As the blinds were 22 years old they far exceeded their useful life and consequently this section of the landlord's claim is dismissed.

With regard to the storage of the freezer; the tenant must remove all her belongings from the unit unless the tenant has permission from the landlord to leave any items in the unit. The tenant testified that the landlord's wife wanted the freezer; however, the landlord's wife was not the landlord and the tenant should not have sought her permission to leave the freezer. When items are abandoned at a rental unit the landlord is entitled to seek storage costs for the items. The landlord seeks to recover \$1.25 a day for storage to a total amount of \$76.25 for November and December; however, this equates to 61 days of storage. The tenant vacated the rental unit on November 23, 2012; consequently the landlord is only entitled to charge storage since that date until the freezer was removed at the end of December. I therefore reduce the landlord's claim for storage costs to \$1.25 for 38 days to an amount of **\$47.50**.

With regard to the landlord's claim for labour costs to paint and repair the unit; the landlord has provided a detailed invoice from a contractor engaged to do the work in the unit; however, this work has not been itemized with separate costs for each section of the work completed. The total invoice is for \$1,425.00. As I have determined that some of the repair work must be regarded as normal wear and tear due to the length of the tenancy I will make a determination concerning the remainder of the costs. I therefore find the landlord is entitled to recover labour costs for replacing the exterior and interior locks; to remove the fan light and replace with the landlord's light; to remove and

replace the hallway door; to repair holes in the closet doors, bedroom door and bedroom ceiling; to paint the new hallway door; to remove and replace the kitchen sink and faucet; and to dispose of the freezer. It is therefore my decision that the landlord is entitled to an amount of **\$1,025.00** for these labour costs. The reminder of the labour costs of \$400.00 has been deducted for labour costs incurred to repair and paint the walls and ceiling and to remove and replace the bedroom light.

With regard to the landlord's claim for unpaid rent for November, 2012; the landlord has provided evidence showing rent was late or unpaid on many occasions and a payment plan was put into place which enabled the tenants to catch up with the rent arrears. The tenant testified that the rent paid on October 31, 2012 was for November, 2012; the landlord testified that rent paid on the last day of the month is for that month and not the preceding month. There is no tenancy agreement in place to show the day of the month that rent is due and no evidence to show which day the tenant had paid the rent and whether or not it was paid in advance or for the current month. When one person's testimony contradicts that of the other then the person making the claim has the burden of proof. While both parties' explanations are equally probable without corroborating evidence to prove whether rent is paid in advance or arrears then I must find that it is one person's word against the other and the burden of proof has not been met. I therefore dismiss the landlord's claim for unpaid rent for November, 2012.

With regard to the landlord's claim for a loss of rent for December, 2012; I refer the parties to the Residential Tenancy Policy Guidelines # 3 which states, in part, that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner. With this guideline in mind I have considered the evidence provided showing the damage caused to the unit. I find there is sufficient evidence to show that the unit was not left in a manner conducive for re-rental through the actions or neglect of the tenant and I therefore uphold the landlord's claim to recover a loss of rent for December, 2012 of **\$900.00**.

As the landlords' claim has merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Carpet cleaning	\$165.00
Counter top	\$53.76
New locks	\$241.32
Storage for freezer	\$47.50
Labour costs	\$1,025.00
Loss of rent for December, 2012	\$900.00
Filing fee	\$50.00
Total amount due to the landlord	\$2,482.58

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$2,482.58**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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 27, 2015

Residential Tenancy Branch

