



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the unit; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant via registered mail on January 7, 2015 at the address where the tenant resides. The landlord was asked repeated as to how he determined where the tenant moved as the tenant had not provided a forwarding address. The landlord was reluctant to answer my enquiries and provided evasive answers; however, the landlord orally provided the registered mail tracking number and a search of the registered mail tracking number showed that the tenant signed for the registered mail. As it appears the tenant signed for the registered mail I was satisfied the tenant was notified of this proceeding and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for the amounts claimed?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced May 1, 2008 and the tenant paid a security deposit of \$337.00. At the commencement of the tenancy the monthly rent was \$675.00. The landlord testified that the rent increased to \$727.00 by way of two Notices of Rent Increase effective October 1, 2010 and February 1, 2012.

The tenant gave the landlord a notice to end tenancy dated October 31, 2014 with a stated effective date of November 14, 2014. The landlord responded on November 1, 2014 by informing the tenant his notice to end tenancy was invalid and that he had to

pay the full amount of rent for November 2014. The landlord submitted that the tenant failed to pay any rent for November 2014 and a 10 Day Notice to End Tenancy for Unpaid Rent was served upon the tenant on November 2, 2014 with a stated effective date of November 12, 2014. The landlord testified that the tenant did not pay the outstanding rent for November 2014 and vacated the rental unit on November 14, 2014. The landlord seeks to recover unpaid rent for the month of November and December 2014.

On the last day of the tenancy the manager met with the tenant at the door of the rental unit. The manager testified that the tenant stated that he did not want to participate in a move-out inspection to avoid confrontation with the landlord. The manager testified that the tenant handed her the keys and then both she and the tenant walked away from the unit. Subsequently, the manager and landlord went through the unit together to inspect the unit and pictures were taken on November 15, 2014.

The landlord described the condition of the rental unit as being very dirty and the tenant failed to remove his abandoned property.

The landlord seeks \$694.00 for cleaning, carpet cleaning, garbage removal and labour to repaint the unit. The landlord prepared an itemized list of amounts used to calculate this sum and this total includes amounts paid to others and the landlord's own time. Other evidence included for this portion of the claim included the cancelled cheque dated written to the manager on November 25, 2014 in the amount of \$100.00 for cleaning of the rental unit as noted in the memo line of the cheque; and, the front side of a cheque written to the landlord's wife on December 19, 2014 in the amount \$150.00 with nothing noted on the memo line. The landlord also included a receipt for carpet cleaning in the amount of \$94.50 and a cancelled cheque written on November 25, 2014 in the amount of \$200.00 for labour to have the unit repainted. The landlord did not charge for the paint materials.

The landlord also provided several photographs taken of the unit on November 15, 2014. The photographs depict a unit with abandoned property including dishes, toiletries, food, cleaning supplies, books and papers, and a variety of other items left strewn about. The photographs also depict debris on the carpets and on the sundeck, mould on the carpets, mould on the bathroom tiles, and a dirty oven.

In addition, the landlord seeks to recover \$260.00 for repairs he made including \$100.00 to fill and sand holes in the walls; \$60.00 replace four broken tiles in the kitchen; and, \$100.00 to mop up water damage in the unit below the rental unit. The landlord did not provide any photographs of broken tiles. The landlord submitted that when the tenant

left the unit he left the toilet running and the water sprayed out of the toilet tank on to the floor which eventually made its way to the unit below. The water sprayed until the manager and landlord returned to the unit the following day.

In support of the landlord's claims against the tenant, the landlord also provided copies of: a letter addressed to the tenant September 22, 2008 advising the tenant the condition of his unit was unacceptable; the tenant's notice to end tenancy dated October 31, 2014; the 10 Day Notice; and, condition inspection reports.

I note that there is a section on the condition inspection report entitled "other damage (check in)" and it appears as though something had been written in that section but it was obscured on the copy provided as evidence for this proceeding.

I also note that the 10 Day Notice provided as evidence indicates that the rent outstanding for November 2014 was \$750.00 (plus \$25.00 for a late fee) despite the landlord's testimony that the monthly rent was \$727.00.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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.

In this case, I have significant concerns about the landlord's credibility considering: the landlord's evasive responses to my enquiries regarding locating the tenant after he moved out of the rental unit; the inclusion of the front side of a cheque written to his wife in support of the cleaning claim when other cheques provided as evidence included the back side of the cheque and a completed memo line; the inconsistency between the amount of rent indicated on the 10 Day Notice and the landlord's testimony; and, the obscured information on the move-in inspection report. Accordingly, I have only relied upon the landlord's submissions where they are supported by other corroborating

evidence, such as photographs and receipts or cancelled cheques, or where found to be otherwise reasonable.

Under section 26 of the Act, a tenant is required to pay rent when due under the terms of tenancy and as provided by the Act. In this case, I find the tenancy came to an end in November 2014 based upon either of the notices to end tenancy given by the parties and the fact the tenant vacated the rental unit in November 2014. Therefore, I find the landlord entitled to rent for the month of November 2014. Since the landlord testified that the monthly rent is \$727.00 which is less than the amount indicated on the 10 Day Notice, I award the landlord rent in the lesser amount of \$727.00.

Under the Act, a tenant is required to leave a rental unit reasonably clean and vacant at the end of the tenancy. Upon review of the photographs, I find the tenant failed to leave the rental unit reasonably clean. Nor, did the tenant leave the unit vacant since he left abandoned property and garbage in the unit. As such, I find the landlord entitled to recover losses associated to cleaning and garbage removal. Given the extend of filth and clutter left in the unit, as evident in the photographs, and the carpet cleaning receipts, I accept that the losses associated to cleaning, carpet cleaning and garbage removal in the sum of \$474.00 is reasonable and I grant the landlord's request to recover this amount from the tenant.

With respect to the landlord's claims for painting and repairs, it is important to note that the Act specifically provides that reasonable wear and tear does not constitute damage. Furthermore, awards for damages are intended to be restorative. Accordingly, 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*.

I have made no award for the painting labour as the unit was likely due for painting given that Residential Tenancy Policy Guideline provides that the average useful life of interior paint is four years and that this tenancy was over six years in duration.

I have made no award to the landlord for filling and sanding holes in the walls as Residential Tenancy Policy Guideline 1 provides that it is expected that tenants will hang artwork and create small holes in the walls. Only where the holes are excessive or unreasonably large may the holes be considered damage. In the absence of any photographs of holes in the walls, I find I am not satisfied that there were excessive or very large holes in the walls. The landlord has also indicated that this claim included time to wash the walls prior to painting but I find the landlord did not provide a sufficient

breakdown so that I could apportion this claim to cleaning versus filling and sanding holes. Therefore, I have made no award to the landlord for filling, sanding or washing the walls.

I have made no award to the landlord for broken tiles as there were no photographs of broken tiles or any other evidence such as receipts for tiles or tile materials to corroborate his position that the tenant is responsible for broken tiles.

I make no award to the landlord for mopping up water in the lower suite. Although water may have been spraying from the toilet tank on the last day of tenancy, since a toilet is made up of mechanical parts subject to fail, I find there is insufficient evidence to point to this being a deliberate or negligent act on part of the tenant. Of further consideration is that the manager had the opportunity to secure the unit as the tenant was vacating the unit yet she chose to lock up the unit without inspecting it further so as to mitigate any such losses.

Finally, the landlord claimed for loss of rent for the month of December 2014; however, the landlord did not specify the reason for this request. In other words, I find I am uncertain as to whether the landlord seeking loss of rent due to the tenant's notice to end tenancy that the landlord found to be "invalid" or due to the condition in which the tenant left the rental unit. In making a claim, the applicant is to provide sufficient particulars as to the reason for their claim. Purporting that the unit was vacant for December 2014 is insufficient in itself to establish a basis to find the tenant responsible for that loss. Nevertheless, upon review of the tenant's notice to end tenancy, I am uncertain as to the reason the landlord found the tenant's notice invalid. Although the stated effective date is incorrect, the Act provides that an incorrect effective date automatically changes to comply with the Act and, as such, would read November 30, 2014. Nor, did the landlord provide evidence as to advertising efforts made to re-rent the unit or documentary evidence to show when the unit was re-rented. Furthermore, some of the landlord's efforts such as painting and tile replacement were found to be not attributable to the tenant. For all of these reasons, I deny the landlord's request for loss of rent for December 2014 due to insufficient particulars and insufficient evidence to show the tenant is responsible for this portion of the claim.

As the landlord's Application did have some merit, I award the landlord recovery of the \$50.00 filing fee paid for this Application. I also authorize the landlord to retain the tenant's security deposit and accrued interest in partial satisfaction of the amounts awarded to the landlord by way of this decision. I have calculated the accrued interest on the security deposit to be \$3.38 for a total of \$340.38 held in trust for the tenant.

In light of all of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – November 2014	\$727.00
Cleaning, carpet cleaning and garbage removal	474.00
Filing fee	50.00
Less: security deposit and interest	<u>(340.38)</u>
Monetary Order	\$910.62

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord was partially successful in this Application. The landlord has been authorized to retain the tenant's security deposit and interest and the landlord has been provided a Monetary Order for the balance of \$910.62 to serve and enforce.

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 19, 2015

Residential Tenancy Branch

