



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on January 16, 2015. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The landlord testified that this month to month tenancy started on November 01, 2009. Rent for this unit was \$750.00 per month due on the first of each month. The tenant paid a security deposit of \$375.00 on November 01, 2009. A copy of the tenancy agreement has been provided in documentary evidence.

The landlord testified that the tenant did not provide proper notice to end the tenancy. The tenant gave notice on November 09, 2014 and vacated the rental unit on November 15, 2014. The tenant and landlord attended the move in condition inspection of the rental unit at the start of the tenancy. The landlord asked the tenant to attend the move out condition inspection of the unit and provided the tenant with two opportunities to attend the inspection. The tenant failed to attend the inspection and the inspection and report were completed in the tenant's absence. The tenant did inform the landlord by telephone of her forwarding address and told the landlord to use the PO Box address the landlord already had.

The landlord testified that the tenant did not collect documents sent to her at the given PO Box address and these documents for the hearing have been returned to the landlord. The landlord testified that no other forwarding address has been provided by the tenant.

The landlord testified that during the move out inspection of the unit the landlord was shocked at the condition the tenant left the unit in. The unit had not been cleaned and was left in a dirty condition. The landlord had to engage the services of a cleaning company who sent two cleaners to complete the work as indicated on the move out inspection report. This work took the cleaners two days to complete and the landlord then went in after to do some additional cleaning. The landlord seeks to recover the cost for the cleaning company of \$400.00 and has provided a cancelled cheque showing this amount was paid.

The landlord testified that she also found a great deal of damage in the unit. The tenant had been smoking inside the unit and the walls and ceiling all had to be repainted. The unit had previously been painted in 2007. The hardwood floors throughout the unit had been destroyed and these had to be stripped, sanded, repaired and varnished. The floors had been in an immaculate condition at the start of the tenancy. The toilet had been removed from the floor and was left half an inch above the floor. This had to be reset, and the floor had to be repaired and finished where it appeared that the tenant's dogs had dug into the floor. The cabinet doors needed some minor repairs. The back door and frame were left severely damaged. These had to be replaced and the door and frame would have been around 12 years old. The window trims were left damaged with scraps and they were also filthy. These had to be cleaned and repaired. The kitchen, bathroom and backroom cupboards were left in such a dirty condition they had to be cleaned and repainted. The screen door at the front of the house has badly damaged and

required repair. The backroom linoleum floor was scrapped and so dirty it could not be repaired or cleaned and had to be replaced. The stove exhaust fan was left in such a dirty condition it could not be cleaned and had to be replaced. This fan was older than 12 years. The landlord engaged a contractor to complete the repair work and seeks to recover the amount of \$12,450.00. The landlord has provided the invoice for this work along with photographic evidence and copies of the condition inspection reports in documentary evidence.

The landlord testified that four blinds in the unit had been left in a damaged condition. These had been new in 2009. The blinds had to be replaced at a cost of \$50.00 each. Two security lights were left damaged. One of which had had the sockets ripped out. These lights were new in 2009 and they had to be replaced at a cost of \$99.98. The landlord has provided quotes from Sears for these replacement costs in documentary evidence.

The landlord testified that the tenant had two dogs at the start of the tenancy. The dogs were not allowed in the house. The tenant started to breed Pit-bull dogs on the property and this caused a great deal of damage to the property. The tenant left a lot of garbage at the property. The landlord engaged the help of two people to assist the landlord in clearing the garbage from the yard. There was so much garbage that it filled a large yard load bin. The landlord seeks to recover \$150.00 for her labour and to pay her helpers. The landlord seeks a further \$391.91 for the cost of the yard fill bin and has provided photographs and the receipt in documentary evidence.

The landlord testified that the yard and lawn were the tenant's responsibility. The tenant did not maintain the yard or lawn and the landlord found the damage to be excessive. The flower beds had to be redone; the irrigation was cracked and had to be repaired; there were large holes dug by the tenant's dogs which had to be filled; fences were left broken which had to be repaired; the grass had to be cut and reseeded; the stucco on the house was also left damaged. The landlord's contractor could not do this work until the spring and they have now completed the work with the exception of the repairs to the stucco which is scheduled to start soon. The landlord seeks to recover the cost for this repair and yard work of \$3,622.50. The landlord has provided photographs and the invoice in documentary evidence.

The landlord seeks an Order to be permitted to keep all of the tenant's security deposit to offset against this monetary claim and seeks a Monetary Order for the balance including the filing fee of \$100.00.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me.

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.

With this test in mind I am satisfied from the undisputed evidence before me that the tenant failed to leave the rental unit in a reasonably clean condition pursuant to s. 32(2) of the *Act*. I further find the tenant did not repair damage caused during the tenancy pursuant to s. 32(3) of the *Act* and failed to maintain the yard and grass as specified under the terms of the tenancy agreement.

The landlord's evidence, such as the condition inspection report, shows the condition of the rental unit at the start and end of the tenancy. This evidence is sufficient to show the damage caused during the tenancy. The landlord has also provided 80 photographs showing the damaged and unclean areas of the unit and yard and pictures showing the amount of garbage removed from the yard. Furthermore, the landlord has provided evidence of the actual costs incurred to remedy the damage and to clean the unit. The landlord did some work herself and has subsequently mitigated some of the loss by not engaging contractors to do all the work.

When a party has met the burden of proof regarding damage or loss claims then I must then turn my mind to the useful life of some of the replacement items. I refer the parties to the Residential Tenancy Policy Guidelines #40 which provides the useful life of building elements. With this guide I have considered the landlord's claim to replace certain items taking into account the depreciation of these items useful life. The useful life of interior paint is four years. The unit was last repainted seven years ago. The landlord was charged \$6,100.00 to paint the unit. I therefore find the landlord would have been required to have painted the unit at least once before and it would be coming up to its second requirement for paint. I must therefore dismiss the landlord's claim for painting the unit. The useful life for blinds is 10 years. As the blinds were five years old and the landlords seeks to recover \$200.00 I must limit the landlord's claim to \$100.00. I useful life of the lights is 15 years. The lights were five years old. And the landlord seeks to recover \$99.98. I must therefore limit the landlord's claim to \$66.65. The useful life of linoleum is considered to be 10 years. The linoleum was five years old and the landlord seeks to recover \$250.00. I must limit the landlord's claim to \$125.00. The useful life of the stove fan is considered to be 15 years. The stove fan was 12 years old. The landlord seeks to recover \$400.00. I must therefore limit the landlord's claim to \$80.00. The useful life of the door and frame are 20 years. The door and frame are 12 years old. The landlord seeks to recover \$700.00. I must therefore limit the landlord's claim to \$280.00.

As the landlord had the other damaged items repaired I find the landlord has mitigated the loss in these sections of her claim. I am satisfied the landlord did some yard clearing with the help of two other people and that contractors came to do the rest of the work to return the yard to the condition it was in at the start of the tenancy.

I Order the landlord to keep the security deposit of \$375.00 pursuant to s. 38(4)(b) of the *Act*. This amount has been offset against the landlord's monetary award as indicated below.

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the *Act*.

The landlord is therefore entitled to recover the following amount from the tenant:

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|---|--------------------|
| cleaning | \$400.00 |
| House repairs | \$5,610.00 |
| Blinds | \$100.00 |
| Security lights | \$66.65 |
| Repair and maintenance of yard | \$3,622.50 |
| Landlords labour to clear garbage | \$150.00 |
| Yard waste bin | \$391.91 |
| Subtotal | \$10,341.06 |
| Filing fee | \$100.00 |
| Less security deposit | (-\$375.00) |
| Total amount due to the landlord | \$10,066.06 |

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 **\$10,066.06**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail 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: June 11, 2015

Residential Tenancy Branch

