



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, 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 for an order to retain the security deposit in partial satisfaction of the claim.

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 tenant provided them with a written letter dated October 15, 2015, that their forwarding address was care of their advocate office. Filed in evidence is a copy of the letter.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were served in person, to the address provided, on October 24, 2015.

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?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on October 1, 2013. Rent was geared to income under the BC Housing guidelines. The tenant paid a security deposit of \$339.50. The tenancy ended on August 31, 2014.

The landlord claims as follows:

a.	Unpaid rent	\$ 167.00
b.	Damages to unit	\$ 789.56
c.	Filing fee	\$ 50.00
	Total claimed	\$ 1,006.56

Unpaid rent

The landlord's agent testified that at the end of the tenancy the tenant had rent arrears that were not paid. The agent stated that the tenant's rent ledger shows the rent due and the payments that the tenant made towards rent. The landlord seeks to recover the balance due of unpaid rent in the amount of \$167.00. Filed in evidence is a copy of the tenant's rent ledger.

Damages to the rental unit

The landlord's agent testified that the tenant did not remove all their personal belongings at the end of the tenancy. The agent stated that the tenant left a couch, sofa chair, 2 coffee tables, kitchen table, and other miscellaneous household items. The agent stated that they had to pay to have the items removed and disposed. The landlord seeks to recover the cost in the total amount of \$241.50. Filed in evidence is a receipt.

The landlord's agent testified that the tenant ripped off two kitchen cabinet doors and one bathroom cabinet door. The agent stated there was no damage to the cabinets at the start of the tenancy. The landlord seeks to recover the cost of the repair in the amount of \$184.50. Filed in evidence is a copy of the receipt.

The landlord's agent testified that the carpets were left heavily soiled by the tenant at the end of the tenancy, which they had to pay to have them cleaned. The landlord seeks to recover the cost of cleaning the carpet in the amount of \$110.00. Filed in evidence is a receipt.

The landlord's agent testified that it appeared from the condition of the stove that the tenant never cleaned the appliance during their tenancy and it was left heavily soiled. The agent stated that the cost to attempt to have the stove cleaned would have been more expensive than purchasing a new stove and applying the depreciated value as the stove was approximately 12 years old at the end of the tenancy. The landlord seeks to recover the depreciated value of \$166.50. Filed in evidence is a receipt.

The landlord's agent testified that the tenant caused damage to the walls as there was large scuff marks up the walls which had to be filled, sanded and painted. The agent stated that the rental unit had been freshly painted when the tenant moved in. The landlord seeks to recover the cost of the supplies to make the repair in the amount of \$86.76. Filed in evidence is a receipt.

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

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 landlords' agent was the tenant did not pay all rent owed each month and accumulated rent arrears, which is support by the tenant's rent ledger. I find the tenant has breached section 26 of the Act when they failed to pay all 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 in the amount of **\$167.00**.

Damages to the rental unit

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.

I accept the undisputed testimony of the landlord's agent that the tenant failed to remove furniture items from the rental unit at the end of the tenancy. This is support by an invoice. I find the tenant breached the Act, when they failed to give vacant possession to the landlord and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the hauling cost in the amount of **\$241.50**.

I accept the undisputed testimony of the landlord's agent that the tenant caused damage to three doors by ripping them off the cabinets. I find the tenant breached the Act, when they failed to leave the rental unit undamaged and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of the repair in the amount of **\$184.80**.

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 and the appliances at the end of the tenancy.

I accept the undisputed testimony of the landlord's agent the tenant did not clean the carpet or the stove. I find the tenant breached the Act, when they failed to clean these items at the end of the tenancy.

While the landlord replaced the stove rather than attempt to clean the appliance, I find that was reasonable as the cost of cleaning the appliance likely would have been greater than the depreciated value claimed. Therefore, I find the landlord is entitled to recover the carpet cleaning and depreciated value of the stove in the amount of **\$276.50**.

I accept the undisputed testimony of the landlord's agent that the tenant caused damage to the walls by scuffing, which was required to be painted, sanded and painted. I find the tenant breached the Act, when they failed to leave the rental unit undamaged and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of the painting supplies in the amount of **\$86.76**.

I find that the landlord has established a total monetary claim of **\$1,006.56** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$339.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$667.06**.

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 and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 09, 2015

Residential Tenancy Branch

