



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNDC, MNR, MNSD, FF
Tenant: MNR, O, FF

Introduction

This hearing dealt with the cross Applications for Dispute Resolution with both parties seeking to cancel monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and his legal counsel.

The landlord provided documentary evidence the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on May 22, 2015 in accordance with Section 89. Legal counsel testified that while the Application was mailed on May 22, 2015 the landlord's evidence was served to the tenant, also by registered mail, on May 21, 2015.

The landlord's legal counsel testified that she had confirmed by using the Canada Post website tracking site that both packages had been received and a signature of receipt was noted.

Based on the evidence and undisputed testimony of the landlord and legal counsel, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

In addition, as this hearing was originally scheduled as a result of the tenant's Application for Dispute Resolution I am satisfied that the tenant was well-aware of the hearing time and call-in procedures provided to him after his Application was accepted and processed.

While the landlord had applied to retain the security and pet damage deposits I note the landlord submitted into evidence a previous decision dated September 17, 2014 between these two parties where the landlord was ordered to return the deposits to the tenant. The landlord testified the deposits have been returned.

As such, I find return of the deposits is *res judicata*. *Res judicata* is the legal doctrine that once an issue has been adjudicated with a final decision made the same issue or

an issue arising from the first issue cannot again be contested. I therefore amend the landlord's Application for Dispute Resolution to exclude the request to retain the security and pet damage deposits.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for reimbursement for the cost of emergency repairs; for compensation; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 51, 67, and 72 of the *Act*.

It must also be decided if the landlord is entitled to a monetary order for unpaid rent and overholding; for damage to and cleaning of the residential property; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on February 10, 2010 for the monthly rent of \$1,850.00 due on the 1st of each month with a security deposit of \$925.00 and a pet damage deposit of \$925.00 paid. The landlord did not provide any evidence or testimony of any rent increases during the tenancy. The tenancy ended and the tenant returned vacate possession of the residential property to the landlord's property management company on July 2, 2014.

The landlord submitted that on April 24, 2014 he issued a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective vacancy date of June 30, 2014. The Notice stated the landlord had all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit a manner that required the rental unit to be vacant.

The landlord testified that at the time he issued the Notice he had intended to refinish (not replace) the oak floors; paint the interior of the rental unit; replace linoleum flooring with ceramic and replace countertops.

The landlord testified that at the time he issued the Notice he provided the tenant with the compensation equivalent to 1 month's rent that is required when issuing such a Notice. He further stated that after that the tenant failed to pay rent for the months of May and June 2014. The landlord seeks this rent owed in the amount of \$3,990.00.

The landlord also seeks \$133.00 for the tenant overholding the rental property for 2 days in July 2014. The landlord did not indicate how he had determined the amount of overholding to be \$133.00.

In support of his claim the landlord has provided a condition inspection report recording the condition of the rental unit at the end of the tenancy; photographs; invoices;

receipts; and a spreadsheet recording the landlord's own labour and time related used to deal with cleaning and repairs made to the residential property as a result of the tenancy.

The landlord submits that due to plumbing problems that the landlord attributes to the tenant there was water damage found in the ceilings below two of the bathrooms in the rental unit. The landlord submits that he had one ceiling repaired by a contractor for a cost of \$945.00 and that he completed the second repair himself over the course of 10 hours at \$50.00 plus \$155.38 in materials. The landlord's total claim for ceiling repairs is \$1,600.38. He has submitted an invoice from the contractor and receipts for the materials.

The landlord seeks compensation for the cost of removing junk and garbage including \$26.00 landfill fees; 17 hours labour at \$50.00 per hour and \$1.00 per kilometre for 26.5 kilometres travelled between the residential property and the landfill.

The landlord claims compensation for the removal and disposal of industrial waste. He has submitted a "fixed cost estimate" of \$200.00. However, the landlord has provided no documentary evidence that the barrels requiring removal constitute industrial waste or that there will be such a significant cost to remove them or a documented estimate for its removal.

The landlord submits that a microwave that was in the rental unit at the start of the tenancy was missing after the tenants moved out. The landlord seeks replacement costs in the amount of \$50.00. The landlord did not provide a receipt for this replacement.

Excluding the cost of floor replacements and weatherstripping, the landlord seeks compensation in the amount of 4 hours labour at \$50.00 per hour for cleaning related to the tenant's dogs and 4 hours labour at \$50.00 per hour for repairs resulting from damage caused by the tenant's dogs. The landlord also seeks general cleaning for 6 hours at \$50.00 per hour. The landlord seeks \$60.00 for the replacement of weatherstripping damaged by the tenant's dogs.

While the landlord was intending to refinish the oak flooring in the rental unit prior to the tenant vacating the rental unit, he determined after the tenant had vacated that the damage to the flooring caused by the tenant's dogs was so severe it required replacement.

The landlord seeks compensation for the removal of the original floors and installation of new underlay in the amount of \$764.33 for materials and supplies plus labour in the amount of 26 hours at \$50.00 per hour. While the landlord submitted an invoice for the cost of replacing all of the flooring in the amount of \$16,505.34 he seeks only 19% of this amount based on the amount of hardwood damaged by the tenant's dogs. The landlord testified the flooring was original to the house which was built in 1999.

The landlord seeks compensation in the amount of \$115.00 for materials plus 2 hours labour at \$50.00 per hour for the replacement of a toilet damaged by the tenant.

Analysis

In the absence of the applicant tenant to present his claim, I dismiss the tenant's Application for Dispute Resolution in its entirety without leave to reapply.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the undisputed documentary evidence and testimony provided by the landlord and on a balance of probabilities I find the landlord has provided sufficient to establish the full amount of his claim with the following exceptions:

1. While the landlord seeks \$3,990.00 and \$133.00 for overholding he has not provided any evidence to confirm a rent increase or for how he calculated the amount of overholding. Based on the tenancy agreement submitted into evidence I find that rent was \$1,850.00. As such, the amount for two month's rent would be \$3,700.00. As to the amount of overholding based on 31 days in July 2014 the per diem rate for overholding would be \$59.68 for a total of \$119.35 for two days. As such, I find the landlord is entitled to \$3,819.35 for unpaid rent and overholding.
2. As the landlord failed to provide any evidence that the drums shown in his photographic evidence contain any industrial waste or will incur such costs for removal I find the landlord has failed to establish this portion of his claim and I dismiss this portion.
3. While the landlord did not submit a receipt for the replacement microwave I find the landlord's claim of \$50.00 is a reasonable amount for such a product.
4. While I accept the amount of the landlord's claim for the removal of oak flooring and the replacement of 19% of the flooring totalling \$5,862.33 I find I must take in to consideration the age the existing flooring and discount the final amount by the depreciated value in accordance with the Residential Tenancy Policy Guideline #40 that states the useful life of hardwood flooring is 20 years. As the floors that

the landlord replaced were installed in 1999 I find the claim must be discounted by 80%. I therefore find the landlord is entitled to \$1,172.47.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$8,619.70** comprised of \$3,700.00 rent owed; \$119.35 overholding; \$1,600.00 ceiling repairs; \$902.50 garbage removal; \$50.00 microwave replacement; \$400.00 for repairs and cleaning resulting from the tenant's dogs; \$300.00 general cleaning; \$60.00 weatherstripping repairs; \$215.00 toilet replacement; \$1,172.47 floor replacements and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 05, 2015

Residential Tenancy Branch

