



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, 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; a Monetary Order for damage to the unit, site or property; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; 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. 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on December 01, 2012 for a fixed term of one year. As no further fixed term agreement was entered into the tenancy then reverted to a month to month tenancy. Rent for this unit was \$4,000.00 per month due on the 1st of each month in

advance. The landlord did not complete a move in or a move out inspection report of the property at the start or end of the tenancy.

The landlord testified that the tenant broke the tenancy agreement and the house was left uninhabitable. The tenant only provided a text message to the landlord on September 01, 2014 indicating that he was ending the tenancy at the end of the month. Although text messages were the landlords and tenants normal method of communication the tenant should still have provided written notice to end the tenancy.

The landlord testified that the house was left in such a poor condition that although the landlord had placed it on the market to sell, it was also advertised for rental. However, due to the condition of the house it could not be viewed or re-rented until the house was cleaned and all the damages repaired. The house was not re-rented until January 01, 2015 although the majority of the work was completed by the end of October, 2014. As soon as new tenants were found in the middle of December, 2014 the house was taken off the market to be sold. The landlord seeks to recover a loss of rent for October, November and December, 2014 of \$12,000.00.

The landlord testified that the interior of the house walls, doors and trim needed to be painted due to the damage caused by the tenant. The tenant had allowed his children to colour on the walls, use pen markers on the doors, the walls and wainscoting had florescent colours painted on them, there was food splattered on the walls and hair dye. The landlord engaged the services of a cleaning company. Two cleaners worked for seven hours each to try to clean the unit they charged the landlord \$60.00 an hour but were unable to remove all the dirt and marks from the walls. The landlord engaged a second cleaning company who came and also worked for seven hours each and charged the landlord \$30.00 an hour. As the marks could not all be removed from the walls the landlord then had to have the interior or of the unit repainted. the landlord seeks to recover the cost incurred to paint the unit at \$4,019.25 and has provide an invoice for this work; the cost for the first cleaners of \$840.00 and has provided an email from the cleaners detailing their costs; the cost of \$420.00 for the second cleaners although no receipt or invoice has been provided in documentary evidence and the cost for a third cleaning company who came to clean up after some of the repair work was done and to clean some additional dirt found later, particularly from an unauthorised pet the tenants must have kept. The

third cleaner spent seven hours at \$25.00 an hour to the amount of \$175.00. The landlord has provided an email in documentary evidence detailing the hours, the cost and cleaning carried out. The landlord testified that when she filed the application she had estimated the cleaning costs to be \$700.00; however, the cost came in higher once the work was completed.

The landlord testified that this house was a new property that had not been previously lived in prior to this tenancy. The landlord referred to a written statement from the new tenants who moved in on January 01, 2015 who have written about some additional cleaning required and the overall condition of the unit when they took possession.

The landlord testified that the carpets were left in a dirty and stained condition with a glue like substance imbedded in the carpets which could not be removed. The landlord had the carpets professional cleaned but only the hallway and master bedroom carpet were salvaged after cleaning. The landlord seeks to recover the cleaning costs of \$153.00 but has failed to provide an invoice in documentary evidence.

The landlord testified that the two bedroom carpets could not be cleaned. The landlord referred to her photographic evidence showing the staining left on these carpets. The two bedroom carpets were replaced for a like for like carpet at a cost of \$2,617.80. The landlord testified the carpets were only two years old at the end of the tenancy and has provided the invoice in documentary evidence.

The landlord withdrew her claim for garbage removal and for the broken shower head at the hearing.

The landlord testified that nearly all the light bulbs were burnt out both interior and exterior. The landlord had to engage an electrician to replace the bulbs due to the height of the ceilings as these bulbs could not be reached by the landlord. The tenant is responsible to replace burnt out bulbs and could just have easily hired an electrician to do this work themselves. The landlord seeks to recover the cost for this work of \$460.00 and has provided an email from the landlord's sister which states she paid this amount to the electrician.

The tenant testified that he did give the landlord a text message notice to end the tenancy on September 01, 2014 but moved out earlier to give the landlord time to get the unit ready for new tenants. The tenant indicated that they were relocating back to the USA and the movers came on September 26, 2014. The tenants still had possession of the unit until September 30, 2014 as they had paid rent for the entire month. The tenant testified that he was not aware of the Act in which he had to give written notice the day before the day that rent was due.

The tenant testified that he agreed the house was in a new condition when they moved in; however, the landlord did not do a move in condition inspection report with the tenant. The tenant testified that he works for US customs and his family had to move back to the USA due to a family emergency. This left the tenant unable to stay in a house this large as he was only authorised to rent a house of this size while his family lived with him. The tenant testified that he had to act quickly and so gave notice to end the tenancy. The tenant testified that they also had an addendum to the tenancy agreement which allowed the tenant to end the lease earlier than the due date if the tenant was transferred back to the States and no rent would be due past the date of surrender of the premises. The tenant agreed that he was not actually transferred back to the States however his family had to relocate. The tenant therefore disputed the landlord's claim to recover a loss of rent of \$12,000.00.

The tenant testified that this was a hard move and he agreed that the house was not left clean. The tenant testified that he agreed to pay half of the \$700.00 claimed by the landlord for cleaning but only on the production of the cleaning invoices. The landlord has not produced these but the tenant is still willing to pay \$350.00 towards the cost of cleaning the unit.

The tenant testified that he did not clean the carpets and although he was willing to pay for carpet cleaning the landlord has not provided any evidence to show that carpet cleaning was done. The tenant therefore disputed the landlord's claim to recover \$153.00.

The tenant disputed the landlord's claim that the entire house needed to be repainted. The invoice from the painter included areas such as baseboards, wainscoting and doors. The landlord was aware at the start of the tenancy that the tenant had three children aged seven, five and three and must expect some wear and tear as children will draw and paint on the walls. The tenant testified that his wife did dye her hair so the landlord must expect that hair dye will

get on the walls and floor. The tenant testified that he thinks it was the landlord's intent to sell the house and so wanted it repainted to help in the sale.

The tenant testified that his youngest daughters had the two bedrooms and any staining on the carpets is normal children's mishaps. The tenant does not feel that the landlord had to replace these two carpets and as the landlord has not provided carpet cleaning receipts how does the tenant know the landlord tried to clean these carpets prior to replacing them.

The tenant testified that he replaced what light bulbs he could during the tenancy and advised the landlord of any light bulbs he could not reach. There was also an issue with one of the outside lights and the landlord had sent an electrician around who said it had some faulty wiring.

The landlord argued that the house was never built with the intention of selling it the other landlord wanted to keep the house to move back into and this landlord also had an intention of eventually living in the house. The landlord agreed the tenant did contact her about a faulty outside light but this was repaired and is a different issue to burnt out bulbs. The painters did the bear minimum to get the house re-rented again. The landlord allowed for some reasonable wear and tear but the damage claimed went above and beyond that. The landlord argued that she did not have the money to do all the repairs and could not do everything quickly. Only the bear minimum was done to get the house re-rented. The carpets were replaced around October 31, 2014 and the painting was completed prior to that in October.

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 a loss of rent for three months; I refer the parties to s.45 of the *Act* which states:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find the tenancy was not renewed at the end of the first years fixed term and therefore the tenancy became a periodic or month to month tenancy after the first year. The tenant should have provided written notice to the landlord by August 31, 2014 in order to be able to end the tenancy at the end of September. As the tenant failed to do so and the landlord was unable to re-rent the unit for October I find the landlord is entitled to recover a loss of rent for October, 2014 of **\$4,000.00**.

With regard to the landlord's claim for an additional two months' rent; the landlord testified the unit could not be re-rented until January 01, 2015 due to the condition the tenant left the rental unit in. 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.

I am satisfied that the tenant did not leave the rental unit reasonably clean at the end of the tenancy, the carpets had not been cleaned, the two bedroom carpets were left badly stained and there was damage to the walls and woodwork which required painting. I find the landlord acted in a timely manner and had the unit cleaned, the carpets cleaned, the bedroom carpets replaced and the unit repainted by the end of October, 2014. Therefore the tenant would only be responsible for a loss of rent up to the time the unit could be re-rented not to the time when it actually was re-rented. The landlord's claim to recover a loss of rent for November and December, 2014 is therefore dismissed.

With regard to the landlord's claim for damages; 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 in mind, I am satisfied that the unit was left in a condition that required extensive cleaning. The landlord has met the burden of proof that the tenant failed to clean the unit at the end of the tenancy; however, the landlord has not provided corroborating evidence to meet the burden of proof of the actual costs incurred for all three cleaning companies. I therefore allow the landlord's claim for the first and third cleaning company based on the email evidence provided but not the second cleaning company as there is insufficient evidence to show a second set of cleaners came to the unit or the cost for their work. Consequently, I award the landlord the amount of **\$1,015.00** for cleaning.

With regard to the landlord's claim for carpet cleaning; the tenant agreed he did not clean the carpets at the end of the tenancy. From the evidence presented I am satisfied that the carpets required cleaning. I find on a balance of probability that the landlord did have the carpets cleaned as the landlords claim that she was able to salvage the hallway carpet and the master bedroom carpet is credible. I find the landlord's photographic evidence showing the staining to the two bedroom carpets shows that this staining was extensive and it is highly likely it could not be successfully removed. However, as the landlord has not provided sufficient evidence to show the actual cost for the carpet cleaning I find I must limit the landlord's claim to **\$110.00**.

With regard to the landlord's claim for replacement bedroom carpets; the tenant testified that the carpets were stained by his children but no more than "normal kids' mishaps". The tenant should not consider that it is allowable to let children cause damage to carpets in a rented

house without being held responsible. A tenant is responsible to clean carpets at the end of a tenancy of a period longer than a year and if the carpets cannot be cleaned then the tenant is responsible for the replacement costs of the carpets. I am satisfied that this level of staining is beyond normal wear and tear and the tenant is therefore responsible for costs to replace the carpets that could not be cleaned. However, the carpets were two years old at the end of the tenancy so in accordance with the Residential Tenancy Policy Guidelines #40 I have deducted 20 percent of the landlord's replacement costs for depreciation of the carpets. I therefore award the landlord the amount of **\$2,094.24**.

With regard to the landlord's claim for painting; the landlord has provided some evidence of areas of the rental unit that required painting due to marks that could not be removed through normal cleaning; however; there is insufficient evidence to show that the entire unit had to be repainted due to the tenant's actions or neglect. The landlord has provided photographic evidence showing some wall damage on one wall in the master bedroom, damage caused on another wall in an unspecified area, children's scribble on the wainscoting, further damage to a wall under a window; extensive staining to another wall with a pink like substance; minor damage to a wall which appears to go up the stairs; and further damage with pink and blue substances on the wainscoting. The landlord has no further evidence to show that the remainder of the walls doors and trims were damaged. A landlord is only entitled to recover costs associated with damage caused by the tenants; I must therefore limit the landlord's claim for painting to **\$2,250.00**.

With regard to the landlord's claim for the costs incurred to replace bulbs; a tenant is required to replace bulbs that burn out during the tenancy. The landlord has not shown how many bulbs burnt out but has provided an email sent from a family member who stated that she paid the electrician \$460.00. Although the email does not specify what this payment was for the tenant agreed that he only replaced some bulbs and he did not replace the ones he could not reach. The Act does not specify that a tenant is only required to replace bulbs they can reach and if the landlord had to pay someone to replace the higher bulbs then unless the parties had an agreement to the contrary, I find the tenant could have equally found someone to replace the higher burnt out bulbs. Consequently I am satisfied that the landlord incurred costs to replace bulbs, however, as the landlord has not provided evidence of the actual costs incurred from the electrician only from a family member, I must limit the landlord's claim to **\$300.00**.

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*. A monetary award has been issued to the landlord for the following costs:

Loss of rent for October	\$4,000.00
Cleaning costs	\$1,015.00
Carpet cleaning	\$110.00
Replacement carpets	\$2,094.24
Painting	\$2,250.00
Replacement bulbs	\$300.00
Filing fee	\$100.00
Total amount due to the landlord	\$9,869.24

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 **\$9,869.24**. 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: July 21, 2015

Residential Tenancy Branch

