



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 the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1348 in order to enable the tenant to connect with this teleconference hearing scheduled for 1300. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord MA (the landlord) provided all of the testimony in this matter.

Preliminary Issue – Service

Service of the dispute resolution package for an application such as the landlords' must be carried out in accordance with subsection 89(1) of the Act:

- (1) An application for dispute resolution ... when required to be given to one party by another, must be given in one of the following ways:
 - (a) by leaving a copy with the person;...
 - (c) by sending a copy by registered mail to the address at which the person resides ...;
 - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...

The landlord testified that, on 4 February 2015, she served the tenant by registered mail. The landlord MA testified that she found the tenant's residential address by performing a credit check. The landlord testified that the full name, birthday, known addresses, and social insurance number all matched the tenant's. The landlord provided me with a Canada Post tracking number. The tracking information indicates that a person with the same first initial and last name as the tenant signed for the package. On the basis of this evidence, I am satisfied that the tenant was served in accordance with paragraph 89(1)(c) of the Act.

Preliminary Issue – Amendment to Particulars

The landlords' monetary order worksheet sets out that the landlords are claiming rent and the dishonoured cheque fee for August. At the hearing the landlord indicated that these amounts were actually for July and not August. As the tenant ought to have known that rent was owing for July when she abandoned the rental unit on or about 7 July 2014, there is limited prejudice in allowing the landlords to amend their claim to rectify this error. The landlords' application is amended to seek rent for July and the bank fee for the dishonoured cheque.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent, damage and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

This tenancy began 1 May 2014 and was for a fixed term of one year. I was provided with a copy of the tenancy agreement for this tenancy. Monthly rent of \$1,050.00 was due on the first. The landlords continue to hold the tenant's security deposit in the amount of \$525.00, which was collected on 15 October 2013.

Clause five of the tenancy agreement provides for liquidated damages in the event of early termination of the tenancy:

If the tenant ends the fixed term tenancy before the end of the original term...the landlord may treat this Agreement as being at an end. In such event, the sum of \$250 will be paid by the tenant to the landlord as liquidated damages, and not as a penalty. Liquidated damages covers the landlord's cost of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.

Clause ten of the tenancy agreement sets out that dishonoured cheques are subject to a \$25.00 administrative fee as well as the bank's charges. The landlords provided me with an invoice that shows that the bank's charge for dishonoured cheques is \$30.00.

The tenant began occupancy of the rental unit in 2013 with her partner at the time. The tenant entered into a second tenancy agreement which is the subject of this dispute. The landlord testified that condition move in/out inspection reports were not completed between the two fixed-term tenancies. The landlord testified that the security deposit was carried over from the first fixed-term tenancy.

The landlords provided me with photographs of the condition of the rental unit at the beginning of the tenancy. The landlord testified they were taken one week before the tenant moved in. There is nothing remarkable about these photographs.

The tenancy ended 8 July 2014 when the tenant abandoned the rental unit. The landlord testified that on 7 July 2014, the landlords received a telephone call from the tenant's uncle stating that the tenant had vacated the rental unit. The uncle informed the landlords that he had the key for the rental unit to return.

The landlord testified that the cheque for July's rent was returned. The landlord testified that she tried to contact the tenant three times by various means.

The landlord testified that the general condition of the rental unit was "atrocious".

I was provided with photographs of the bathroom. It is clear that no attempt was made at cleaning the bathroom. I was provided with photographs of the oven. The oven is dirty. I was provided with photographs of the fridge. The fridge is dirty. I was provided with photographs of the floor. The floor is dirty. I was provided with photographs of the carpets. The carpets are stained.

The landlord testified that the tenant installed a satellite dish without the landlords' permission. The landlord testified that no repairs have been undertaken in respect of this installation and no specific damage has been identified.

The landlord testified that the tenant left debris and garbage in and around the rental unit. The landlord testified that three truckloads of garbage were taken to the dump. I was provided with photographs of the debris, which accord with the landlord's testimony as to the volume of refuse. The landlord provided receipts for the dumping costs. The receipts total \$74.20.

The landlord testified that the walls were marked with children's drawings. I was provided with photographs of these drawings. They are in red crayon. The walls were also damaged. I was provided with a photograph of two fist-sized holes in the wall. I was provided with a photograph of the paint damage to the ledge of the upstairs landing. The landlord testified that the rental unit was last repainted two years ago. The landlord testified that eight hours were spent painting and repairing the walls.

The landlord submits that cleaning the chimney is the tenant's responsibility. The landlord admitted that there is no clause in the tenancy agreement in relation to chimney cleaning.

The landlord testified that a set of curtains was removed from the rental unit.

The landlord testified that she posted advertisements for new tenants both online and in two different papers. The landlords entered into a new tenancy commencing 1 August 2014. Monthly rent of \$850.00 is payable under the tenancy agreement. The landlord testified that the rental unit was rerented at a lower rent. The landlords claim for the difference of \$200.00 per month for the remainder of the fixed-term tenancy.

The landlords claim for \$4,800.65:

Item	Amount
Cleaning, Painting, Repairs	\$1,226.25
Dump Fees	74.40
Rental Loss	1,800.00
July Rent	1,050.00
Bank Fee	30.00
Replace Curtains	70.00
Damage to Roof	300.00
Liquidated Damages	250.00

Total Monetary Order Sought	\$4,800.65
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The landlord's further particularized the claim for "cleaning, painting and repairs":

Item	Amount
July 8 dispose of garbage	\$67.50
July 9 dispose of garbage	90.00
July 10 dispose of garbage	67.50
July 11 cleaning	337.50
July 12 cleaning	225.00
July 13 yard and shed cleaning	90.00
July 14 carpet and chimney cleaning	56.25
July 14 repair and paint walls	180.00
July 15 rerent ads and screen applicants	45.00
Jan 26 prepare dispute	67.50
Total Monetary Order Sought	\$1,226.25

Analysis

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains.

Residential Tenancy Policy Guideline, "1. Landlord & Tenant – Responsibility for Residential Premises" (Guideline 1) states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ...

Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy. ...

At the end of the tenancy the tenant must clean the stove top, elements and oven defrost and clean the refrigerator, wipe out the inside of the dishwasher. ...

The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping. ...

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible. ...

The landlord is responsible for cleaning and maintaining the fireplace chimney at appropriate intervals.

The tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it. ...

Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds. ...

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

On the basis of the landlord's testimony and the photographs provided, I find that the tenant did not clean the carpets that she had caused to be stained contrary to subsection 32(3) of the Act and Guideline 1 when she abandoned the rental unit. The landlords are entitled to their costs associated with cleaning the carpets: one half of the July 14 costs in the amount of \$28.13.

On the basis of the landlord's testimony and the photographs provided, I find that the tenant did not clean the rental unit, yard, shed and appliances contrary to subsection 32(3) of the Act and Guideline 1 when she abandoned the rental unit. The landlords are entitled to their costs associated with cleaning the rental unit:

- July 11 labour of \$337.50;
- July 12 labour of \$225.00; and
- July 13 labour of \$90.00.

On the basis of the landlord's testimony and the photographs provided, I find that the tenant left garbage in the rental unit contrary to subsection 32(3) of the Act and Guideline 1 when she abandoned the rental unit. The landlords are entitled to their costs associated with removing and disposing of the garbage:

- dumping fees of \$74.20;
- July 8 labour of \$67.50;
- July 9 labour of \$90.00; and
- July 10 labour of \$67.50.

On the basis of the landlord's testimony and the photographs provided, I find that the tenant caused damage to the walls of the rental unit contrary to subsection 32(3) of the Act and Guideline 1. *Residential Tenancy Policy Guideline* "40. Useful Life of Building Elements" provides me with guidance in determining damage to capital property. The useful life of interior paint is four years. The landlord testified that the rental unit was

last painted approximately two years ago. The purpose of damage is to return the claimant to his or her original position. As the value of the interior paint had depreciated by one half, the tenant is responsible for compensating for the depreciated value of the interior paint. The landlords claim for \$180.00 for the labour associated with repainting. I find that they are entitled to one half of this amount: \$90.00.

The landlords seek the cost of cleaning the chimney. In accordance with Guideline 1, it is the landlords' responsibility to clean the chimney. Accordingly, the landlords are not entitled to compensation for this cost.

I find that the landlords and tenant entered into a fixed-term tenancy for the period 1 May 2014 to 30 April 2015.

Subsection 45(2) of the Act sets out how a tenant may end a fixed-term tenancy:

A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

This means that a tenant cannot give notice to end the tenancy before the end of the fixed term. In this case, the tenant vacated the rental unit before the completion of the fixed term. The tenant has breached the Act and as a result the landlord experienced a loss.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The landlords mitigated their losses by advertising the rental unit for rent and finding new tenants. The landlords were able to re-rent the rental unit for 1 August 2014 at a rate of \$850.00. Thus, as a result of the tenant's breach of the Act, the landlords experienced a loss of \$200.00 per month for the remainder of the fixed term. The remainder of the term was August 2014 to April 2015 (nine months). Accordingly the landlords experienced a total loss of \$1,800.00. The landlords are entitled to this amount in compensation from the tenant.

The landlord testified that the cheque for July's rent was returned as dishonoured. The landlords became aware that the tenant abandoned the rental unit as of 7 July 2014. The landlords were entitled to rent due 1 July 2014. I find that the tenant did not pay rent as due on 1 July 2014 as that cheque was dishonoured. The landlords are entitled to recover July 2014 rent in the amount of \$1,050.00.

Paragraph 7(1)(c) of the *Residential Tenancy Regulations* (the Regulations) provides that a landlord may charge a service fee charged by a financial institution to the landlord for the return of a tenant's cheque. The landlord testified that as a result of the dishonoured cheque for July the landlords incurred a bank fee of \$30.00. The landlords provided an invoice that shows that \$30.00 is their bank's fee for dishonoured cheques. I find that the landlords are entitled to charge the fee. The landlords are entitled to recover \$30.00.

The landlords seek compensation for the cost of replacing a missing curtain and damage they say was sustained to the roof by the tenant installing a satellite dish without permission. The landlords have not provided any receipts or estimates for the cost of repairing these issues. Without providing any justification for the amounts claimed, the landlords have failed to prove the quantum of the damage caused as is required by section 67 of the Act. As such, the landlords are not entitled to recover any amount for the missing curtain or satellite dish installation.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

In this case, the liquidated damages clause is intended to compensate the landlords for losses resulting from the costs of re-renting the rental unit after a tenant breach. The cost of re-renting a rental unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the

process of re-renting to new tenants numerous times. However, one important reason why landlords enter into fixed-term tenancy agreements is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it more likely than not that, when a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord incurs the costs of re-renting earlier than they would have without the breach. This exposes the landlord to extra costs of rental. For that reason, I find there is a loss to the landlords associated with the breach. The next question is whether the amount specified (\$250) is a genuine pre-estimate of that loss. In this case, I find that the amount is a reasonable pre-estimate of the loss. The landlords are entitled to liquidated damages in the amount of \$250.00.

The landlords seek both their labour cost of rental and liquidated damages. To award both of these amounts would result in double compensation to the landlords. This is not permitted at law. The landlords are not entitled to recover the labour costs of rental.

The landlords claim for their labour costs associated with preparing for this application. This claim is in the nature of “costs”.

Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional. I find that the landlords are not entitled to make any claim for compensation for the landlords’ costs.

The landlords applied to keep the tenant’s security deposit. I allow the landlords to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords have been successful in this application they are entitled to recover their filing fee for this application.

Conclusion

I issue a monetary order in the landlords’ favour in the amount of \$3,724.83 under the following terms:

Item	Amount
July 14 carpet cleaning	\$28.13
July 11 cleaning	337.50

July 12 cleaning	225.00
July 13 yard and shed cleaning	90.00
Dump Fees	74.20
July 8 dispose of garbage	67.50
July 9 dispose of garbage	90.00
July 10 dispose of garbage	67.50
July 14 repair and paint walls	90.00
Rental Loss	1,800.00
July Rent	1,050.00
Bank Fee	30.00
Liquidated Damages	250.00
Offset Security Deposit Amount	-525.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$3,724.83

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and 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 subsection 9.1(1) of the Act.

Dated: August 21, 2015

Residential Tenancy Branch

