



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ESI MARKETING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 37 and 67 for damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

SERVICE

The landlord gave sworn testimony that they served the Application for Dispute Resolution by registered mail and the tenants agreed they received it. I find that the tenant is served with the Application according to section 89 of the Act.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Have they proved rental loss due to the tenants' actions and entitlement to recover the filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the present tenancy commenced December 1, 2014 on a fixed term lease to February 28, 2015; monthly rent was \$1200 and a security deposit of \$600 was paid on December 12, 2014.

This was a complicated tenancy as the original tenancy commenced on April 16, 2014 on a fixed term to end on June 15, 2015 with one male tenant on the lease; however the weight of the evidence is that a female tenant, A.M., resided in the unit at the same time. The male tenant was evicted in November 2014 for non payment of rent and the female, A.M., together with her sister and a male friend signed the present lease with the same terms but which expired on February 28, 2015.

The premises were a condominium which was new in August 2013 so was one and a half years old at the end of the tenancy.

The landlord claims damages as follows:

- 1) \$470.40 to clean the unit, scrub the deck, steam clean the carpets and dispose of garbage. The landlord supplied photographs as evidence of the damage and invoices for the work. The tenant said they cleaned as best they could but they had no power for the last month of the tenancy. They said the hydro was in the previous male tenant's name and they could not get a connection without paying the large unpaid bill he had left. The landlord said she had no method to transfer the hydro account and could not get in touch with the former male tenant. She said the female tenant, A.M., who had occupied the unit at the same time as the male tenant said she was taking over the hydro account; she noted that the hydro had been cut off in February and October 2014 and then in February 2015.
- 2) \$873.75 to replace two doors in the master bedroom, to repair and touch up drywall, baseboard, bi-fold doors and moulding and the refrigerator door plus repair/touch up floor scratches in the living room (Parts & labour 10 hours at \$28 an hour).
- 3) \$11.20 Replacement of 5 light bulbs
- 4) \$2400 in rental loss due to time lost for repairs.

The tenants stated that the previous male tenant had occupied the master bedroom and had damaged it and scratched some drywall as he had to leave the unit in a hurry because of unpaid bills. They said they are not responsible and no condition inspection report was done at the time they entered into the tenancy. The landlord said she had looked at the unit just prior to the male tenant leaving and there were only some scratches on the drywall; she said she submitted photographs of the master bedroom to show this.

The tenant provided no documents to dispute the claim. The landlord provided a move-in condition inspection report showing everything was 'okay' on April 11, 2014; on move-out, there is no comment on individual items but at the end it states the whole unit is dirty and some items were not removed until February 28, 2015 at 9 p.m. It notes two doors and walls need fixing and touch up and that photographs were taken. Invoices for the work are in evidence.

The landlord said in their claim that they lost two months rent for a prospective tenant walked away from the tenancy when they saw the damage. No evidence was submitted of this prospective tenant. The cleaning invoice is dated March 5, 2015 and the repair invoice is dated March 20, 2015. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 37 of the Act states that when a tenant vacates a unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I find the preponderance of the evidence is that the tenants did not leave the unit clean in violation of section 37 of the Act. I find the landlord incurred costs of \$470.40 to clean the unit and dispose of garbage and I find the landlord entitled to recover these costs. Although the female tenant, A.M., disclaimed some responsibility for she said the hydro was off and this made it impossible to clean sufficiently, I find it was not act or neglect of the landlord that caused the hydro to be off. I find the lease provides it is the tenants' responsibility to pay the hydro and A.M. should have been aware of the problem as the hydro was cut off twice while she was residing in the unit with the previous male tenant (and presumably sharing some use of the hydro).

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that these particular tenants caused some of the damage. However, the tenants contend that the previous male tenant did some of the damage, especially to the master bedroom which he occupied and to the drywall as he was leaving with furniture in a hurry. The landlord completed no condition inspection report after he was evicted but she directed me to some photographs she allegedly took at the end of his tenancy which she said illustrated he only scraped some drywall.

In examining the landlord's photographs, I find some labelled 'Master bedroom door and bathroom door' which show damaged, split and scraped doors but do not refer to the former tenant; I find no other photographs which might be attributable to the former tenant. Some photographs labelled 'Main bathroom' show a towel rack off and some discoloured paint. The laundry room photograph shows a damaged cupboard, another a damaged refrigerator door and some stickers are shown on a wall. I find this is insufficient evidence to support the damage claim of \$873.75 against these tenants as the landlord has not broken down the invoice into the damage caused by the former male tenant and these tenants and they did no condition inspection report when these tenants commenced their tenancy. I find the weight of the evidence is that much of the damage may have been caused by the former male tenant such as the master bedroom doors, the baseboards and drywall; however I find there is evidence of some damage caused by the present tenants so I find the landlord entitled to costs for repairing the towel rack, the laundry room moulding and the laundry bi-fold door and other small items. I take into account that all of these items were one and a half years old at the end of the tenancy and some damage might be attributable to reasonable wear and tear. I award the landlord the nominal sum of \$200 for these repairs as they have not broken down the costs of repair and proven them to my satisfaction.

I find the landlord entitled to costs of \$11.20 for replacing lightbulbs as this is the tenant's responsibility as explained in Policy 1 of the Residential Tenancy Policy Guideline.

In respect to the landlord's claim for rental loss, I find insufficient evidence that these tenants caused the landlord two months of rental loss. I find as stated above, the former male tenant may have caused some damage and I find the photographs do not illustrate these tenants caused an amount of damage that would take two months to repair. I find also that the landlord has an obligation to mitigate their losses and I find insufficient evidence of any effort the landlord made to diligently advertise or to re-rent the unit as soon as possible. I find the landlord not entitled to recover rental losses and dismiss this portion of their claim.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit with interest to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Cleaning and garbage disposal	470.40
Nominal Award for repair	200.00
Costs of replacing lightbulbs	11.20
Filing fee	50.00
Less security deposit (no interest 2011-15)	-600.00
Monetary Order to Landlord	131.60

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: September 16, 2015

Residential Tenancy Branch

