



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; 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 in advance of this hearing; the landlord's evidence was also sent to the tenant. The tenant testified that her documentary evidence was left on the landlord's doorstep; however, the landlord testified he did not receive documentary evidence from the tenant. The tenant confirmed receipt of the landlord's evidence.

The tenant is required to serve the landlord in a manner directed under s. 88 of the *Act*. S, 88 (g) allows a party to leave documents either on the door or in another conspicuous place. Rule 3.16 of the Rules of Procedure states: the respondent must be prepared to demonstrate to the satisfaction of the Arbitrator that each applicant was served with all their evidence, as required by the *Act*. I am not satisfied that the tenant has served the landlord with her evidence package; therefore I decline to accept the tenant's documentary evidence and heard oral testimony instead. 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.

Preliminary Issues

The parties agreed a previous hearing took place to deal with the tenant's application to recover double the security deposit. The tenant was awarded a Monetary Order for the security deposit on April 01, 2015. As the matter of the security deposit has already been dealt with this prevents me dealing with the landlord's claim to keep the security deposit as the principal of Res Jucatia applies. This section of the landlord's claim is therefore dismissed without leave to reapply.

Issue(s) to be decided

- 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 month to month tenancy started on October 01, 2013. This was an oral agreement between the parties. The tenancy ended on October 01, 2014. The parties also agreed that the landlord did not complete a move in condition inspection report at the start of the tenancy.

The landlord testified that the tenant caused damage to the rental unit which was not corrected at the end of the tenancy. The landlord claims the following items:

The tenant left severe staining on the carpet. The tenant offered to pay \$50.00 towards the carpet cleaning but the landlord called in a carpet cleaning company who said they could try to clean but it may not be successful. The tenant had removed the window screens which had allowed a cat to come into the unit and the cat sprayed urine on the carpets. The landlord contacted another cleaning company who did manage to save the carpets and get the stains removed. The landlord referred to the invoice for this work and explained that as some of the cost was for the stairs the landlord only seeks to recover \$195.47 of the total bill.

The tenant failed to leave the rental unit clean. The landlord engaged a cleaner who has documented all areas she had to clean. This work took 22 hours 20 minutes at \$30.00 per hour. The landlord referred to the invoice and photographic evidence showing the condition of the rental unit. The landlord seeks to recover \$787.50.

The tub was in a good condition when the tenant moved into the unit. The tenant caused damage to the surface of the bath tub during the tenancy and the surface appeared to have been worn off. The tub had to be re-glazed and the landlord seeks to recover the cost incurred of \$440.00.

The tenant or her family ordered moves on demand from Telus without the landlord's permission. The tenant had requested two extra Telus boxes and when these were put in there was no pin lock. The tenant then started to order the children's movies. The landlord agreed that the Telus account was shared with the tenant upstairs but she did not have young children living with her and this tenant had two small children. The first movie was ordered on March 20, 2014 nothing else was ordered until September 14, 2014 and a total of 57 movies were ordered some as many as six in one day. The landlord seeks to recover this cost of \$315.44 from the tenant. The landlord has provided the bill from Telus showing the movies ordered and the costs for each one.

The tenant removed some items from the property. A 30 foot outdoor extension cord which was available for the lawnmower and which the tenant used to plug in her outdoor

lamp. This cord was only two years old. Although the whole house had access to the power cord it was plugged into the tenant's lamp after the upper tenant vacated. The landlord seeks to recover \$40.00 for a replacement power cord. A Black and Decker electric grass and weed trimmer was missing. This was stored under the deck with the tenant's belongings and was not there after she vacated. This was purchased in 2014 and the landlord seeks to recover \$100.00 for replace this item. A window rod was missing along with the curtain. The tenant informed the landlord that she had hired someone to pack for her and they may have packed the rod and curtain and the tenant would return it to the landlord. The landlord did not recover this from the tenant; the curtains and rod were two years old and the landlord seeks to recover \$150.00 to replace these items. The landlord referred to his photographic evidence showing the window where the missing items were located. The tenant removed the smoke and CO2 detector which was plugged in in the living room. This was also two years old and the landlord seeks to recover \$50.00 to replace this item. There was a black metal TV stand which was used by the tenant. This stand was also missing at the end of the tenancy. The stand was three years old. The landlord seeks to recover \$50.00 to replace this item. Two plug in adaptors belonging to Telus were removed by the tenant. These were used to power the digital boxes. The tenant said she would return them to the landlord when she had unpacked but to date these items have not been returned. The landlord seeks to recover \$40.00 for these missing items. The tenants also removed the fire extinguisher from the kitchen. This was three years old and the landlord seeks to recover \$50.00 to replace this item. The total amount claimed for missing items is \$480.00.

The tenant or someone permitted on the property spilt some kind of oil all over the courtyard. The tenant's car also leaked oil onto the driveway. The landlord will have to clean up these oil spills and seeks to recover the amount of \$150.00 for materials and the landlord's labour. The landlord referred to his photographic evidence showing these oil spills.

The landlord testified that due to the embarrassing condition of the rental unit and the stench of cat urine the landlord's appointments made to view the unit for re-rental were unsuccessful. It took the month of October to clean the unit and organise contractors to do the work. Due to this the landlord seeks a loss of revenue for October of \$1,150.00. The landlord testified that as the stench from the lower unit pervaded into the upper unit the landlord was also unable to re-rent the upper unit during October. The landlord seeks to recover the loss of revenue for the upper unit from this tenant of \$1,150.00.

The tenant rebuts the landlord's claims. The tenant testified that when she moved into the unit the carpets had not been cleaned. The landlord agreed at that time that the tenant would not have to clean the carpets at the end of the tenancy. As the tenants children had split drinks on the carpets the tenant thought it would be fair to offer to pay \$50.00 towards the carpet cleaning costs. The tenant disputed that there was a cat in her unit. The previous tenants had two cats and the tenant had asked the landlord for months to deal with a cat urine smell in the unit. The landlord had agreed to clean the carpets but by this time the tenant had her furniture in and did not agree to move everything out to have carpets cleaned.

The tenant disputed the landlord's claim that she failed to clean the rental unit. The tenant also disputed the landlord's claims concerning the cleaner's invoice. The tenant points out that the invoice is dated March 18, 2014 and states the work was done on March 12th and 13th, 2014 yet the tenants vacated on October 01, 2014 and the landlord's receipt provided in evidence shows a date paid of October 15, 2014.

The tenant disputed the landlord's claim to have the tub re-glazed. The tenant testified that the faucet was leaking and the landlord did not fix this until halfway through the tenancy. The tub was used to bath the tenant's children and was not used in any abnormal way that would take the glaze off the tub. The tub was not in a great condition when the tenant moved in and it was old and leaking.

The tenant disputed that they ordered and watched online movies. The tenant testified that these were rented by the tenant upstairs as that tenant and the landlord were fighting and she did this to get back at the landlord. The tenant testified that she sent the upstairs tenant a text message asking about the movies and the upstairs tenant agreed she had rented them. The tenant testified that she had instructed her family not to watch any movies rented by the upstairs tenant.

The tenant disputed that she purposely took anything of the landlords from the property. The tenant testified that the upstairs tenant moved out at the same time and could have also taken any of these items claimed by the landlord. The tenant testified that she had said she would return curtains and rod if she found them in her packing as she would not need them as her new home already had curtains and rods. The tenant disputed that that room didn't even have curtains and testified that there was a blind in that room. The tenant testified that she had told the landlord that she would return anything she found but nothing of the landlords has been found in the tenant's belongings. The tenant agreed she had inadvertently taken the adaptors for the digital boxes but testified that these were returned to the landlord on October 02, 2014. The fire extinguisher was also inadvertently taken.

The tenant disputed that she caused the oil stain in the courtyard and testified that she has no idea what caused this staining. The tenant testified that the oil on the driveway could have been caused by her car or the car belonging to the upstairs tenant. There were also other tenants living upstairs prior to this and the oil could have come from their car. No one had designated parking spaces everyone just parked wherever there was an available space.

The tenant disputed the landlord's claim for loss of revenue for both units. The tenant testified that the landlord was showing the upper unit since August, 2014 and it was in a poor condition and the landlord was asking for too much money and that is why it did not rent. The tenant testified that she did clean her unit it is not her fault the landlord could not re-rent it.

The landlord argued that the tenant agreed it was not a big deal that the carpets were not clean at the start of the tenancy. The landlord disputed that he said the tenant did not have to clean the carpets at the end of the tenancy. The cat urine was caused during the last few months of the tenancy and the tenant had never asked the landlord to deal with it and it was the tenant's boyfriend who informed the landlord that a cat had come in through a window.

The landlord argued that the cleaner made a mistake on the invoice dates. The landlord testified that the cleaning list matches the photographic evidence provided showing the cleaning required.

The landlord argued that even if the faucet was leaking this would only cause water staining at one end of the tub yet the entire tub required re-glazing so the landlord does not know what the tenant did to the glaze in the tub.

The landlord argued that the upstairs tenant's Telus box was locked and she could not have ordered any movies whereas this tenant had two unlocked Telus boxes in her unit; the movies were all children's movies and this tenant had two small children.

The landlord argued that the upper tenant would not have taken anything belonging to the landlord. She was very short on space when she moved and had to minimize what she could take on her moving truck. The landlord disputed that the tenant returned the adaptors when she came to speak to the landlord as she was just denying all the damages.

The landlord cross examined the tenant and asks if the tenant is saying she did not allow a cat into the unit to cause the urine on the carpet. The tenant responded that she does not know what caused the smell it was brought to the landlord's attention but he did nothing about it. The landlord asked the tenant what the powder was on the bedroom carpet. The tenant responded that this was put down to try to get rid of the smell in the carpet but the tenant cannot confirm what the smell was as the tenant did

not see any cat urinating on the carpet. The landlord asked the tenant why her boyfriend told the landlord that he saw a cat entering the unit. The tenant responded that she does not know; if she had seen a cat it would have been made to leave. The landlord asked the tenant if she returned the adaptors on October 02, 2014 did the tenant hand them to the landlord. The tenant responded yes she did.

The tenant cross examined the landlord and asked the landlord if he recalls the tenant asking the landlord if he could smell a bad smell. The landlord responded that she did and the landlord had said his nose was plugged. It was the tenant's boyfriend who later said it was cat urine. The tenant asked the landlord if he did anything about the smell. The landlord responded that he got the report from the first company who said they would have to take the carpets up and spray the subfloor. This report was given to the tenant and she did not offer to help the landlord with the problem. The tenant asked the landlord how one cat getting into the unit could cause all this damage. The landlord responded yes it did.

Analysis

I have carefully considered all the admissible evidence before me, including the sworn testimony of both parties. 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 of 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.

I have turned my mind to the landlord's claim for carpet cleaning. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair. The parties agreed that the carpets were not clean at the start of the tenancy. I have insufficient evidence from the landlord in the form of a move in or move out condition inspection report to show that the carpets were stained anymore during the tenancy. While the tenant agreed she did offer to pay **\$50.00** to the landlord to help with carpet cleaning as her children had split some drinks on the carpets I am only prepared to award this amount to the landlord as the landlord should have ensured the carpets were cleaned at the start of the tenancy if he expected the tenant to be responsible for cleaning costs at the end of the tenancy. The remainder of the landlord's claim for carpet cleaning is therefore dismissed without leave to reapply.

The same test has been applied to cleaning. The landlord's documentary evidence provided showing the cleaning completed in the property does lead me to believe that the tenant did not leave the rental unit reasonable clean at the end of the tenancy. However, I find the dates on the cleaner's invoice to be inconclusive to show when the cleaning was done in the unit as these dates would show that this cleaning work was done on while the tenant was still living in the unit in March 2014. This may have been an error on behalf of the cleaner; however, as the landlord has the burden of proof in this matter I have looked at the other evidence provided. The landlord's photographic evidence shows the unit was not clean and these correspond to the cleaner's written report and invoice showing the level of work completed. I have also taken into account the receipt showing a payment of \$787.50 was made on October 15, 2014. I find

therefore the landlord has met the burden of proof in this matter and I award the landlord the amount of **\$787.50** for cleaning charges.

The landlord must show that the tenant caused damage to the glazing of the tub. The photographic evidence is not clear to show what the damage to the tub was and there is insufficient evidence to show the condition of the tub at the start of the tenancy. I must find therefore that the landlord has not met the burden of proof that the tenant caused damage to the tub through her actions or neglect and the landlord's claim to get the tub re-glazed for \$440.00 is dismissed without leave to reapply.

With regard to the landlord's claim that the tenant ordered 57 on demand movies; I accept the evidence before me that the upper tenant's Telus account was locked and that she had no young children living in her unit. This tenant had two Telus boxes which were not locked and she had two young children. The movies ordered were all children's movies; I find therefore on a balance of probabilities that these movies were ordered by the tenant or a person permitted on the property by the tenant and as such I find the landlord is entitled to recover the cost for these movies of **\$315.44**.

With regard to the landlord's claim for stolen items; the landlord must show that this tenant is responsible for the removal of these items. Some of the items were shared with other tenants and not the sole use of this tenant such as the extension cord and grass and weed trimmer. As the other tenant living upstairs also vacated around the same time as this tenant the landlord would have to show on a balance of probabilities that this tenant did remove these items from the property. In the absence of any corroborating evidence I find the landlord has not met the burden of proof that the tenant removed the extension cord or the grass and weed trimmer and the landlord's claim for these two items is dismissed without leave to reapply.

However, with regard to the other missing items; I accept that some of these items may have been inadvertently packed when the tenant vacated the unit. The landlord's photographic evidence clearly shows there was a curtain rod at the window as the

brackets remain in place. I am satisfied with the evidence before me that the tenant did remove curtains and a rod, a smoke detector, a black metal TV stand, two plug in adaptors and a fire extinguisher. The tenant agreed she still has the fire extinguisher and testified that she returned the adaptors to the landlord on October 02, 2014. The tenant disputed that she had found any other items when she unpacked her belongings.

I find on a balance of probabilities that these items were removed from the rental unit by the tenant or her packers and find that if the tenant no longer has most of these items in her possession then the landlord is entitled to be reimbursed. The landlord is required to provide an actual cost for replacement items or to show the value of the items taken. The landlord has failed to do so and consequently I must limit the landlord's claim to a nominal amount for the curtain and rod, the smoke detector, the TV stand, and the fire extinguisher to an amount of **\$200.00**. I am not prepared to deal with the adaptors as it is one person's word against that of the other that they were returned to the landlord on October 02, 2014 and therefore the landlord has not met the burden of proof that they were not returned.

With regard to the landlord's claim that the tenant split oil in the courtyard and driveway; I am satisfied from the evidence before me that there is a spillage of some sort in the courtyard of the rental unit and what appears to be oil on the driveway. The tenant testified that she has no idea how this spillage occurred in the courtyard and testified that the oil on the driveway could have been caused from any of the tenants' vehicles. The landlord has the burden of proof to show the tenant is responsible for this damage in both areas. I am not satisfied that the landlord can hold this tenant solely responsible for oil split on the driveway when it is a common area shared with other tenants. I am; however, satisfied that the oil in the courtyard is the tenant's responsibility. While the landlord has claimed \$150.00 to clean the oil he has not provided sufficient evidence to show the cost of any product purchased to remove the oil or how many hours of the landlord's labour this work will take. I must therefore limit the landlord's claim to **\$50.00** to clean the oil in the courtyard.

With regard to the landlord's claim that the tenant's unit could not be re-rented due to the condition it was left in and the smell of cat urine; The landlord has the burden of proof to show that the tenant's actions allowed a cat to enter her unit and urinate all over the carpets. The tenant testified that the previous tenants had two cats and the carpets had not been cleaned at the start of her tenancy. I find on a balance of probabilities that it is more likely if there was a urine smell in the carpets that it was caused by the previous tenants' cat and not because a stray cat entered the tenant's unit on one occasion. The landlord has insufficient evidence to meet the burden of proof in this matter. I do accept that the unit was not left reasonably clean but this work was completed by the landlord's cleaner within a few days. The landlord is required under s. 7(2) of the *Act* to mitigate any loss of rent by getting the unit cleaned in a timely manner and to advertise the unit to get it re-rented as quickly as possible. The landlord has not met the burden of proof in this matter to show when the unit was cleaned only that he paid for this work on October 15, 2014, the landlord has not shown when the unit was re-rented.

While I accept that an email dated October 05, 2015 from a prospective tenant who viewed the unit referred to the unit being in a filthy condition with the stained carpet and stench of cigarettes and cat urine the landlord has insufficient evidence to show that the tenant is responsible for the carpet or the smell in the home. Had the landlord provided the rental unit with clean carpets at the start of the tenancy and then if the tenant failed to clean the carpets at the end of the tenancy the landlord would have reasonable cause to recover a loss of rent. There is insufficient evidence to show that the upper or lower units were un-rentable due to this tenant's actions or neglect. Consequently, I must dismiss the landlord's claim to recover a loss of rent for the upper and lower unit of \$2,300.00 without leave to reapply.

As the landlords' claim has some merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

Conclusion

I hereby issue a Monetary Order in the landlord's favor pursuant to s. 67 and 72(1) of the Act in the amount of **\$1,452.44** under the following terms:

Item	Amount
Carpet cleaning	\$50.00
Cleaning	\$787.50
Movies	\$315.44
Missing items	\$200.00
Cleaning courtyard	\$50.00
Recover Filing Fee	\$50.00
Total Monetary Order	\$1,452.94

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 08, 2015

Residential Tenancy Branch

