



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MND, MNDS, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for a monetary order for unpaid rent, for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on April 14, 2015, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on February 2015. The tenant paid a security deposit of \$600.00. The tenancy ended on April 2, 2015.

The landlord claims as follows:

a.	Unpaid rent for April 2015	\$ 900.00
b.	Cleaning and damages	\$1,955.49
c.	Missing items	\$ 44.01
d.	Filing fee	\$ 50.00
	Total claimed	\$2,949.50

Unpaid rent for April 2015

The landlord testified that the tenant gave written notice on March 24, 2015 to end the tenancy on May 1, 2015. However, the tenant then decided to leave earlier and moved out of the rental unit on April 2, 2015. The landlord stated that the tenant did not give sufficient notice or time to attempt to re-rent the unit for April 2015. The landlord seeks to recover loss of rent of April 2015 in the amount of \$900.00. Filed in evidence is a copy of the tenant's written notice to end tenancy.

Cleaning and damages

The landlord testified that the tenant did not make any attempt to clean the rental unit. The landlord stated that they had to clean all the floors, wash the walls as they were spattered with what appeared to be soup and fruit juice and none of the appliances were cleaned. The landlord stated that they had an estimate to have the cleaning done which was \$535.24. The landlord stated they did not use the cleaning company and it took them 24 hours to clean the rental unit. The landlord seeks to recover the amount of \$535.24. Filed in evidence is a copy of a cleaning estimate.

The landlord testified that the tenant was provided with two area rugs, one 4'x6' and the other 6'x9'. The landlord testified that the tenant made no effort to clean the rugs and they required to be replaced as they were heavily stained. The landlord seeks to recover the cost of the rugs in the amount of \$150.00.

The landlord testified that the tenant damaged the countertop by using the counter as a cutting board. The landlord stated that the countertop was in good condition at the start of the tenancy. The landlord stated that they believe the countertop is 10 years old. The landlord seeks to recover the cost to replace the countertop in the amount of \$530.25. Filed in evidence is an estimate for the countertop and a photograph of the countertop.

The landlord testified that the tenant caused damage to the walls by excessive dents and scratches as there were approximately 103 dents and scratches. The landlord stated that there was also stickers and glue on the walls. The landlord stated that the cost of the materials was \$479.63 and it took them 24 hours to fill, sand and paint the walls. The landlord seeks to recover the amount of \$600.00.

The landlord testified that the tenant left a lot of garbage behind, which included a bedframe. The landlord stated that they received an estimate to remove the garbage which was the amount of \$140.00. The landlord stated that they did not incur any actual costs as they hauled and dispose of the items.. Filed in evidence is a photograph of items left. Filed in evidence is an estimate.

Missing items

The landlord testified that at the beginning of the tenancy the tenant was provided with three ice cube tray and an ice bin. The landlord stated these items were missing at the end of the tenancy. The landlord stated that the estimate cost to replace these items is the amount of \$15.00.

The landlord testified that the microwave platter was also missing. The landlord stated the estimate cost to replace the item is \$29.01. The landlord stated that they recently discovered they could replace the item with a used one, which the cost is \$18.00. Filed in evidence is a photograph of the microwave.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Unpaid rent for April 2015

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice

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

...

In this case, the evidence of the landlord was that the tenant gave written notice on March 24, 2015 to end the tenancy on May 1, 2015, then gave verbal notice and ended the tenancy on April 2, 2015. Under section 45(1) of the Act the tenant was required to provide the landlord with at least one month notice to end the tenancy. I find the tenant has breached the Act when they vacated the rental unit prior to their written notice and this caused losses to the landlord.

Since the tenant failed to comply with the Act by not given the landlord sufficient notice to end the tenancy. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy. Therefore, I find the landlord is entitled to recover loss of rent for April 2015, in the amount of **\$900.00**.

Cleaning and damages

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I accept the undisputed testimony of the landlord that the tenant did not clean the rental unit at the end of the tenancy. I find the tenant breached the Act when they failed to leave the rental unit reasonable cleaned. As this is supported by the photographs.

Although the landlord provided an estimate from a cleaning company, that company was not used to clean the premise. The evidence of the landlord was that it took them 24 hours to clean the rental unit. I find that reasonable based on the photographs. Therefore, I grant the landlord compensation at the rate of \$15.00 for each hour of cleaning in the total amount of **\$360.00**.

I accept the undisputed testimony of the landlord that the tenant was provided two area rugs, which were left dirty and stained by the tenant. I find the tenant breach the Act, when they failed to repair the area rugs. The evidence of the landlord was that the estimate to replace the two rugs is the amount of \$150.00. I find that amount reasonable. Therefore, the landlord is entitled to recover the cost to replace the two area rugs in the amount of **\$150.00**

I accept the undisputed testimony of the landlord that the tenant caused damage to the countertop by using the countertop as a cutting board. The move-in condition inspection report support that the countertop was in good condition at the start of the tenancy and the move-out condition inspection report supports the countertop was damaged at the end of the tenancy. The photographs show large cut marks in the countertop.

I find that the damage caused to the countertop does not constitute normal wear and tear, as normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. I find the tenant has breached section 37(2) of the Act, when they failed to repair the damaged countertop at the end of the tenancy and this caused losses to the landlord.

The Residential Tenancy Policy Guideline 40 defines the useful life of building elements. If the tenant damaged an item, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement.

I have determined based on the guideline that the countertop had a useful life span of 25 years. The countertop was 10 years old at the time of replacement. I find the landlord is entitled to recover the depreciated value of 60 percent.

The evidence of the landlord was the estimated cost to replace the countertop was the amount of \$530.25. Therefore, I find the landlord is entitled to compensation for the cost of replacing the item in the depreciated amount of **\$318.15**.

I accept the undisputed testimony of the landlord that the tenant caused damage to the walls, with excessive scratches and dents. This is supported by the photographs. This does not constitute normal wear and tear. I find the tenant breached the Act, when they failed to repair the damage to the walls at the end of the tenancy and this caused losses to the landlord.

In this case the landlord made repairs to the walls, by filling, sanding and painting. The evidence of the landlord was that the cost of the materials was \$479.63 and it took them 24 hours to make the repairs. The landlord did not provide confirmation of the materials. I find an appropriate amount for compensation for labour is the rate of \$15.00 for each hour of repair in the amount of \$360.00 and a nominal amount for material in the amount of \$100.00. Therefore, I find the landlord is entitled to recover for repairing the walls the total amount of **\$460.00**.

I accept the undisputed testimony of the landlord that the tenant left items behind. I find the tenant breached the Act, when they failed to remove all their belongings from the rental unit at the end of the tenancy. While the landlord provided an estimate for removal of the garbage, they did not use that company. Rather they removed the garbage themselves. Therefore, I grant the landlord a nominal amount in the amount of **\$25.00**.

Missing items

I accept the undisputed testimony of the landlord that the tenant was provided 3 ice cube trays, ice cube bin and a platter for the microwave at the start of the tenancy. I find the tenant breached the Act, when they removed items from the rental unit that were provided under the tenancy. Therefore, I find the landlord is entitled to recover the amount of **\$31.00**.

I find that the landlord has established a total monetary claim of **\$2,294.15** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$600.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,694.15**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 22, 2015

Residential Tenancy Branch

