



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNR MNSD FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord wrote the following in the details of the dispute:

Damage to the unit = \$950.00 keeping of the security deposit = \$1250.00
Unpaid rent = \$5000.00
Disposal of Garbage = \$300.00
Recovery of mailbox key = \$30.00
Pressure washing = \$200.00
Recovery of filing Fee \$ Total =

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for the cost to replace the mailbox key. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on April 21, 2015 seeking to obtain a \$6,480.00 Monetary Order for: damage to the unit, site or property; for unpaid rent or Utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord and his Agent. No one was in attendance on behalf of the Tenants. The Landlord provided documentary evidence that each Tenant was served notice of this application and this hearing by registered mail on April 22, 2015. Canada Post tracking information was submitted into evidence by the Landlord and confirmed that Canada Post attempted delivery of each package on April 23, 2015 and that a notice card was left that date to advise each Tenant they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on April 30, 2015 that the registered mail was available for pick up.

As of May 13, 2015 the Canada Post tracking information indicated that the Tenants still did not pick up the registered mail and the package and each package was returned to the Landlord. The Landlord submitted photocopies of the returned unclaimed packages. Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision.

In addition to the above listed documentary evidence, the Landlord submitted photographs of the Tenants' new home showing the address, and photographs of the Tenant's work truck parked in the driveway. The Landlord also submitted a written statement listing the property manager's name and contact information regarding this new address where they submit the Tenants are currently residing. They argued that they had attempted to obtain written information from the property manager and due to privacy regulations their request was refused.

The Landlord testified that he and his wife attempted to personally delivery their hearing documents to the Tenants on April 23, 2015 and June 20, 2015 at the Tenants' new residence. When they attended on June 20, 2015 they approached the male Tenant to serve him the documents while the Tenant was sitting in his truck. The Landlord stated that the Tenant refused to accept the documents and drove away.

Based on the undisputed evidence of the Landlord, I conclude that each Tenant was sufficiently served notice of this hearing in accordance with Sections 89(1) (c) and Section 90(a) of the *Act* on April 27, 2015, five days after they were mailed, pursuant to section 90 of the *Act*. Therefore, I continued with the hearing in absence of either Tenant.

Issue(s) to be Decided

Has the Landlord proven entitlement to Monetary Compensation?

Background and Evidence

The Landlord testified that the Tenants entered into a one year fixed term written tenancy agreement that began on July 01, 2012 and switched to a month to month tenancy after June 30, 2013. Rent of \$2,500.00 was due on or before the first of each month and on May 31, 2012 the Tenants paid \$1,250.00 as the security deposit, as per the tenancy agreement submitted into evidence.

The Landlord described the rental unit as being a single detached house which he had built and has owned since 2006.

The Landlord submitted evidence of a copy of a 10 Day Notice to end tenancy that was dated February 16, 2015 indicating the Tenants failed to pay \$5,000.00 in rent that was due February 1, 2015.

In support of their monetary claim the Landlord submitted testimony, receipts and a Monetary Order Worksheet listing six items being claimed as follows:

- 1) \$30.00 to replace the Canada Post Mailbox Key as no keys were returned by the Tenants– as per the receipt in evidence dated April 09, 2015;
- 2) \$300.00 for the cost of labour to remove garbage and junk from the rental unit as per the typed receipt in evidence which states the Landlord paid cash for the removal of garbage on March 8, 2015. The Tenants left several items scattered around the property including a Christmas tree and a large pool table;
- 3) \$200.00 for pressure washing as per the typed statement that the “property” was pressure washed on March 10, 2015. The Landlord testified that the driveway needed to be pressure washed because the Tenants’ vehicles dripped oil all over it. Upon further clarification the pressure washing was completed on the driveway and the concrete around the side and the pad and steps at the back of the house;
- 4) \$5,000.00 for unpaid rent for January and February 2015 as per the 10 Day Notice issued February 16, 2015 as no rent was paid for these months;
- 5) \$100.00 filing fee paid for this Dispute Resolution process;
- 6) \$945.00 for “re-touching and painting” the interior of the rental unit as per the undated invoice submitted into evidence.

The Landlord argued that the Tenants painted one of the bedrooms a dark blue color and they put up wallpaper which had to be removed. Upon review of the invoice for painting submitted in their evidence the Landlord stated that they had submitted the wrong invoice. They stated that the invoice submitted in evidence pertained to their other rental property. The correct invoice listed removed of wallpaper. The Landlords argued that the rental unit had been painted just prior to this tenancy in 2012; however, they did not submit documentary evidence to prove the exact date it had been painted.

The Landlords stated that they did not know the exact date the Tenants moved out; however, they called them on the telephone on approximately February 22, 2015 to see if they were moving or going to pay the rent. The Landlord said it was during that telephone conversation that the Tenants told them that they had already moved out. The Landlords submitted that they re-rented the house effective April 1, 2015.

Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Policy Guideline 40 provides that the normal useful life of interior painting is 4 years.

Policy Guideline 1 provides, in part, the following information on who is responsible for property maintenance to a rental unit as follows:

3. 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.
5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, the undisputed evidence, and on a balance of probabilities I find as follows:

The Tenants' rent was payable on the first of each month as per the tenancy agreement. I accept the undisputed evidence that the Tenants failed to pay their January and February 2015 rent in breach of section 26 of the Act. The evidence proves the Tenants were served a 10 Day

Notice to end tenancy on February 16, 2015, and that Notice remains undisputed. Accordingly, I find there to be sufficient evidence to prove the Landlord's claim and I award them **\$5,000.00** for unpaid January and February 2015 rent.

I accept the undisputed evidence that the Tenants left the rental unit requiring additional cleaning and without returning the keys to the Landlord which is in breach of sections 32 and 37 of the *Act*.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

Notwithstanding the Landlord's oral submissions, I conclude that there was insufficient evidence that would prove when this rental unit interior had previously been painted. I then considered that this tenancy was in effect from July 1, 2012 until February 2015 and there was no interior painting conducted during that period.

In absence of a move in or move out condition inspection report form I find the Landlord submitted insufficient evidence to support his submission that wallpaper had been installed during this tenancy or that painting had been completed by the Tenants. In addition there was no photographic evidence submitted that would support the Landlord's submissions.

Based on the above, and in consideration that an incorrect invoice was submitted in evidence listing this rental unit address when it pertained to a different address, I find there to be insufficient evidence to support the claim of \$945.00 for painting. Accordingly the claim for painting is dismissed, without leave to reapply.

I considered the evidence relating to pressure washing the property regarding the work that was performed on the driveway and all around to the back of the house. Given that the property was 7 years old and located in a very wet climate, and in absence of any evidence of the condition of the property at the outset of this tenancy, I find there was insufficient evidence to prove the burden of the cost of power washing fell to the Tenants. Rather, I conclude that power washing of a property to be a major maintenance project that would be the responsibility of a landlord, pursuant to Policy Guideline 1. Accordingly, I dismiss the claim of \$200.00 for pressure washing, without leave to reapply.

I accept the Landlord's submissions that the Tenants are responsible to bear the costs for garbage and debris removal and for replacement of the Canada Post mailbox key, pursuant to sections 32 and 37 of the *Act*. I further accept the documentary evidence that those items cost the Landlord \$300.00 and \$30.00 respectively. Accordingly, I award the Landlord monetary compensation in the amount of **\$330.00** (\$300.00 + \$30.00), pursuant to section 67 of the *Act*.

The Landlord has primarily succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*.

I conclude that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid January and February 2015 Rent	\$5,000.00
Garbage Removal & Mailbox Key	330.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$5,430.00
LESS: Security Deposit \$1,250.00 + Interest 0.00	<u>-1,250.00</u>
Offset amount due to the Landlord	<u>\$4,180.00</u>

Conclusion

The Landlord has primarily succeeded with their application and was awarded monetary compensation of \$5,430.00 which was offset against the Tenants' \$1,250.00 security deposit; leaving a balance due to the Landlord of \$4,180.00.

The Landlord has been issued a Monetary Order in the amount of **\$4,180.00**. This Order is legally binding and must be served upon the Respondent Tenants. In the event that the Respondents do not comply with this Order it may be filed with the Small Claims 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 25, 2015

Residential Tenancy Branch

