



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF,

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent and for damage to the unit 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 his filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. Both parties confirmed receipt of the Notice of Hearing Package submitted and filed by the other party. Both parties confirmed receipt of the documentary evidence submitted by the other party. I accept the undisputed testimony of both parties and find that each has been properly served with the Notice of Hearing Package and the submitted documentary evidence.

Preliminary Issue

This hearing was adjourned to November 17, 2015 due to a lack of time while hearing the landlord's claims. The details of the tenant's claims have not yet been heard. Both parties were advised that a new notice of an adjourned hearing letter would be sent to

each party for a continuation date. Both parties confirmed their addresses as listed on their applications for dispute resolution. Both parties were advised that no amendments or new evidence would be allowed.

On November 17, 2015 the adjourned hearing was commenced with both parties in attendance by conference call.

Issue(s) to be Decided

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

Is the landlord entitled to an order authorizing him to retain all or part of the security deposit and recovery of the filing fee?

Is the tenant entitled to a monetary order for the return of the all or part of the security deposit and recovery of the filing fee?

Background and Evidence

This tenancy began on August 4, 2011 on a 6 month fixed term tenancy ending on January 31, 2012 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$900.00 payable on the 1st day of each month and a \$450.00 security deposit was paid on August 4, 2011. Both parties confirmed that the tenancy ended on July 31, 2014.

The landlord seeks a monetary claim of \$4,999.00, which consists of:

Item	Amount
Replace Mini Blind	10.00
Replace Cupboard Doorknob	8.78
Replace lightbulb	1.50
Carpet Cleaner Soap	76.84
Carpet Cleaner Rental	27.99
Professional Carpet Cleaner	100.00
Cleaning Supplies	58.05
Air Fresheners	14.09
Locksmith- Copy New Keys	24.64
4 Months Utilities (Aug.-Nov.)	152.66
4 Months Insurance (Aug.-Nov.)	149.33
4 Months Strata Fees (Aug.-Nov.)	1,191.08
4 Months Hydro (Aug.-Nov.)	55.98

Landlord's Labour (160 hours@\$25/hr)	4,000.00
Landlord's time to respond to Dispute (8hrs.)	200.00
Lost Rental Income 4 Months@\$900	3,600.00
Depreciation of Rental Property (from \$179,649.00 to \$162,500)	17,149.00
Total Monetary Claim	\$26,819.94

The landlord stated that he understood that his monetary claim was limited to the \$4,999.00 as his listed total monetary claim exceeded the statutory limit on his filed application.

The landlord stated that the tenants vacated the rental unit on July 31, 2014 and that there were no completed condition inspection reports for the move-in or the move-out. The landlord relies on a notation on the signed tenancy agreement as the condition inspection report for the move-in which states,

Unit is 100% clean. All lightbulbs working.

Carpet & lino is 40% worn. Everything in unit is in good working condition.

The landlord stated that this became the "Condition & Inspection Report" which was signed as part of the tenancy agreement. The tenant disputed that there was no condition inspection report for the move-in completed. The landlord relies upon a hand written statement prepared and signed by the landlord only dated August 2, 2015 which lists the following deficiencies:

Carpet bleaching, stains & filth.

Ink on curtains.

Fire & smoke damage to bathroom medicine cabinet.

Chip in sink.

Both towel bars torn off.

Gyproc damage in dinette & bathroom.

3 missing door stops & damage to Gyproc.

Living room blind broken.

Stains & filth on deck.

Stove burner and oven liners missing.

Garbage left in kitchen and bathroom.

Heavy pee spray all around toilet.

Entire condo needs complete cleaning.

The landlord submitted a total of 80 photographs on a compact disc which show 10 different images duplicated. The tenant argued that there was no condition inspection report for the move-out completed.

The tenant disputes the landlord's claims stating that the condo was cleaned prior to vacating the rental unit. The tenant also stated that the condition of this rental was old and worn but rentable.

The landlord claims that he had to buy a replacement blind as one was missing at the end of the tenancy. The tenant confirmed that his daughter broke the blind, but that a new blind was bought to replace it. The landlord stated that the tenant bought the wrong blind. The tenant stated that he was never told what the proper blind size should be.

The landlord seeks recovery of \$8.78 for replacing a cupboard doorknob. The tenant disputes this charge stating that he was never notified of it. The landlord stated that the missing cupboard doorknob was not noticed until December of 2014 about 6 months after the end of the tenancy.

The landlord seeks \$1.50 for the replacement of lightbulbs as the tenant replaced the lightbulbs with incorrect ones. The tenant disputed this stating that the correct bulbs were installed.

The landlord seeks \$204.83 which consists of \$27.99 for the rental of a carpet shampoo machine, \$76.84 for carpet cleaning soap and \$100.00 for the labour paid to a carpet cleaner. The landlord has submitted copies of the receipts for the carpet shampoo and the carpet shampoo rental costs. The landlord stated that a cash payment was made for the labour and was not given a receipt/invoice. The tenant disputed this claim stating that he had the carpet cleaned every year during the tenancy, but noted that there were stains present in the carpet at the beginning of the tenancy. The landlord relies on the submitted photographs which show carpet stains in 3 different areas.

The landlord stated that he needed to purchase \$58.05 worth of cleaning supplies to properly clean the rental unit which was left dirty by the tenant. The tenant disputes this claim stating that the rental was left clean when it was vacated by the tenant.

The landlord provided no details for the \$14.08 claim for air fresheners. The tenant provided no comment on this claim.

The landlord stated that he incurred a cost of \$24.64 for the purchase of a new lock set. The landlord stated that he had to change this himself due to a lack of trust with the tenants and that he did not know what they may or may not do. The tenant provided no comment on this claim.

The landlord stated that because of a 4 month period in which it took him to clean (on a part time basis) and make repairs to the rental unit he seeks compensation from the tenants for:

4 Months Utilities (Aug.-Nov.)	152.66
4 Months Insurance (Aug.-Nov.)	149.33
4 Months Strata Fees (Aug.-Nov.)	1,191.08
4 Months Hydro (Aug.-Nov.)	55.98
Landlord's Labour (160 hours@\$25/hr)	4,000.00
Landlord's time to respond to Dispute (8hrs.)	200.00
Lost Rental Income 4 Months@\$900	3,600.00

The tenant disputes these claims stating that the rental was not left dirty and damaged that would require a 4 month period to clean and repair it. The tenant also stated that the landlord came to the rental unit every month to collect the rent and that no issues were ever brought up during the tenancy as the landlord was able to view it whenever he attended. The landlord stated that if he had hired a cleaning service/contractor that it would have taken them 1 month to clean and repair the rental premises before making rentable again.

The landlord also stated that the rental property depreciated by \$17,149.00 because of the actions of the tenants. The landlord stated in his written details that

the condo value depreciated due to a reduced value/selling price as per real estate value due to items damaged and repaired as best as possible and which should have been replaced, affecting the units desirability on the market. Such items include the black-out curtains which should have been replaced, the medicine cabinet which was repaired, but should have been replaced, the carpets which were cleaned, but now have permanent stains, the walls which should have been painted but were only washed, repaired and paint touch up.

Was over 4 months doing the cleaning and repairs and the unit was actually vacant for 5 months (Rented again as of Jan. 1,2015)

The tenants seek a monetary claim for the return of the \$450.00 security deposit and recovery of the \$50.00 filing fee from the landlord.

Both parties have confirmed that the tenancy ended on July 31, 2014 and that the landlord received in writing the forwarding address from the tenant on March 29, 2015. The \$450.00 security deposit was paid by the tenant on August 4, 2011.

Analysis

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.

In this case, the landlord relies on a notation on the signed tenancy agreement which stated,

Unit is 100% clean. All lightbulbs working.

Carpet & lino is 40% worn. Everything in unit is in good working condition.

The landlord also relies upon a hand written statement prepared and signed by the landlord dated August 2, 2015 which lists the following deficiencies:

Carpet bleaching, stains & filth.

Ink on curtains.

Fire & smoke damage to bathroom medicine cabinet.

Chip in sink.

Both towel bars torn off.

Gyproc damage in dinette & bathroom.

3 missing door stops & damage to Gyproc.

Living room blind broken.

Stains & filth on deck.

Stove burner and oven liners missing.
Garbage left in kitchen and bathroom.
Heavy pee spray all around toilet.
Entire condo needs complete cleaning.

The landlord also submitted a total of 80 photographs on a compact disc which show 10 different images duplicated eight times each. These duplicated 10 images show:

a chipped enamel sink
wall damage
hole in a wall
3 different carpet stains
damaged blinds
cupboard stains(fire/smoke damage)

Of the claims sought by the landlord, I find only evidence of:

Carpet stains
Damaged bathroom cupboard (fire/smoke damage)

The landlord has provided receipts for rental of a carpet shampoo machine (\$27.99) and carpet cleaning soap (\$76.84) totalling, \$104.83. I find on a balance of probabilities that the landlord has established a claim for \$104.83. This is supported by the limited photographs which show stained carpet at the end of the tenancy and the landlord's "condition inspection report" which noted that the carpet was worn.

I also find that the landlord has established a claim for \$8.93 for the replacement of mini-blinds. The tenant confirmed in his direct testimony that his daughter broke the blinds, but that the landlord was not notified. Although the tenant stated that he bought a replacement blind, it was the wrong one according to the landlord. As such, I find that the landlord is entitled to this portion of his claim.

The tenant has disputed the landlord's claims and has repeatedly pointed out that the landlord has failed to complete a condition inspection report for the move-in and the move-out. I find that the landlord has failed to provide sufficient evidence to satisfy me of the condition of the rental unit before and after the tenancy began. The landlord has also failed to provide sufficient evidence of the remaining portions of the claim that the damage was caused by the actions or neglect of the tenant. The landlord relies on a self-serving deficiency list that was produced by the landlord without the tenant after the tenancy ended. The remaining portions of the landlord's claim are dismissed.

The landlord has established a total monetary claim of \$113.76. Using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain \$113.76 from the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. The tenant is granted a monetary order for the difference of \$336.24.

As both parties were successful in their applications, I decline to make any orders regarding the recovery of the filing fees.

Conclusion

The landlord may retain \$113.76 from the security deposit.

The tenant is granted a monetary order for \$336.24.

The tenant is provided with this order in the above terms and the landlord must be served with this order as soon as possible. Should the landlord 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: November 20, 2015

Residential Tenancy Branch

