



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNDC, MNR, MNSD, FF
Tenant: MNDC, MNSD

Introduction

This hearing dealt with the cross Applications for Dispute Resolution with both parties seeking monetary orders. The hearing was conducted via teleconference and was attended by the landlord; his agent; and the tenant. The landlord had arranged for a witness to be available for the hearing, however she was never called to provide testimony.

At the outset of the hearing the landlord clarified that when his Application for Dispute Resolution was submitted he had sought an estimated \$3,963.70, however, by the time the landlord submitted his evidence some of the actual cost were determined and as such the amount was reduced to \$3,706.95. I also clarified later in the hearing the landlord already had received a portion of the hydro charges and I have adjusted the landlord's claim accordingly.

Also at the outset of the hearing the tenant clarified that she was no longer seeking lost wages in the amount of \$1,200.00 in her Application for Dispute Resolution.

I accept these changes from both parties as they both represent reductions in their claims. As such, I find there is no prejudice to either party to amend their respective Applications. I amend each Application to reflect the above changes.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities; for compensation for damage to and cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for 1 month's rent and for all or part of the security deposit, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on March 31, 2015 for a 6 month and 1 day fixed term tenancy beginning on April 1, 2015 for a monthly rent of \$1,100.00 due on the 1st of each month with a security deposit paid. The landlord submits the tenant paid only \$500.00 of the \$550.00 security deposit and the tenant states she paid \$600.00. The landlord provided copies of receipts issued totalling \$500.00 paid for security deposit;
- A copy of a Condition Inspection Report signed by the landlord's agent and the tenant on both the start and end of the tenancy. The tenant has checked off that she does not agree that the report represents the condition of the rental unit for the following reasons: "floor".
- The landlord has also submitted invoices for work and repairs claimed;
- Several text messages from throughout the tenancy

Both parties submitted several photographs and the landlord submitted several text messages.

The landlord seeks the following compensation:

Description	Amount
Floor repairs	\$3,097.50
Utilities – hydro	\$201.77
Cleaning/Garbage removal	\$85.00
Repairs/painting	\$50.00
Lock Replacement	\$50.00
Canada Post charges for hearing documents	\$22.68
Filing Fee	\$50.00
Total	\$3,556.95

The parties agree that they had entered into a mutual agreement to end the tenancy, originally for June 1, 2015 and then it was later changed to May 15, 2015.

The tenant submits the landlord had promised that they would pay her 1 month's rent (\$1,100.00); pay for her moving costs; to remove all of her garbage; and return of her

security deposit. The tenant confirms the landlord paid her \$300.00 for moving costs. The parties agree that when the tenant found a new place to move to for May 15, 2015 the landlord returned \$600.00 for ½ month's rent and utilities. The landlord testified a promise of a month's rent or the removal of garbage was never made.

The tenant seeks return of her security deposit and the equivalent of 1 month's rent the landlord promised her.

The tenant disputes the condition of the rental unit floor she states that the landlord had provided her with pads for furniture and that she hadn't even unpacked her belongings and so there is no way the floors could have been damaged.

The landlord has provided several close-up photographs identifying a number of scraps; scratches; gouges; and indentions on the flooring in several locations. The tenant's has submitted several photographs showing a long range few without any detail of the condition of the flooring. The landlord stated the flooring was at least 4 years old.

She also states the landlord had promised to remove the tenant's garbage as part of their agreement to end the tenancy. The tenant submitted that she had cleaned the stove and provided a photograph of the exterior part of the stove. The landlord provided a photograph of the interior of the stove. The tenant did not dispute the landlord's claim for repairs and painting.

As to the utilities, the landlord provided a detailed explanation and calculation to determine the tenant owed, through the course of the tenancy an amount of \$351.77 for hydro. The tenancy agreement required the tenant to pay \$100.00 per month to the landlord for utilities that would be reconciled when the bills were received.

The landlord confirmed the tenant had paid the landlord \$200.00 and that they had returned \$50.00 of this amount for the ½ month of May 2015 when the tenant vacated the rental unit. The tenant disputes the amount of the landlord's claim for hydro but provided no evidence to substantiate her position.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In the case before me, the tenant submits the landlord had agreed to provide her with compensation equivalent to 1 month's rent, however the landlord disputes this claim. As such, the burden is on the tenant to provide some form of evidence to corroborate her claim.

While the tenant did provide a type written note from a witness, the note is neither signed nor authenticated. Further the landlord submitted that the person who wrote the note was not located anywhere where he could have heard any of the discussions with the tenant. As such, I find this written note has little or no value to substantiate the tenant's claim.

In addition, the parties entered into a written mutual agreement to end the tenancy and there is one additional term written on the agreement which states: "the exchange of moving costs to" the tenant. Even if the landlord had wanted the rental unit back for his own use of the property he did not issue a 2 Month Notice to End Tenancy for Landlord's Use of Property. If the landlord had issued such a Notice the tenant would have been entitled to 1 month's rent as compensation.

I find the landlord has established the value of the hydro costs that are attributable to the tenant at \$351.77. I am not persuaded by the tenant's argument that she merely disagrees with the amount of the claim. I also find the tenant had paid the landlord \$200.00 of which \$50.00 was returned to the tenant leaving a balance owing of \$201.77.

As to the landlord's claim for the cost of postage in the amount of \$22.68 for the cost of hearing packages, there is no provision in the *Act* to recover the costs associated with pursuing a monetary claim against the other party to a tenancy with the exception only of recovery of the filing fee. As such, I dismiss the landlord's claim for postage costs.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the documentary evidence submitted by both parties as to the condition of the rental unit at the end of the tenancy, I prefer the landlord's evidence. I find the landlord's photographic evidence of the condition of the hardwood floors provides sufficient detail to access the condition, while the tenant's photographs are taken too far away from the flooring to show the condition.

I also accept the landlord has established the minor repairs and painting; the additional cleaning of the stove; and the requirement for the key replacement was required and as a result the landlord suffered a loss.

In addition, based on the absence of any corroborating evidence, I find there was no agreement for the landlord to pay the costs of removing any garbage from the rental unit.

Based on the above, I find the landlord has established that he has suffered a loss that resulted from the tenant's failure to comply with the requirements under Section 37 of the *Act*. I also accept the landlord has established the value of that loss, in the amounts claimed above.

However, in regard to the value of the landlord's claim for refinishing the flooring I note that the landlord testified the hardwood flooring was 4 years old. Residential Tenancy Policy Guideline 40 states that the useful life for hardwood flooring is 20 years. As such, I find the landlord's claim must be adjusted by 20% to take in account depreciation as set out in this guideline.

As to the amount of the security deposit held by the landlord I find the landlord has provided sufficient evidence, in the form of receipts, to confirm the tenant had paid \$500.00 for a security deposit.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,914.77** comprised of \$201.77 utilities owed; \$2,478.00 flooring; \$85.00 cleaning and garbage removal; \$50.00 minor repairs and painting;

\$50.00 lock box key replacement and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$500.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,414.77**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

Also based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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 9, 2015

Residential Tenancy Branch

