



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, MNDC, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, the cost of cleaning, painting and repairs and for the filing fee. The tenant applied for a monetary order for the return of double the security deposit and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, the cost of cleaning, painting and repairs and for the filing fee? Is the tenant entitled to the return of double the security deposit and the filing fee?

Background and Evidence

The tenancy started on April 01, 2011. The monthly rent was \$1,600.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$780.00. The parties conducted a move in inspection at the start of tenancy and a report was filed into evidence. The report indicates that there were no deficiencies.

On March 22, 2015, the landlord sent the tenant a message by email asking her if she would be renewing the lease that was due to end on April 01, 2015. The tenant replied on March 23, 2015, informing the landlord by email that she would be moving out by the end of April. The landlord stated that he was planning to sell the house and therefore did not look for a new tenant. On May 02, 2015, the tenant returned the keys to the female landlord. The female landlord stated that the unit was not clean, the carpets were stained and the walls were damaged and therefore requested the tenant to return on May 09 to carry out a move out inspection in the presence of the male landlord.

The tenant did not attend the move out inspection on May 09, 2015. On May 21, 2015, the tenant provided the landlord with a forwarding address, in writing.

The landlord filed digital evidence to show the condition of the home at the end of tenancy. He stated that the home was two years and four months old at the start of tenancy and the tenant was the second occupant of the rental home. The landlord stated and the tenant agreed that the carpet on the lower stairs were replaced at the start of tenancy.

The digital evidence shows that the carpet is stained in several places, throughout the home. The tenant attempted to clean the carpet and used the service recommended by the landlord, but the stains could not be removed. The landlord replaced the carpet and is claiming the cost of doing so. .

The landlord stated that rental unit was not cleaned and also filed digital evidence to support his testimony. The evidence shows that the windows and patio door were left in a dirty condition. The landlord is claiming \$245.00 for his time spent cleaning.

The landlord testified that the walls and baseboard were damaged. The digital evidence shows marks and damage to the walls and baseboard which appear to be beyond normal wear and tear. The landlord's witness was the painter who patched the walls and painted the unit. He stated that the walls had several holes, scratches and the corners appeared to be damaged by the moving of furniture. He also stated that there were water stains on the ceiling of the basement which could have leaked from upstairs.

The landlord stated that it took him a month to get the unit repaired, cleaned and painted and therefore he was unable to show the unit to prospective buyers. The landlord is claiming loss on income in the amount of one month's rent.

The landlord is claiming the following:

1.	Cost of Carpet	\$1,512.00
2.	Installation of carpet	\$611.94
3.	Cleaning windows	\$245.00
4.	Cleaning and pressure washing garage, patio etc.	\$140.00
5.	Painting	\$530.00
6.	Paint supplies	\$142.44
7.	Loss of income	\$1,600.00
	Total	\$4,781.38

Analysis

Landlord's application:

1. Cost of carpet - \$1,512.00
2. Installation - \$611.94

Based on the digital evidence filed by the landlord, I find that the carpet was considerably stained in several places. Attempts to remove the stain by professional carpet cleaners were unsuccessful. The move in report does not indicate that the carpet was stained in any area. Based on the above, I find that the stains on the carpet were beyond wear and tear and therefore the tenant is responsible for a portion of the cost of the carpet.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the carpet. As per this policy, the useful life of flooring is ten years. The carpet was seven years old at the end of tenancy and therefore had three years of useful life left. Accordingly I find that the landlord is entitled to \$637.18 which is the prorated value of the remainder of the useful life of the flooring.

3. Cleaning windows - \$245.00

Based on the digital evidence of the landlord, I find that the windows were not clean at the end of tenancy. The landlord has provided a receipt and therefore I award the landlord his claim of \$245.00.

4. Cleaning and pressure washing garage, patio etc.- \$140.00

The digital evidence shows that the patio and garage were left in a messy condition. Based on the receipt I award the landlord \$100.00 towards cleaning. The landlord must bear the cost of pressure washing the driveway.

5. Painting - \$530.00
6. Paint supplies - \$142.44

The digital evidence of the landlord indicates that there is damage to the walls and baseboard which is beyond wear and tear. The useful life of interior paint as per the policy guidelines is four years. The landlord agreed that the unit was last painted seven years ago and was touched up twice since then.

According to the guidelines the useful life of the paint was exhausted by the end of tenancy and therefore the landlord must bear the cost of painting.

However, the landlord's witness described the damage to the walls and baseboard and along with the photographs; the damage appears to be beyond wear and tear. Accordingly I award the landlord \$250.00 toward the cost of repair of the walls.

7. Loss of income - \$1,600.00

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I find that the tenant provided adequate notice to end the tenancy. The landlord did not intend to re rent the unit and therefore did not suffer a loss of income. The landlord's claim for \$1,600.00 is dismissed. However the tenant did overstay when she moved out on May 02, 2015 and therefore I award the landlord the prorated rent for two days in May in the amount of \$103.22.

Overall the landlord has established a claim as follows;

1.	Cost of Carpet	\$637.18
2.	Installation	0.00
3.	Cleaning windows	\$245.00
4.	Cleaning and pressure washing garage, patio etc.	\$100.00
5.	Painting	\$250.00
6.	Paint supplies	\$0.00
7.	Loss of income	\$103.22
	Total	\$1,335.40

Since the landlord has proven most of his claim, he is entitled to the recovery of the filing fee of \$50.00. Overall the landlord has established a claim of **\$1,385.40**.

Tenant's application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

In this case, the landlord failed to return the security deposit or file an application to keep it within 15 days of receiving the tenant's forwarding address in writing and therefore must return double the security deposit.

Since the tenant has proven her case, she is entitled to the recovery of the filing fee of \$50.00. Overall, the tenant has established a claim of **\$1,610.00**.

I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$224.60 which consists of the difference between the established entitlements of the parties.

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$224.60. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order for **\$224.60**.

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 12, 2015

Residential Tenancy Branch

