



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for unpaid rent, for loss of rent, for compensation under the *Residential Tenancy Act* (the “Act”) and the tenancy agreement, for damage and cleaning of the rental unit, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

This tenancy began June 1, 2009. At that time monthly rent was payable in the amount of \$900.00. The Landlord confirmed that rent was not increased during the tenancy such that at the end of the tenancy monthly rent continued to be payable in the amount of \$900.00.

The Landlord confirmed that he did not perform a move in condition inspection report.

The Landlord testified that the tenancy ended on September 30, 2014. The Landlord then testified that he performed a move out condition inspection report on September 2, 2014, yet also claimed that the move out report was dated September 18, 2014. When the discrepancy between these aforementioned dates was brought to the Landlord's attention and he was asked if he was sure about those dates he stated he was.

Although the Landlord claimed to have filed a copy of the condition inspection report in evidence, this document was not available to me.

The Landlord testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 2, 2014 (the "Notice"). The Notice was provided in evidence and indicated that rent was outstanding in the amount of \$900.00 as of September 1, 2014. The effective date of the Notice was September 15, 2014.

The Landlord claimed he incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenant.

The Landlord provided a Monetary Orders Worksheet wherein he claims as follows:

Loss of rent for September 2014	\$900.00
Cost to repair holes in walls and doors	\$650.00
Cost of painting and clean-up of rental unit	\$658.00
Cost of carpet cleaning	\$169.00
Cost to replace 9 doors and 4 lock sets	\$1,506.34
Outstanding water bill	\$98.41
Replacement of window screens	\$175.00
Clean up of yard	\$100.00
Replacement of two thermostats	\$36.00
Missing light bulbs, light plug covers and plates	\$50.00
Filing fee	\$50.00

Total claimed	\$4,592.75
----------------------	-------------------

The Landlord testified that the carpets could not be cleaned and were instead removed; as a result, he confirmed that he did not have the carpets cleaned as claimed above.

The Landlord submitted in evidence 42 photos of the rental unit which depicted the condition of the rental unit at the end of the tenancy. These photos include the following:

- Excessive paint on the baseboards, ceiling, electrical switch plates, and carpets;
- Holes in the drywall, some of which were “repaired” by duct tape;
- Writing on the walls;
- Holes in the doors;
- Cracked doors;
- Missing light bulbs in the bathroom vanity;
- An unclean refrigerator;
- An unclean oven;
- Staining on the outside deck;
- A broken closet door;
- A window sill filled with cigarette butts;
- A stained and dirty under sink cabinet
- Dirty kitchen cabinets;
- Missing electrical plug and thermostat covers;
- Broken electrical plugs;
- A room full of clothing and other miscellaneous items; and
- Overgrown blackberries beside the house.

The Tenant testified that she is married to the Landlord’s son M.S., who is the other named Tenant on the tenancy agreement. She stated that she and M.S. separated and as a result she moved from the rental unit on August 11, 2014. The Landlord did not name M.S. on his application for dispute resolution. She further testified that she was unaware when M.S. moved from the rental unit and as such was unaware of the condition of the rental when he moved. She also testified that she was not aware if M.S. had paid the outstanding rent for September 2014.

The Tenant stated that she was made aware of the Notice on September 3, 2014 and at that time made arrangements to move out the balance of her belongings on September 7, 2014.

The Tenant confirmed that she received the Landlord's photos of the rental unit when she received the notice of the hearing from the Landlord. She also confirmed that the photos accurately depicted the condition of the rental unit when she moved out, but that some of the damage existed prior to her moving in. For instance, she claimed that the following damage predated the tenancy:

- one exterior door (depicted in the Landlord's photo #33) was dented at the time the tenancy began;
- another exterior door (depicted in the Landlord's photo #27) was split at the time the tenancy began; and,
- one thermostat (depicted in Landlord's photo #11) was damaged when the tenancy began.

The Tenant confirmed that the mirrored closet door fell over and shattered while she was vacuuming. She confirmed that she was responsible for the associated cost.

The Tenant also testified that two of the doors were damaged, but she disputed the Landlord's claim that four doors were damaged.

The Tenant further confirmed that the screens were not damaged, they were merely removed from the windows. She stated that she believed they remained at the rental unit.

In reply the Landlord noted that the photos submitted by the Landlord confirmed that four doors were damaged at the end of the tenancy.

The Landlord also stated that he replaced the broken mirrored doors with bi-fold doors as they were less expensive than the mirrored door and he was trying to keep his costs down.

The Landlord confirmed that the screens were not on the property at the end of the tenancy and he had no option but to replace the screens.

The Tenant confirmed that she paid the outstanding water bill in the amount of \$98.41 on October 5, 2014 via online banking. She further noted that the water bill was in her name. Notably, the water bill introduced in evidence was in fact in the name of the Tenant, J.S.

The Landlord stated although the water bill was in the Tenant's name, as it is a municipal utility it reverts to the owner if left unpaid. He confirmed that he paid the water bill in September of 2014. He stated that he was not aware that the Tenant had paid the bill as well, but that if she claimed to have done so he was prepared to accept her testimony. He confirmed he wished to withdraw this part of his claim.

I directed the Tenant to provide the Landlord with proof that the \$98.41 was paid on October 5, 2014. The Landlord is at liberty to apply for a further monetary order should the Tenant not provide this proof, or the Landlord determines that the payment was not made as claimed by the Tenant.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

I accept the Landlord's evidence that rent was not paid for September 2014. The Tenant was not able to dispute this claim having left the rental unit in August of 2014. She confirmed she was not aware if her estranged husband, the other named tenant on the tenancy agreement, had paid the September rent.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the *Act* as follows:

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.

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

I accept the Landlord's testimony as to the condition of the rental unit at the end of the tenancy. Further, the photos submitted in evidence show significant damage to the rental unit. They also show that the rental unit was not clean as required by the *Residential Tenancy Act*.

The Tenant's ability to contradict the Landlord's claims was complicated by the fact she left the rental prior to the tenancy ended. She confirmed that she left the rental unit in August of 2014 and that the other tenant, her estranged husband, remained in occupation for a period of time. She was not aware when the other tenant moved out such that she did not know the condition of the rental after she left. That said, she conceded that the photos provided in evidence by the Landlord, for the most part, depicted the condition of the rental when she vacated.

Section 7 of the Act provides as follows:

(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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I accept the Landlord's evidence as to the amounts spent to clean and make necessary repairs to the rental unit. He provided in evidence copies of the invoices for these expenses. I also find the Landlord made his best efforts to minimize his losses, for example, by replacing the mirrored closet doors with less expensive bi fold doors. As the Landlord has been successful I also award him recovery of the filing fee.

Accordingly, I award the Landlord the sum of **\$4,325.34** for the following:

Loss of rent for September 2014	\$900.00
Cost to repair holes in walls and doors	\$650.00

Cost of painting and clean-up of rental unit	\$658.00
Cost to replace 9 doors and 4 lock sets	\$1,506.34
Replacement of window screens	\$175.00
Clean up of yard	\$100.00
Replacement of two thermostats	\$36.00
Missing light bulbs, light plug covers and plates	\$50.00
Filing fee	\$50.00
Total awarded	\$4,325.34

The Landlord is granted a Monetary Order pursuant to section 67 for the balance due of **\$4,325.34**. The Landlord must serve this Order on the Tenant and may file and enforce it in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Landlord is entitled to compensation in the amount of \$4,325.24 for unpaid rent for September 2014, costs incurred to clean and repair the rental unit, and recovery of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 21, 2016

Residential Tenancy Branch

