



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1420 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's agent and witness provided testimony in support of the landlord's application.

Preliminary Issue – Service

The agent testified that the landlord served the tenant with the dispute resolution package on 16 January 2016 by registered mail. The landlord provided me with a tracking number. The tracking information indicated that Canada Post delivered the package to the concierge of the residential property.

The agent testified that the tenant did not provide a forwarding address. The agent testified that the landlord sent the mailing to the tenant's residence. The agent testified that she discovered that the tenant had moved to a different unit within the same building "through the grapevine".

The witness is a concierge in the residential property. The witness testified that the tenant lives at the address used for service. The witness testified that it is the practice of the building when signing for packages to place the package in the occupant's mailbox or to call the occupant to have them pick up the delivery. The witness testified that the dispute resolution package would have been delivered to the tenant.

On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to paragraphs 89(1)(c) and 90(a) of the Act.

Preliminary Issue – Amendment

The landlord asked to amend her application to include a request for compensation for the tenant's overholding to 7 January 2016 and compensation for the cost of registered mail.

The landlord's application indicates that the tenant failed to vacate at the end of the tenancy agreement and did not vacate until 5 January 2016.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution. In this case, the landlord has set out all the particulars of the claim for the period of overholding 1 to 5 January 2016, but not for 6 and 7 January 2016. As the tenant had sufficient notice of this claim, I amend the landlord's application to include a monetary amount claim of \$1,129.03 for the period 1 to 5 January 2016.

The claim for the registered mailing cost is a claim for a disbursement associated with this application.

Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional and includes disbursement costs.

I find that the landlord is not entitled to amend her application to include this claim as disbursements are not a cost that is compensable under the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, loss and for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's

security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 November 2015. Monthly rent was \$7,000.00. The landlord continues to hold a security deposit in the amount of \$3,500.00, which was collected at the beginning of the tenancy.

The landlord did not provide me with a condition inspection report for the beginning of the tenancy; however, the agent testified that the rental unit was built in 2009 and there has only been one other occupant of that unit. The agent testified that the prior occupant left the rental unit in immaculate condition.

The tenant did not pay rent due 1 December 2015. The landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 10 December 2015. The 10 Day Notice set out an effective date of 21 December 2015. The tenant did not vacate the rental unit until 5 January 2016. The agent testified that the landlord did not receive the keys to the rental unit until 7 January 2016.

The agent testified that she was not aware of any reason that would entitle the tenant to deduct any amount from rent. The agent testified that there are no prior orders of the Residential Tenancy Branch and the tenant did not conduct any emergency repairs. The tenant did not apply to dispute the 10 Day Notice. The tenant did not pay the landlords any compensation for the period of overholding.

The agent testified that the tenant damaged the walls in multiple places. The damage to the walls included scratches and pieces of missing drywall. The agent testified that the rental unit was last repainted in 2014. The agent testified that there were no holes in the walls at the beginning of the tenancy. The agent testified that the painter chosen for this work has been used in the past and has a very reasonable price for good work.

The landlord provided me with a receipt for the paint dated 7 January 2016 in the amount of \$28.38. The landlord provided me with an invoice dated 10 January 2016 in the amount of \$577.50. The invoice sets out that it was for fixing and painting walls.

The agent testified that the walls were stained. The agent testified that the cleaners hired did not have the appropriate cleaning supplies to remove the stains so the landlord purchased the supplies for the cleaners use.

The agent testified that all of the lightbulbs were working at the beginning of the tenancy. The agent testified that at the end of the tenancy more than five were burnt out. The landlord provided me with a receipt for lightbulbs dated 11 January 2016 in the amount of \$33.75.

The agent testified that the rental unit was very clean at the beginning of the tenancy. The agent testified that at the end of the tenancy, it did not appear that the tenant had made any effort to clean. The balcony was particularly bad. The landlord provided a receipt for cleaning supplies in the amount of \$13.41. The landlord provided an invoice for cleaning dated 12 January 2016 in the amount of \$262.50.

The landlord provided photographs that confirm the damage and cleaning for which the landlord claims compensation.

The landlords' evidence was well presented and well organized. I thank the landlord for and her agent for their effort creating this coherent package.

The landlord seeks the following compensation:

Item	Amount
Unpaid December Rent	\$7,000.00
Overholding Compensation	1,129.03
Paint	28.38
Paint Labour	577.50
Lightbulbs	33.75
Cleaning Supplies	13.41
Cleaning	262.50
Offset Security Deposit Amount	-3,500.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Sought	\$5,565.28

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not pay rent due 1 December 2015 when it was due under the tenancy agreement. There is no evidence before me that indicates that the tenant was entitled to deduct any amount from rent. I find that the landlord has proven her entitlement to December's rent in the amount of \$7,000.00 pursuant to section 26 of the Act.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice. The landlord delivered such a notice on 10 December 2015.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant did not make an application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice on 21 December 2015. The tenant did not vacate the rental unit until 5 January 2016.

Pursuant to section 57 of the Act, a landlord may make a claim for compensation from an overholding tenant. The tenant did not pay for the use and occupancy of the rental unit for the period 1 to 5 January 2016. As the tenant occupied the unit beyond the termination of the tenancy, the landlord is entitled to compensation for the tenant's use and occupancy for that period. The landlord is entitled to a monetary order in the amount of \$1,129.03 for the tenant's use of the rental unit for 1 to 5 January 2016.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains. Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

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 condition in which the tenant left the rental unit was short of the standards required of him. On the basis of the evidence provided by the landlord and, importantly, the absence of evidence from the tenant, I find that the tenant caused all of the damage to the rental unit that the landlord alleges.

The tenant caused damage to the walls that required the walls to be repainted.

Guideline 1 sets out:

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

3. The tenant is responsible for all deliberate or negligent damage to the walls.

...

The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

Pursuant to subsections 32(3) and 37(2) of the Act, and Guideline 1 the tenants are responsible for the cost of restoring the rental unit walls including painting. The landlord provided a receipt for the cost of paint in the amount of \$28.38 and a receipt for repairs and painting labour in the amount of \$577.50.

On the basis of subsections 32(3) and 37(2) of the Act, and Guideline 1, I find that the tenant is responsible for repairs costs in the amount of \$288.75, one half the labour invoice as this is the direct loss experienced by the landlord.

The landlord seeks the cost of repainting the walls. *Residential Tenancy Policy Guideline* "40. Useful Life of Building Elements" provides me with direction in determining damage to capital property. This guideline sets out that the useful life expectancy of interior paint is four years. The landlord testified that the interior paint was one year old. As such, the capital value of the interior paint has depreciated by 25%. On this basis the landlord is entitled to recover 75% of the cost of repainting. The landlord is entitled to recover \$21.28 in supplies and \$216.56 in labour (3/8 of the labour invoice).

Guideline 1 sets out that a tenant is responsible for replacing light bulbs in his or her premises during the tenancy. The tenant did not replace the bulbs. I find that the tenant is responsible for the cost of replacing the bulbs. The landlord provided a receipt that proves she spent \$33.75 to replace the lightbulbs. The landlord is entitled to this amount.

Residential Tenancy Policy Guideline, “1. Landlord & Tenant – Responsibility for Residential Premises” (Guideline 1) states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ...

By failing to clean the rental unit at the end of tenancy to the standards required by subsection 37(2) of the Act, the tenant caused the landlord loss. The landlords spent \$262.50 on cleaners and \$13.41 on cleaning supplies. I accept that the landlord experienced a direct loss of at least \$275.91 as result of the cleaning. The landlord is entitled to recover this amount.

The landlord applied to keep the tenant’s security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord’s favour in the amount of \$5,565.28 under the following terms:

Item	Amount
Unpaid December Rent	\$7,000.00
Overholding Compensation	1,129.03
Wall Repairs	288.75
Paint	21.28
Paint Labour	216.56
Lightbulbs	33.75
Cleaning Supplies	13.41
Cleaning	262.50
Offset Security Deposit Amount	-3,500.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$5,565.28

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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 subsection 9.1(1) of the Act.

Dated: April 15, 2016

Residential Tenancy Branch