



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LINCOLN MANOR LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for damage to the rental unit and unpaid rent or utilities; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

On September 1, 2015 the parties participated in a previous dispute resolution proceeding with respect to the tenant's request for return of the security deposit (file number referred to on the cover page of this decision). A decision was issued on September 14, 2015 granting the tenant a Monetary Order for return of double the security deposit.

Both parties attempted to raise arguments to me as to the tenant's entitlement to the Monetary Order and satisfaction of the Monetary Order; however, I did not permit such submissions during this proceeding as a decision issued under the Act is final and binding, subject only to applicable review provisions and this proceeding is not a review hearing. By way of the decision and Monetary Order issued on September 14, 2015 the security deposit has been disposed of and it is upon the tenant to enforce the Monetary Order as necessary and the landlord may not now seek authorization to retain the security deposit by way of this proceeding. By way of this proceeding I have considered whether the landlord has established an entitlement to recover the amounts claimed against the tenant without any consideration for the security deposit.

Issue(s) to be Decided

Has the landlord established an entitlement to recover the amounts claimed against the tenant?

Background and Evidence

The tenancy commenced on October 1, 2011 and ended on February 28, 2015. The tenant was required to pay monthly rent of \$600.00 and electricity was not included in the rent.

The tenant and landlord's agent signed a condition inspection report at the start of the tenancy. While many of the individual items appearing on the condition inspection report were left blank, on the signature page it is noted: "apt painted, clean, good condition".

The move-out inspection report was completed by the landlord without the tenant present. The landlord submitted that the tenant was orally invited to participate in the move-out inspection when he was seen in the parking area taking garbage to the dumpster at the end of the tenancy and the tenant nodded in agreement but did not attend the landlord's office to proceed with the move out inspection or return the keys to the property. The tenant stated that he did not recall the landlord inviting him to participate in a move-out inspection but recalled the manager telling him not to leave furniture beside the dumpster. The tenant acknowledged that he did not attend the landlord's office for purposes of returning the keys at the end of the tenancy. The tenant explained that he did not attend the landlord's office to return the keys to avoid conflict with the landlord.

The move-out inspection report prepared by the landlord provided much more detail than the move-in inspection report. The landlord described the rental unit as being unclean in numerous areas; damage from smoke and burn marks; scuffs and nails left in the walls.

The tenant was of the position the rental unit was in poor condition due to mould and repairs that were needed. The tenant also indicated that the rental unit was in "terrible" condition when the tenancy began despite the move-in inspection report reflecting otherwise. The tenant indicated he signed the move-in inspection report without reading it and did not indicate he agreed with the landlord's assessment of the property in the space provided. I noted that the tenant did not indicate he disagreed with the landlord's assessment in the space provided.

Below, I have summarized the landlord's claims against the landlord and the tenant's responses.

Description	Amount	Landlord's reasons	Tenant's responses
Cleaning	\$150.00	Rental unit left dirty in several areas and included abandoned food and garbage in the unit.	Rental unit was left sufficiently clean.
Closet door replacement	\$82.69	Closet door was missing.	Door was not on closet when tenancy began.
Final electric bill	\$115.66	Outstanding electric bill paid by landlord as part of property taxes	Unaware of an outstanding electric bill.
Repainting of rental unit	\$390.00	Walls were smoky and damaged.	Rental unit was mouldy and required repairs and repainting.
Removal of furniture	\$94.50	Tenant left furniture beside dumpster which had to be removed separately from ordinary garbage removal.	Furniture left behind for other tenants to take and dismantled beside dumpster since it would not fit in dumpster.
Carpet replacement	\$2646	Carpets damaged by smoke and burns	Carpets mouldy and in poor condition at start of tenancy.
Total	\$3,478.85		

In addition to the above, the landlord seeks to recover the \$50.00 filing fee paid for this Application and postage costs to serve the tenant in the amount of \$23.92.

The landlord provided a written submission along with copies of the tenancy agreement; the move-in and move-out condition inspection report; the utility bill and some invoices for the repairs made.

The tenant provided a written submission.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

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. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean and undamaged. Reasonable wear and tear does not constitute damage.

Awards for damages are intended to be restorative. Where an item is so damaged that it requires replacement it is often appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

The Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the Regulations is the best evidence as to the condition of a rental unit. In this case, the move-in inspection report did not include sufficient and complete particulars with respect to the individual areas of the rental unit. I find the move-in inspection report does not meet the criteria of being the best evidence as to the condition of the rental unit at the start of the tenancy due to this reason; however, since it does provide some information and was signed by both parties I find that it does hold some evidentiary value which I have applied in making this decision as described below. It is important to note that although the tenant argued that he did not indicate that he agreed with the landlord's assessment of the property on the move-in inspection report, the tenant did not otherwise indicate that he disagreed with the landlord's assessment. I find the consequences of the tenant's failure to read and indicate whether he agreed or disagreed with the landlord's assessment to be attributable to the tenant since the landlord cannot force the tenant to tick one of the two boxes. As such, I find it reasonably likely the tenant was in agreement with the landlord's assessment of the property since he did not otherwise indicate any objection at the time.

With respect to the move-out inspection report I find, on the balance of probabilities, that I accept the landlord's submission that the tenant was orally invited to participate in the move out inspection on the last day of tenancy and the tenant chose not to participate given his reason for not attending the landlord's office for purposes of the returning the

keys to the residential property which he was required to do under the Act. Therefore, I have given considerable evidentiary weight to the move-out inspection report.

As to each of the landlord's claims against the tenant, I find as follows:

Cleaning

Upon hearing from both parties, and in consideration of the move-out inspection report, I find the landlord's submission that the rental unit needed further cleaning to bring the unit up to a state of reasonably clean to be more likely in contrast to the tenant's relatively vague response that the unit was left sufficiently clean. However, I find the landlord did not provide sufficient details or support of the amount claimed. For instance, I was not provided an invoice or work order or time sheet for the cleaning performed. Nor did the landlord otherwise provide the number of hours spent cleaning. Therefore, I find it appropriate to provide the landlord with a nominal award of \$50.00.

Closet door replacement

I find the move-in inspection report does not indicate whether a closet door was present or missing at the start of the tenancy given the woeful lack of detail on the move-in inspection report. Since the landlord has the burden to complete the condition inspection report I find it appropriate to attribute the consequences of this lack of detail to the landlord. Therefore, I find I am unsatisfied that the closet door was present at the start of the tenancy given the tenant's clear recollection that there was not one and I dismiss this portion of the landlord's claim.

Final utility bill

The landlord provided a copy of the last electricity bill issued for this tenancy and since the tenancy agreement clearly provides that rent does not include electricity I find the electricity incurred during the tenancy is the tenant's liability. Therefore, I grant the landlord's request to recover \$115.66 from the tenant for the electricity bill paid by the landlord.

Repainting

Landlords are expected to repaint rental units at reasonable intervals to reflect reasonable wear and tear. Residential Tenancy Policy Guideline 40 provides that interior paint has an ordinary useful life of four years. I accept that the rental unit was repainted in the months before the tenancy began as submitted by the landlord meaning

the interior paint was nearing the end of its useful life. Further, the landlord did not provide documentary evidence to show the cost incurred to repaint the unit. For these reasons, I find I unsatisfied that the tenant is responsible for paying the landlord \$390.00 as requested for repainting and I dismiss this portion of the landlord's claim.

Removal of furniture

Under the Act, a tenant is required to remove all of their possessions from the residential property. The tenant acknowledged leaving furniture outside of the dumpster which I find to be unreasonable and an attempt to transfer the tenant's burden to take his furniture to the landlord. I accept the landlord's statements that leaving furniture outside of the garbage dumpster requires the landlord to arrange and pay for separate removal of abandoned furniture. Therefore, I grant the landlord's request to recover \$94.50 from the tenant.

Carpet replacement

I note from the invoice provided to me in support of the carpet replacement claim that there are charges for replacement of tile and trim in the bathroom which the landlord did not seek to recover from the tenant. The largest charge on the invoice is for "replace living room and kitchen floor" in the amount of \$2190.00 plus tax; however, the move-out inspection report does not indicate there is damage to the kitchen flooring. Rather, the move-out inspection report includes a notation beside walls and flooring in the kitchen as being "not clean left in mess". While I heard fairly reliable evidence from the landlord that the living room floor was damaged by burn marks, I find I am unable to determine the cost of replacing the living room floor since the replacement cost was lumped together with replacement of the kitchen floor. It is also apparent that the living room carpeting would have been subject to a number of years of wear and tear. Accordingly, I provide the landlord with a nominal award of \$100.00 for carpet damage due to burn marks.

Filing fee and postage costs

The landlord was partially successful in this Application and I award the landlord one-half of the filing fee, or \$25.00.

Section 72 of the Act provides that an applicant may be awarded recovery of the filing fee but the other costs to participate in a dispute resolution proceeding are not recoverable under the Act. Therefore, I deny the landlord's request to recover postage costs from the landlord.

Monetary Order

In light of all of the above, I provide the landlord with a Monetary Order calculated as follows to serve and enforce upon the tenant:

Cleaning	\$ 50.00
Final utility bill	115.66
Removal of furniture	94.50
Carpet damage	100.00
Filing fee	<u>25.00</u>
Monetary Order for landlord	\$385.16

Conclusion

The landlord has been provided a Monetary Order in the amount of \$385.16 to serve and enforce upon the tenant.

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: May 18, 2016

Residential Tenancy Branch