



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNR, MND, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, the cost of cleaning and repairs 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.

The landlord made application on August 31, 2015 and this matter was scheduled to be heard on March 01, 2016. The landlord attended the hearing but the tenant did not. The Arbitrator granted the landlord a monetary order. The tenant applied for a review of the decision on the grounds that she was not served with the notice of hearing. The tenant stated that she received photographs but not the notice of hearing and that is the reason she did not attend the hearing. The tenant was granted a review hearing for today's date – June 02, 2016.

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in the making of this decision. As this matter was conducted over 86 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Is the landlord entitled to a monetary order to recover loss of income, the cost of cleaning and repairs and the filing fee?

Background and Evidence

The landlord purchased the home approximately 12 years ago. The home is an old timer that was renovated and added on to. The rental unit is a separate structure located on the same property behind the landlord's home.

The tenancy started in August 2010. The landlord testified that at the start of the tenancy, the tenant was in the hospital and her belongings were moved in by friends. The landlord

also stated that she sent photographs to the tenant while she was in the hospital to assist her in her decision to rent the unit. The tenant denied both being in the hospital and having received the photographs.

The landlord filed a copy of the advertisement which contained photographs of the rental unit. The photographs show that the unit is clean and ready to be occupied. The photographs do not show detail but are adequate for me to determine that the unit was clean and in good repair at the start of tenancy.

The monthly rent at the end of tenancy was \$980.00 due on the first of each month. The tenant stated that she provided the landlord with written notice to end the tenancy on September 01, 2013. The landlord stated that she received the notice by text message on September 17, 2013. The tenant stated that she moved out on September 29, 2013 and the landlord stated that the tenant moved out on October 01, 2013, left the unit in a dirty condition and promised to return to retrieve her belongings and clean. The landlord filed a copy of a text message sent by the tenant on October 04, 2013 that states "*I plan on cleaning it*" The landlord stated that the tenant did not return.

The landlord filed photographs of the unit at the end of tenancy. The photographs indicate that the tenant left behind several of her belongings and also show the condition of the unit as extremely dirty, severely damaged and cluttered.

The tenant filed photographs which she states she took in September and posted on social media on September 09, 2013. Some of the photographs were faxed into evidence and I was unable to see any detail. The other photographs are blurry and also unclear. Two of the photos posted on social media are of the washroom and laundry room. I asked the tenant the reason for posting these and she replied she wanted to inform her friends of the progress she was making with preparation to move out.

The landlord found new tenants to occupy the rental unit for October 01, 2013 and testified that the new tenants agreed to clean and repair the unit in lieu of rent for two months. The landlord filed a copy of their agreement. The landlord would provide the materials or reimburse the new tenants for supplies.

The landlord testified that this tenant agreed to cover the cost of repairs as indicated in the copies of text messages filed into evidence by the landlord. The conversation by text message took place on various dates in December 2013.

The content of the messages between the two parties confirms the landlord's testimony that the tenant intended to pay for the cost of repair and cleaning. One message states "*I would like to know how much I owe you so I can start paying you. Please advise thank you*".

Another message from the tenant on December 14, 2013 states that she is expecting a settlement in May and “*will be able to work something out with you*”

The landlord is making the following claim:

1.	Loss of income (October 2013)	\$980.00
2.	Garbage removal	\$180.00
3.	Flooring	\$869.78
4.	Supplies for flooring etc.	\$96.63
5.	Sink and sink supplies	\$290.02
6.	Paint and paint supplies	\$237.30
7.	Blades	\$57.10
8.	Plumbing fittings	\$133.63
9.	Moulding and caulking	\$210.42
10.	Miscellaneous supplies	\$113.15
11.	Carpet disposal	\$38.00
12.	Photographs	\$25.00
13.	Labour	\$1960.00
14.	Replace door	\$175.00
15.	Filing fee	\$50.00
	Total	\$5,416.03

Analysis

The parties disagreed on almost all aspects of this case and contradicted each other's testimony throughout the hearing. Both parties were disruptive and interrupted each other and myself several times. I provided multiple warnings to both parties.

The landlord filed copies of text message conversations between the two parties. The tenant's testimony during the hearing contradicted several of the content of the text messages while the landlord's testimony did not. Therefore I found that the landlord established credibility and I preferred her testimony over the tenant's testimony for most part.

Based on the documents filed into evidence and on a balance of probabilities I find as follows:

1. Loss of income for October, 2013 -\$890.00

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.

In this case, even if I accept the tenant's evidence that she provided written notice on September 01, 2015, to end the tenancy on September 29, 2015, I find that the tenant did not provide proper notice, pursuant to s.45. However, a new tenant was found for October 01, 2015 and accordingly, I find that the landlord did not suffer a loss of income for that month. Therefore the landlord's claim for loss of income is dismissed.

2. Garbage removal - \$180.00

The photographs provided by the landlord indicate that the tenant left behind several of her belongings which had to be disposed of. The landlord also filed a receipt for the payment made. I award the landlord her claim of \$180.00 for garbage removal.

3. Flooring - \$869.78

4. Supplies for flooring etc. - \$96.63

The landlord's photographs and receipts support the landlord's testimony that the flooring was destroyed and had to be replaced. Therefore I award the tenant her claim to replace the flooring and to dispose of the carpet.

5. Sink and sink supplies - \$290.00

The landlord stated that the porcelain sink was "spidered" and had to be replaced. The tenant denied causing damage to the sink. The photographs filed by the landlord do not show detail and the landlord testified that the sink was functional.

Therefore I find that damage if any is cosmetic and could possibly be due to wear and tear. I further find that the landlord has not met her burden of proof and her claim for the cost of the sink and for sink supplies is dismissed.

6. Paint and paint supplies - \$237.30

The landlord's photographs indicate that there is considerable damage to the walls. The landlord has filed receipts to support her claim and I find that the amount claimed by the landlord is reasonable. Accordingly I award the landlord her claim for the cost of paint and paint supplies.

7. Blades - \$57.10

The landlord is not entitled to the cost of equipment and therefore I dismiss her claim.

8. Plumbing fittings - \$133.63

9. Moulding and caulking - \$210.42

Based on the contradictory testimony of both parties, I prefer the testimony of the landlord which is supported by the photographs and receipts that she filed into evidence. Accordingly I award the landlord her claim for items #8 and #9.

10. Miscellaneous supplies - \$113.15

I find that the landlord was left with the repair of extensive damage to all parts of the rental unit and incurred costs to repair and restore the rental unit. Therefore I award the landlord her claim for miscellaneous supplies.

11. Carpet disposal - \$38.00

I award the landlord the cost incurred to dispose of the carpet.

12. Photographs - \$25.00

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the landlord's claim for the cost of photographs is dismissed

13. Labour - \$1,980.00

The landlord has established that extensive damage was done to the rental unit and there was garbage and items belonging to the tenant that were left behind. I accept the landlord's testimony that the tenant promised to return to clean up as supported by the text message from the tenant dated October 04, 2013. I also accept that the new tenants agreed to repair and clean in lieu of two months' rent. Therefore I grant the landlord her claim of \$1,980.00.

14. Replace door - \$175.00

The tenant agreed to cover the cost of replacing the door.

15. Filing fee - \$100.00

The landlord has proven the majority of her claim. Therefore I award her the recovery of the filing fee of \$100.00.

Overall the landlord has established a claim as follows:

1.	Loss of income (October 2013)	\$0.00
2.	Garbage removal	\$180.00
3.	Flooring	\$869.78
4.	Supplies for flooring etc.	\$96.63
5.	Sink and sink supplies	\$0.00
6.	Paint and paint supplies	\$237.30

7.	Blades	\$0.00
8.	Plumbing fittings	\$133.63
9.	Moulding and caulking	\$210.42
10.	Miscellaneous supplies	\$113.15
11.	Carpet disposal	\$38.00
12.	Photographs	\$0.00
13.	Labour	\$1,960.00
14.	Replace door	\$175.00
15.	Filing fee	\$100.00
	Total	\$4,113.91

I grant the landlord a monetary order under section 67 of the *Residential Tenancy Act*, for \$4,113.91. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for **\$4,113.91**.

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: June 02, 2016

Residential Tenancy Branch