



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt; including tracking number, as proof the hearing package and evidence were sent to the tenant on March 10, 2016. The landlord testified that the address used for service is the forwarding address provided by the tenant. The landlord stated the registered mail was unclaimed by the tenant. Section 90 of the Act provides that a party is deemed to have received documents five days after mailing, even if the party refuses to accept or pick up their mail. Accordingly, I deemed the tenant to be served with the hearing documents and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to compensation for damage to the rental unit and loss of rent as claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The month to month tenancy commenced May 1, 2011 and the tenant paid a security deposit of \$530.00. The tenancy agreement provides that the tenant was required to pay rent of \$1,060.00 on the first day of every month. Every year the landlord issued Notices of Rent Increase to increase the monthly rent obligation. At the end of the tenancy the tenant's rent obligation was \$1,183.00.

On February 3, 2016 the tenant sent an email to the landlord to advise the landlord of her intent to vacate the rental unit by February 29, 2016. The landlord responded by

advising the tenant that they would try to re-rent the unit but would hold the tenant responsible for March 2016 rent if a replacement tenant was not secured. The tenant vacated the rental unit between February 26 and February 29, 2016.

The building manager had scheduled a move-out inspection with the tenant for March 1, 2016; however, the tenant did not appear for the inspection. The building manager proceeded to do the inspection without the tenant and prepared a condition inspection report.

The landlord testified that a prospective tenant was found who was willing to rent the unit in March 2016; however, upon entering the rental unit the over-whelming smell of pet urine resulted in the prospective tenant not proceeding with a tenancy at that time. Rather, the prospective tenant agreed to enter into a tenancy once the smell of pet urine was eliminated. The landlord determined that due to multiple urine stains that had penetrated down to the sub-floor that it was necessary to replace the carpeting, replace the underlayment, and seal the sub-floor. This work was done on March 29, 2016 and a new tenancy started as of April 1, 2016.

The landlord had estimated that the tenant's liability for the replacement carpeting, underlayment and sub-floor sealing was \$1,500.00 at the time of filing. During the hearing, the landlord testified that the work actually cost \$2,500.00. The landlord provided evidence that the carpeting was new in April 2011.

The landlord also seeks to hold the tenant responsible for replacing an interior door in the rental unit which had holes, likely from being punched or kicked. The cost to replace the door was \$100.00 for materials and labour. The landlord submitted that the damaged door was less than 10 years old but the exact age was unknown at the time of the hearing.

The landlord also seeks to recover the loss of rent for the month of March 2016 from the tenant in the amount of \$1,183.00. The landlord submits that the tenant is liable to pay this given the tenant's inadequate notice to end tenancy and due to the condition of the rental unit at the end of the tenancy.

Documentary evidence included copies of the tenancy agreement; the annual Notices of Rent Increase; the tenant's email of February 3, 2016 and the landlord's response; as well as documentation showing the cost and charges for carpeting and the interior door. To illustrate the damage to the rental unit the landlord provided a copy of the condition inspection reports and several photographs.

Analysis

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.

Awards for damages are intended to be restorative. Where an item has a limited useful life, it is 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*.

Under section 32 of the Act, a tenant is responsible for repairing any damage that results from their actions or neglect. Section 37 of the Act provides that at the end of the tenancy a tenant is required to leave the rental unit reasonably clean and undamaged. Section 32 and 37 further provide that reasonable wear and tear is not damage and a tenant is not responsible for reasonable wear and tear.

Where a tenant's actions or neglect results in damage and the tenant does not repair the damage, the landlord is at liberty to seek compensation from the tenant for the damage under section 7 and 67 of the Act.

Upon consideration of the undisputed evidence before me, I accept that the tenant caused damage to the rental unit by way of numerous instances of urination on the carpeting. I also accept that to effectively remove the smell of urine the carpeting and underlayment had to be replaced and the sub-floor sealed. Policy Guideline 40 provides that carpeting has an average life of 10 years and in this case the carpeting was approximately five years old at the end of the tenancy. Accordingly, I find the tenant responsible to compensate the landlord \$1,250.00 calculated as follows:

Cost to replace and seal flooring	\$2,500.00
Divided by average useful life of carpeting	10 years
Multiplied by expected useful life at end of tenancy	5 years
Award for landlord [$\$2,500 \times 5/10$ years]	\$1,250.00

Also upon consideration of the undisputed evidence before me, I accept that the tenant is responsible for causing damage to an interior door and that the damage resulted in replacement of the door. Policy Guideline 40 provides that the average useful life of a door is 20 years. Based on the landlord's testimony I calculate the landlord's award on the premise the door was approximately 10 years old at the end of the tenancy.

Therefore, I calculate the landlord's award as follows:

Cost to replace interior door	\$100.00
Divided by average useful life of door	20 years
Multiplied by expected useful life at end of tenancy	10 years
Award for landlord [$\$100.00 \times 10/20$ years]	\$ 50.00

Finally, with respect to the landlord's request to recover loss of rent for the month of March 2016, I grant the landlord's request based upon the following considerations. Firstly, under section 45 of the Act, a tenant is required to give at least one full month of written notice to end a month to month tenancy and the tenant failed to meet this obligation. In order for the tenant to end her obligation to pay rent after February 29, 2016 the tenant would have had to give written notice no later than January 31, 2016, which she did not. Secondly, where a tenant leaves a rental unit damaged and the damage results in a delay in re-renting the unit the tenant may be held responsible for loss of rent as part of a damage claim. In this case, both of the above circumstances apply and I hold the tenant responsible for the landlord's loss of rent for March 2016. Therefore, I award the landlord \$1,183.00 for loss of rent for March 2016 as requested.

Given the landlord was largely successful in this application; I also award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In light of all of the above, the landlord is provided a Monetary Order for the balance owed to the landlord, calculated as follows:

Damage to carpeting and underlay	\$1,250.00
Damage to interior door	50.00
Loss of rent for March 2016	1,183.00
Filing fee	100.00
Less: security deposit	<u>(530.00)</u>
Monetary Oder for landlord	\$2,053.00

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court to enforce as an order of the court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and the landlord has been provided a Monetary Order for the balance of \$2,053.00 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: July 07, 2016

Residential Tenancy Branch