Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Code(s): MND, MNR, MNDC, FF

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit; unpaid rent; and, damage or loss under the Act, regulations or tenancy agreement. 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.

The hearing was held by way of teleconference call over three dates and by way of a final written submission from each party. Interim decisions were issued after each hearing date and should be read in conjunction with this decision. By way of the third interim decision issued on June 2, 2016, the parties were given orders with respect to submitting their final written submissions.

The landlord provided a final written submission including two registered mail receipts to demonstrate that it was sent to each tenant via registered mail on June 3, 2016. A search of the tracking numbers showed that Canada Post left a notice card for the tenants on June 6, 2016 and the tenants retrieved the registered mail on June 9, 2016. I am satisfied the landlord complied with my orders and I have considered the landlord's final written submission in making this decision.

The tenants provided a final written submission including a registered mail receipt indicating it was sent to the landlord on June 16, 2016. I am satisfied that the tenants sent their final submission within one week of actually receiving the landlord's submission. Although I had informed the tenants that I would deem them served five days after the landlord mailed her submission to them, when I consider that there was a three day delay in Canada Post leaving a notice card, I find that the mailing of their submission on June 16, 2016 is sufficient and non-prejudicial. Therefore, I have accepted and considered the tenants' final written submission in making this decision.

Issue(s) to be Determined

Have the landlords established an entitlement to recover the amounts claimed for damage to the rental unit; damages or loss; and, unpaid rent from the tenants?

Background and Evidence

Most of the background and evidence presented to me was in dispute; however, the parties were in agreement with respect the following facts: The parties entered into an oral tenancy agreement for a tenancy that commenced in October 2003. The tenants paid a $600.00 security deposit at the start of the tenancy. The monthly rent was initially $1,200.00 and increased to $1,275.00 in September 2005 and $1,350.00 in 2010.

Although I was provided a considerable amount of disputed testimony and written submissions with respect to this dispute, with a view to brevity, I have only summarized the landlords' claims against the tenants and the tenants' responses below.

Unpaid Rent

The landlord submitted that the tenants failed to pay rent of $1,350.00 for the month of November 2013. The landlord submitted that the tenants also failed to pay $350.00 in rent in the year 2011 and $1,100.00 in the year 2012. The landlord submitted that she maintains a computerized ledger of the rent payments she received. The landlord testified that she repeatedly issued 10 Day Notices to the tenants that included the unpaid rent from prior periods but admitted that she did not move to enforce the 10 Day Notices.

The landlord testified that when rent was not received in early November 2013 a 10 Day Notice as posted on the door. The rent was not paid by the tenants. The landlord finally entered the rental unit in early December 2013 and determined the tenants had abandoned the unit.

The tenants acknowledged that they did not pay any rent for November 2013. The tenants acknowledge that they did not give the landlord notice to end the tenancy and pointed out that they had received notices to end the tenancy nearly every month from the landlord and they explained that they finally acted upon it by moving out. Initially, their position was that they vacated the unit on October 31, 2015; however, the tenants also acknowledged receiving the 10 Day Notice issued in November 2013 and were position that they had until November 15, 2015 to vacate. The tenants also stated that they informed the landlord over the telephone on or about November 15, 2015 that they had left the keys in the house and gave the landlord the code to the garage door. When pressed to explain the inconsistency in their submissions that they vacated October 31, 2013 but did not remove their belongings and return the keys until November 15, 2013 the tenant responded by stating that they have vacated October 31, 2013 "in their minds." The tenant eventually conceded that the tenancy ended effective November 15, 2013. As such, the tenants submit they are not responsible for paying rent after November 15, 2013.

As to whether the tenants owed rent from 2011 and 2012 the tenants provided varying responses. Initially, the male tenant testified that he "felt" as though they did not owe the rent due to the high cost of utilities; the condition of the rental unit; repairs and improvements he had made to the property during the tenancy; and, being threatened and intimidated by the landlord's family members. Then, the female tenant submitted that they did not owe rent from prior years because they paid it. The male tenant then changed his position to say that they paid the outstanding rent every time they received a 10 Day Notice.

As far as threats and intimidation they tenants further explained in their written submission that this includes the landlord serving them 10 Day Notices to End Tenancy "to get their attention". The tenants also indicate they were not privy to the landlord's ledger before receiving it with the landlord's written submission. The tenants submit that it is not a ledger but merely numbers on a page. The tenant also submitted in the written submission: "as far as I know, on the first of the month I went to [name of landlord] bank and paid the rent directly to the mortgage".

The landlord acknowledged that heating costs were high due to the style of windows in the rental unit and submitted that the rent was set low to offset higher heating costs. The landlord denied that she or anybody else attended the property to threaten or intimidate the tenants. The landlord stated that the

tenant informed her on November 25, 2013 that they left the keys in the rental unit after numerous calls to the tenants went unanswered.

Both parties provided consistent testimony that in years prior, approximately 2006, the tenant had deducted amounts from rent for repairs or improvements he made and that in response the landlord advised him to cease doing so. The tenant explained that any repairs or improvements he made were done on a "tab". The tenant acknowledged that he had made a previous Application for Dispute Resolution with the intention to sue the landlord for repairs and improvements he made. That application was dismissed with leave; however, the tenants did not reapply.

Security Deposit and Pet Damage Deposit

The landlord testified that the security deposit was applied to unpaid rent in years prior. The tenants denied this to be accurate and were of the position they allowed the landlord to keep the security deposit for garbage removal required at the end of the tennacy.

The landlord testified that the tenants did not pay a pet damage deposit. The tenants initially testified that they paid a $300.00 pet damage deposit at the start of the tenancy and then they changed their testimony to say they paid $600.00 for a pet damage deposit.

The landlord's ledger shows that the $600.00 security deposit was used to pay the shortfall in rent on January 3, 2009 since they only paid $675.00 that month.

Damage

As compensation for damage to the rental unit the landlord seeks 25% of the labour and material costs incurred to repair and renovate the rental unit after the tenancy ended, or $4,614.09. The landlord explained that she has limited the claim to 25% to reflect their failure to inspect the unit regularly which contributed to deterioration of the condition of the rental unit. The amount claimed includes labour and material costs to clean; repaint; install new cabinets and countertops in the kitchen and bathroom; install a new bathtub; install new tiling; install a new door; install new baseboard; drywall patching; and, yard work including fencing and laying mulch.

The landlord provided receipts and invoices in support of the amounts claimed. The landlord provided photographs of the rental unit shortly after the tenancy ended and after the renovations were completed.

There was no move-out inspection report prepared at the end of the tenancy; however, the parties were in agreement that at the end of the tenancy the rental unit was in dire need of a repairs and renovation. The crux of the dispute concerning the damage claim revolved around the condition of the unit at the start of the tenancy and the reason(s) for the deterioration of the unit during the tenancy.

There was no move-in inspection report completed at the start of the tenancy although this tenancy commenced before 2004 when inspection report requirements were enacted. Nor was there any photographic evidence pertaining to the condition of the unit at the start of the tenancy except a picture of the front exterior of the property as seen on the sales listing from 2003. The parties were in dispute as to whether the parties inspection the rental unit together at the start of the tenancy. The landlord testified that they did inspect the unit together, thoroughly, in the presence of a third party. The tenants testified that they did not inspect the unit at all and that they picked up the keys from the landlords' house.

The landlord submitted that the rental unit was in good condition at the start of the tenancy and pointed to a letter written by the tenant that rented the unit prior to the subject tenants. The landlord also testified that prior to the tenancy she had renovated the kitchen in 2002; and, installed a new bathtub surround, installed new blinds, painted the walls, and levelled the house in 2003. To demonstrate the landlord maintained the property during the tenancy the landlord testified that she made the following repairs and improvements during the tenancy: a new fence, deck and furnace in 2004; repairs to drains, ducts and the stove in 2005; repairs to faucets, water lines and the sewer line in 2006; renovation of the bathroom in 2007 due to leaking pipe; extraction of a toy from the toilet in 2008; replacement of hot water tank in 2009; repair of bathroom leak in 2010; roofing and new hot water tank in 2012.

The landlord was of the position that the tenants should be held responsible, at least in part, for repairs and renovations done at the end of the tenancy due to their failure to repair damage they caused during the tenancy and keep the unit reasonably maintained. The landlord pointed to poor housekeeping and neglect in how the tenants treated the house. For instance, the landlord submitted that she had the same countertops in her house and they are 40 years old.

The landlord acknowledged that the tenants did perform some work at the property during their tenancy but was of the position this was done without the landlord's prior consent and was done for the tenant's own benefit such as a patio for their hot tub and enclosing the carport for storage of their personal property.

The tenants submitted that the house was constructed in the late 1960's to a minimum standard because the rental unit was built to house mill workers. The tenants acknowledged a newer kitchen was in place at the start of the tenancy but submitted that that it was constructed of very inexpensive materials and the house has issues with settling when the kitchen was installed. The tenants acknowledged that the countertops and cabinets were not in good condition at the end of the tenancy but claim that this was because it was a very inexpensive kitchen that was at the end of its life.

The tenants also submitted that at the start of the tenancy the house needed foundation work and the doors and trim was already damaged by a former tenant who used a wheelchair. The tenants claim that when they viewed the house it had been listed for sale and the listing indicated it needed "a little TLC" which is a euphemism for saying it needs work. The tenants provided a copy of the real estate listing that appears to be from 2003 based upon the tax year quoted.

The tenants submit that they also made repairs to the property including electrical and plumbing work and installation of a garage door in addition to building a deck, fence and performing extensive landscaping. The tenants stated when the landlord "renovated" the bathroom in the past all that was done was to install inexpensive "peel and stick" vinyl tiles on the floor. As well the bathtub was old and rusty. The tenants claimed the fence was damaged by someone else in the neighbourhood.

In contradiction to the landlord's statements that she did not view the rental unit regularly, the tenants submitted that the landlord had been in the rental unit a number of times as they treated each as "as family".

Appliances

The landlord seeks to recover 25% of the cost to purchase a new fridge, stove, washer and dryer for the rental unit, or $470.94. The landlord testified that at the end of the tenancy the stove was missing; the

fridge was not working and it was left with mouldy food inside; and the washer and dryer left in the unit were not working.

The landlord stated that the fridge and stove were a few years old at the start of the tenancy and she would have replaced them had she known they stopped working. The landlord was uncertain if the washer and dryer left in the unit were the same machines she had provided to the tenants at the start of the tenancy.

The tenants testified that the appliances provided to them by the landlord were at least 10 years old at the start of the tenancy and had stopped working during their tenancy so they purchased replacement appliances. The tenants took the landlord's stove to the dump at the landlord's request and they took their stove with them at the end of the tenancy. The tenants also acknowledged that they had two fridges in the rental unit because they prefer to use two for their family and they left both of them behind; however, the tenants claim the fridges were working. The tenants stated that they replaced the washer and dryer during the tenancy because the old ones broke down and that the ones left behind were still in working condition.

Garbage and junk removal

The landlord seeks to recover $967.40 from the tenants for the cost of garbage bins and dumping fees to remove garbage and junk from the rental unit after the tenancy ended. The landlord submitted that the amount left behind by the tenants was considerable and included the large items such as a hot tub; a trampoline; a slide from an outdoor playhouse; and, various items of construction debris in addition to household trash.

The tenants acknowledged leaving behind many of the items described above because they "ran out of time". The tenants were also of the positon that the landlord denied the tenants' attempts to come back to the property and remove the remainder of their items. The tenants were of the position the landlord could keep the security deposit for garbage removal.

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.

Unpaid Rent

Under section 26 of the Act, a tenant is required to pay the rent when due under their tenancy agreement even if the landlord has breached the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent under the Act. The Act defines a tenancy agreement to include agreements

entered into orally, such as in this case. There are very limited and specific circumstances under the Act when a tenant has the legal right to withhold rent. Having outstanding repair issues, high utility costs, or making unauthorized repairs or improvements is not a basis for withholding rent under the Act unless an Arbitrator authorizes the tenant to make deductions from rent. The tenants raised some of these issues in response to the landlord's claim for unpaid rent and I have disregarded these submissions from further consideration since they do not form a legal basis to withhold rent.

In order for a tenant to end a month to month tenancy and bring an end to their obligation to pay rent the tenant must give at least one full month of written notice. In this case, the tenants did not give written notice to end the tenancy but the landlord gave the tenants several notices to end tenancy for unpaid rent. During the hearing, the tenants eventually acknowledged that they were in possession of the unit in early November 2013, that the tenancy ended on November 15, 2013 pursuant to a 10 Day Notice issued by the landlord in November 2013, and the tenants had not paid rent for November 2013. Accordingly, I find the tenants were obligated to pay rent that was due on November 1, 2013 in the amount of $1,350.00.

Upon receiving the 10 Day Notice the tenants had the option to pay the rent to continue the tenancy or the tenants could have filed to dispute the 10 Day Notice if it was invalid or they had a legal right to withhold rent. They chose neither option but chose to accept the end of the tenancy. The tenants breach of the tenancy agreement and Act is what brought the tenancy to an end and their breach does not extinguish their obligation to pay rent of $1,350.00 that was due on November 1, 2013. Nor did the landlords re-rent the unit in November 2013. Therefore, I find the landlord entitled to the full amount of $1,350.00 for November 2013.

As to the rent owing in the two preceding years, I find the landlord's evidence more credible than the tenants' often changing and conflicting testimony. Not only was the landlord's testimony supported by a written accounting, but the 10 Day Notices presented to me included rental arrears. I also noted that in one of the emails submitted in evidence by the tenants the landlord refers to rental arrears and the tenants did not dispute that statement in their response to the landlord. In contrast, the tenants provided varying reasons and positions as to whether they owed rental arrears. Aside from the varying reasons provided during the hearing, the tenants took another position by way of their written submission which was that they paid their rent at the bank every month. The tenants did not provide copies of receipts issued by the bank or any other documentary evidence to contradict the landlord's ledger. Had the tenants paid all of their rent every month on time, as they allege, it is illogical to me that the landlord would issue numerous 10 Day Notices. Therefore, based on the balance of probabilities, I accept the landlord's submission that a further $1,450.00 in rent was outstanding from the years 2011 and 2012.

In light of the above, I grant the landlord's request to recover unpaid rent from the tenants in the sum of $2,800.00 as claimed.

Security deposit and pet damage deposit

It was undisputed that the tenants paid a security deposit of $600.00; however, the parties were in dispute as to whether the deposit had already been applied to unpaid rent. For reasons given above, I have accepted that the landlord's ledger is reliable in comparison to the tenants' unreliable testimony and lack of evidence to support their position. Therefore, I consider the security deposit has already been applied to unpaid rent in January 2009 and it has been taken into account in calculating the landlord's award for unpaid rent.

The tenants claim to have paid a pet damage deposit at the start of the tenancy and the landlord denied this allegation. Not only was the testimony of the tenant's changing as to the amount paid but pet damage deposits were not permissible under the former Act. The right of a landlord to require or accept a pet damage deposit started when the current Act came into effect on January 1, 2004 which was after this tenancy started. There, I find I prefer the landlord's version of events that a pet damage deposit was not paid.

Damage

Section 32 of the Act requires a tenant to repair damage caused by their actions or neglect. Section 32 also requires that a tenant maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant is required to leave the rental unit reasonably clean and undamaged at the end of the tenancy. However, both sections 32 and 37 provide that reasonable wear and tear is not damage and a tenant is not obligated to make repairs for reasonable wear and tear.

Should the tenant fail to meet their obligations under sections 32 and 37 the landlord may seek compensation from the tenant for the landlord's losses to clean and repair damage. Since awards for compensation are intended to be restorative, where an item is so damaged that it requires replacement, it is appropriate to reduce the replacement cost by the depreciation of the original item. Reducing the replacement cost by depreciation serves to recognize that building elements deteriorate with age and use for which a tenant is not responsible. 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 Element*s.

It was undisputed that at the end of the tenancy the rental unit was in dire need of repair and renovation. When I look at the photographs taken at the end of the tenancy, I accept that the photographs depict a unit in a poor condition. From what I can see, the most disturbing components are the amount of garbage, trash and filth left behind; a particularly worn and filthy looking carpet; holes in an interior door; and a separating and cut up kitchen countertop. In contrast, the photographs taken after the renovation was completed show a rental unit that is clean, updated and rather appealing. This issue for me to determine is whether the tenants' actions or neglect necessitated the renovations, all or in part, and whether the amounts claimed for damage represents the tenants' liability for damage.

Unfortunately, I was not provided photographic evidence as to the rental unit at the start of the tenancy except for one small picture of the exterior of the rental unit that appears in the real estate sales listing of 2003. The landlord submitted that the rental unit was in good condition at the start of the tenancy and pointed to a letter purportedly written by the immediately preceding tenant. The tenant provided a copy of the sales listing from 2003 which indicates that the property was in need of "a little TLC". I find that I prefer the realtor's description, which was made in 2003, as being more subjective than the former tenant's description of the property that was provided in 2014. I am of the view that a house in good condition would not warrant a description as needing "a little TLC"; therefore, I accept that it is more likely than not that the rental unit was not in as good as condition as the landlord submitted.

I certainly accept that the tenants should be held responsible for compensating the landlord for removing the tenants' large amount of garbage and filth. However, I find compensation the landlord for a part of the renovation cost is more problematic. To illustrate: I find the photographs and receipts reflect the need to

replace items that would need replacement due to aging and deterioration that occurs over time. For example, considering the tenancy was over 11 years in duration and carpeting has an average useful life of 10 years and interior paint has an average life of 4 years, the landlord should expect to replace carpeting and repaint the walls as part of the landlord's obligation to repair and maintain a unit at reasonable intervals. Also, the photograph of the damaged interior door depicts a rather old looking door given its style and I find it reasonably likely the door is older that the average useful life of a door which is 20 years. Accordingly, I find the landlord has not established that the tenants should be held responsible for flooring replacement, repainting of the unit, or replacing an interior door.

I accept that the countertops were damaged by neglect, in part, considering the significant cut marks that are visible in the photographs and I accept the undisputed evidence that the countertops were new in 2002; however, I am less convinced that the separation at the corner is the result of the tenants' actions especially when I consider the house had settling issues that were not repaired until after the countertops were installed and the tenant had provided evidence from 2006 indicating the kitchen sink and faucet had leaked. Accordingly, I find it likely that the separation in in the corner of the countertop was from either settling or water damage, or both, and I am not persuaded that the tenants were responsible for either of these.

The landlords claim also included the cost of new cabinets; however, from the few fuzzy photographs provided to me I cannot visualize damage except for two missing handles. I also note that the tenants had requested repairs to the kitchen cabinets in 2006. Given the landlord has the burden of proof I find I remain unpersuaded that the tenants are responsible for replacement of the kitchen cabinets.

Also, the landlord included the cost to install a new bathtub when the former tub was an old green rusty one. I find the tenants not responsible for any part of this cost. While I appreciate the landlord stated that it was easier to replace the tub than clean it, I have awarded the landlord for cleaning for below in this decision.

I also note that some of the landlord's claim includes landscaping such as mulch for the garden and I am unpersuaded that the tenants are responsible for providing mulch. Rather, tenants are generally held responsible for grass cutting and some garden bed weeding as seen under Residential tenancy Policy Guideline 1. Further, the landlord included photographs of a broken fence; however, the fencing looks rather weathered and old. I consider 10 years to be a reasonable expectation for fence boards and in this case the fence boards appear to be at or near that age. Therefore, I do not hold the tenants responsible for replacing any fencing or mulching.

Given the length of this tenancy, that the rental unit was in need of some work at the start of the tenancy, that building elements require replacement from time to time due to age and use, I find the landlord has not satisfied me that the tenants are responsible for 25% of the renovation costs. While I accept that the tenants may be responsible for <u>some</u> damage, the landlord's labour invoices did not specify the tasks performed and the listing of the receipts often characterized the purchases as being for "supplies" and "materials". I find the grouping of multiple renovation tasks together without more specific detail is problematic in determining the tenants' liability for repairs for damage. Nevertheless, considering the obvious lack of cleanliness by the tenants and considerable volume of trash left in the rental unit, I find it appropriate to award the landlord an estimated nominal award of $1,000.00 for labour to clean and remove the tenants' trash.

Appliances

Residential Tenancy Policy Guideline 40 provides that the average useful life of appliances such as a fridge, stove, washer and dryer is 15 years. Considering this tenancy was over 11 years in duration and the landlord acknowledged the appliances were a few years old at the start of the tenancy, I find it likely that the appliances provided with the rental unit would have been at or near the end of their useful life and of little or no remaining value. Therefore, I find the landlord's actual loss as it relates to the original appliances that were either missing or not working at the end of the tenancy to be at or near nil and I make no award to the landlord for replacement appliances.

Garbage and junk removal

The Act requires that at the end of a tenancy the tenant is required to leave the rental unit vacant and reasonably clean. This includes removal of the tenant's personal possessions and garbage. In this case, the tenants acknowledged that their tenancy ended November 15, 2013 and that they left possessions behind, including large items such as a hot tub and trampoline. The landlord's photographs also show a significant amount of household trash left behind. Accordingly, I am satisfied that the tenants violated their obligation leave the rental unit reasonably clean and devoid of their possessions and garbage.

I am satisfied that the items left behind had little or no value and would be considered garbage. While the tenant submitted that the hot tub had a value of $5,000.00 I find this is an exaggeration assuming the hot tub was working and could be sold and moved. The tenant provided no corroborating evidence to demonstrate the hot tub had such a value in its condition at the end of the tenancy. I also accept the undisputed evidence that the rusty trampoline was trash and the landlords removed the slide from the playhouse at their expense.

The claim for garbage and junk removal includes the cost of renting large garbage bins and the disposal of the garbage. While the landlord provided receipts to verify the cost incurred, I find the tenants are likely not responsible for all of the garbage hauled away since building elements were removed and disposed of during the renovation and I have denied the landlord's claim against the tenants for renovation costs. Considering the tenants stated during the tenancy that they were agreeable to the landlord keeping the security deposit for garbage disposal, I find $600.00 to be a reasonable estimate of the cost of garbage disposal for the tenants' possessions. Since the security deposit was already applied to unpaid rent, I award the landlords $600.00 toward the cost to dispose of the tenants' garbage and abandoned property.

Filing fee and Monetary Order

Given the landlord's partial success, I award the landlord recovery of $50.00 of the filing fee paid for this application.

Based on all of the above, I provide the landlords a Monetary Order calculated as follows:

Unpaid rent	$2,800.00
Labour for cleaning and garbage removal	1,000.00
Garbage disposal costs	600.00
Filing fee	50.00
Monetary Order for landlord	$4,450.00

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

Conclusion

The landlord has been provided a Monetary Order in the amount of $4,450.00 to serve and enforce upon the tenants as necessary.

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 15, 2016

Residential Tenancy Branch