



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF; MNDC

Introduction

This hearing was convened in relation to 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 tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

This hearing was also convened in relation to the tenants' application for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act.

This hearing was originally scheduled to be heard 30 March 2016. Despite the parties' best efforts we were unable to complete the hearing within the allotted time and the hearing was adjourned to be reconvened on today's date. At the first hearing the landlord provided his direct evidence. The parties were informed of the new hearing's date and time at the hearing and again by mail.

All named parties attended the first hearing date. Only the landlord attended the second hearing date.

Preliminary Issue – Disposition of Tenants' Application

While the landlord attended the reconvened hearing by way of conference call, the tenants did not, although I waited until 0944 in order to enable the tenants to connect with this teleconference hearing scheduled for 0930.

Rules 7.1, 7.3 and 7.4 of the Rules of Procedure establish the consequences of failing to appear at a hearing at the scheduled time:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenants and in the absence of the tenants' participation in this hearing, I order the tenants' dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, 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.

The landlord testified that the tenancy began 25 October 2014. Month rent was initially \$650.00 and was due on the first. The landlord collected a security deposit in the amount of \$325.00, which he continues to hold.

The landlord testified that the tenancy agreement specified that no pets were permitted, no smoking was permitted in the rental unit, and no marijuana smoking was permitted anywhere on the residential property. The landlord testified that he wrote the terms of the tenancy on a piece of paper and that this piece of paper was signed by both parties. I was not provided with a copy.

The landlord testified that in December 2014 he became aware that the tenants had a pet cat. The tenants initially denied having the pet. The landlord's son took a photograph of the cat and the tenant KD admitted that it was her pet.

The landlord testified that on or about 5 January 2015 he provided a handwritten notice to end tenancy to the tenants. The handwritten notice set out that the tenants had violated terms of the tenancy agreement with respect to pets and asked the tenants to vacate the rental unit before 31 January 2015.

The landlord testified that he and the tenants renegotiated the tenancy agreement to permit one pet. The tenants agreed to pay rent in the amount of \$700.00 beginning 1 February 2015.

The landlord testified that in February 2015 his wife observed two cats. The landlord testified that he asked the tenant KD which cat was hers and she denied having two cats. The landlord testified that the tenant KD later admitted that they were both her cats.

The landlord testified that the parties reached an agreement to further increase the monthly rent by \$25.00 per month to compensate for the additional pet. The landlord testified that his son wanted a pet deposit and restrictions on the tenants' visitors. The landlord testified that the rent would increase as of 1 April 2015. The landlord testified that the parties made a written agreement, but that he was no longer in possession of that document.

The landlord testified that the rental unit sold on or about 18 November 2015. The landlord testified that he provided the tenants with a 2 Month Notice on the Residential Tenancy Branch form on or about 3 December 2015. That notice set out an effective date of 31 January 2016. The landlord testified that he went to the rental unit and discovered a third cat in the unit. The landlord testified that he also served the tenants with handwritten notice to vacate on 3 December 2015. The landlord testified that he expected the tenants to vacate within ten days as they had vacated the terms of the tenancy agreement by having a third cat. The landlord testified that the tenants paid rent for December on 5 December 2015.

The landlord submits that by breaching the tenancy agreement by adding an additional cat, the tenants have lost any benefits that may flow from the 2 Month Notice.

The landlord testified that he did not receive the tenants' notice dated 26 December 2015. The landlord testified that he did not receive this notice until he received the tenants' application for dispute resolution on 29 December 2015. The tenants' notice was included as evidence within their dispute resolution package. The landlord testified that, in any event, the tenants did not vacate 4 January 2015.

The landlord testified that the tenants did not pay rent for January. The landlord testified that he served the tenants with a 10 Day Notice on 3 January 2016.

On 5 January 2015 the tenants provided some notices informing the landlord that they had not yet vacated the rental unit.

On 6 January 2016, the tenants provided the landlord with a letter that made an admission that they were responsible for cleaning the rental unit. The landlord testified that the tenants gave permission on 6 January 2016 for the landlord to change the locks. The landlord provided an undated handwritten letter from the tenants in which the tenants say that they lost the keys so the landlord will have to change the lock.

The landlord testified that the tenants came on 7 January 2016 to pick up a few remaining items.

The landlord testified that he changed the lock to the rental unit. The landlord testified that the locks cost \$50.84 to replace.

The landlord testified that the tenants damaged a door to the master bedroom in a fight. The landlord testified that the door cost \$32.49 to replace. The landlord testified that it was necessary to replace the carpet in a room because of staining caused by the tenants. The landlord testified that the carpet was eight or nine years old. The landlord testified that he purchased the cheapest carpet he could find, which was \$0.89/sf. The landlord testified that it took three or four hours to repair the door and install the carpet.

The landlord testified that the tenants caused holes in the walls and that there was black on the walls from a fire. The landlord testified that he bought paint and roller. The landlord testified that the rental unit was last painted in October 2014. I was provided with a receipt dated 9 January 2016 in the amount of \$113.63 for painting supplies.

The landlord testified that it took five days to clean the rental unit. The landlord testified that the tenants left debris that the landlord had to dispose of using his car. The landlord testified that he spent 50 hours of his own labour repairing and cleaning the rental unit. The landlord testified that his spouse spent ten or twelve hours cleaning the rental unit. The landlord claims \$900.00 for disposing of debris, cleaning and repairs.

The landlord provided a DVD containing a video and photographs taken the evening of 6 January 2016. The video shows a large amount of debris in the rental unit and backyard. The video shows that the rental unit has not been cleaned and that there is damage to the walls and the bedroom door. The carpet is heavily stained in the back bedroom. It is clear where the carpet was exposed and a bed (or other piece of large furniture) was sitting. The walls appear to be splattered with some liquid.

The landlord claims for \$1,895.96:

Item	Amount
Unpaid January Rent	\$650.00
Door	32.49
Lock	50.84
Carpet	149.00
Paint	113.63
Labour for Painting, Door Repair, Carpet, and Cleaning	150.00
Debris Disposal	750.00
Total Monetary Order Sought	\$1,895.96

Analysis

In accordance with section 44 of the Act, a tenancy ends where:

- the landlord or tenant gives notice,

- the landlord and tenant agree; or
- the tenant abandons the rental unit.

In this case the landlord gave multiple handwritten notices to end the tenancy and the 2 Month Notice.

Pursuant to paragraph 52(e) of the Act, a notice given by a landlord must be in the approved form. As a result of paragraph 52(e) of the Act, the landlord's handwritten notices were insufficient to end the tenancy.

Pursuant to section 50 a tenant may end a tenancy with ten days' notice where they receive a notice pursuant to section 49 of the Act. This notice must be given to the landlord. The landlord's sworn and uncontested evidence is that he did not receive the tenants' 10 Day Notice until it was delivered as part of the tenants' evidence package with the dispute resolution package and attached to a three page submission. The tenants did not attend to contest this evidence. On the basis of the landlord's uncontested evidence, I find that the tenants were not effective in ending their tenancy early. Accordingly, the tenants' responsibilities under the tenancy agreement ended on 31 January 2016.

Pursuant to subsection 51 a tenant is entitled to receive the equivalent of one month's rent in compensation:

- (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Pursuant to subsection 51(1.1) a tenant may withhold the last month's rent:

- (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

The landlord claims for January's rent and says that the tenants were not entitled to compensation pursuant to section 51 because of other breaches in the tenancy. The rules regarding compensation pursuant to a 2 Month Notice do not make it conditional on any other conduct—merely that the tenant is in receipt of the 2 Month Notice. As there is no basis for revoking the tenants' right to compensation under section 51, the tenants were entitled to withhold rent due 1 January 2016. The landlord is not entitled to recover January's rent.

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. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" 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. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. ...

The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense.

...

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

On the basis of the uncontested evidence of the landlord, I find that the tenant breached subsection 37(2) of the Act, by leaving the rental unit damaged and unclean. In particular, the tenants left the door, walls and carpet damaged, the tenants left debris in the rental unit, the tenants did not clean, and the tenants did not return the keys. By breaching subsection 37(2) of the Act, the tenants caused the landlord to incur costs of remedying the breach.

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 amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

Further, *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 carpet is ten years. The landlord testified that the carpet was eight or nine years old. As such, the capital value of the carpet had depreciated by at least 80%. On this basis, I find that the landlord is entitled to recover 20% of the cost of the carpet cost.

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 carpet had depreciated by 25%. On this basis, I find that the landlord is entitled to recover 75% of the cost of the interior paint costs.

The landlord testified that he spent \$32.49 in materials replace the door, \$149.00 in materials to replace the carpet, and \$113.63 in materials to replace the paint. On the basis of my reasons set out above the landlord is entitled to recover \$32.49 for the door, \$29.80 for the carpet, and \$82.22 for the cost of paint.

In applying the useful life, I have not applied the reduction to the labour portion of the capital costs as the labour required to clean would have been valued at a similar amount to the repainting and carpet installation labour and accordingly accurately reflects the true damage to the landlord. The landlord testified that the labour for repairs and cleaning totaled \$150.00. I find that this is a reasonable amount for these breaches. As such, the landlord is entitled to recover the full amount of his claim for the labour and cleaning totaling \$150.00.

The landlord claims for \$750.00 for the cost of removing the debris. The tenants did not appear to challenge this claim. The video recording of the debris shows that there was a large volume of debris left by the tenants. On the basis of the landlord's uncontested evidence, I find that they incurred costs of \$750.00 disposing of the debris. The landlord is entitled to recover the full amount of this cost.

The tenant's did not return all the keys and told the landlord that they would incur the cost of changing the locks as a result. I find that the landlord is entitled to recover the cost of changing the locks in the amount of \$50.84.

The landlord applied to keep the tenants' 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.

Conclusion

The tenants' application is dismissed without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$770.35 under the following terms:

Item	Amount
Door	\$32.49
Lock	50.84
Carpet	29.80
Paint	82.22
Labour for Painting, Door Repair, Carpet, and Cleaning	150.00
Debris Disposal	750.00
Offset Security Deposit Amount	-325.00
Total Monetary Order	\$770.35

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.

The remainder of the landlord's application is dismissed.

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: July 22, 2016

Residential Tenancy Branch

