



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties attended the hearing, with the tenant represented by an agent. They confirmed the Application for Dispute Resolution was served by registered mail. They agreed to waive the time limit for the submission of evidence as it appeared both had provided late evidence which was significant. Therefore, the late evidence is considered in the Decision. The landlord applies pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for rental loss and damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear the cost of repair? Did they suffer rental loss due to the tenant's actions? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced July 1, 2006, this landlord assumed the lease in 2008, monthly rent is \$1169 and a security deposit of \$487.50 was paid in July 2006 and transferred to the present landlord in 2008.

The evidence is that at one time the relationship between the parties was friendly but has become contentious.

The landlords claim as follows:

- \$2591.74 to replace carpet that was badly stained and smelling. Age is unknown. The tenant said it was not new in 2006 and the move-in report shows it was stained then.
- \$26.25 for unpaid water bill received after tenants vacated.
- \$133.13+11.19+ 36.59+220 (total \$400.91): for repainting rooms done in dark colours. The tenant's agent said the tenant painted the rooms about every year as she is a professional painter and she had the landlord's consent. The landlord agreed they had consented once but said the Act provides a tenant must return the unit to neutral colours and the tenant did not. Her chosen colours were very dark.

- \$14.50+23.10+39.15+82.95+102.48+45.15+290 (total \$597.33): for cleaning and hauling garbage. The tenant agreed they did not have sufficient time to clean up as they had to leave on February 28, 2016 instead of February 29, 2016. The landlord said they never asked for an extra day to move out. She pointed to a previous hearing where the tenant said she was going to replace flooring on a floor that she had painted but had not done this.
- \$37.31 for a missing baseboard heater and \$31.29 (total \$68.60) for two missing thermostats. The tenant said she did not know about them. They were missing for a long time.
- \$1169 for rental loss for one month as they could not re-rent until April 1, 2016 due to the amount of clean up required.

The landlord referred me to a prior hearing where it was established that the tenant removed part of the carpet and painted the concrete sub floor without permission. At that time, the landlord's position was that the carpet would have to be replaced in both rooms and the latex paint would have to be scraped, adding to the cost of repairing the flooring.

In evidence are statements of the parties, several tenancy agreements, condition inspection reports, photographs of damage, invoices, and emails between the parties.

One email from the tenant states the landlord may keep the security deposit plus the \$50 filing fee awarded on a previous file.

The tenant also provided documents to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does not give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that this tenant caused damages by leaving much garbage to be cleaned up. The landlord's credibility is supported by the tenant's agreement that they did not have time to clean up as they had to leave on February 28, 2016 rather than February 29, 2016. I find the landlord entitled to recover \$597.33 for cleaning up and hauling garbage away. I find this claim well supported by the invoices in evidence.

I find the landlord also entitled to recover costs of a baseboard heater and thermostats that disappeared during the tenancy. I find them entitled to recover \$68.60 for these items. I find the tenant also owes the last water bill of \$26.25 so I find the landlord entitled to recover this amount.

In respect to painting the premises, the landlord asserted in the hearing that the tenant was obligated to return the unit to its original neutral colour of paint according to the Act. On researching the issue, I find the Residential Tenancy Policy Guideline # 1 states:

RENOVATIONS AND CHANGES TO RENTAL UNIT

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

However, in this case, I find the landlord did consent to the tenant painting the unit as she was a professional painter. Moreover, this tenancy was in existence since 2006 so any painting done by the original landlord would be beyond its useful life according to Guideline #40 which assigns a useful life for paint of 4 years in rented premises. The Incoming Condition Inspection Report in evidence shows there were some nail holes in the walls but there is nothing to indicate their original colour. Although the lease agreement has some addendums, there is no provision for the tenant to repaint walls in a neutral colour or any indication in any of these documents as to what the original colour was. In summary, I find the tenant had consent to paint the unit, there is no written agreement on colours and I find insufficient evidence of the original colour of the unit or that the tenant had to return it to that colour. I dismiss this portion of the landlord's claim.

Regarding the claim for new carpets, as discussed with the parties in the hearing, Guideline #40 assigns a useful life for carpets of 10 years. This is designed to account for reasonable wear and tear for which a tenant is not responsible. These carpets were stained when the tenants

entered into the tenancy in 2006 so they are obviously over 10 years old. Therefore, I find the landlords not entitled to compensation for their replacement as the carpets were beyond their useful life in rented premises.

I find there was a significant amount of clean up and repair required so the landlord was unable to re-rent the premises for one month. I find they are entitled to one month rental loss as this is attributable to the tenants' actions in leaving the unit unclean and with garbage. I find them entitled to recover rental loss for one month in the amount of \$1169.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Rental loss	1169.00
Cleaning & garbage removal	597.33
Heater and thermostats	68.60
Unpaid water bill	26.25
Filing fee	100.00
Less security deposit	-487.50
Less filing fee owed to tenant	-50.00
Total Monetary Order to Landlord	1423.68

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 28, 2016

Residential Tenancy Branch

