



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on February 15, 2014. Rent in the amount of \$3,800.00 was payable on the first of each month. A security deposit of \$1,950.00 and a pet damage deposit of \$350.00 were paid by the tenants. The tenancy ended on September 15, 2015.

The landlords claim as follows:

a.	Unpaid rent for August 2015 and September 2015	\$ 7,600.00
b.	Pay per view movies	\$ 481.10
c.	Cleaning	\$ 550.00
d.	Damage to walls	\$ 725.00
e.	Replace blind	\$ 250.00
f.	Rekey	\$ 265.00
g.	Remove cameras and repair soffits	\$ 2,000.00
h.	Replace ASUS dark night router	\$ 223.99
i.	Unplug kitchen sink	\$ 960.00
j.	Filing fee	\$ 100.00
	Total claimed	\$13,155.09

Unpaid rent

At the outset of the hearing the tenants did not deny rent was owed for August 2016 and September 2016.

Pay per view movies

At the outset of the hearing the tenants did not deny they owed for pay per view movies.

Cleaning

The landlord testified that the tenant did not clean the 2 ovens and the refrigerator was dirty. The landlords seeks to recover \$50.00 for each item cleaned. Filed in evidence are photographs of the stoves.

The landlord testified that the tenant also failed to clean the baseboards throughout the rental unit and there was a significant dust buildup. The landlords seek to recover the amount of \$400.00. Filed in evidence is a photograph of one baseboard.

The tenant testified that they had a professional cleaner come in regularly during the entire tenancy. The tenant stated that they are single and rarely ever used the ovens. The tenant stated the ovens are in the same condition as when the tenancy started.

The tenant testified that the one photograph of the baseboard that the landlord has provided as evidence is the baseboard that was behind the bed and the bed was too heavy to move when they were cleaning. The tenant stated that all the baseboards were cleaned.

Damage to walls

The landlord testified that the tenant caused damage to the living room wall, when the tenant had the cable outlet move to the top of the fireplace as there was a hole left in the drywall which had to be fixed. The landlord stated that when the tenant removed their TV mount from the wall it left large holes in the drywall which had to be fixed. The landlords seek to recover the cost to make the repair in the amount of \$150.00. Filed in evidence are photographs of the wall.

The landlord testified that the tenant caused damage to the master bedroom wall when they removed their TV mount leaving large holes which had to be repaired. The landlords seek to recover the cost to make the repair in the amount of \$75.00. Filed in evidence are photographs of the walls.

The landlord testified that the tenant also had wall art painted on the walls of one of the bedrooms. The landlord stated the art had to be painted over. The landlords seek to recover the cost of painting in the amount of \$400.00. Filed in evidence are photograph of the wall.

The tenant testified that they had permission of the landlords to move the cable outlet. The tenant stated that this was also for the benefit of the landlords. The tenant stated that they hired a professional company and they do not know why the company would mount the outlet cover sideways or leave a hole in the wall.

The tenant testified that they did leave the holes from the TV mounts, but it makes no sense to fill the holes as the next tenant would be mounting their own TV.

The tenant testified that the wall art was done by a friend who is a well-known artist and did the work to complement the unique characters of the room. The tenant stated that it was a birthday gift for his daughter and it was a shame that it was painted over.

Replace blind

The landlord testified that the kitchen blind was replaced during the tenancy and at the end of the tenancy it was found ripped. The landlords seek to recover the cost of the blind in the amount of \$250.00.

The tenant testified that they do not recall the kitchen blind ever being used as it was always left in the same position. The tenant stated that they don't believe the blind was damage and there is no photographic evidence.

Re-key

The landlord testified that the tenants were proved with two sets of keys at the start of the tenancy and at the end of the tenancy only one set was returned. The landlord stated that as a result they had to take the locks apart, change the pins and then

reassemble the locks. The landlord stated that there were 6 locks and each lock took approximately 45 minutes to repair. The landlords seek to recover their time at the rate of \$60.00 per hour. The landlords seek to recover the total amount of \$265.00.

The tenant testified that they left one set of key inside by the back door and the other set was left under the mat at the door. The tenant stated that the keys were only for three doors.

The landlord argued that there six doors; the landlord listed those doors during the hearing.

Removal of camera and repair soffits

The landlord testified that the tenant installed security cameras on the soffits of the rental unit. The landlord stated that the tenant removed the equipment, such as the camera receiver and the cameras were of no use to them. The landlord stated that they removed the cameras pulled all the wire out of the walls. The landlord stated that it took them, plus one other person a total of 10 hours. The landlords seek to recover 20 hours of labour time at the rate of \$60.00. The landlords seek to recover the amount of \$1,600.00.

The landlord testified that after the cameras were removed they had to repair the holes in the soffits. The landlord seeks to recover materials and labour in the amount of \$400.00.

The tenant testified that they had permission to install the cameras. The tenant stated that the cameras were fully functional and that the only thing that was removed was the recorder. The tenant stated that it makes no sense for the landlords to remove the cameras and all the wiring.

Replace router

The landlord testified that the tenant changed the password to the router and they are unable to use it. The landlord stated that they had a master code; however, it appears to be deleted. The landlords seek to recover the cost of a new router in the amount of \$223.99.

The tenant testified that they are not technical and they are not even sure what the item is, that the landlord is referring to. The tenant stated that they did not have any password for this device.

Unplug kitchen sink

The landlord testified that during the tenancy the tenant had plugged the kitchen sink with food solids. The landlord stated that the sink was again found plug with food solids

at the end of the tenancy. The landlords seek to be compensated for 16 hours at the rate of \$60.00 per hour for having fixed the plugged sink twice.

The tenant testified that they did not put food solids down the sink. The tenant stated that there is a garburator that they used; however, it was used properly.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rent

In this case, the tenant acknowledged that they did not pay rent for August 2015 and September 2015, when due under the term of the tenancy agreement. I find the tenants breached the Act, and the landlord suffered a loss. Therefore, I find the landlords are entitled to recover unpaid rent in the amount of **\$7,800.00**.

Paper view movies

In this case, the tenant acknowledged that they are responsible for the movies. Therefore, I find the landlords are entitled to recover the amount of **\$481.10**.

Damages

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is

responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Cleaning

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit. 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

In this case, the rental unit was a 4,000 square foot home, I find based on the landlord evidence that they have failed to prove the tenant breach the Act, by leaving the rental unit unreasonable clean. Photograph of oven #1 does not show the oven was left dirty. Photograph of oven #2, shows minor residue on the bottom of the oven, overall the oven was left reasonable clean. Further, I find one photograph of a baseboard is not evidence that all the baseboards were left in the same condition. I find the landlords have failed to prove that the rental unit was left unreasonable clean. Therefore, I dismiss this portion of the landlords' claim.

Damage to walls

In this case, I accept the landlord's evidence that the tenant caused damage to the walls, when they removed their TV mounts leaving large holes. I further find that when the tenant had the cable outlet moved to over the fireplace by a profession that the job was substandard as a large hole in the drywall was left behind. I find the tenants breached the Act, when they failed to make the repairs. I find the amounts claimed by the landlord to make the repairs reasonable. Therefore, I grant the landlords for repairing the drywall the amount of **\$225.00**

I am further satisfied that the walls in the bedroom had to be repainted to cover up the artwork. I find the amount claimed to repair the walls is reasonable. Therefore, I grant the landlords for repaint the bedroom walls the amount of **\$400.00**

Replace blind

The evidence of the landlord was the tenants ripped the blind in the kitchen. The evidence of the tenant was that they did not rip the blind. In this case, both parties have provided a different version of events. As the onus is on the landlord to prove the tenant caused damage to the blind, I find without further evidence, such as a photograph of the ripped blind that the landlords have failed to prove the blind was damaged by the tenants. I find the landlords have failed to prove a violation of the Act, by the tenant. Therefore, I dismiss this portion of the landlords' claim.

Re-keys

Under the Act, the tenants must return all keys that give access to the rental unit. Although the evidence of the tenant was that they left one set of keys in the rental unit and the other under the mat; however, there is no way for the tenants to prove the keys under the mat were received by the landlord. The evidence of the landlord was that they only received one set of keys. I find the tenants breached the Act, when they failed to ensure that the keys were received by the landlord.

As a result of one set of keys not being received by the landlord 6 doors had to be rekeyed, which took the landlord 4.5 hours to change. The landlords are seeking to recover the amount of \$60.00 per hour for their labour.

I find the hourly rate of pay the landlords are seeking for their own time is unreasonable high. I find a reasonable amount to compensate the landlord for their time is \$20.00 per hour for 4.5 hours. Therefore, I grant the landlords the amount of **\$90.00**.

Removal of camera and repair soffits

Under the Act, the tenants must have written permission from the landlords to make changes to the rental unit. In this case, the tenants have provided no evidence that they had written permission to install cameras prior to their installation.

At the end of the tenancy the cameras were left behind; the landlord did not want the cameras and removed them and the wiring from the premises. That was the landlord right to do so.

However, in this case the landlord is claiming \$60.00 per hour for two people for a total of 20 hours. I find the hourly rate of pay the landlords are seeking is unreasonably high. I find a reasonable amount to compensate the landlords is \$20.00 per hour, per person. Therefore, I grant the landlords the amount of **\$400.00**.

The landlord further seeks to recover the cost of repairing the soffits. Since the landlord has not provided a breakdown of material or labour. I find it appropriate to reduce the amount claimed by 50% as I have found the previous amount claim for labour is high. Therefore, I grant the landlords the amount of **\$200.00**.

Replace router

The evidence of the landlord was that the tenant changed the password on the router and they are unable to use the device. The evidence of the tenant was that they never had the password and were not even sure what the device was.

In this case, the landlord provided no evidence that the tenant actually changed the password. Further, I am not satisfied that the landlord could not simply take the device

and have it reset. I find the landlord has failed to prove a violation of the Act by the tenant. Therefore, I dismiss this portion of the landlords' claim.

Unplug kitchen sink

In this case both parties have provided a different version of events. The evidence of the landlord was that the tenant plugged the kitchen sink with food solids. The evidence of the tenant was that they only used the garburator that was provided by the landlords.

Base on the above I am not satisfied that the tenants caused damage to the kitchen sink by plugging it with food solids. The rental unit is equipped with a garburator and it is reasonable that food items would be dispose in the garburator. Further, I find the amount claimed by the landlords is extravagant and unreasonable that a plugged sink even on two occasions would cost \$960.00. Therefore, I dismiss this portion of the landlords' claim.

I find that the landlords have established a total monetary claim of **\$9,596.10** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit (\$1,950.00) and the pet damage deposit (\$350.00) in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$7,296.10**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlords are granted a monetary and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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: September 27, 2016

Residential Tenancy Branch