



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MSND, FF

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order, an order to retain the security deposit in partial satisfaction of the claim and the recovery of the filing fee. The tenant has filed an application seeking a monetary order, the return of the security deposit and to recover the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is the either party entitled to a monetary order as claimed?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on March 1, 2013 and ended on January 5, 2016. The tenants were obligated to pay \$1400.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$700.00 security deposit. The landlord stated that on December 8, 2015 the tenant advised him that he would be moving out on January 5, 2016. The landlord stated that despite numerous requests to have the tenant give his notice to end tenancy in writing, the tenant refused. The landlord stated that the tenant did not pay the rent for January. The landlord stated that the tenant left the unit dirty and required extensive cleaning.

The landlord stated that numerous miscellaneous repairs were required as a result of the tenants' actions. The landlord stated that he spent two weeks getting the unit back up to a standard that could be rented again. The landlord stated that the tenants claim is without merit and lacks any substance. The landlord stated that much of the tenants claim is made up of lies and that he wasn't aware of any of the issues until he was served the paperwork from the tenant. The landlord stated that there wasn't any flood in the unit and that it was a minor leak that was resolved the same day. The landlord stated that the tenant made this process very difficult by never providing his forwarding address. The landlord stated that things might have gone easier had the tenant been willing to discuss the matter and be accountable, but "he chose to run away without a trace".

1.	Unpaid Rent for January	\$1400.00
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2.	Cleaning and rubbish removal	\$1365.00
3.	Painting	\$850.00
4.	Landlords Labour to clean and make repairs plus parts and supplies	\$3499.25
5.	Light Bulbs	\$135.96
6.	Filing Fee	\$100.00
7.	Total	\$7350.21

The tenant gave the following testimony. The tenant stated that he endured two “major floods” that required him to spend a large amount of money to replace his items. The tenant stated that the landlord told him he had to move so he spent a lot of money finding a new place, moving his items and losing work because of the landlords’ demands. The tenant stated that the landlords’ application is full of lies and he was willing to just walk away from this but the landlord is “a very difficult guy”. The tenant stated that the landlord never fixed anything and that he didn’t have use of a hot tub for the whole tenancy. The tenant stated that he thinks the landlord should pay him some compensation for living in such a poorly maintained home. The tenant stated that he never gave his forwarding address to the landlord as he didn’t want to deal with him again.

The tenant is applying for the following

1.	Dry Cleaners	\$600.00
2.	Loss of Furniture	\$4000.00
3.	Damage Deposit for new place	\$800.00
4.	Rent for new place	\$1170.00
5.	Rent rebate for loss of use of hot tub	\$3600.00
6.	Rent rebate for loss of use of basement	\$2400.00
7.	Move to new house	\$1000.00
8.	Lost wages for one week to move	\$1000.00
9.	Loss of kids clothes	\$2500.00
10.	Return of security deposit	\$700.00
11.	Filing Fee	\$100.00
	Total	\$17870.00

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements:**

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Firstly, I address the landlord's claims and my findings around each as follows.

1. Loss of Rent January 2016

The tenant acknowledges that he did not provide written notice to end the tenancy as is required under the Act. In addition the tenant also acknowledges that he did not move out of the unit until January 5, 2016. Section 45 of the Act addresses the issue before me as follows:

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenant is in breach of Section 45 of the Act and therefore the landlord is entitled to \$1400.00.

2. Suite Cleaning and Rubbish Removal - \$1365.00.

The tenant stated that he felt that he left the unit clean but did acknowledge that he left some items behind. The landlord provided photos and receipts to show that the unit required extensive cleaning and rubbish removal. I find that

based on the evidence before me, the landlord has proven this claim and is entitled to \$1365.00.

3. Painting \$850.00.

The landlord stated that the unit needed to be repainted as there were scuffs and scratches throughout and that the drywall needed patching in some areas. Residential Tenancy Policy Guideline 40 addresses the “useful life” of paint as four years. The landlord stated that the unit was painted in 2008. I find that the paint had exceeded its useful life and the deficiencies of the paint and drywall can be attributed to reasonable wear and tear. Based on the above, I dismiss this portion of the landlords claim.

4. Labour, parts, and supplies - \$3499.25.

The landlord stated that he conducted many of the repairs on his own and spent an extensive amount of time doing it. When I asked the landlord to provide a breakdown of hours and costs per repair his response was “I wasn't prepared to answer questions like that”. The landlord went on to say “ I really don't know how much time I spent but I figured it was about two weeks”. Furthermore, when I asked how much he was asking for an hourly labour rate, he replied “I have no idea; it was a long time ago that I did the work”.

The landlord also acknowledged that he did not conduct a move in condition inspection report in writing because “I was too busy, I have a very busy life”. The tenant disputes the landlords claim. The tenant stated that the landlord has now renovated the unit but is trying to make him pay for it. The tenant stated that the unit was in a very tired state when he moved in.

It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. In addition, the landlord was unable to quantify the amount of work, the scope of work conducted, the hours required and the labour involved. The landlord has not been able to meet the four grounds as outlined in Section 67 of the Act. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

5. Lightbulbs - \$135.96.

The tenant stated that he left a couple of burnt out lightbulbs and that “I think I left some spares in the suite”. The landlord stated that numerous bulbs were burnt out that required replacement. The landlord provided receipts to support his claim. Based on the landlords' documentation and on a balance of probabilities I find that the landlord is entitled to the amount as claimed of \$135.96.

6. Filing Fee - \$100.00.

As the landlord has been only partially successful in his application, he must bear the cost of the filing fee.

The landlords' total entitlement is \$2900.96.

I address the tenants' claim and my findings as follows.

1. Dry Cleaners - \$600.00.

The tenant stated that because of flood in the basement many of his belongings required professional dry-cleaning. The tenant was unable to recall when the flood happened or what items were damaged that required dry cleaning. Based on the very vague and inconsistent testimony of the tenant, I must dismiss this portion of the tenants' application.

2. Loss of Furniture - \$4000.00, loss of kids clothes \$2500.00, loss of use of the basement.

The tenant stated that he bought furniture when he moved in. The tenant stated because of the flood, the furniture was ruined. The tenant stated that he has not replaced the furniture. As mentioned in the previous claim, the tenant could not even recall when the alleged "flood" occurred or provide a clear and detailed timeline of the events. In addition, the tenant did not provide any photos or statements to support the damaged furniture or provide the timeline that he was without use of the basement.

The landlord stated that the tenant had the same furniture throughout the tenancy and that he only became aware of these "losses" when the tenant filed for Arbitration. The landlord stated the flood was a "one day thing" and was more of a leak than a flood. The landlord stated that the matter was resolved immediately on the day that it happened. Based on the insufficient evidence before me and on a balance of probabilities, I dismiss this portion of the tenant's claim.

3. Rent for new place \$1170.00, deposit for new place \$800.00, moving costs \$1000.00 and loss of wages to move.

The tenant stated that the landlord forced him to move. The landlord disputes this claim. In the tenants own testimony he stated that on December 8, 2015 he advised the landlord that he would be moving. The tenant further went on to say that he initiated the search for a new place. Based on the above, I find that the tenant has not provided sufficient evidence to support this claim and accordingly I dismiss this portion of his application.

4. Loss of use of the Hot tub - \$3600.00

The tenant stated that he is seeking \$100.00 x 36 months = \$3600.00 for loss of use of the outdoor hot tub. The tenant stated that it's included in the tenancy agreement and therefore he should be entitled to compensation.

The landlord stated that the hot tub has not worked in years and that the tenant was aware of this from the outset of the tenancy. The landlord stated that he noted that there is a hot tub on the tenancy agreement more as a matter of inventory than as an included perk. The landlord stated that he has always made notation of it on the tenancy agreement so that a tenant doesn't try to steal it. The landlord acknowledged that the condition inspection report is the appropriate place to make such notation. The landlord stated that he once again surprised by this claim of "losses" as the tenant was aware of it at the outset of the tenancy.

Although the landlords' method of inventory keeping is unusual and somewhat sloppy, I accept his version of why it is noted on the tenancy agreement. The tenant failed to provide sufficient evidence to meet each of the grounds as listed above to be successful in obtaining a monetary order pursuant to Section 67 of the Act. Based on the above and on a balance of probabilities, I dismiss this portion of the tenant's application.

5. Security Deposit - \$700.00.

Both parties have made an application seeking to be awarded the security deposit. The landlord stated that he "was too busy" to conduct a written condition inspection report at move in. Section 24 of the Act addresses this issue as follows.

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the above and on the landlords own testimony acknowledging that he did not conduct or even offer to conduct a move in condition inspection report to the tenant, the tenant is entitled to the return of the security deposit of \$ 700.00.

6. Filing fee - \$100.00

As the tenant has been only partially successful in his application, he must bear the cost of the filing fee.

The tenants' total award is \$700.00; the landlords' total award is \$2900.96. Applying the tenants' award against the landlords, the landlord is entitled to a monetary order of \$2200.96.

Conclusion

The landlord has established a claim for \$2200.96. I order that the landlord retain the \$700.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1500.96. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 23, 2016

Residential Tenancy Branch