



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, unpaid utilities, the cost of repairs and for the loss of items from the furnished rental unit. The landlord applied to retain the security and pet deposits in satisfaction of her claim. The tenant applied for the return of the security and pet deposits.

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.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, unpaid utilities, the cost of repairs and for the loss of items from the furnished rental unit? Is the tenant entitled to the return of the security and pet deposits?

Background and Evidence

The tenancy started on April 07, 2015 for a fixed term of one year ending on April 30, 2016. The tenant moved out on April 11, 2016. The monthly rent was \$775.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$387.50 and a pet deposit of \$775.00.

The landlord stated that the rental unit was furnished and that at the end of the tenancy, some items were damaged and others were missing. The tenant agreed that the unit was furnished but stated that he did not damage or remove items from the home. The landlord agreed that she did not have an inventory of the items that were furnished with the home or a description of their condition.

A copy of the unsigned tenancy agreement was filed into evidence. The rent did not include the utilities. The tenant occupied the basement and the landlord lived upstairs.

The tenancy agreement states that the tenant would pay \$40.00 per month towards utilities and if the landlords were away, the tenant was required to pay the entire utility bill. The landlord stated that she was away for 10 out of the 12 months of tenancy.

The tenant agreed that he did not pay utilities from the start of the tenancy until the male landlord asked him to. The tenant paid a lump sum of \$245.00 and the landlord issued a receipt. The tenant stated that this payment comprised of utilities at the rate of \$35.00 per month for seven months. The tenant agreed that he owed utilities for the months of December 2015 up to April 2016 in the total amount of \$175.00. The tenant stated that he had no intentions of paying the entire utility bill in the absence of the landlord and since the landlord accepted \$35.00 as his monthly contribution towards utilities, he agreed to pay this amount every month.

The tenant testified that a sliding door in the house was problematic and the landlord had purchased a replacement. The tenant helped the landlord move the door from the garage into the suite. The tenant stated that the landlord intended to replace the jammed door but did not do so. The landlord is claiming the cost of replacing the door.

The tenant testified that during the tenancy he was looking to purchase a home and in February 2016 he found one. He verbally informed the landlord on February 28, 2016 that he would be moving out at the end of March. On March 23, 2016, the tenant gave written notice to the landlord by way of text message. The landlord responded. The tenant filed copies of the text messages into evidence.

The tenant agreed that he moved the last of his belongings out of the home on April 11, 2016. He also agreed that he did not pay rent for April 2016. He provided the landlord with his forwarding address on April 04, 2016. The landlord made this application in a timely manner.

The landlord is claiming the following:

1.	Missing linen	\$250.00
2.	Ruined antique quilt	\$1,800.00
3.	Damaged chesterfield	\$150.00
4.	Replace sliding door	\$1,239.68
5.	Replace carpet	\$3,866.63
6.	Utilities	\$1,780.00
7.	Unpaid rent for April and May 2016	\$1,550.00
	Total	\$10,636.31

Analysis

Landlord's application:

1. Missing linen - \$250.00
2. Ruined antique quilt - \$1,800.00
3. Damaged chesterfield - \$150.00

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenant testified that he used his own linens through the tenancy and did not take any with him when he moved out. The tenant also denied causing damage to the quilt. The landlord stated that he quilt was 40 years old and had a value of \$1,800.00. The tenant stated that he did not damage the chesterfield.

The landlord agreed that she did not have an inventory list of all the items that were provided to the tenant during the tenancy. In addition the landlord did not have a condition report describing the condition of these items at the start of tenancy.

The parties provided contradictory testimony with regard to the landlord's claim. In the absence of an inventory list and evidence indicating the condition of the items supplied to the tenant at the start of tenancy, I find that the landlord has not proven her claim and therefore the landlord's claim for the above three items is dismissed.

4. Replace sliding door \$1,239.68

The tenant testified that the door was problematic at the start of the tenancy. The landlord agreed that there was a door in the garage that was moved into the suite with intentions of replacing the problematic door. The tenant denied having caused additional damage to the door. The landlord stated that the door was the original door in the house that was 20 years old.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the door. As per this policy, the useful life of doors is 20 years. The landlord stated that the door was 20 years old and therefore by the end of the tenancy, the door had outlived its useful life

Accordingly, even if I find that the tenant damaged the door, which I do not, the landlord would be responsible for the cost of replacing the door after 20 years. Therefore the landlord's claim for the cost of replacing the door is dismissed.

5. Replace carpet - \$3,866.63

The landlord stated that the carpet needed replacement at the end of tenancy, but has not yet replaced the carpet. Based on section 40 of the *Residential Tenancy Policy Guideline*, the useful life of a carpet is 10 years. The landlord stated that the carpet is 20 years old. Therefore I find that the carpet has outlived its useful life and the landlord must bear the cost of replacing the carpet. The landlord's claim is dismissed.

6. Utilities - \$1,780.00

The tenancy agreement requires the tenant to pay \$40.00 towards utilities and the entire utility bill when the landlords are away. The tenant's main evidence is that the landlord accepted \$35.00 per month from the tenant and issued a receipt for a lump sum payment of \$245.00 which covered utilities for seven months at the rate of \$35.00 per month. The tenant has filed a copy of this receipt to prove that the landlord accepted \$35.00 from the tenant as his monthly contribution towards the cost of utilities.

Based on the above, I find that the tenant has proven that such implied consent existed despite the terms of the tenancy agreement. I further find that it is prejudicial to the tenant to have to pay the entire utility bill in the absence of the landlords when the tenant is occupying only a portion of the home.

The tenant agreed that he owed utilities for the months of December 2015 to April 2016 and therefore I award the landlord \$175.00 for utilities.

7. Unpaid rent for April and May 2016 - \$1,550.00

Based on the testimony of the tenant and the documents filed into evidence, I find that the tenant gave the landlord verbal notice to end the tenancy on February 28, 2016 and then written notice by way of a text message on March 23, 2016. The tenant moved out on April 11, 2016. The tenant agreed that he did not pay rent for April 2016 and therefore I find that the tenant owes rent in the amount of \$775.00 for April 2016.

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I accept the tenant's evidence in respect of the claim. In this case the tenant provided written notice on March 23, 2016 which allows him to end the tenancy by April 30, 2016, which is also the end date of the fixed term.

I find that the tenant provided adequate notice of 30 days and ended the tenancy on the same end date of the fixed term. Therefore I find that the tenant is not responsible for the loss of income that the landlord may have suffered for the month of May 2016. In addition the landlord testified that she decided not to rent out the basement of her home, sometime in May 2016. Accordingly, I find that the landlord is not entitled to rent or loss of income for May 2016 and this portion of her claim is dismissed.

Overall the landlord has established a claim of \$175.00 for utilities and \$775.00 for unpaid rent for the month of April 2016, for a total of \$950.00. The landlord has in her possession a total of \$1,162.50 for security and pet deposits. The landlord may retain \$950.00 from the deposits and must return the balance of \$212.50 to the tenant. :

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$212.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$212.50**.

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: October 13, 2016

Residential Tenancy Branch

