



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant and her advocate, BK (collectively "tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that her advocate had authority to speak on her behalf at this hearing.

The landlord connected to the teleconference late at 1:07 p.m., when the conference began at 1:00 p.m. and I informed her of what happened in her absence. This hearing lasted approximately 119 minutes in order to allow both parties to fully present their submissions.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The tenant said that she did not receive the landlord's photographs #1 to 4. The landlord said that the above photographs were submitted at the same time as the

landlord's other written evidence, which the tenant confirmed that she received. I advised both parties that I did not consider the landlord's photographs #1 to 4 as the tenant did not receive it and they were not required for this hearing in any event, since the tenant agreed that the rental unit needed cleaning.

At the outset of the hearing, both parties agreed that they attended a "previous hearing" at the Residential Tenancy Branch with respect to this tenancy on February 4, 2016, whereby a decision was issued on the same date by a different Arbitrator. The file number for that hearing appears on the front page of this decision. Both parties agreed that the "previous decision" regarding the tenant's application awarded double the amount of the security deposit to the tenant, totaling \$600.00. The landlord said that she had not paid this amount to the tenant because she was waiting for the outcome of this hearing. I notified both parties that the previous hearing decision was still in full force and effect and that both parties were required to abide by it, regardless of the outcome of this hearing, as I could not overturn another Arbitrator's decision or order. I advised both parties that I could not deal with the landlord's current application at this hearing to retain the tenant's security deposit because the security deposit issue is *res judicata*, meaning it has already been dealt with in the previous hearing decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to 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 the landlord's claims and my findings are set out below.

Both parties agreed that this month-to-month tenancy began on December 1, 2014. The tenant said that the tenancy ended on August 31, 2015, but the landlord did not know the date because she said that no notice was given to her. Both parties agreed that monthly rent in the amount of \$600.00 was payable on the first day of each month. Both parties agreed that a written tenancy agreement was signed by both parties and a copy was provided for this hearing. Both parties agreed that a move-in condition inspection report was completed for this tenancy but the tenant said that she did not walk through and inspect the unit with the landlord, she only signed the report. Both

parties agreed that a move-out condition inspection report was not completed for this tenancy.

The landlord seeks a monetary order of \$1,343.36 plus the \$100.00 filing fee for this application. During the hearing, the landlord clarified her monetary order worksheet, indicating the exact amount that she was claiming for each item. The landlord explained that she had initially included a range of numbers and estimates for the same items in her monetary order worksheet because she wanted to provide a range of options.

The landlord seeks \$180.00 for cleaning the rental unit, \$100.00 for laundry costs, and \$15.36 for developing photographs to be used for this hearing. The landlord further seeks \$112.00 for fixing, priming and painting an exterior door frame that she says the tenant damaged. The landlord also seeks \$380.79 for the purchase of a new bathroom cabinet, \$100.00 to remove an old bathroom cabinet and reinstall a new one, and \$371.00 for new bathroom flooring because she said the tenant caused a toilet leak and water damage.

Both parties agreed that a toilet leak occurred in the rental unit. The landlord explained that when she viewed the toilet, a chain was wrapped around the lever on the inside of the toilet tank. The tenant said that she did not do anything to the toilet to cause the leak and that it was a toilet malfunction.

Both parties agreed that the tenant notified the landlord about the leak immediately when she went to pay rent and after a rent receipt was issued to her. The landlord said that this delay in reporting of about 15 minutes, caused water damage and rippling to the bathroom vanity cabinet and discolouration in the bathroom flooring, such that the cabinet and flooring have to be replaced. The landlord maintained that the leak caused flooding and by the time she arrived at the rental unit with the tenant, the entire floor was covered and she had to clean up the water with the tenant. The tenant said that she did not know where the water shut-off was, in order to stop the water from leaking further.

Analysis

As per section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy 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 tenant 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$80.00 of the \$180.00 sought for cleaning the rental unit after the tenant moved out. The tenant agreed to pay \$80.00 to the landlord during the hearing. The landlord claimed for an extra \$100.00 during the hearing when it was not included in her monetary order worksheet. The landlord said that she charged \$20.00 per hour for five hours to clean the unit herself, in addition to the \$80.00 that she paid someone else to clean. I find that the landlord did not sufficiently justify this extra \$100.00 cost, why extra cleaning was required on top of the \$80.00 that she paid someone else to clean and why she charged the rate that she did. I find that the landlord's coloured photographs are zoomed-in to show microscopic damage and do not show that an unreasonable amount of cleaning was required after the tenant vacated.

I award the landlord \$5.00 of the \$100.00 sought in laundry costs. The landlord said that the laundry services were included in rent only for the tenant, not for the tenant's family. She said that the hydro bills were higher because of this extra laundry by the tenant. The tenant agreed to pay the landlord \$5.00 during the hearing. The tenant's written tenancy agreement indicates that laundry is included with the cost of rent, not as an additional charge. The tenant agreed that she did one extra load of laundry for her family, not herself, and therefore, she was responsible for the above cost. I find that the landlord failed to meet part 3 of the above test, by not providing utility bills to show the increased hydro costs for laundry, despite the fact that the landlord referenced these bills in her submissions. The landlord simply maintained that \$100.00 was a "fair" and "reasonable" amount based on \$1.50 to \$2.00 per load of laundry for a "couple of months" of extra laundry that the tenant did for her family.

I dismiss the landlord's claim of \$15.36 for the cost of producing photographs for this hearing. As advised to both parties during the hearing, the only hearing-related costs recoverable under section 72 of the *Act*, are for filing fees.

I dismiss the landlord's claim of \$84.21 for advertising the rental unit for re-rental in the newspaper. The landlord provided an invoice for this cost. The landlord said that the tenant provided notice one day late on August 1, 2015, instead of July 31, 2015, to vacate the rental unit. The tenant agreed that she provided late notice but disputed the landlord's claim for advertising costs, stating that the landlord did not lose any rent as the unit was re-rented quickly and advertising costs are part of the standard costs of a landlord. I find that the landlord is not required to advertise the unit in a newspaper. There are many free options to advertise a unit for rental, including online. I also find that advertising is part of the costs of doing business as a landlord.

I dismiss the landlord's claim of \$112.00 for fixing the exterior door frame, including priming and painting. The landlord provided her own estimate of this cost, stating that she could do the work herself. The landlord also provided a photograph of this damage. I find that the landlord failed to provide sufficient evidence that the tenant caused this damage. The landlord said that the tenant probably damaged the exterior door frame when moving her furniture out of the rental unit. However, the landlord did not provide witness evidence or other definitive evidence that the tenant caused the damage and failed part 2 of the above test. The tenant said that she or her movers did not damage the exterior door frame when moving out of the rental unit.

I dismiss the landlords' application of \$380.79 for the purchase of a new bathroom cabinet, \$100.00 to remove an old bathroom cabinet and reinstall a new one, and \$371.00 for new bathroom flooring. The landlord provided coloured photographs as well as estimates for the work to be done, as it has not been completed yet. I find that the landlord failed to meet part 2 of the above test to show that the tenant caused the damage. I find that the landlord failed to show that the toilet leak was due to the tenant's willful conduct or negligence. The landlord did not provide documentary evidence from a plumber, indicating how the leak occurred or that it could have been due to the tenant's conduct. I accept the tenant's evidence that she did not cause the toilet leak to occur. I find that the tenant notified the landlord within a reasonable period of time after the toilet leak occurred and that it is the landlord's responsibility to repair and maintain the toilet. I do not find that 15 minutes is an unreasonable amount of time for the tenant to notify the landlord about the toilet overflow, particularly given the tenant's difficulty in articulating herself that was apparent during this hearing and given the assistance she required from her advocate during the hearing. As the landlord was mainly unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$85.00 against the tenant. The landlord is provided with a monetary order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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 landlord's application for a monetary order for unpaid rent, which the landlord said was for laundry charges and the rental advertisement, is dismissed without leave to reapply.

The security deposit issue is *res judicata*, as it has already been dealt with in the previous hearing decision.

The previous hearing decision and order are still in full force and effect and both parties must abide by it.

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 04, 2016

Residential Tenancy Branch