



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to their rental unit and property; unpaid rent; and, damage or loss under the Act, regulations or tenancy agreement. The tenants did not appear at the hearing. The landlord testified that he sent a hearing package and evidence package to each tenant on March 3, 2016 and March 7, 2016. All packages were returned because they were "refused by recipient". The address used for service was the tenants' address of residence at the time of mailing. The landlord provided copies of the registered mail receipts, including tracking numbers, and copies of the envelopes returned to him.

Section 90 of the Act deems a person to have received a document five days after mailing, even if the person refuses to accept or pick up their mail. In this case, I was satisfied the landlord sent the required documentation to the tenants in a manner that complies with the Act and I deemed the tenants to be sufficient served pursuant to section 90 of the Act. Accordingly, I proceeded to hear from the landlord without the tenants present.

I was presented evidence that the tenancy ended pursuant to a 1 Month Notice to End Tenancy for Cause. The 1 Month Notice had an effective date of February 28, 2014. The tenants had filed to dispute the 1 Month Notice and a hearing was held on March 18, 2014 (file number provided on cover page of this decision). The tenants did not appear at the hearing and the landlord was provided an Order of Possession. to be effective two days after service. The landlord sent the Order of Possession to the tenants via registered mail. The landlord travelled to the town where the rental unit is located on March 31, 2014 and the tenants vacated the rental unit on April 1, 2014. In filing this application on February 22, 2016 I am satisfied the landlord filed within the two year statutory time limit for filing.

Issue(s) to be Decided

Has the landlord established an entitlement to a Monetary Order in the amount requested?

Background and Evidence

The landlord submitted that the tenancy started in January 2011 and the tenants were required to pay rent of \$1,150.00 on the first day of every month. A security deposit and a pet damage deposit were not collected. The landlord did not prepare a move-in or move-out inspection report.

As stated previously, the tenancy ended pursuant to a 1 Month Notice to End Tenancy for Cause that was issued in January 2014 with an effective date of February 28, 2014. Although the tenants had filed to dispute the 1 Month Notice the tenants did not appear at March 18, 2014 hearing and the landlord was provided an Order of Possession to be effective two days after service. The landlord sent the Order of Possession to the tenants via registered mail. The landlord travelled to the town where the rental unit is located on March 31, 2014 and the tenants vacated the rental unit on April 1, 2014.

The landlord submitted that the tenants left the rental unit very dirty, damaged and left abandoned possessions on the property, including a live chicken in a chicken coop. The landlord proceeded to clean and make repairs and renovations to the property and re-rented it effective June 1, 2014.

Below, I have summarized the landlord's monetary claims against the tenants.

Repairs, renovations, cleaning, garbage removal -- \$15,002.11

The landlord seeks to recover 32% of the value of his time and cost of materials to repair, renovate, clean, remove garbage, remove sand piles against the house, remove sewage and tar left in containers at the property, and relocate the live chicken.

The landlord's claim for labour is unclear. On the summary page of his written submission, he describes the value of his labour as being \$36,750.00; however, within the body of his written submission the landlord states: "my services are \$400.00 per 8 hour day. The repairs took two months and two round trips to [town name]. 40 days at \$400.00 is \$16,000."

During the hearing, the landlord testified that he is a red seal carpenter and that he is seeking compensation based upon what he usually charges his customers for his work. The landlord stated that he did not hire more local trades in his place since he would have had to be at the property to oversee the work.

The cost of materials is identified on the summary page as being \$13,257.02. Numerous receipts are provided with the landlord's evidence; however, the landlord did not provided a detailed listing to itemize the amounts that are included in this sum.

The landlord acknowledged that after making all of the repairs and renovations the rental property is in a better or "fresher" condition than it was when the tenants began their occupancy so the landlord limited his claim to 32% of \$36,750.00 and \$13,257.02 which is \$15,002.11.

Since the landlord had produced a large volume of photographs and receipts for various items without providing a detailed listing as to which is included in the claim, during the hearing I requested that the landlord describe the most significant or costly items for which he is seeking compensation from the tenants. In response, the landlord submitted that the most costly repairs involved:

1. The replacement of flooring in the rental unit. The landlord submitted that the carpeting was so filthy, stained and burned that it could not be cleaned so it was replaced. The landlord testified that the upstairs carpeting had been installed in 1999 when the house underwent a renovation and the downstairs carpeting was older than that. However, the landlord submitted that the carpeting was in good condition at the start of the tenancy.
2. Repainting the rental unit. The landlord testified that he did some of the repainting himself but this was proving to be too time consuming so he hired a local contractor to finish the painting. The landlord testified that the house had been completely repainted in 1998 or 1999 but that a couple of rooms had been repainted more recently.
3. Replacement of the electrical panel. The landlord submitted that the tenants had people living in two large trailers on the property and those trailers were connected to the house's electrical system. In addition, the tenants were using electric space heaters instead of the furnace in the house which placed a further burden on the 100 amp electrical system. Also, the landlord found evidence of hydroponic equipment at the rental unit. The electrical panel had to be repaired temporarily and then replaced because it became so overburdened that it caught fire and the wiring was burnt.
4. Replacement of a missing fridge. The landlord submitted that he had left a white fridge in a storage room in the garage of the property at the start of the tenancy, to be used when the fridge in the kitchen stopped working since it was older. During the tenancy the fridge in the kitchen had stopped working so the landlord told the tenants to use the white fridge in the garage. The tenants told him it was gone. The landlord stated that the white fridge was new at the start of the tenancy and at the end of the tenancy the tenants left a used stainless-steel fridge that did not match the kitchen.

Travel costs -- \$2400.00

The landlord lives and works in a City far from the town where the rental unit is located. The landlord submitted that he travelled to the town where the rental unit is located at the end of March 2014 to "try and get [the tenants] out" since he could not afford the services of a bailiff. After the landlord cleaned and started making repairs he determined that he needed more tools to do extensive repairs so he returned home to retrieve his tools and trailer. The landlord seeks \$1,000.00 for the first trip and \$1,400.00 for the second trip, explaining that the second trip was more costly because he was towing a trailer.

Unpaid/loss of Rent for March 2014 -- \$1,150.00

The landlord seeks to recover unpaid or loss of rent of \$1,150.00 for March 2014 since the tenants were in possession of the rental unit and had not paid any monies for rent or use and occupation.

Overholding - \$1,000.00

The landlord seeks \$1,000.00 from the tenants because the tenants continued to occupy the rental unit after the Order of Possession was issued. The landlord calculates this claim to be for the days of March 20, 2014 through March 31, 2014. I dismissed this claim summarily as the landlord already requested compensation for the tenants occupying the rental unit in March 2014 in the previous item.

Loss of rental income for April and May 2014 -- \$2,300.00

The landlord seeks to recover loss of rental income for these two months due to cleaning, repairs and renovations made to the property during in these months.

Time spent to file initial eviction papers and prepare this claim -- \$2,000.00

The landlord seeks compensation for his time spent serving and enforcing the 1 Month Notice to End Tenancy for Cause as well as the time spent preparing for and filing the application before me. I dismissed this portion of the landlord's claim summarily as the Act does not provide for compensation for a party to prepare for, file and participate in dispute resolution proceedings with the exception of the filing fee. Further, a landlord should anticipate serving a tenant with documentation, including a Notice to End Tenancy, from time to time, as a cost of doing business as a landlord.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 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.

Repairs, renovations, cleaning, garbage removal

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean and undamaged at the end of the tenancy. Sections 32 and 37 of the Act also provide that reasonable wear and tear is not damage. Accordingly, a landlord may not pursue a tenant for compensation pre-existing damage or to rectify wear and tear.

Awards for compensation intended to be restorative. Accordingly, where an item is so damaged that it must be replaced, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

Upon review of the photographs of the rental property provided by the landlord I accept the landlord's submissions that the tenants left the rental unit in a dirty condition and they left stickers and crayon on the walls, windows and interior doors; left sand piled along the side of the house; left containers of sewage and tar in the yard; and, left abandoned possessions at the property, including a chicken. I also see evidence of burned or melted wiring in the electrical panel. Therefore, I am satisfied that the tenants violated the Act and the landlord is entitled to compensation for cleaning and damage done to the property the tenants.

Although I am satisfied the tenants violated the Act with respect to the condition in which they left the property, I find the landlord's claims for compensation are unclear and unreasonably high despite limiting the claim to 32%. As pointed out in the background section of this decision, in one part of the landlord's submission he estimates the value of his time as being \$16,000.00 but in another part he indicates it is \$36,750.00. The lower sum of \$16,000.00 was calculated as being \$400.00 per day based on an eight hour day, which is the equivalent of \$50.00 per hour. While this may be the income the landlord ordinarily receives for his skills as a red seal carpenter, some of the landlord's time was spent doing work whereby such training is not required, such as cleaning, scraping stickers, shovelling sand from the side of the house, and garbage removal. I am of the view that labour for such tasks could be obtained for less than \$50.00 per hour. If the landlord chooses to do the work himself, I find it reasonable to limit the compensation to an amount more in line with the work performed, which I estimate to be \$25.00 per hour.

Also of consideration is that the paint and carpeting in the rental unit were old at the end of the tenancy. The paint and upstairs carpeting was 15 years old and based upon the photographs it

would appear that the downstairs carpeting was much older than that. Policy guideline 40 provides that interior paint has an average life of four years and carpeting has an average life span of 10 years. Accordingly, I find the rental unit was likely due for new paint and flooring due to aging and deterioration that occurs with use over that many years. As such, I find that holding the tenants responsible for 32% of the cost to repaint and install new flooring is unreasonable.

Since the landlord did not provide a detailed breakdown as to how much time he spent on particular activities, I find it more reasonable to provide the landlord a nominal award based upon the photographs provided to me. Assuming an hourly rate of \$25.00, I award the landlord \$500.00 for cleaning and \$1,000.00 to remove stickers and crayon from walls, windows and doors; remove sand from the exterior of the house, remove garbage and the tanks of sewage and tar, and relocation of the chicken.

Despite the forgoing, I find the landlord has satisfied me that the tenants caused damage to the electrical panel by overloading it with the two large travel trailers they had on the property and using portable electric heaters instead of the furnace. The photographs of the panel and breakers depict an older panel but I was not provided the exact age of the panel. Policy guideline 40 provides that power lines have an average useful life of 25 years. Therefore, I find the landlord's request to recover 32% of the repair and replacement cost is likely within reason. Accordingly, I grant the landlord an award of 32% of the electrical invoices which amounts to \$470.05 [calculated as $(\$1,084.78 + \$384.14) \times 32\%$].

I am also satisfied by the unopposed evidence before me that a newer fridge went missing from the rental unit during the tenancy. Assuming the fridge would have been three years old at the end of the tenancy, and appliances have an average useful life of 15 years, I award the landlord \$759.22 [calculated as $\$949.00 \times 12/15$ years].

In light of the above, I award the landlord a total of \$2,729.27 for cleaning, repairs, garbage removal, chicken relocation and loss of a fridge.

Travel costs

The landlord made two trips from his home town to where the rental unit is located. I find the costs associated to travelling largely due to the landlord's decision to be a long distance landlord and to make repairs and renovations himself.

Landlords should expect to travel to their rental unit at the start and end of a tenancy so as to fulfill their statutory obligations as a landlord, such as performing the condition inspection reports. Otherwise, the landlord may appoint an agent or hire a property manager and costs for agents are those of the landlord. If the landlord does decide to travel to the property himself then that cost should be absorbed by the landlord.

The landlord's second trip was to make extensive repairs; however, for reasons provided earlier in this decision, I am of the view that many of the repairs include renovations that were due to be made given the time that had passed since the last renovation and I have already awarded the landlord fair compensation for other tasks such as cleaning and garbage removal.

In light of the above, I make no award to the landlord for travel costs.

Unpaid and loss of rent

Since the tenants were in possession of the rental unit in March 2014 and the tenants did not pay for their continued occupation of the unit I award the landlord \$1,150.00 for March 2014 as requested. Since the tenants left the unit dirty, complete with garbage and other abandoned property, and damaged, all of which are contrary to the Act, I further award the landlord loss of rent of \$1,150.00 for the month of April 2014. I do not award the landlord loss of rent for May 2014 as I am of the view that the landlord was also making upgrades and repairs needed to the unit due to aging of the building elements for reasons provided previously.

Filing fee

The landlord's claim was with merit and I award the landlord recovery of the \$100.00 paid for this application.

Monetary Order

I provide the landlord with a Monetary Order to serve and enforce upon the tenants, calculated as follows:

Cleaning, repairs, garbage removal	\$2,729.27
Loss of Rent: March 2014	1,150.00
Loss of Rent: April 2014	1,150.00
Filing fee	<u>100.00</u>
Monetary Order	\$5,129.27

Conclusion

The landlord has been provided a Monetary Order in the amount of \$5,129.27 to serve and enforce upon the tenants.

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: November 04, 2016

Residential Tenancy Branch