



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit; unpaid rent; and, damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that she served the tenant in accordance with an Order for Substitute Service granted on May 19, 2016 (file number provided on cover page of this decision).

The decision issued in conjunction with the Order for Substitute Service provides an email address for the tenant and the address for the tenant's place of employment. The Order for Substitute Service provides that the landlord is to serve the hearing documents and evidence upon the tenant as follows:

1. Via email to the email address listed on the front page of this Decision – If proof of receipt of the email is not obtained the Tenant will be deemed served notice of the applicant for Dispute Resolution and the Notice of Hearing documents three (3) days after the email is sent, pursuant to section 71 of the Act; and/or
2. Via registered mail addressed to the Tenant and marked "personal and confidential" to the Tenant's place of employment, at the address listed on the front page of this Decision. The Tenant will be deemed to have received the registered mail five (5) days after it is sent, pursuant to section 71(2)(c) of the Act.

The landlord testified that she used both methods of service described above. I proceeded to hear the landlord's claims, conditional upon receiving proof of service. I ordered the landlord to provide me with a copy of the email she sent to the tenant and proof of sending registered mail to the tenant as ordered. The landlord provided a copy of an email sent to the tenant on June 16, 2016 using the email address provided in the decision granting the Order for Substitute Service. The email contains two attachments. The landlord provided a copy of a Canada Post receipt for registered mail purchased on

June 16, 2016 and a copy the envelope showing the address used for service is that provided in the decision granting the Order for Substituted Service. Having been satisfied the landlord served the tenant using the methods of service ordered, I proceed to consider the landlord's claims against the tenant.

Issue(s) to be Decided

1. Is the landlord entitled to compensation from the tenant in the amounts claimed?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy started in July 2014 for a fixed term set to expire on June 30, 2015 and then would continue on a month to month basis thereafter. The tenant paid a security deposit of \$750.00 and was required to pay rent of \$1,500.00 on the first day of every month.

In March 2015 the tenant failed to pay \$400.00 of the monthly rent. The tenant did not pay any rent for the months of April 2015 or May 2015. On June 1, 2015 the landlord was provided an Order of Possession pursuant to an Application for Dispute Resolution by Direct Request and a Monetary Order for the unpaid rent for March 2015 (file number provided on cover page of this decision). The landlord was given leave to reapply for any unpaid rent for April 2015 and May 2015.

The landlord testified that she posted the Order of Possession on the door of the rental unit on June 7, 2015 and when she returned to the property on June 10, 2015 she found the rental unit had been vacated. The landlord proceeded to change the locks; clean the unit; make repairs and re-rented the unit as of July 15, 2015.

The landlord testified that when she entered the unit on June 10, 2015 she found the unit in the following condition: a massive amount of garbage including abandoned furniture was left behind; a couch was put in the bathtub with the shower rod stuck into it; carpeting that was stained by felt pen and crayon; stickers on the walls; large hooks in the ceiling that were apparently used to create a bedroom out of the dining room; residue from a fire on the patio that was also transferred into the kitchen; a dishwasher and stove that were so filthy they were beyond cleaning; sticky and gouged cupboards; gouged walls; curtain rods pulled off the wall; and, a broken window.

The landlord requested a Monetary Order for \$12,103.00 which was supported by a detailed listing, which I have summarized below:

<u>Item #</u>	<u>Description</u>	<u>Reason</u>	<u>Amount</u>
1	Unpaid Rent – March 2015	Tenant did not pay all of the rent that was due.	\$400.00
2 & 3	Unpaid Rent – April and May 2015	Tenant did not pay rent.	3,000.00
4	Rent payment stopped – June 2015	Tenant put a stop payment on rent cheque.	1,500.00
5	Loss of rental income	Lost rental income for July 1 – 15, 2015 due to tenant's breach of agreement and condition in which rental unit was left.	750.00
6	Lock replacement	Landlord changed locked because tenant did not return the keys to the rental unit.	85.72
7	Junk removal	Removal of tenant's garbage and abandoned possessions.	311.85
8	Filing fee	For Application for Dispute Resolution by Direct Request filed in May 2015.	50.00
9 & 10	Canada Post	Registered mail for serving 10 Day Notice to End Tenancy for Unpaid Rent and Application for Dispute Resolution in May 2015	23.73
11	Carpet cleaning	Landlord attempted to have carpets cleaned of stains.	120.00
12	Painting	Walls damaged when stickers were peeled off. Ceiling holes had to be filled. Walls and trim were gouged. The repair of the above items necessitated repainting the entire unit. The unit had been painted in 2012 and was in good condition at the start of this tenancy.	1,215.90
13, 17 & 18	Cleaning	Landlord purchased cleaning supplies and cleaned the unit with her husband and two professional cleaners. Landlord is claiming compensation equivalent to what professional cleaners charged.	31.86 + 325.00 + 325.00
14	Replace window	Window broken during tenancy.	307.44

15	Replace screen door	Screen had been ripped off and had holes.	105.00
16	Replace carpet and lino	Carpet stains were not removed by cleaning and had to be replaced. Carpeting was 5 years old. Lino in bathroom replaced because of cuts in the flooring. Lino in kitchen replaced due to black gooey fire residue, rust stains, and cuts. Lino was approximately 13 years old.	1,458.49
19	Replace garburator	The garburator was filled with junk, including screws, and was no longer working so it had to be replaced. It had been previously replaced in 2012.	179.41
20	Replace stove	Stove replaced because it would have been more costly to try to clean it given the extensive filth on the stove. The landlord replaced it with a used stove.	100.00
21	Filing fee	Paid to court house to enforce previously issued Monetary Order.	18.00
22	Replace shower rod	Shower rod pulled off wall and stuffed in couch in bathtub.	47.94
23 & 24	Replace keys and fob to common areas	Tenant did not return keys and fob to the building and landlord had to purchase new keys and fob from building management company.	100.00 + 70.00
25, 26 & 27	Process server	Landlord hired process server to locate an address for the tenant and attempt service of hearing documents for this proceeding.	100.00 + 115.50 + 95.00
28	Landlord's mileage	Mileage driven by landlord from home to rental unit in order to pursue eviction and facilitate repairs to rental unit. 160 km roundtrip from home to rental unit.	1,267.20
	TOTAL CLAIM		\$12,103.00

Upon reviewing the above claims with the landlord during the hearing, I dismissed some of the above claims summarily. I dismissed the first item since the landlord already has a Monetary Order for this amount that may be enforced. I also dismissed item

numbered 8 as any filing fee I may award is limited to the filing fee paid for the application before me and not a previous application. I dismissed items 9, 10, 25, 26 and 27 as costs to prepare for or participate in dispute resolution are not recoverable under the Act except for the filing fee paid for the application. I also dismissed item number 21 since this is a filing fee paid to the court for enforcement of an order previously issued and it is upon the court to decide whether to award recovery of its filing fees to the applicant.

In support of most of the other items claimed by the landlord, the landlord provided copies of the following evidence: bank chargeback notices, receipts and invoices. The landlord also provided print-outs of numerous emails exchanged between the parties during the tenancy; a copy of the previously issued decision and Orders of June 1, 2015; and, the decision and Order for Substituted Service.

Analysis

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.

Unpaid rent

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement. The parties executed a written tenancy agreement for a fixed term set to expire on June 30, 2015. I am satisfied by the unopposed evidence before me that the tenant failed to pay rent for the months of April, May and June 2015 and the tenant was in possession of the rental unit until June 2015. Therefore, I grant the landlord's request to recover unpaid rent of \$4,500.00 for these three months as requested.

Replacement locks and fob

Under section 37 of the Act, a tenant is required to return all keys or means of access for the rental unit and residential property to the landlord at the end of the tenancy. I am

satisfied by the unopposed evidence before me that the tenant failed to return the keys to the rental unit, the keys to the building and the fob for the building. Therefore, I grant the landlord's request to recover \$255.72 (the sum of \$85.72 + \$100.00 + \$70.00) from the tenant.

Garbage removal

Under section 37 of the Act, the tenant is required to leave the rental unit vacant at the end of the tenancy and this includes removal of their garbage and abandoned property. I am satisfied by the unopposed evidence that the tenant left garbage and abandoned property in the rental unit and I grant the landlord's request to recover junk removal costs of \$311.85 from the tenant.

Carpet cleaning

Under section 37 of the Act, a tenant is required to leave the rental unit reasonably clean at the end of the tenancy. As provided under Residential Tenancy Policy Guideline 1, a tenant is generally held responsible to steam clean or shampoo the carpets if the tenancy was longer than one year. However, if the carpets are dirty or stained the tenant may be held responsible for carpet cleaning even if the tenancy was less than one year. In this case, I accept the unopposed evidence before me that the carpeting was stained at the end of the tenancy and the landlord hired professional carpet cleaners in an attempt to remove the stains before determining it was necessary to replace the carpeting. I hold the tenant responsible for paying for carpet cleaning and I grant the landlord's request to recover \$120.00 for carpet cleaning.

Cleaning

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean at the end of the tenancy. I accept the unopposed evidence before me that the tenant failed to meet this requirement and the landlord incurred costs to purchase cleaning supplies, hire cleaners, and spent time cleaning the unit herself, along with her husband. I also accept that it was more cost effective to replace the stove rather than attempt to clean it. Therefore, I grant the landlord request to recover \$781.86 (the sum of \$31.86 + \$325.00 + \$325.00 + \$100.00) for cleaning from the tenant, including the cost of the used stove.

Damage

Section 32 of the Act requires the tenant to repair damage the tenant, or persons the tenant permits on the property, caused during the tenancy. Section 37 of the Act also provides that the tenant is to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 also provide that wear and tear is not considered damage.

Since awards for damages are intended to be restorative, where an item is so damaged that it must be replaced, it is often 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*.

In this case, I am satisfied by the unopposed evidence that the tenant is responsible for damaging the carpeting, vinyl flooring, walls and trim, garburator, broke a window, ripped the screen door and pulled off the shower and curtain rods. The landlord provided evidence to support the costs incurred to remedy this damage; however, for reasons provided above, I find it appropriate to take into account depreciation of the original items.

Policy Guideline 40 provides that carpeting has an average useful life of 10 years. I consider 10 years for vinyl flooring to be reasonable as well. The vinyl flooring that was in the rental unit was 13 years old and the carpeting was approximately five years old. Accordingly, I award the landlord 50% of the carpet replacement cost and nil for the vinyl flooring replacement. Based upon the carpet and lino invoice before me, I calculate the landlord's award to be \$287.78, representing 50% of the carpet replacement cost.

I accept that the tenant damaged the walls and trim in the rental unit based upon the unopposed evidence before me; however, the invoice for painting does not indicate wall patching was done by the painters. As such, I view the painter's invoice as being for painting only. Interior paint has an average useful life of four years according to policy guideline 40 and the paint was three years old at the end of the tenancy; however, I accept that the walls and trim were in rather good condition at the start of the tenancy since it was the landlord's daughter that had been occupying the rental unit after the landlord renovated it in 2012. Therefore, I allow 50% of the landlord's claim for repainting, or \$608.00.

The garburator was 3 years old at the end of the tenancy and based upon policy guideline 40 I estimate that a garburator has an average life of 15 years. Therefore, I award the landlord \$143.53 (calculated as $\$179.41 \times 12/15$ years) for damage to the garburator.

I was not provided the age of the window, screen door, shower rod or curtain rods. However, in recognition that the tenant likely damaged these items with by way of wilful conduct, I grant the landlord recovery of the entire replacement cost. Therefore, I award

the landlord \$460.38 (calculated as \$307.44 + \$105.00 + \$47.94) for replacement of these items.

Loss of Rent: July 1 – 15, 2015

Where a tenant leaves a rental unit in poor condition and damaged, a landlord may include loss of rent as part of the damage claim. I have accepted the landlord's unopposed evidence that the tenant left the rental unit very dirty and damaged. Therefore, I allow the landlord's claim for loss of rent of \$750.00 as part of the damage claim.

Mileage

Upon review of the landlord's mileage ledger, I note that the landlord included trips to show and turnover the property to the new tenants, and respond to a dishwasher leak after the next tenancy started. I fail to see how the tenant would be responsible for these trips.

The other trips to the rental unit from the landlord's home involve a variety of tasks including posting the Order of Possession, meeting cleaners, meeting the painters and then returning to the property to pay these suppliers, and trips to buy supplies and new appliances. Each trip to the rental unit was 160 km, roundtrip, for which the landlord is seeking compensation of \$0.495 per km. I largely attribute the mileage to the landlord's choice to be a long distance landlord and it would be unfair to hold some tenants responsible for mileage and other not depending upon where their landlord resides. Also, landlords should expect to make trips to their rental unit from time to time as a cost of doing business as a landlord. Alternatively, landlords may elect to hire a property manager whom is located much closer to the rental unit.

Of further consideration, is that I have already awarded the landlord compensation for cleaning the rental unit at the same rate paid to the professional cleaners. Accordingly, I find that it would be inappropriate to award the landlord mileage to attend the rental unit to clean it since the cleaners were not compensated mileage on top of their fee.

In light of the above, I deny the landlord's request to recover mileage from the tenant.

Filing fee, security deposit and Monetary Order

The landlord's application had merit and I award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord by way of this decision.

In light of all of the above, I provide the landlord a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent: April 2015 - June 2015		\$4,500.00
Lock and fob replacement		225.52
Garbage removal		311.85
Carpet cleaning		120.00
Cleaning		781.86
Damage:		
Flooring	\$287.78	
Walls and trim	608.00	
Garburator	143.53	
Window, screen, shower/curtain rods	460.38	
Loss of rent: July 1 – 15, 2015	<u>750.00</u>	2,249.69
Filing fee		<u>100.00</u>
Total award		\$8,288.92
Less: security deposit		<u>(750.00)</u>
Monetary Order		\$7,538.92

To enforce the Monetary Order it must be served upon the tenant and it may be filed in provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$7,538.92 to serve and enforce upon the tenant.

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 15, 2016

Residential Tenancy Branch