



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Codes: MNSD, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order for unpaid rent, for damages to the unit, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant.

This matter commenced on August 31, 2016, and was adjourned. An interim decision was made on September 9, 2016, which should be read in conjunction with this order.

Preliminary and procedural matter

At the outset of the hearing the tenant indicated that they authorize their mother KE to act as their agent, and that they have their full authority to make any decision necessary. The tenant requested that they be excused from the hearing. As I am satisfied the tenant's agent has full authority to act as agent. The tenant was excused from the hearing.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

- Are the landlords entitled to a monetary order for unpaid rent?
- Are the landlords entitled to monetary compensation for damages?
- Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on August 17, 2012. Rent in the amount of \$750.00 was payable on the first of each month. A security deposit of \$350.00 was paid by the tenant. The tenancy ended on May 13, 2015.

The landlords claim as follows:

a.	Unpaid rent for May 2015	\$ 750.00
b.	Junk removal	\$ 152.25
c.	Yard work	\$ 250.00
d.	Paint cost	\$ 600.00
e.	Flooring cost	\$1,000.00
f.	Labour	\$1,901.45
g.	Filing fee	\$ 100.00
	Total claimed	\$4,761.81

Unpaid rent for May 2015

The landlord testified that the tenant was served with a 1 Month Notice to End Tenancy with an effective date of May 31, 2015. The landlord stated that the tenant did not pay any rent for May 2015, and they found the property abandoned. The landlords seek to recover unpaid rent for May 2015.

The tenant's agent KE testified that the tenant was in a difficult position and had to make a tough decision. As they acknowledged the tenant received a 1 Month Notice to End Tenancy. KE stated that the tenant did not pay any rent for May 2015, as they need money for a security deposit and rent for their new rental accommodations.

KE testified that the tenant also received a 10 Day Notice to End Tenancy for failure to pay rent with an earlier effective vacancy date than May 31 2016.

Junk removal

The landlord testified that the tenant left bags of garbage behind which had to be removed and taken to garbage yard. The landlord stated that they had to pay a flat rate of \$100.00 for removal and the disposal costs of \$52.50. The landlord seeks to recover the amount of \$152.40. Filed in evidence is a copy of the invoice.

The tenant's agent KE testified that they agreed that there was about half a dozen bags of garbage left behind. KE stated that the amount claimed is excessive, as the dumping fee is \$200.00 per metric ton. KE stated that based on the dumping fee in the invoice there was 500lbs of garbage. KE stated that there was not 500lbs of garbage left at the rental unit. KE stated the cost for disposal fees should be about \$25.00. KE stated that the labour charge is also excessive as the disposal yard is not far from the rental unit.

The landlord argued that there were about 15 bags of garbage behind. The landlord restated that the labour was a flat fee for having to attend to pick up the garbage and remove it and then dispose of it.

Yard work

The landlord testified that the tenant was responsible to maintain the yard, which is approximately 1/3 of an acre. The landlord stated that the tenant had not cut or trimmed the grass for several months. The landlord stated that they also had to remove fencing that was around a pool. The landlord stated that the owners son did the yard work and charge \$250.00. Filed in evidence is a receipt.

The tenant's agent KE testified that the tenant last cut the grass during spring break and the lawn does not grow fast as there is a lot of weeds and moss. KE stated that the grass only take about two hours to cut. KE stated that the amount claimed is excessive and the receipt does not provide any particulars of what was done or how long it took to cut the grass.

Paint cost

The landlord testified that the entire rental unit needed to be painted due to heavy smoking in the rental unit. The landlord stated the tenant had permission to paint; however, they were not given permission to use chalkboard paint, which was used on two walls in each of the bedrooms and then on some of the trim. The landlord stated that the total amount to paint was \$1,909.56; however, they are claiming the amount of \$600.00.

The tenant's agent KE testified that the unit was not newly painted when the tenant moved in. KE stated that the tenant used some paint to make the rental unit suitable for their family and chalkboard was used on one wall, trim and maybe a door. KE stated the tenant was not aware they had to have permission to use chalkboard paint. KE denied there was smoking in the rental unit.

The landlord was asked when the owner last fully painted the rental unit. The landlord stated they were not provided that information by the owner.

Flooring cost

The landlord testified that they are not seeking the cost of the flooring. The landlord stated that the tenant did not clean the carpets as required by the tenancy agreement. The agent stated that the cost of cleaning the carpets earlier was \$193.20. The landlord seeks to recover the estimated amount of \$193.20.

The tenant's agent KE testified that the tenant cleaned the carpets during the tenancy as they would rent a carpet cleaner together. KE stated that carpets were cleaned approximately eight

months prior to the tenancy ending. KE stated the carpets were not clean when the tenant moved into the rental premises.

Labour

The landlord testified that the owner seeks labour for general work. The landlord stated that they were not provided with a detail list or an invoice showing the work. The landlord seeks to recover the amount of \$1,901.45.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Unpaid rent for May 2015

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, the tenant did not pay rent for May 2015, as they were early served with a 1 Month Notice to End Tenancy for Cause, with an effective vacancy date of May 31, 2015. The tenant made the decision to use the rent to secure new accommodations.

I find the tenant breached the Act, when they made the decision not to pay rent. Although the tenant may have been served with a 10 Day Notice to End Tenancy for Unpaid Rent and the effective vacancy date was earlier than May 31, 2016. The tenant is not entitled to a prorated rent when they breach the Act. The landlords are entitled to an amount sufficient to put the landlords in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlords for any loss of rent. Therefore, I find the landlords are entitled to recover unpaid rent for May 2015, in the amount of **\$750.00**.

Junk removal

In this case, both parties have provided a different version to the amount of garbage left behind by the tenant. The evidence of the landlord was it there were approximately 15 bags. The evidence of KE was there were approximately 6 bags.

As the onus is on the landlord to prove their version, such as providing photographs, I find the landlords have failed to prove that there were 15 garbage bags left behind. However, I am satisfied based on the evidence of KE that there was some garbage left behind by the tenant.

I find the tenant breached the Act when they failed to remove their garbage. I accept the landlords had to pay a flat rate of \$100.00 to have someone attend the rental unit and pickup and remove the garbage, as flat rates are not uncommon for such services.

However, I am not satisfied that the disposal fee would be \$52.50 as claimed in the invoice, as the KE provided contrary evidence. Therefore, I grant the landlords the flat rate of \$100.00 and \$25.00 for disposal for a total amount of **\$125.00**.

Yard work

In this case, the landlords have provided a receipt for yard work from the owner's son. The receipt provided no details of what work was done to the yard, or the hours of work it took. No photograph evidence was submitted by the landlords to support their claim.

I accept the evidence of the KE that the lawn was cut approximately 4 to 6 weeks early and it would take two hours to cut. I find it appropriate and reasonable to grant the landlord for two hours of labour at the rate of \$25.00. Therefore, I find the landlords are entitled to recover for yard work the amount of **\$50.00**.

Paint cost

Under the Residential Policy Guideline #40, the useful life span of interior paint is four years.

In this case, both parties provided a different version regarding smoking in the rental unit. Even if I accept the landlord's version, I am unable to determine if the tenant is responsible for any of

the painting costs. The landlord did not know the age of the paint and based on the length of the tenancy, the paint was likely past the useful lifespan of four years.

However, the tenant did not have permission to use chalkboard paint.

Under the Residential Policy Guideline #1, any changes to the rental unit not explicitly consented to by the landlord must be returned to the original condition. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit to its original condition and claim the costs against the tenant.

Since the tenant did not have explicit consent to use chalkboard paint, I find the tenant breached the Act, when they failed to return the premises to the original condition.

Based on the invoice submitted as evidence by the landlord, I grant the landlords 5 hours of labour in the amount of \$125.00 as this was to the labour to repair of the chalkboard paint. I further grant the landlords a nominal amount for paint in the amount of \$50.00. Therefore, I find the landlords are entitled to recover the amount of **\$175.00** for painting.

Flooring cost

I find the tenant breached the Act when they failed to clean the carpets at the end of the tenancy. While the landlords seek the cost of cleaning the carpets, the evidence supports the carpets were not cleaned, rather they were replaced.

I find it would be unreasonable to award costs to the landlords when these costs were not incurred. However, as I have found the tenant breached the Act when they failed to clean the carpets, I find it appropriate to award a nominal amount to recognize the breach by the tenant. Therefore, I find the landlords are entitled to the amount of **\$1.00**.

Labour

In this case, the landlords are claiming labour for general repairs. General repairs of the rental unit are the responsibility of the landlord, not the tenant. The landlords provided no documentary evidence, such a photographs, to support that the repairs were required do to damages caused by the action or neglect of the tenant. Therefore, I dismiss this portion of the landlords' claim.

I find that the landlords have established a total monetary claim of **\$1,201.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$350.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$851.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlords are granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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 10 2016

Residential Tenancy Branch