



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 an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for unpaid utilities, for the cost of cleaning, repairs and painting, and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of the claim.

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 unpaid utilities, for the cost of cleaning, repairs and painting, and for the recovery of the filing fee?

Background and Evidence

The parties agreed to the following: The tenancy started on August 01, 2009 and ended on May 31, 2016. The monthly rent at the end of the tenancy was \$1,483.00 payable on the first of each month and did not include utilities. Prior to moving in the tenant paid a security deposit of \$687.50. A move in inspection report was not completed. The landlord stated that the tenant was given two opportunities to do a move out inspection but did not show up at the appointed time.

The rental unit consists of a two level home. The tenant occupied the upper level. The lower level was occupied by one of the two landlords that are named on the tenancy agreement. The two landlords are father (WBJ) and son (KBJ). WBJ attended the hearing to represent both landlords. KBJ did not attend the hearing. KBJ lives in the lower level of the rental unit.

The tenancy agreement contains a clause that states that smoking is not permitted inside the rental unit. As per the agreement the tenant was also required to pay 50% of the utility bill. The utilities were registered in the name of KBJ. He would present the bill to the tenant who paid her share directly to him.

The parties agreed that the landlord was provided with the forwarding address of the tenant on June 15, 2016. The landlord made this application in a timely manner.

The tenant admitted that she smoked inside the rental unit. The tenant testified that KBJ visited the tenant on the upper level and smoked inside the rental unit upstairs. The tenant referred to a party that she hosted to which KBJ was invited. The tenant stated that KBJ smoked inside her residence during that party. The tenant also stated that KBJ smoked inside his own residence on the lower level of the rental unit and therefore the tenant understood that it was okay to smoke inside the rental unit. WBJ denied the allegation that KBJ smoked inside his suite.

The landlord stated that he incurred a considerable expense to rid the unit of the smell of cigarette smoke and to repair smoke damage. The landlord is making a claim for the cost of doing so. The landlord is also claiming the cost of painting, cleaning, repairs to the deck, utilities and a portion of the roof replacement.

The landlord stated that the tenant had plants on the deck and a portion of the deck was damaged due to water overflow from the plants. The landlord also stated that the tenant did not clean the needles and leaves from the roof and the gutters which resulted in damage to the roof. The landlord is claiming a portion of the cost to replace the roof.

The landlord stated that from October 2015 to the end of tenancy in May 2016, the tenant did not pay her share of utilities. The tenant stated that she had paid her share and had cancelled cheques to support her testimony. The tenant agreed that she owed utilities for the last month of the tenancy. The landlord did not file a copy of the utility bill for the last month of tenancy and was unable to provide information on the amount that was owed. Since both parties did not provide documentary evidence to support the amount owed, I dismiss this portion of the landlord's claim with leave to reapply.

The landlord filed photographs to support his claim and also invoices for the work done to restore the unit. The tenant stated that the amounts that the landlord was claiming were outrageous and pointed out that the invoices were made up by the landlord himself as he owns the company. The landlord agreed that he was the proprietor of the company that issued the invoices.

The landlord is claiming the following:

1.	Cost of removing cigarette residue from doors, carpet, blinds, all rooms in the unit including the washrooms	\$625.00
2.	Clean windows inside and out	\$200.00
3.	Clean roof and gutters	\$250.00
4.	Clean deck, railings and glass panels	\$100.00
5.	Wash and bleach all surfaces in the unit including ceiling, walls etc.	\$1,360.00
6.	Painting	\$2,190.00
7.	GST	\$241.25
8.	Replace damaged post and railing on deck	\$803.25
9.	Tenant's portion to replace roof	\$459.00
10.	Cleaning materials	\$100.00
11.	Filing fee	\$100.00
	Total	\$6,428.50

Analysis

Based on the testimony of both parties, I find as follows:

1. Cost of removing cigarette residue from doors, carpet, blinds, all rooms in the unit including the washrooms - \$625.00

The tenant agreed that she smoked cigarettes inside the rental unit. Since the tenancy was two months shy of 7 years, the buildup of cigarette residue was likely significant and required considerable time and effort to do so. I find that the landlord is entitled to his claim of \$625.00

2. Clean windows inside and out - \$200.00

The tenant is only responsible for cleaning the windows from the inside. The tenant stated that she had cleaned the windows in March 2016 which is two months prior to the end of tenancy. I find it appropriate to award the landlord \$50.00 toward his claim.

3. Clean roof and gutters - \$250.00

Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant.

The outside maintenance of the rental unit is the responsibility of the landlord and accordingly I dismiss the landlord's claim.

4. Clean deck, railings and glass panels - \$100.00

The landlord filed photographs to show that a corner of the deck was left with littered with a plant, a birdhouse, dirt etc. I find that the tenant failed to clean the deck and accordingly I award the landlord \$100.00.

5. Wash and bleach all surfaces in the unit including ceiling, walls etc. - \$1,360.00

The landlord made a claim for the cost of removing cigarette residue from the rental unit and has been awarded \$625.00 Therefore I dismiss the landlord's claim for an additional \$1,360.00 to clean the rental unit.

6. Painting - \$2,190.00

Section 40 of the *Residential Tenancy Policy Guideline* addresses the useful life of an item. I will use this guideline to assess the remainder of the useful life of the painting.

As per this policy, the useful life of interior painting is four years. The landlord testified that he had last painted the rental unit in December 2007 and therefore by the end of the tenancy, the painting had outlived its useful life and the landlord would have had to paint the unit at his own cost. Accordingly, the landlord's claim for \$2,190.00 for painting is dismissed.

7. GST - \$421.25

The landlord has claimed GST in the amount of \$421.25 on his monetary claim for items #1 to #6. I have awarded the landlord a total of \$775.00 for these claims and therefore the GST is \$38.75. I award the landlord this amount towards GST.

8. Replace damaged post and railing on deck - \$803.25

9. Tenant's portion to replace roof - \$459.00

The landlord has filed a photograph that shows that a post on the deck is rotted. Based on section 32 of the *Residential Tenancy Act*, I find that the landlord is responsible for maintaining the outside of the home including the roof. Therefore I dismiss the landlord's claims for the cost of replacing the post and the roof.

10. Cleaning materials - \$100.00

The landlord has already been awarded \$625.00 for cleaning which includes the materials.

11. Filing fee - \$100.00

The landlord has proven part of his claim and therefore I award the landlord the filing fee of \$100.00

1.	Cost of removing cigarette residue from doors, carpet, blinds, all rooms in the unit including the washrooms	\$625.00
2.	Clean windows inside and out	\$50.00
3.	Clean roof and gutters	\$0.00
4.	Clean deck, railings and glass panels	\$100.00
5.	Wash and bleach all surfaces in the unit including ceiling, walls etc.	\$0.00
6.	Painting	\$0.00
7.	GST	\$38.75
8.	Replace damaged post and railing on deck	\$0.00
9.	Tenant's portion to replace roof	\$0.00
10.	Cleaning materials	\$0.00
11.	Filing fee	\$100.00
	Total	\$913.75

Overall the landlord has established a claim of \$913.75. I order that the landlord retain the security deposit of \$687.50 plus accrued interest of \$0.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$226.25. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$226.25**.

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: December 23, 2016

Residential Tenancy Branch