



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent;
- a monetary order for compensation for loss;
- a monetary order for damage to the unit;
- a monetary order to keep all or part of the security deposit; and
- recovery of the filing fee paid for this application from the tenant.

Preliminary and Procedural Matters

The landlord withdrew the claim for an order of possession as the tenant had moved out of the rental unit.

Prior to the hearing, the landlord and tenant reached an agreement that the landlord could retain the tenant's security deposit. Accordingly, I dismiss the landlord's claim to keep all or part of the security deposit as it is no longer necessary to address that issue.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to a monetary order for compensation for loss?
- Is the landlord entitled to a monetary order for damage to the unit?
- Is the landlord entitled to a recovery of the filing fee paid for this application from the tenant?

Background and Evidence

The undisputed evidence of the landlord and tenant established that a tenancy started as a one year fixed term tenancy on February 1, 2013 ending on January 31, 2014, with

the option to continue on a month to month basis. The tenant signed a written tenancy agreement on January 21, 2013 with the previous owner. The rental unit is 800 square feet.

The current landlord purchased the property on July 23, 2015. The tenancy agreement indicates that the amount of rent is \$1,600.00 due on the first day of each month. The landlord and tenant agreed that the tenant had paid a security deposit to the previous owner in the amount of \$800.00 on January 21, 2016. The landlord testified that the previous owner did not obtain a condition inspection report at the start of the tenancy.

The landlord and tenant agreed that the amount of rent had increased over the course of the tenancy, however, they disagreed as to the amount of rent that is due each month.

Rent

The landlord submitted a copy of the Purchaser's Statement of Adjustments for the property showing that the rent adjustment as at July 23, 2015, the date of the purchase, was based upon rent in the amount of \$1,675.00.

The landlord testified that the previous owner issued the tenant a Notice of Rent Increase dated March 5, 2015 increasing the rent from \$1,635.00 to \$1,675.00 effective July 1, 2015. A copy of the Notice was submitted by the landlord.

The landlord testified that the tenant paid \$1,675.00 for rent due for August 2015 and then paid only \$1,625.00 for rent due for each of the months of September, October, November and December 2015; and January, February, March, April, May and June 2016.

The landlord testified that the tenant was issued another Notice of Rent Increase dated March 22, 2016 increasing the rent from \$1,675.00 to \$1,723.50 effective July 1, 2016. Despite the Notice, the landlord testified that the tenant began to pay rent in the amount of \$1,675.00 starting July 1, 2016. The landlord testified that the tenant paid \$1,675.00 for each of the months of July, August, September and October 2016. A copy of this Notice was submitted by the landlord. The landlord submitted copies of bank records showing the rent amounts paid by the tenant in support of her testimony.

The landlord testified that the tenant was issued a 10 Day Notice To End Tenancy for Unpaid Rent or Utilities dated October 11, 2016, with an effective move out date of October 26, 2016, for each month starting September 1, 2015 through to Oct. 1, 2016

which were all served in one registered mailing. The landlord testified that the amount shown as owing on each of the 10 Day Notices is the difference between the rent amount that was due each month and the amount paid by the tenant, plus an additional \$25.00 late fee. The tenant testified that she didn't receive the registered mailing.

The landlord testified that the tenancy agreement provides for a late fee of \$25.00 for rent that is not paid when it is due. A copy of the tenancy agreement was submitted by the landlord.

The landlord and tenant agreed that the tenant moved out of the unit around the middle of November 2015, however, the tenant still had her possessions in the unit until November 30, 2016. The landlord testified that the tenant was given access to the unit up until December 5, 2016 to remove all her belongings. The tenant did not return to retrieve the items left behind. The landlord testified that the tenant left dressers and a desk in the unit and the landlord had to pay to have the items removed.

The tenant testified that at the time the current landlord took over from the previous owner the rent was \$1,625.00. The tenant also testified that the current rent is \$1,675.00.

The tenant testified that there was an arrangement in place for reduced rent until such time as repairs to her unit were completed, including fixing the sidewalk, the dishwasher and the sink drain. However, the tenant was unable to recall what the agreement was as to the rent amount once the repairs were done. The landlord denied that there was ever such an arrangement.

The landlord and tenant agree that the tenant consented to the landlord retaining the security deposit in the amount of \$800.00 to be used towards the tenant's rent that was due on November 1, 2016.

The landlord is seeking compensation for unpaid rent for the period between September 1, 2015 and November 1, 2016.

The landlord did not include the \$25.00 late payment fee in the calculation of rent arrears in their application. The landlord is requesting to amend the landlord's application to include the \$25.00 late payment fee provided for in the tenancy agreement for each of the months starting September 1, 2015 to November, 2016.

Damage

The landlord testified that the tenant caused significant damage to the unit including leaving holes in the wall, marks on the wall, knife marks on a drawn out dart board on the wall and water damage to floor in bathroom. The landlord submitted photographs of damage done to the unit. The landlord testified that the previous owner did not do a move in condition inspection report. The landlord testified that she viewed the unit within one week of the closing of the purchase and that she didn't see the damage that she saw after the tenant moved out.

When the landlord made their application, the landlord claimed \$2,000.00 as an estimate for the cost of repairs. The landlord testified that a written estimate has since been obtained. The landlord submitted a written quote dated November 28, 2016 describing the repairs needed with a cost estimate of \$3,800.00 plus GST. The repairs include interior painting, drywall repairs, water damage repairs and repairs to and replacement of the two damaged interior doors and the kitchen cabinet door. The landlord testified that the written estimate doesn't include the cost of repairing the knife marks in the wall. The landlord estimated that it would cost a further \$500.00 to \$600.00 more to make these repairs.

The tenant acknowledged that repairs were required to the drywall, paint and stopper for the doors. The tenant argued that it was not her responsibility to pay for cleaning up after the construction. The tenant testified that the kitchen cupboard just needs to be put back into place. The tenant said that the landlord has the cupboard and the tenant has the screws.

Loss of Rent

The landlord testified that the unit cannot be rented out to a new tenant until the damage has been repaired. The landlord estimated that it would take somewhere up to two months to complete the repairs. Accordingly, the landlord is seeking compensation for lost rent for each of the months of December 2016 and January 2017.

Removal Fee

The landlord is seeking \$500.00 for the cost of removing the tenant's desk and dressers on December 10, 2016. The landlord testified that the tenant was given access to the unit to retrieve her belongings up until December 5, 2016. This amount was not claimed in the landlord's application. The landlord did not submit a receipt. The tenant acknowledged having abandoned these items.

Cleaning Fee

At the hearing the landlord claimed for cleaning costs at \$20.00 per hour. The landlord testified that it took between 4 to 8 hours to clean the unit. Cleaning fees were not part of the landlord's initial application. The tenant testified that she cleaned the unit before moving out and that it would not take 8 hours to clean the unit which is only 800 square feet.

Filing Fee

The landlord is seeking to recover the \$100.00 filing fee for their application from the tenant.

Analysis

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

Unpaid Rent

I accept the landlord's evidence that the rent due for each of the months of September 2015 through to June 1, 2016 was \$1,675.00. I find that the tenant only paid the rent amount of \$1,625.00 for each of these months. The shortfall is \$50.00 for each of these 10 months amounting to the sum of \$500.00.

I accept the landlord's evidence that the current rent due since July 1, 2016 is \$1,723.50. I find that the tenant has only paid \$1,675.00 for the each of the months starting July 2016 to October 2016. The shortfall is \$48.50 for each of these 4 months amounting to the sum of \$194.00.

The tenant's evidence in regards to the rent payable lacked credibility as the tenant's evidence was vague and lacked sufficient detail. The landlord, on the other hand, had supporting documentation to support the landlord's testimony.

Based on the testimony of the landlord and tenant, I find that while the tenant may not have been physically living in the unit after November 15, 2016, the tenant was still occupying the unit until November 30, 2016.

As the tenant moved out at the end of November 2016 and the tenant's security deposit of \$800.00 was used to pay rent up to November 15, 2016, I find that the landlord is entitled to pro-rated rent for the balance of November 2016 in the amount of \$861.75.

I accept the landlord's request to amend their application to include the \$25.00 late fee in their claim for unpaid rent. I have considered the fact that the fee is provided for in the tenancy agreement; and the landlord included this late fee on each of the 10 Day Notices issued to the tenant which were included in the landlord's evidence. I also find that the tenant is not prejudiced by the landlord's request to amend their application to include the \$25.00 late fee as the tenant knew or ought to have known that she was required to pay it when she did not pay the full amount of rent that was due on time.

Based upon the foregoing, I find that the landlord is entitled to a monetary order for unpaid rent as follows:

September 2015 to June 2016 (\$50.00 unpaid rent + \$25.00 late fee x 10 months)	\$ 750.00
July 1, 2016 to October 2016 (\$50.00 unpaid rent + \$25.00 late fee x 4 months)	\$ 300.00
November 16, 2016 to November 30, 2016 (rent of \$1,723.50 pro-rated rent for 15 days)	\$861.75
Total Unpaid Rent	\$1,911.75

Damage and Loss

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Based upon the testimony of the landlord, which was supported by photographs, I find that there is sufficient evidence to find that there was damage to the unit caused by the tenant that is not due solely to normal wear and tear. The tenant acknowledged being liable for holes in the drywall and drawing on the walls.

I also find that based upon the evidence before me, there is sufficient evidence to support a finding that the landlord has taken reasonable steps to minimize the damage or loss. The tenant did not challenge the steps taken by the landlord.

Damage

In the landlord's initial application, the landlord sought compensation for damage in the amount of \$2,000 for repairs to the unit. Prior to the hearing, the landlord submitted a written estimate for the repairs in the amount of \$3,800 plus GST. I find that the landlord is entitled to some compensation to repair the damage. However, I find that the landlord is limited by the amount the landlord claimed in their application.

I award the landlord \$750.00 for 10 hours of labour at \$75.00 per hour which represents the lower end of the estimated range for repairing the damage shown on the written estimate. In making this award, I have taken into consideration the fact that the onus is on the landlord to prove the value of the loss and the landlord has only submitted an estimate and not actual receipts for the cost of repairs.

The landlord's written estimate indicates that the interior painting will cost \$2,200 plus GST. I award the landlord an amount of \$1,000.00 for interior painting taking into account that there will be some interior painting that is required due to normal wear and tear in the areas where damage attributable to the tenant has not occurred.

Based on the foregoing, I find the landlord entitled to compensation for damage to the unit in the amount of \$1,750.00.

Loss of Rent

I accept the testimony of the landlord that repairs are required to fix the damage to the tenant's unit which will cause a delay in renting to a new tenant. Based upon the evidence before me, I find that landlord is entitled to one month's loss of rent in the amount of \$1,723.50 as I find that one month is a reasonable amount of time within which to complete the repairs. I have taken into consideration that the landlord's written estimate for the repairs indicates labour of 10 to 15 hours in addition to the interior painting.

Removal Fees

Based upon the testimony of the landlord and tenant, the tenant abandoned dressers and a desk that were left in the unit after the tenant moved out. I find that the landlord incurred an expense to dispose of the tenant's property on December 10, 2016. However, the landlord did not include this claim in their application. Accordingly, I dismiss the landlord's claim for the cost of removing the tenant's abandoned property with leave to reapply.

Cleaning Fees

I dismiss the landlord's claim for cleaning fees with leave to reapply as the landlord did not include a claim for these fees in their application.

I find that the landlord is entitled to recovery of the \$100.00 filing fee from the tenant as their application has been substantially successful.

Based on the foregoing, I find the landlord is entitled to a monetary order in the amount of \$4,585.25 as follows:

Total Unpaid Rent	\$ 1,911.75
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Cost of Repairs	\$ 1,750.00
Loss of Rent	\$ 1,723.50
Filing Fee	\$ 100.00
TOTAL	\$ 5,485.25

Conclusion

I dismiss the landlord's claim for removal fees and cleaning fees with leave to reapply.

Pursuant to section 67, the landlord is granted a monetary order in the amount of \$5,485.25 for unpaid rent, compensation for damage and various losses and the filing fee which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: February 02, 2017

Residential Tenancy Branch