Dispute Resolution Services

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 unit or property; unpaid rent and utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit and/or pet damage deposit. The tenant did not appear at the hearing.

The landlord sent the original hearing package to the tenant at the rental unit address via registered mail on September 15, 2016. The landlord provided the registered mail tracking number as proof of service. The registered mail was picked up by the tenant on September 24, 2016. I was satisfied that the tenant was duly notified of this proceeding.

The landlord submitted an Amendment to an Application for Dispute Resolution on February 22, 2017 to increase the monetary claim. The Amendment and the landlord's evidence were sent to the tenant via registered mail on February 22, 2016. The landlord provided the registered mail tracking number as proof of service. A search of the tracking number shows that, as of the date of the hearing, two notice cards had been left by Canada Post but the package had not yet been picked up. The service address used for mailing this package was the address of the home the tenant moved to on October 2, 2016. The landlord determined that the tenant had moved to this address by following the tenant from the rental unit on October 2, 2016 with a truck load of possessions and watched him move them into this new residence. To confirm the tenant still lived there, at 6:45 a.m. on January 25, 2017, the landlord observed the tenant leave this address, apparently on his way to work. I was satisfied that the landlord sent the Amendment and evidence to the tenant at his address of residence on February 22, 2017 and I deemed the tenant sufficiently served with notification of the amendment and evidence five days after mailing, as provided under section 90 of the Act.

I noted that the landlord had included a decision for a previous dispute resolution preceding that took place on November 1, 2016 (file number quoted on cover page of

this decision). In this decision the Arbitrator awarded the landlord recovery of unpaid rent for the months of September 2016 and October 2016 and authorized the landlord to retain the security deposit and pet damage deposit in partial satisfaction of the unpaid rent. In filing this application the landlord requested authorization to retain the security deposit and pet damage deposit and recovery of unpaid rent for the months of September 2016 and October 2016. Since these matters were determined in an earlier proceeding I informed the landlord that those matters have already been determined and that any Monetary Order issued with this decision shall be in addition to the Monetary Order already provided. Accordingly, I amended the monetary claim to exclude unpaid rent for the months of September 2016 and October 2016 and the request to retain the security deposit and pet damage deposit.

Issue(s) to be Decided

Is the landlord entitled to recover from the tenant the amounts claimed for damage, unpaid and/or loss of rent, unpaid utilities, and other damages and losses, as amended?

Background and Evidence

The three month fixed term tenancy started June 1, 2016 and the tenant was required to pay rent of $2,900.00 on the first day of every month.

On August 25, 2016 the landlord was provided an Order of Possession under the Direct Request procedure based upon a 10 Day Notice to End Tenancy for Unpaid Rent dated August 2, 2016. The tenant filed an Application for Review and his request for a review hearing was granted. The review hearing was held on November 1, 2016 and both parties participated in the review hearing. After hearing from both parties, on November 3, 2016, the Arbitrator issued a decision confirming that the landlord was entitled to the Order of Possession.

The landlord testified that even though she observed the tenant move possessions out of the rental unit and into another home on October 2, 2016 the tenant remained in possession of the rental unit. The landlord stated that during the review hearing of November 1, 2016 that tenant stated he was occupying the rental unit. After receiving the review hearing decision the landlord mailed the Order of Possession to the tenant on November 5, 2016 and on November 7, 2016 the tenant returned the keys to the rental unit to the landlord’s parents. On November 16, 2016 the tenant met the landlord and her parents at the rental unit to do the move-out inspection.

The tenant only participated in the move-out inspection but left after they had inspected the entry and kitchen only. The landlord and a witness continued to finish the move-out inspection and move-out inspection report without the tenant. Before leaving the property the tenant wrote on the bottom of the move-out inspection report that he did not have a forwarding address.

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

November 2016 rent -- $2,900.00
The landlord submitted that the tenant held possession of the rental unit until November 7, 2016 and left the unit dirty and damaged. The unit was not re-rented in November 2016 despite efforts to find suitable replacement tenants.

Hydro and natural gas -- $427.77 + $108.38
The landlord submitted that the tenant was required to pay for hydro costs during the tenancy as follows: 100% if the basement suite was not occupied and 67% if the basement suite was occupied. The landlord is seeking to recover hydro bills for the period of June 11, 2016 through November 7, 2016 and gas bills for the period of June 13, 2016 through November 15, 2016. The landlord provided copies of the utility bills and detailed calculations showing the period of time the basement suite was occupied and when it was vacant.

The landlord pointed out that in filing his Application for Review for the previous proceeding the tenant had submitted a receipt showing payment of $160.00 toward utilities. The landlord testified that this receipt was fraudulent and the landlord did not receive $160.00 from the tenant but that the tenant used this fraudulent receipt to get the review hearing. The Arbitrator who heard from the parties during the review hearing found in favour of the landlord after finding landlord credible and the tenant not credible.

Clean up -- $288.00
The rental unit was not left reasonably clean and the tenant left a lot of abandoned furniture and possessions behind including food, old couches, a table, desk, and bed, among other things. The landlord stated that these items were old and of little or no value so they were disposed of. The landlord and two other people cleaned and removed the junk for 8 hours each. The landlord seeks to recover $12.00 per person, per hour. The landlord took photographs and video of the property and recorded the condition, including the presence of abandoned furniture, on the move-out inspection report.

Flea treatment and carpet cleaning – $1,167.60

The landlord submitted that the tenant had a cat in the rental unit and the rental unit became infested with fleas. The fleas also migrated into the basement suite. The carpeting was also stained in many areas. The landlord had photographs and video of carpet stains and fleas trapped at the property.

The landlord purchased insecticide from a chemical supply company and then had it applied and removed from by a cleaning and treatment company. The cleaning and treatment company then shampooed the carpeting and vapor steamed the unit. The cost of the insecticide was $403.20, as supported by a receipt, and the cleaning and treatment company charged the landlord $764.40 as evidenced by an invoice.

Yard Maintenance -- $1,050.00

The landlord submitted that the tenant was required to perform yard maintenance at the rental property but that he did not and the landlord did it. The landlord pointed out that the tenant was not provided any equipment by the landlord so the tenant elected to have the landlord do the yard maintenance rather than buy yard maintenance equipment.

The tenancy agreement provides that the tenant's obligations are to "maintain the lawn/yard (ie: mowing the lawn, trimming bushes/branches, and de-weeding the gardens, etc.), any cost incurred to do so is the responsibility of the tenant." The tenancy agreement further provides that "if the landlord maintains the lawn/yard there will be a fee of $90.00 every time the yard needs maintenance (once approximately every 2 weeks). If the tenant fails to maintain the lawn/yard the landlord maintains the right to charge a fee of $120.00 if the time of the last lawn/yard maintenance was more than 3 weeks." The tenancy agreement further provides that if the basement suite is occupied the tenant is responsible for 67% of the cost.

The landlord seeks to recover fees of $240.00 for July 2016; $270.00 per month for each of the months of August 2016, September 2016 and October 2016. The landlord stated that she typically had the lawn mowed on the 8th, 18th and 28th day of each month which equals a charge of $270.00 each month. For the month of July 2016 there were two cuts while the basement suite was occupied so the landlord charged $60.00 for each of these cuts, and one cut done later in the month after the basement suite was vacated so the landlord charged $90.00 for this cut.

Broken windows -- $990.00

The landlord testified that at the end of the tenancy there was a cracked window in an upper floor bedroom and a cracked window in a bedroom on the main floor that were not broken at the start of the tenancy. The landlord noted that there as a cracked

window in the bathroom at the start of the tenancy for which the landlord is not charging the tenant.

The landlord acknowledged the broken windows have yet to be replaced but obtained an estimate via email. The landlord stated the broken windows were only four years old as they had been installed in 2013.

Broken screen door – $309.60

The landlord testified that the landlord had moved the abandoned couches to the back deck and the screen door had been left on the back deck. The landlord believes the tenant returned to the property in early December 2016 to retrieve two of the couches and in the process damaged the screen door. The landlord stated that a neighbour told the landlord that the tenant was seen hanging the couch over the edge of the balcony. I heard that the screen door was approximately two years old. The landlord printed off an image of a new screen door from a home improvement store website, including the cost to purchase the door.

Filing fees and registered mail costs

The landlord seeks to recover from the tenant the filing fee paid for this application and the previous Application for Dispute Resolution. In addition, the landlord seeks to recover registered mail costs used to send documents to the tenant.

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.

Upon consideration of everything before me, I provide the following findings and reasons based upon the unopposed evidence and submissions of the landlord.

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean, undamaged, vacant, and return the keys to the landlord at the end of the tenancy. As provided in section 37 damage does not include reasonable wear and tear.

November 2016 rent

The Arbitrator hearing the previous dispute resolution proceeding concluded the tenant violated the tenancy agreement by not paying all of the rent when due for August 2016 and upheld the 10 Day Notice which brought the tenancy to an end. I am satisfied by the evidence before me that the tenant remained in possession of the unit into November 2016 considering the Arbitrator issued an Order of Possession in November 2016 and the unopposed testimony that the tenant did not return possession until November 7, 2016. Further, I am satisfied from the evidence that the tenant did not leave the rental unit reasonably clean and undamaged when possession was returned to the landlord. Accordingly, I find the tenant violated the tenancy agreement and the Act and the landlord suffered a loss of rent for November 2016 due to the tenant's actions. Therefore, I find the landlord is entitled to recover loss of rent for the month of November 2016 from the tenant as claimed.

Hydro and natural gas

Upon review of the tenancy agreement and the utility bills provided as evidence, and the landlord's calculations, I accept the landlord's unopposed evidence that the tenant owes the landlord for hydro and natural gas bills in the amounts of $427.77 for hydro and $108.38 for gas, as claimed.

Clean up

Upon consideration of the unopposed evidence before me, I am satisfied the tenant failed to leave the rental unit reasonably clean and did not remove all of his or his roommates possessions at the end of the tenancy. I find the landlord's request for compensation of $288.00 to be very reasonable and I award the landlord recovery of that amount.

Flea treatment and carpet cleaning

From the unopposed evidence before me, I accept that the rental unit had fleas at the end of the tenancy as a result of the actions or neglect of the tenant and the carpets were left stained. Therefore, I find the landlord entitled to recover the costs to exterminate the fleas and have the carpets cleaned in the amounts claimed.

Yard maintenance

Under section 32(2) of the Act a tenant “must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.”

Residential Tenancy Branch Policy Guideline 1 provides policy statements with respect to a landlord’s and tenant’s responsibilities under the Act. As it pertains to property maintenance, the policy guideline provides, in part:

> 3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
> 4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
> 5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.
> 6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

Upon review of the term of the tenancy agreement that pertains to yard maintenance and comparing it to the Act and Policy Guideline 1, I find that the tenancy agreement requires the tenant to maintain the yard to a level higher than is expected of tenants. For instance, bush trimming and pruning is a landlord responsibility whereas the tenancy agreement requires the tenant to do this work. Also, a tenant is responsible to perform a reasonable amount of weeding but the tenancy agreement provides that the tenant is responsible for all “de-weeding”.

The tenancy agreement outlines the fee that the landlord may charge if the tenant fails to perform the yard maintenance and I find it reasonable to interpret the fee the landlord may charge to account for all of the yard maintenance duties described in the tenancy agreement.

Under section 6 of the Act, where a term is a tenancy agreement conflicts with the Act the term is not enforceable.

Having found the yard maintenance term requires more from the tenant than is required under the Act, I find the term unenforceable.
While I accept that landlord attended the property to mow the lawn during the tenancy, having found the yard maintenance term unenforceable I decline to award the amounts

the landlord claimed under that term. In the absence of an estimate of the actual cost or time involved to cut the lawn I find I am unable to determine a reasonable award for the landlord; therefore, I make no award for lawn cutting to the landlord.

Broken windows

Based upon the condition inspection reports, I accept that at the end of the tenancy there were two cracked windows at the end of the tenancy that were not cracked at the start of the tenancy. The landlord seeks to recover the cost to install new windows in the rental unit from the tenant; however, awards for damage are intended to be restorative. Where an item has a limited useful life, it is often appropriate to reduce the replacement cost by the depreciation of the original item. Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements* provides that windows have an average useful life of 15 years and aluminum framed windows have an average life of 20 years.

Upon viewing the videos the landlord provided as evidence it appears to me that the windows in question are much older than the four years of age as she stated during the hearing and the windows appear to be aluminum framed. I find it likely that the windows were at or near the end of their useful life and I find it unreasonable to hold the tenant responsible to pay for the cost of new windows. Therefore, I deny the landlord's claim for the cost of new windows.

Broken screen door

The condition inspection report does not indicate the screen door is broken at the end of the tenancy and damage is not seen in the photographs or video evidence provided to me. The landlord explained that the damage occurred a number of weeks after the tenant returned possession of the unit to the landlord based upon hearsay evidence of a neighbour. Since the alleged damage occurred after the tenancy ended and possession of the unit had been returned to the landlord I am of the view that the alleged trespass and damage to landlord's property is a crime that does not fall under the *Residential Tenancy Act*. Therefore, I make no monetary award to the landlord and the landlord remains at liberty to pursue the offender criminally if she so choses.

Filing fee and registered mail costs

Under section 72 of the Act, I have the authority to award a party recovery of the filing fee paid for the application that is before me. I award the landlord recovery of the $100.00 filing fee paid for this application.

The Act does not give me the authority to award a filing fee for a previous application that was heard and decided by a different Arbitrator. Therefore, I make no award for the filing fee the landlord paid for her previous application.

Costs to send documents to the other party, or other costs to participate in a dispute resolution proceeding are not recoverable under the Act and I make no award for recovery of registered mail costs.

Monetary Order

Based upon all of the above, I provide the landlord with a Monetary Order calculated as follows:

Loss of Rent: November 2016	$2,900.00
Hydro	427.77
Natural gas	108.38
Clean up	288.00
Flea treatment and carpet cleaning	1,167.60
Filing fee	100.00
Monetary Order	$4,991.75

Conclusion

The landlord was partially successful and has been provided a Monetary Order in the amount of $4,991.75 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: March 24, 2017

Residential Tenancy Branch