



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for a monetary order for unpaid rent, monetary orders for damage to the rental unit and for compensation for loss or damage under the Act, regulation, or tenancy agreement, for authorization to retain the security deposit and for recovery of the filing fee.

Both of the parties attended the hearing and were given full opportunity to be heard, to present affirmed testimony and documentary evidence, to make submissions and to call witnesses.

The tenant confirmed that he had received the landlord's application, notice of hearing, and supporting documentary evidence by registered mail. The landlord testified that she had included a USB stick in the registered mail envelope. All of the landlord's materials, including the USB stick, were before me. The tenant conceded that he did not look in the envelope for a USB stick and may have overlooked it. All of the landlord's materials were carefully prepared and I therefore accept that the tenant was duly served with all of the landlord's materials, including the USB stick, in accordance with the Act.

The tenant did not submit any evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit, for compensation for loss or damage, and/or for unpaid rent?

Is the landlord authorized to retain the security deposit in satisfaction of monies owing?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

A copy of the residential tenancy agreement was in evidence. This tenancy began August 1, 2014 as a month to month tenancy with rent of \$1,600.00 due on the first of each month. A security deposit of \$800.00 was paid at the beginning of the tenancy and remains in the landlord's possession.

The tenant testified that he sent the landlord a text in the first week of September advising her of his intention to leave and that he did not initially understand that he was required to give one month's notice to end the tenancy. The tenant further testified that the landlord did not respond to his text, so he texted her again. At that point the landlord responded and the tenant was informed that he should have given her one full month of notice. The tenant said that he could have remained in the rental unit for October but, as he had already scheduled movers for the end of September, he and the landlord entered into a verbal agreement that he would leave at the end of September, the landlord would attempt to rent the unit, and, if she could not, he would pay her \$300.00 for October's rent.

The landlord agrees that she and the tenant came to an agreement at this point. However, she says that the agreement was that he would leave at the end of September, and if she could not rent the unit out for October, she would keep his security deposit of \$800.00 in satisfaction of October's rent. She also said that this agreement was explicitly made subject to a satisfactory condition inspection report.

It was agreed that a condition inspection report was conducted at the beginning of the tenancy. The tenant testified that he tried to participate in the move-out condition inspection report but that he was overwhelmed and upset by the way the landlord and others with her were speaking to him about the condition of the unit. The landlord testified, and the tenant admitted, that the landlord sent the tenant a Notice of Final Opportunity to conduct the move-out report, and that the tenant did not attend. The landlord completed the report herself and provided the tenant with a copy.

The landlord filed this application on October 11, 2017, claiming for the following amounts:

1. Cleaning of the unit: \$268.80.

A copy of the cleaning receipt was in evidence. The photographs submitted by the landlord establish that the unit was not properly cleaned. Some of the walls and the

backsplash have substantial drips and particles on them. The toilet, shower, and bathroom drawers are not clean. The patio and closets were not swept and are significantly dirty. Many parts of the unit appear to not have been dusted or cleaned for months, if not years.

The tenant says that he cleaned the unit before he left and that it was reasonably clean. He says that during the initial attempt to conduct a move-out inspection report, the landlord was pointing out small things, like the fact that the hood fan was too oily.

2. Wall and trim repair: \$800.00.

The landlord said that the tenant had considerably damaged some walls and trim. The photographs submitted by the landlord show several walls with gouges in them, and molding that has been scraped so that the wood and/or particle board (not simply the paint) is physically compromised. In the main bathroom some has been removed and the metal beam underneath a column is showing. None of this damage is recorded in the move-in condition inspection report.

The landlord testified that she received an estimate for this work orally and did not submit any documentation in support. The work has not yet been done.

The tenant testified that the damage alleged by the landlord is only reasonable wear and tear. He says the paint in some areas was starting to come off when he moved in.

3. Carpet replacement: \$1,200.

The landlord testified that the carpets in the living room and the master and second bedroom were stained, and notes that the move-in condition inspection report records that they were in good condition at the beginning of this tenancy. The carpets are seven years old.

The tenant testified that he had the carpets professionally cleaned when he left. The landlord recognized this but says that they were stained, not dirty. She also says they smelled like urine.

4. Strata infraction: \$200.00.

A copy of a letter from a management company, dated March 17, 2016, was in evidence. It is addressed to the landlord and advises that the Strata Council has received complaints alleging a contravention. It then states: "you have been issued the

following infractions before: First contravention -- \$200 FINE -- letter September 22, 2015.” It closes by requesting the landlord’s response to the allegation and advising of the range of possible outcomes, including dismissal of the complaint, imposition of a fine, remedial action, and denial of use of recreational facilities.

It was not clear if the landlord was claiming for the September, 2015 fine, or for the potential fine arising from the March, 2016 complaint. In any event, the parties agreed that neither the landlord nor the tenant have paid a fine to the Strata Council. The tenant stated that he wishes to dispute the March, 2016 complaint with the landlord.

A Form K, under which the tenant acknowledges his obligations to the Strata, was also in evidence. Number 3 of Form K provides that a tenant who contravenes a bylaw or rule is responsible for and may be subject to penalties, including fines.

5. Unpaid rent: \$1,600.00

The landlord claims October’s rent in full because the condition inspection report was not satisfactory, and her agreement with the tenant that she would simply retain the security deposit in satisfaction of October rent was subject to the tenant’s leaving the unit in satisfactory condition. She says that she has since tried to rent the unit in question and that it is still vacant because of the state of disrepair. She provided copies of an advertisement she placed on September 10, 2016.

Analysis

1. Cleaning of the unit: \$268.80.

Based on the evidence submitted by the landlord, I find that the tenant failed to leave the rental unit reasonably clean, and I award the landlord the amount claimed for cleaning.

2. Wall and trim repair: \$800.00.

The landlord’s photographs show considerable damage to trim and some damage to walls. I accept the landlord’s evidence that repairs to the baseboards and trim and walls will cost somewhere in the range of \$800.00 and award the landlord this amount.

3. Carpet replacement: \$1,200.

The landlord's photographs establish that the carpets were badly stained, and the move-in condition inspection report does not record any damage at the time of move-in. The landlord testified that the carpets were 7 years old. Residential Tenancy Branch Policy Guideline #40 estimates a useful life for carpets of 10 years. Accordingly, I discount the landlord's claim by 70% and award \$360.00.

4. Strata infraction: \$200.00.

It is not clear on the landlord's evidence that he landlord has been levied a fine for the complaint described in the March 17, 2016 letter. In any event, the landlord agreed that she has not paid any fines on behalf of the tenant. It also appears, based on the Form K in evidence, that any fine levied would be the responsibility of the tenant rather than the landlord. There is insufficient evidence that the landlord has or will suffer a loss. Accordingly, I do not award this amount.

5. Unpaid rent: \$1,600.00

Section 45 of the Act requires a tenant to give a landlord one month's notice to end a tenancy, effective on a date that is no less than one month after the landlord's receipt of the notice and the day before rent is due. Here, the tenant should have given notice on or before the end of August if he wished to avoid responsibility for October rent. He did not do so. Accordingly, I find that the tenant owes \$1,600.00 in unpaid rent.

I do not accept that the landlord and tenant reached an agreement as to the amount that would be payable for October's rent, largely because the parties did not themselves agree on the terms. Even if I were to accept the landlord's version of the agreement, as the tenant urged me to do as an alternative to accepting his version, the agreement would not apply in the circumstances anyway because the landlord also says it was subject to a satisfactory condition inspection report.

As the landlord has been successful in this application, I find she is entitled to recover the \$100.00 filing fee from the tenant.

In accordance with sections 38 and 72 of the Act, I allow the landlord to retain the tenant's \$800.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour and I issue a monetary award for the balance owed landlord in the amount of **\$2,328.80**, calculated as follows:

Cleaning	\$268.80
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Walls and trim	\$800.00
Carpet replacement (discounted)	\$360.00
October rent	\$1,600.00
Filing fee	\$100.00
Less security deposit	-800.00
TOTAL AWARDED	\$2,328.80

Conclusion

I authorize and order the landlord to retain the tenant's security deposit of \$800.00 and I issue a monetary award in the landlord's favour for the balance owing of **\$2,328.80**.

The tenant must be served with this order as soon as possible. Should the tenant fail to comply, 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 Act and is final and binding pursuant to s. 77 unless otherwise indicated in the Act.

Dated: April 13, 2017

Residential Tenancy Branch