



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE FORT NELSON REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties and witnesses attended the hearing and gave sworn testimony. The landlord said they served the Application for Dispute Resolution on the tenant personally and the subsequent amendments by registered mail. The tenant agreed she received the documents as stated. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for unpaid rent and damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that there is unpaid rent and that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. They agreed that the original tenancy commenced in October 2015 on a fixed term lease and the tenant signed a further fixed term lease commencing October 1, 2016 and expiring September 30, 2017. Rent was \$1150 a month and a security deposit of \$575 was paid.

The tenant said she decided to vacate in early November due to a domestic problem but the landlord had given her the impression that they had a new tenant to take over the lease. The landlord said they had someone who put down a deposit but was waiting for the husband to view it. In the end, the prospects turned it down. Subsequently the landlord management company said they tried diligently to re-rent the unit but the market in the town was declining so they had no success. They reduced the rent twice

before they were able to re-rent the unit for \$950 a month from February 1, 2017 to January 31, 2018. They provided in evidence a list of prospects to whom they had shown the property with the dates of viewing. The tenant said she would have said if she had known of her liability for the rent and the fact that it had not been rented. The landlord said she called the tenant but the messages were not returned. The tenant denies this and says she communicated with the landlord by email. The landlord said the tenant told her she was fleeing a bad situation with her ex so she does not understand why she is claiming now that she would have stayed.

The landlord claims as follows:

\$441 for cleaning and lightbulbs. The tenant said she had hired someone to clean but it appeared she had not done it. The landlord said she was not contacted for access by the friend allegedly hired for cleaning.

\$294 for carpet cleaning. The tenant said the carpets were dirty when she moved in but she did not notice the animal hair on them at the time.

\$644.64 for move out repairs and changing locks. This amount was not broken down but the landlord said a major portion was for drywall repair and paint plus lock changes for the keys were not returned. The paint was previously done about January 2015 making it about 23 months old at move out. The locks were about 5 years old.

\$61.71 for electricity November 5, 2016 to January 23, 2017

\$273.95 for gas November 5, 2016 to January 23, 2017

\$50 October rent arrears

\$3450 rental loss for Nov., Dec., 2016 + Jan. 2017 (\$1150 x 3)

\$1600 rental loss from February to Sept. 2017 (new rent \$950 mo. So \$200 loss x 8)

The tenant objected to the high cost for drywall repair and paint as she said she only put a small hole in the stairwell wall when moving furniture. She agreed she lost the keys. She believes she should not be responsible for all the rental loss claimed as she would have stayed if the landlord had informed her that the first prospect did not take the unit.

In evidence are invoices, photographs and a move-in and move out condition inspection report. The tenant supplied a number of emails as evidence. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Monetary Order

I find that there are rental arrears in the amount of \$50 from October 2016.

In respect to the other damages claimed, awards for compensation are provided in sections 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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy no earlier than the end of the fixed term. I find the tenant violated her tenancy agreement by leaving in November 2016. I find this violation caused the landlord to incur rental losses due to the breach. I find the landlord entitled to recover \$3450 total rental loss for November, December 2016 and January 2017 (3 months x \$1150 a month). I find the landlord did what was reasonable to minimize the loss by trying diligently to re-rent the unit. I find their list of frequent showings support their oral evidence. Although the tenant said she probably would have stayed if she had known the suite was not re-rented for December, 2017, I find her remark is inconsistent with the evidence she gave both orally and in her email of fleeing some domestic issues, for example she emailed on October 17, 2016 that she was moving to another community due to issues with her ex-spouse and family and on October 26, 2016 that she was validated in her choice to move by her ex-spouse threatening her.

I find the landlord incurred further rental losses as they had to rent the unit at \$200 a month less. I find them entitled to recover that rental loss from February 1, 2017 when it was rented until September 30, 2017 which was the end of the fixed term lease. This totals \$1600 (8 months x \$200 mo.)

I find during the term of the fixed term lease before the unit was re-rented, the landlord incurred costs of utilities of \$61.71 for electric and \$273.95 for gas. I find them entitled

to recover these costs as the tenant was still responsible under the terms of her lease to pay the utilities.

In respect to the landlord's claim for damages, the onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that this tenant caused some damage. I find the landlord entitled to recover cleaning costs of \$441 and carpet cleaning costs of \$294. Although the tenant claimed the home and carpet were dirty at move-in, I find insufficient evidence to support her statement. I find the condition inspection report at move-in and move-out support the landlord's credibility that the home was not cleaned and the carpets were left dirty contrary to the provision in the lease that required the tenant to have them cleaned.

The sum claimed for repairs and changing locks is a global amount of \$644.64 and not differentiated, although the landlord said it was mostly for drywall and paint. Another earlier invoice in the file indicates that it was \$252 to repair the drywall and screen door and \$109.21 for the doorknob and to replace locks. The landlord said the earlier invoice was only a quote but I note it was from the employee who did the work and will rely on it as the global amount is not differentiated. I find the locks were 5 years old and locks are assigned a useful life of 20 years according to Residential Policy Guideline 37-40. This assignment is designed to account for reasonable wear and tear in rented premises. I find the landlord entitled to recover 75% of the cost for the knob and locks for the useful life remaining for a total of \$81.90. I find the landlord not entitled to recover the cost of fixing the screen door. I find the weight of the evidence was that the screen door had constant problems during the tenancy and was not damage caused by the tenant. Paint is assigned a useful life of 4 years in the Policy Guideline and the paint in the unit was 23 months old when the tenant vacated. I find insufficient evidence to support the global \$644.64 damage claim as photographs did not illustrate drywall damage and the tenant said it was only a small hole in one wall. I find the landlord entitled to recover 48% of the cost of repair and paint based on the earlier invoice for the remaining useful life of the paint. As the amounts were not differentiated for calculation, I find it reasonable that the worker took an hour on the screen door (\$40) and will deduct that from the invoice. The remaining invoice is for \$212 and I find the landlord entitled to recover 48% of that amount for a total of \$101.76 allowance for repairs and painting.

I find the costs to repair are supported by statements, photographs and invoices and the move-in, move-out reports. The tenant also agreed that she damaged the door knob, lost the keys and made a small hole in the drywall which supported the landlord's claim.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Rental Arrears Oct. 2016	50.00
Rental Loss Nov.2016-Jan 2017	3450.00
Rental loss differential Feb.-Sept.30, 2017	1600.00
Cost of electric Nov.-Jan. 23, 2017	61.71
Cost of gas Nov.-Jan 23,2017	273.95
Cleaning costs	441.
Carpet cleaning	294
Knob and locks	81.90
Drywall repair and paint	101.76
Filing fee	100.00
Less security deposit	-575.00
Total Monetary Order to Landlord	5879.32

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: May 31, 2017

Residential Tenancy Branch