



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; unpaid utilities; and, damage or loss under the Act, regulations or tenancy agreement. The tenant did not appear at the hearing. The landlord testified that he sent the hearing documents to the tenant at his forwarding address on October 21, 2016. The landlord provided a registered mail receipt, including tracking number, as proof of service. I was satisfied the landlord duly served the tenant with notification of this proceeding and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

Has the landlord established an entitlement to compensation for the amounts claimed against the tenant?

Background and Evidence

The landlord testified that the tenancy started over 20 years ago and the landlord did not collect a security deposit. The landlord testified that at the end of the tenancy the monthly rent was \$625.00. The landlord testified that the tenancy came to an end due to unpaid rent and the landlord obtained an Order of Possession under a previous dispute resolution proceeding that took place in May 16 2016 (file number quoted on cover page of this decision). The landlord testified that the tenant did not move out by the end of May 2016 as he was required. Rather, the tenant had removed the majority of his belongings but some remained until June 12, 2016 when the landlord removed the last of his possessions from the rental unit so that he could commence renovations of the property.

The landlord seeks a Monetary Order for the following items:

Rent: June 2016 and July 2016

The landlord seeks to recover loss of rent for June 2016 because the tenant remained in possession of the rental unit until June 12, 2016. The landlord also seeks to recover loss of rent for July 2016 since the rental unit was damaged by the tenant's neglect. The landlord stated the tenant was a hoarder and the floor rotted below the bathtub in the rental unit. The landlord had renovations to make before it could be re-rented starting in September 2016.

Unpaid gas bill

The landlord submitted that the tenant was required to pay for gas at the property and he did not pay the last bill received in the amount of \$9.83. the landlord provided a copy of the gas bill for the period of April 15, 2016 through to May 16, 2016.

Damaged flooring

The landlord alleged that a gun was shot in the rental unit and the bullet penetrated the kitchen flooring in the landlord's unit above. The landlord obtained three quotes for vinyl flooring replacement and requests compensation equivalent to the highest quote of \$2,635.63. The landlord acknowledged that he has not yet repaired or replaced the flooring. The landlord described the vinyl flooring as being over 10 years old but claimed that it was in like new condition. The landlord provided copies of three quotations along with a schematic of the landlord's kitchen.

Door repair

The landlord submitted that the door of the rental unit had been kicked in and the landlord repaired the damage by installing a kick plate. The landlord seeks to recover \$50.00 for this repair.

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.

Loss of rent

Section 57 of the Act provides for what happens if a tenant does not vacate the rental unit when the tenancy is over. Below I have reproduced section 57 in part:

(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Upon review of the preceding dispute resolution decision, I see that the landlord was granted an Order of Possession on May 16, 2016 and was awarded compensation for loss of rent up to and including the month of May 2016 at the monthly rate of \$625.00.

I accept the unopposed submission of the landlord that the tenant remained in possession of the rental unit until June 12, 2016 when the landlord took possession back by removing the tenant's possessions from the rental unit; however, the landlord did not have a Writ of Possession which is a breach of section 57 of the Act.

Also of consideration is that the landlord proceeded to make renovations to the rental unit. Having heard the tenancy was over 20 years in duration I have no doubt the rental unit was in need of renovation due to age and wear and tear.

Considering the landlord took possession of the rental unit, unlawfully without a Writ of Possession, and commenced to renovate the rental unit after a tenancy that was longer than 20 years, I limit the landlord's award for loss of rent to the 12 days in June 2016 in which the tenant had possession. Accordingly, I award the landlord loss of rent of \$250.00 [calculated as \$625.00. x 12/30 days]

Unpaid utilities

Upon review of the previous dispute resolution decision I note that the landlord was awarded unpaid utilities incurred up to March 1, 2016. The invoice provided with this

application is for the gas consumed from April 15, 2016 through May 16, 2016. Therefore, I am satisfied that the landlord has not already been awarded this unpaid gas bill and I grant the landlord's request to recover \$9.83 from the tenant for unpaid gas.

Damaged flooring

Awards for damages are intended to be restorative. Where an item has a limited useful life, it is 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 vinyl flooring has an average life of 10 years.

I accept the unopposed submissions of the landlord that a gunshot penetrated the flooring of the living unit above the rental unit. One of the estimates provided by the landlord described a 1" hole in the flooring. Considering the flooring was older than 10 years; the hole is only 1"; and, the landlord has yet to replace the flooring, I find I not satisfied that the damage caused by the tenant amounts to a loss of \$2,635.63 to the landlord. However, in recognition of the damage caused by the tenant's actions or negligence, I find it appropriate to award the landlord a nominal award. I award the landlord \$100.00 for the 1" hole in the floor.

Door repair

I accept the unopposed evidence of the landlord that the door was damaged when it was kicked in by the tenant or a person permitted on the property by the tenant. I find the landlord's request for \$50.00 to repair the damage to be within reason and I grant that at amount to the landlord.

Since the landlord's claim had some merit, I award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of all of the above, the landlord is provided a Monetary Order calculated as follows:

Loss of rent	\$250.00
Unpaid utilities	9.83
Flooring damage	100.00
Door damage	50.00
Filing fee	<u>100.00</u>
Monetary Order	\$509.83

Conclusion

The landlord has been provided Monetary Order in the total amount of \$509.83 for loss of rent, unpaid utilities, and damage to the property.

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 16, 2017

Residential Tenancy Branch