Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code(s) MNR, MND, MNSD, MNDC, FF

Introduction

This proceeding dealt with the landlord's application for a Monetary Order for damage to the unit; unpaid and/or loss of rent; and, other damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit and pet damage deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Procedural Matter

This hearing was conducted by way of a participatory hearing held on March 28, 2017 and adjourned for written submissions. An Interim Decision was issued to both parties and should be read in conjunction with this decision. During the period of adjournment I received written submissions from both parties along with registered mail receipts indicating each party served their written submission upon the other party within the time limit I imposed upon them. I have considered all of the evidence and submissions that were before me in making this decision; however, with a view to brevity, I have only summarized the most relevant submissions and evidence.

Also of note, and as described in the Interim Decision, the landlord's monetary claim was amended to reflect the sum that appeared on the Monetary Order Worksheet.

Issue(s) to be determined

1. Has the landlord established an entitlement to compensation in the amounts claimed against the tenant for unpaid and/or loss of rent, cleaning and damage?
2. Is the landlord authorized to retain the tenant's security deposit and pet damage deposit?

Background and Evidence

The landlord and the tenant, along with the tenant's boyfriend at the time, executed a tenancy agreement for a tenancy that started on February 1, 2014. The tenant and her boyfriend ended their relationship and in September 2015 the landlord and tenant entered into a second tenancy agreement for a one year fixed term. The tenant was required to pay rent of $1,700.00 on the first day of every month. The landlord collected and is holding a security deposit and pet damage deposit totalling $1,200.00 pending the outcome of this decision.

Both parties provided consistent testimony that a move-in inspection report was done at the start of the tenancy but that it was not included in the evidence submitted by either party. The tenant testified that she was never provided a copy of the move-in inspection report.

On August 15, 2016 the landlord wrote a letter to the tenant informing the tenant that the landlord would not be "renewing" the lease with the tenant and served the tenant with a 1 Month Notice to End Tenancy for Cause with a stated effective date of September 30, 2016. The tenant filed to dispute the 1 Month Notice on August 19, 2016 and a hearing was set for October 13, 2016 (file number referred to on cover page of this decision). The tenant notified the landlord, via text message on August 29, 2016, that she would be vacating the rental unit as of September 18, 2016; cancelling the rent cheque for September 2016 and implying that the landlord may use the security deposit and/or pet damage deposit to cover the unpaid rent for the period up to September 18, 2016. Both parties appeared at that the October 13, 2016 hearing and confirmed that the tenant had already vacated the rental unit and the landlord had regained possession of the rental unit effective September 18, 2016.

The landlord attempted to set up a move-out inspection with the tenant via text message to no avail. On or about September 20, 2016 the landlord mailed a Notice of Final Opportunity to Schedule a Condition Inspection to the tenant at the service address she had provided to the landlord in a text message. The inspection was scheduled for September 28, 2016. The tenant received the Notice and sent her mother to the move-out inspection to act on her behalf. Repairs and renovations were already underway at the property at the time of the move-out inspection. I heard consistent testimony from both parties that a move-out inspection report was not presented to the tenant's mother. The landlord stated that the tenant's mother was too upset to present her with a move-out inspection and she left before it was over. The tenant stated that she understood from her mother that the landlord was record the

move-out inspection. I noted that a move-out inspection report was not included in the landlord's evidence package; nor, was an audio or video recording provided. Rather, I was provided photographs of the rental unit by both parties.

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

Painting materials and labour: $1,713.16 ($1,350.00 + $181.58 + $181.58)

The landlord submitted that the entire rental unit needed to be repainted due to wall damage and to rectify an unknown substance on the walls that the landlord suspects to be urine. The landlord stated that the rental unit was last painted in the fall of 2013 and repainting commenced late September 2016 or early October 2016.

The tenant testified that the rental unit had been lived in before her tenancy started and the unit did not look freshly painted at the start of the tenancy. The tenant denied that the walls were urinated on during the tenancy, and pointed out that she has a female dog. The tenant took responsibility for paint that was damaged in a window frame when she removed an air conditioning unit from the window frame.

The landlord maintained that the walls were in good shape at the start of the tenancy as the house had been painted just prior to listing the house for sale in 2013. The tenant pointed out that wear and tear is to be expected in the years since the house was last painted, her tenancy started in 2014, and the only paint damage the tenant caused was the window frame from the air conditioner unit.

Carpet replacement materials and labour: $1,176.38 ($2,724.82 + 950.00 + $1,000.00 - $3,498.44)

The landlord had all of the carpeting replaced in the rental unit after the tenancy ended. The landlord made an insurance claim for "vandalism" and received compensation from the insurance company for costs of $3,498.44 less a $1,000.00 deductible. The landlord stated that the insurance claim was for the living room, dining room and hall but not the carpeting in the three bedrooms or stairs. The landlord stated that the insurance claim covered the living room, dining room and hall as this was considered one area and that the landlord would have had to pay a separate deductible for each of the other rooms if the landlord made an insurance claim for the other rooms.

The landlord stated that the vandalism claim was made on the basis the living room/ dining room carpeting was soaked in urine. The bedrooms had stains and the stair carpeting was clawed by the tenant's cat.

The landlord testified that the carpeting was installed in February 2010, was in very good condition, freshly shampooed at the start of the tenancy, and the landlord did not have plans to replace it had it not been for the damage caused by the tenant.

The landlord testified that the property was insured as a tenanted property. I note; however, that the "Proof of Loss" document submitted as evidence by the landlord indicates that the loss was caused by vandalism, occurred on September 18, 2016 and that occupancy is recorded as being: "…occupied for no other purpose than the following Homeowners". The document also provides that "since the above policy was issued there has been no change in use, possession, location or exposure of the property described, except No Exceptions"

The Proof of Loss document indicates that "a particular of the loss is attached hereto and forms part of this proof"; however, the landlord did not include any other documents received from or pertaining to the insurance claim as evidence for this proceeding.

The landlord submitted that I may contact her insurance agent to confirm that it was urine soaked carpets that resulted in an assessment of vandalism. The landlord submitted that the house was appraised in July 2016 and the house did not smell of urine at that time. The landlord alleges that the urination is likely a reason the tenant did not cooperate with participating in the move-out inspection.

The tenant denied that the carpeting was freshly shampooed at the start of her tenancy and the tenant claims she had the carpets shampooed after she moved in. The tenant also submitted that there had been a large dog living in the rental unit before her tenancy started.

The tenant acknowledged that her dog urinated in one corner of the dining room and the tenant takes responsibility for that; however, the tenant stated that her dog had never urinated in a house before. The tenant acknowledged the damage caused by her cat and for a juice spill in one of the bedrooms. The tenant considered her pet damage deposit as sufficient to cover damage caused to the carpeting during her tenancy.

The tenant denied soaking the carpets in urine at the end of the tenancy does not understand how the landlord made a vandalism claim since she did not vandalise the property. The tenant invited me to contact the person who helped her move to verify

the carpets were not soaked in urine when they left the property. The tenant also pointed out that the landlord's insurance company has not contacted or pursued her with respect to recovering the insurance payout. The tenant implied that the landlord may have made a fraudulent insurance claim in the past as she was trimming trees at the property in July 2016 while claiming to be disabled while pursuing an ICBC claim.

The tenant is of the position that the landlord's claim is excessive considering the carpeting was not new or in good condition at the start of the tenancy and the landlord had informed her that they were going to replace the carpeting anyways.

The tenant explained that she did not participate in the move-out inspection because of stress she was experiencing and because of the poor treatment she was receiving from the landlord.

Replacement of garage door opener: $577.50

The landlord seeks to hold the tenant responsible to pay for a new garage door opener. The landlord asserted that the track had become damaged early in the tenancy when the tenant's boyfriend and brother had items stored in the garage and the lift motor burned out as a result. The landlord stated the opener was new shortly before the tenancy started. The landlord did not repair or replace the garage door opener during the tenancy because the garage was too full while the tenant's boyfriend lived at the property and the garage door was not fixed after he moved out because the landlord was of the opinion the tenant should pay to have it fixed.

The tenant submitted that the opener stopped working early in the tenancy but the tenant does not know the reason it stopped. The tenant reported it to the landlord and the landlord responded by saying she would look into it but she did not. The tenant opened the garage door manually for the rest of the tenancy. The landlord did not indicate to the tenant that she would hold the tenant responsible for damaging the garage door opener; she did not pursue the tenant's boyfriend and former tenant for it; or, raise it as an issue when entering into the second tenancy agreement with her. The tenant denied that the garage was overly full, nor was this ever pointed out to her by the landlord.

Cleaning supplies and repairs: $419.80 ($103.65 + $113.53 + $62.14 + $11.20 + $129.28)

The landlord seeks to recover the cost of cleaning supplies to clean the rental unit, including masks and gloves to remove the soiled carpeting; as well as repairs to: the

bathroom cabinet, the hinge on the kitchen cabinet door, the living room blinds, screen door, and spackle for wall repairs.

The tenant submitted that she had cleaned the rental unit at the end of the tenancy with the exception of walls and window sills, but claimed these areas were dirty when she moved in. The tenant testified that the bathroom cabinet, hinge on the kitchen cabinet, and screen door had pre-existing damage at the start of the tenancy; and, testified that the living blinds were not damaged when she left the rental unit.

The landlord denied that the bathroom cabinets had pre-exiting water damage and claims the house was in show home condition in 2013. The landlord denied that the kitchen hinge was broken before the tenancy started. The landlord explained the blinds were bent from the air conditioning unit the tenant installed. The landlord acknowledged that it appears the carpets were vacuumed and the fridge cleaned at the end of the tenancy but that many other areas were not cleaned and the unit was not returned in the same condition in which it was given to the tenant.

The tenant pointed out that the home may have been listed for sale in 2013 but people were living in the unit until her tenancy started in 2014 and the tenant maintained that the bathroom cabinet had pre-existing damage when her tenancy started. The tenant clarified that the kitchen cabinet hinge was loose when the tenancy started. The tenant acknowledged that she failed to clean the balcony and referred me to her photographs to show the extent to which she cleaned the unit.

Junk removal: $39.00

The landlord seeks to recover the cost to dispose of abandoned property left by the tenant (a space heater and mop/bucket) as well as the carpeting.

The tenant stated that she did not leave any of her property behind and there were items left by other tenants.

The landlord said other tenants did not have access to the garage but that the majority of the dump cost was the soiled carpeting. The tenant clarified that the items left behind by other tenants were not in the garage but outside.

September 2016 rent: $1,700.00

The landlord seeks to recover unpaid rent for September 2016 since the tenant put a stop payment on the rent cheque and occupied the rental unit in September 2016.

The tenant submitted that she felt harassed by the downstairs tenant and the landlord sided with the other tenant. She found a place to move to staring mid-September 2016 so she took it. She had to pay rent and deposits at her new place so she had to cancel the September 2016 rent cheque to the landlord. The tenant viewed her security deposit as sufficient to pay the rent for the first half of September 2016.

The landlord denied harassing the tenant but could not ignore the fact that there had been four tenants in the basement suite in two years and all had complained of similar issues with the tenant. The tenant denied that there were issues with four of the basement suite tenants and claimed that she was on good terms with two of them.

Loss of Rent: October 1 – 15, 2016: $850.00

The landlord re-rented the rental unit starting October 15, 2016 and seeks to hold the tenant responsible for loss of rent for the first half of October 2016 due to the poor condition the tenant left the rental unit.

The tenant was of the position she is not responsible to compensate the landlord for loss of rent for October 2016 as she is not responsible for most of the damage the landlord is claiming against her.

Costs to serve and file claim

The landlord seeks to recover the costs to print photographs, file her claim against the tenant and serve the tenant.

The Act provides that I may award a party recovery of the filing fee but the Act does not authorize me to award recovery of other costs associated to preparing for or participating in a dispute resolution proceeding. Accordingly, I shall consider the landlord's request for recovery of the filing fee but the other dispute resolution costs are dismissed summarily.

Summary

In summary, the landlord is of the position the tenant damaged the rental unit and did not leave it clean and the tenant should be held responsible to compensate the landlord for the landlord's losses.

In summary, the tenant was of the position that the landlord is trying to have a renovation paid for by the tenant. The tenant has acknowledged that she is responsible for some damage and some cleaning and unpaid rent but not the pre-existing damage, wear and tear, or vandalism.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. 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.

In this case, the applicant landlord has the burden of proof. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim will fail.

A majority of the landlord's claims against the tenant pertain to allegation of damage to the property. Section 32 and 37 of the Act provide that a tenant is responsible for repairing damage caused by way of their actions or neglect; however, these sections of the Act also provide that wear and tear is not considered damage. Nor, is a tenant obligated to rectify pre-existing damage.

The parties were in dispute as to the condition of the rental unit at the start of the tenancy. Section 21 of the Residential Tenancy Regulations provides that a condition inspection report prepared in accordance with the Regulations is the best evidence of the condition of a rental unit in a dispute resolution proceeding. I heard that a move-in inspection report was prepared by the landlord; however, it was not provided as evidence and I am left with disputed submissions of the parties. Although the landlord indicated a number of times that the rental unit was in very good condition when it was listed for sale in 2013, as pointed out by the tenant, the tenancy started in 2014 and the rental unit was occupied by other people and a dog prior to the start of her tenancy. Considering the rental unit was occupied prior to the start of the tenancy; the lack of a

move-in inspection report for me to review; and the landlord has the burden of proof the condition of the unit was as good as she has asserted, I find it reasonably like and accept the tenant's position that the home had signs of wear and tear and pre-existing damage when the tenancy started.

Also of significance is that the landlord claimed for the replacement cost of items that were replaced. Awards for damages are intended to be restorative, meaning the award should place the applicant in the same position had the damage not occurred, but not in a better position. Where a building element has a limited useful life, it is usually appropriate to reduce the replacement cost by the depreciation of the original item. I find the landlord's request for full replacement cost of items that were a number of years old at the end of the tenancy is unreasonable. The landlord did not reduce her claims to reflect wear and tear of the items that were replaced: most notably carpeting and paint. In considering the landlord's entitlement to recovery for damage, if any, I will take into consideration the depreciation of the items replaced. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

Painting

Residential Tenancy Policy Guideline 40 provides that interior paint has an average useful life of 4 years. The paint in the rental unit was 3 years old at the end of the tenancy. Upon review of the photographs provided by both parties, I find that certain areas of the wall required cleaning and there are signs of wear and tear in the entry way but I do not see obvious signs of wall damage with the exception of the window frame that the tenant acknowledged. Accordingly, I find the landlord's request to recover the entire cost to repaint the rental unit from the tenant is unreasonable. However, I find it appropriate to taking into account that the tenant acknowledged damage to the window frame and I provide a nominal award to the landlord for wall damage and repainting. Upon review of the photograph of the window frame, I accept that it was likely that the window frame required sanding and/or extra preparation and an extra coat of paint and I award the landlord a nominal award of $100.00.

Carpeting

Residential Tenancy Policy Guideline 40 provides that carpeting has an average useful life of 10 years. The carpeting in the rental unit was six years old at the end of the tenancy based on the landlord's testimony. The landlord had all of the carpeting

replaced and seeks to hold the tenant responsible to pay for this expenditure which I find unreasonable considering:

- the landlord's claim does not take into account six years of wear and tear;
- the former carpeting appears to be of different colours and textures in the bedrooms in comparison to the hallway carpeting as seen in the landlord's photographs yet the new carpeting appears to be all one colour and type which I consider to be an improvement;
- I find I am unsatisfied that the tenant vandalized the carpeting in the rental unit; and,
- the bedroom carpeting appears to have food and/or drink stains but I was not provided evidence that an attempt to have the carpets cleaned was made by the landlord prior to replacement.

As for the allegation of vandalism, I find the landlord's evidence to be inconsistent and concerning. The landlord submitted to me that the rental unit was insured as a tenanted property but that is contradicted by the Proof of Loss statement she submitted whereby the insurance coverage is for occupation by homeowners and that the occupation had not changed since the policy started. The landlord submitted to me that the reason the bedroom and stair carpeting was not included in the vandalism claim was because she would have to pay a separate deductible for each room. I find that explanation unlikely and find it more likely that the reason for not including those rooms in the vandalism claim is because the insurance company did not consider the cat scratches and food spills to be vandalism. The landlord did not submit the "particulars" of the insurance claim even though the Proof of Loss statement indicates that "particulars" were attached to the document. Also of consideration is that the landlord's insurance company has not pursued the tenant to recover the loss paid out by the insurance provider. Therefore, I find I am not satisfied by the landlord's evidence that the vandalism claim was the result of the tenant's actions.

The tenant readily took responsibility for her dog urinating in an area of the dining room, her cat scratching the carpeting on the stairs, and a food/juice spill in the bedroom and was agreeable to compensating the landlord the amount equivalent to her pet damage deposit to cover this damage. Unfortunately, the amount of the pet damage deposit was not provided to me by either party and the tenancy agreement was not provided as evidence. Rather, the parties stated that the tenant paid a security deposit and pet damage deposit in the combined amount of $1,200.00.

Since the tenant had stated during the hearing that the security deposit would cover one-half of a month's rent, I estimate the breakdown of the deposits to be: $850.00 for the security deposit and $350.00 for the pet damage deposit.

In light of the above, I award the landlord $350.00 for carpet damage.

Garage door opener

The landlord provided a receipt to show a new garage door opener was purchased after the tenancy ended; however, I find the landlord's evidence that the tenant should be held responsible to pay for a new opener is weak.

As for the reason the garage door opener stopped working is unclear. I was not provided evidence, such as a report by the garage door installer or photographs, to corroborate that it was a bent track that resulted in the need for a new motor.

The evidence shows me that the tenant did report the malfunction of the garage door opener to the landlord early in the tenancy. There is no evidence to demonstrate the landlord attempted to hold the tenant, or former tenant, responsible for damaging the garage door opener at that time, or when a new tenancy agreement was entered into with the tenant, or at any other time until the landlord made this claim after the tenancy ended.

In light of the above, I find the landlord's evidence fails to satisfy me that the tenant's actions or neglect is the reason a new garage door opener was required after the tenancy ended.

Cleaning supplies and repairs

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean at the end of the tenancy. There is no exception to this requirement. If a rental unit is not reasonably clean at the start of the tenancy, it is expected that the tenant will raise this as an issue at that time and not as an excuse for not cleaning the unit at the end of the tenancy. Accordingly, I reject the tenant's argument that some areas of the rental unit were not clean at the start of the tenancy.

Upon review of the photographs and the tenant's acknowledgement that walls and window sills were not cleaned at the end of the tenancy, I am satisfied that the landlord is entitled to recover cleaning costs from the tenant. The landlord provided a receipt

that appears to show the purchase of cleaning supplies and I award the landlord recovery of that receipt in the amount of: $103.65.

Had the landlord made a request to recover labour to clean the rental unit I would have considered such an award; however, the landlord did not and I make no award for cleaning labour.

The other receipts provided in this category appear to pertain to repairs to the bathroom vanity, screen door and cupboard door hinge. The tenant denied responsibility for these items, claiming these items had pre-existing damage or wear and tear at the start of the tenancy. In the absence of a copy of the move-in inspection report or other corroborating evidence, I find the disputed testimony and submissions with respect to the condition of the rental unit at the start of the tenancy are insufficient proof for me to conclude the tenant caused this damage. Therefore, I make no award for these repair items.

As for the living room blind, I see a photograph of a damaged blind in the landlord's photographs, but the tenant denied damaging it. Nor, did the landlord take into consideration any depreciation of the blind. Therefore, I find I am not satisfied that the tenant owes the landlord the replacement cost of a living room blind.

The landlord also included costs for keys but I was not provided evidence to demonstrate that the landlord is entitled to charge the tenant for keys under the Act, such as a tenant's failure to return all of the keys as required. Therefore, I make no award for replacement keys.

Junk removal

The majority of this expenditure related to dump fee for disposition of carpeting. I find it uncertain as to whether the insurance proceeds would have covered some of this expenditure and I am unable to confirm this in the absence of the "particulars" that accompanied the Proof of Loss issued to the landlord by the insurance company. Also of consideration is that I found the tenant liable for only some of the carpet damage. As such, I find it likely that the tenant is responsible for a portion of this charge but I am unsatisfied she is obligated to pay the entire charge. Therefore, I provide the landlord a nominal award of $10.00.

September 2016 rent

Section 26 of the Act provides that a tenant must pay rent when due under the terms of their tenancy agreement. The inability to pay rent is not an exemption from this requirement. The tenant was required to pay rent on the first day of every month pursuant to her tenancy agreement.

In this case, both parties gave notice to end tenancy to the other. The landlord gave the tenant a notice to end the tenancy effective September 30, 2016. The tenant disputed the notice but then notified the landlord, via text message, on August 29, 2016 that she would be vacating the rental unit September 18, 2016. A written notice given by the tenant on August 29, 2016 would have an effective date of September 30, 2016 at the earliest under section 45 of the Act. Therefore, I find the tenant was obligated under the Act to pay September 2016 rent on September 1, 2016 and the landlord remains entitled to receive that from the tenant.

In light of the above, I award the landlord unpaid rent of $1,700.00 for the month of September 2016.

October 1 - 15, 2016 loss of rent

The landlord's basis for seeking loss of rent from the tenant is that the tenant damaged the rental unit. As seen in my findings above, I have found the landlord failed to sufficiently demonstrate the tenant is responsible for much of the damage the landlord has alleged against the tenant. Further, landlords should expect to make some repairs and update/renovate the rental unit from time to time and a period of vacancy is not uncommon while these activities take place. The tenant acknowledged some damage to the rental unit during her tenancy but when I consider the tenant returned possession of the rental unit on September 18, 2016 and I have awarded the landlord rent for the entire month of September 2016, I find the landlord has received a benefit by commencing repairs and renovations early. Taking into account all of these factors I deny the landlord's request for loss of rent for the first half of October 2016.

Filing fee

The landlord was partially successful in her claims against the tenant. Accordingly, I find it appropriate to award the landlord a portion of the filing fee she paid. I award the landlord recovery of $40.00 of the $100.00 she paid for this application.

Security deposit and pet damage deposit

I authorize the landlord to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

Monetary Order

Based on all of the above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Painting (wall damage)	$ 100.00
Carpet damage	350.00
Cleaning	103.65
Junk removal	10.00
September 2016 rent	1,700.00
Filing fee	40.00
Sub-total	$2,303.65
Less: security deposit and pet damage deposit	(1,200.00)
Monetary Order	$1,103.65

Conclusion

The landlord was partially successful in this application and has been awarded compensation of $2,303.65. The landlord has been authorized to retain he tenant's security deposit and pet damage deposit in partial satisfaction of this sum and provided a Monetary Order for the balance of $1,103.65 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: May 23, 2017

Residential Tenancy Branch