



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for damage to the rental unit or property; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security 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.

Preliminary and Procedural Matters

The landlord seeks compensation of \$11,588.00 from the tenant. This claim is largely comprised of compensation for building materials and labour, cleaning and one month of loss of rent.

At the commencement of the hearing, I confirmed that the parties had exchanged their respective hearing documents and evidence upon each other.

I noted that the tenant had provided a thorough and detailed response to each of the landlord's claims including reference to Residential Tenancy Policy Guidelines that provide for a landlord's obligations to repair and maintain a property and criteria for making claims for damages; along with assertions that the landlord renovated the property after the tenancy ended. I noted that the landlord's claims did not appear to take into account depreciation or wear and tear of building elements and the landlord acknowledged that the property was renovated after the tenancy ended. I asked the landlord whether she still wanted to pursue all of her claims, as filed, after reviewing the tenant's submissions. The landlord confirmed that she did.

I started hearing the landlord's claims and I enquired about the age of the items the landlord was claiming and the reason the landlord was seeking compensation from the tenant. This proved extremely tedious and time consuming given the numerous items claimed on the receipts. The landlord responded that she did not think we would review each item on the

receipts as this was not the approach taken in a previous dispute resolution proceeding she participated in for a different tenancy. Each claim turns on its own merits. I explained that where a landlord seeks compensation from a tenant to replace a building element, the landlord must be prepared to establish that the item requires replacement due to damage or neglect on part of the tenant. The landlord stated that she was uncertain whether the tenant caused damage or that she could prove the tenant caused damage for each item claimed. To illustrate: the landlord sought compensation for one new door knob but not the other matching door knobs she purchased. The landlord stated that one door knob was not working at the end of the tenancy. The landlord acknowledged that she did not know the reason for that but since it stopped working during the tenancy she holds the tenant responsible for paying for a new knob.

I informed the landlord that many building elements may fail due to wear and tear, aging, or mechanical failure and tenants are not responsible for replacement of items for those reasons. The landlord stated that she claimed everything that was not as good as it was at the start of the tenancy and intended to leave it up to the Arbitrator to determine the compensation she is entitled to receive from the tenant.

As another example of the landlord making an unreasonable claim, the landlord requested the tenant pay to have the entire rental unit repainted. The landlord claimed that every wall in the rental unit was damaged and needed repainting. The landlord claims the damage was from “huge holes” or “deep gouges” in the walls. When I turned to the photographs I noted that I did not see huge holes or deep gouges. The landlord acknowledged that the tenant had patched them at the end of the tenancy so the holes and gouges were no longer there but that the patches required more painting. As a result, I was of view that the landlord’s statement that there were huge holes and deep gouges in the walls was not an accurate reflection of the rental unit at the end of the tenancy and the landlord was prone to exaggerate and make inflammatory statements.

The landlord pointed to the condition inspection report where it states: “Tenants must repair all damage made during their tenancy” as a basis for claiming everything that deteriorated during the tenancy against the tenant. I informed the landlord that the statement on top of the inspection report is not a “term” that forms part of the tenancy agreement but that if it were in the tenancy agreement, a term that contradicts the Act or regulations is not enforceable.

It was apparent to me that the landlord compared the move-in inspection report to the move-out inspection report and seeks to hold the tenant responsible for any and every item that is not in as good condition at the end of the tenancy and then expects the Arbitrator to catch anything she is not entitled to. I find this to be an unreasonable approach as it attempts to shift the burden to the other participants of this dispute when the burden rests with the landlord.

Every applicant bears an obligation to set out a basis for her claim under the Act, regulations or tenancy agreement. Given the lack of a clear basis for her claims, and the volume of items claimed, I determined that it would take a vast amount of resources to sort through this claim as

it has been filed. Rather, than dismiss the landlord's claim outright, I informed that landlord that I was prepared to dismiss her claim with leave to reapply so that she may familiarize herself with the Act, regulations and policy guidelines published by the Residential Tenancy Branch. I had also heard that the tenant has filed an Application for Dispute Resolution and I informed the parties that if the landlord were to re-file in a timely manner she may request her claim be joined with the tenant's application.

In light of the above, I dismiss the landlord's claims with leave to reapply. The landlord is encouraged to familiarize herself with sections 32 and 37 of the Act and refer to Residential Tenancy Policy Guidelines 1, 16 and 40.

Since the landlord continues to hold the tenant's security deposit and the landlord's claims are dismissed, I order return of the security deposit to the tenant in keeping with Residential Tenancy Policy Guideline 17: Security Deposit and Set-Off. The tenant expressly agreed that I may authorize the landlord to retain \$75.00 of his \$1,000.00 security deposit in satisfaction of some of the landlord's claims. Provided to the tenant with this decision is a Monetary Order for the sum of \$925.00 to serve and enforce upon the landlord as necessary.

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: July 14, 2017

Residential Tenancy Branch