



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN MND MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for an order of possession based on a tenants' notice to end tenancy, for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, to retain all or part of the tenants' security deposit, and to recover the cost of the filing fee.

The landlord and the tenants attended the teleconference hearing and gave affirmed testimony. The parties were given the opportunity to ask questions about the hearing process. A summary of the testimony and documentary evidence presented is provided below and includes only that which is relevant to the matters before me.

The tenants confirmed that they were served with the landlord's documentary evidence and that they had the opportunity to review that evidence prior to the hearing. The tenants also confirmed that they did not serve their documentary evidence on the landlord and as a result, the tenants' documentary evidence was excluded from the hearing as it was never served on the applicant landlord as required by the Rules of Procedure.

Preliminary and Procedural Matter

At the outset of the hearing the party confirmed that the tenants no longer occupy the rental unit as the tenants vacated the rental unit on May 1, 2017. Given the above, I have not considered the landlord's claim for an order of possession based on the tenants' notice to end tenancy as the landlord already has possession back of the rental unit.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 15, 2016 was scheduled to either continue for another fixed term or revert to a month to month tenancy after August 15, 2017. The parties agreed that the tenants vacated the rental unit on May 1, 2017.

Monthly rent in the amount of \$2,000.00 was due on the first day of each month. The tenants paid a \$1,000.00 security deposit at the start of the tenancy, which the landlord continues to hold.

The landlord's monetary order worksheet as submitted in the amount of \$8,491.74 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of rent for May 1, 2017 to August 15, 2017 due to breach of fixed-term tenancy	\$7,000.00
2. Mould and moisture cleanup	\$250.00
3. Repairs to holes left in walls (labour)	\$160.00
4. Materials for repairs to holes left in walls	\$36.74
5. Repairs to bedroom window and wall from water damage	\$945.00
6. Electricity from May 1 to August 15	TBD (to be determined)
7. Filing fee	\$100.00
TOTAL	\$8,491.74

Firstly, the landlord failed to complete a written move-in inspection report and written move-out inspection report as required by sections 23(4) and 23(5) of the *Act* which I will deal with later in this decision.

Regarding item 1, the landlord has claimed for loss of rent between May 1, 2017 and August 15, 2017 due to the tenants breaching a fixed term tenancy earlier and providing notice to end tenancy contrary to section 45(2) of the *Act*. The parties agreed that the tenants vacated on May 1, 2017. The landlord testified that he began to list the rental unit on a popular free online classifieds website as of May 5, 2017. The landlord stated that he began in April to repair the mould damage that he stated was caused by the tenants. The landlord stated that once the keys were returned on May 1, 2017, the contractor hired by the landlord worked on the rental unit and completed the work on May 4, 2017. The landlord confirmed that he did not submit a

copy of the new ad placed by the landlord. The parties agreed that the ad was for a temporary three month rental between May 15 and August 15.

The landlord stated that he first received interest from a prospective tenant about two weeks after it was listed and that he did not want students in the suite as it was being sold and he did not a party place where damage could occur. The landlord confirmed that he did not advertise the rental unit in any other way then the one popular website and that over the period of two months, he has listed it a total of twice and eventually removed the ad in the beginning of July 2017. The landlord confirmed that he did not attempt to reduce the rent from \$2,000.00 per month to a lower amount and claim the difference to help entice a prospective tenant.

The tenants stated that there was no sign outside of the building indicating a unit was for rent and that a friend of the tenants' P.W. who was a teacher had sent the landlord interest in the rental by email and that the landlord did not respond to his interest. The tenant called P.W. as a witness who was called into the hearing as the witness was living in Japan. P.W. was affirmed and stated that is was about 6 in the morning Japanese time but that he would testify as a witness. Witness P.W. confirmed he was a teacher and that he emailed in response to the rental unit and did not get a response from the landlord. Witness P.W. confirmed that he did not mention that he was a teacher in the email sent to the landlord to express interest in the rental unit. Witness P.W. testified that he checked all of his folders including his junk folders and confirmed that the landlord had not responded to his interest in the rental unit. The tenant asked the witness if his intention was to party to which the witness replied "no". The landlord then asked the witness if he emailed only to get information to which the witness replied "yes".

Regarding item 2, the landlord has claimed \$250.00 for mould and moisture damage to the rental unit. The landlord confirmed that he did not submit receipts in support of this portion of this claim. The landlord stated that he arrived at the amount of \$250.00 comprised of 10 hours multiplied by \$25.00 per hour that he was charging the tenant for including 4 hours of work plus one hour of travel times for a total of 5 hours and that he had to make two visits for a total of 10 hours. The landlord confirmed that he did not submit any before photos so show the condition of the rental unit at the start of the tenancy. The tenants did not respond to this portion of the landlord's claim during the hearing.

Regarding item 3, the landlord has claimed \$160.00 to repair holes to the walls of the rental unit. The landlord provided some photos of what appeared to be screw holes in the walls. The landlord confirmed that no before photos of the walls were submitted in evidence. The landlord also did not submit any receipts in evidence in support of this portion of his monetary claim. The landlord stated that he was charging \$40.00 per hour multiplied by 4 hours and referred to a copy of a website ad for a handyman who charged \$40.00 per hour which is why he used that amount. The tenants stated that they planned to live at the rental unit for a long time so they did hang pictures and that the number of holes in the walls was not excessive for a 600 square foot apartment. One of the tenants did confirm that a chunk of one of the walls was taken out by one of the screws or wall hangers which was shown in one of the photos.

Regarding item 4, the landlord has claimed \$36.74 in materials to repair the holes in the walls of the rental unit. The landlord submitted a receipt which supports the amount claimed for this portion of the landlord's monetary claim. The tenant stated that he hung picture hangers not to create damage but to protect the walls from any damage that not using hangers would cause.

Regarding item 5, the landlord has claimed \$945.00 for labour to repair water damage around the windows of the rental unit. The tenants confirmed that they did not communicate in writing to advise the landlord of any problems with the windows having moisture issues during the tenancy. The tenant confirmed that the photos referred to in evidence did look like the rental unit windows at times during the tenancy which showed a lot of moisture and mould growth due to the moisture. The tenants stated that they moved in during the summer and that the landlord told them to keep a window open to allow the moisture to escape. The landlord clarified that he did not tell the tenants to keep windows open 24 hours per day and only during cooking or when creating moisture inside the unit. The landlord added that the tenants heating costs were included in the rent and that at no time did the tenants advise there was a problem with the windows themselves. The landlord provided an invoice in evidence in the amount of \$945.00.

Regarding item 6, this item was dismissed during the hearing as the landlord wrote "TBD" which stands for "to be determined" which I find prejudices the tenants as the tenants would not be aware of an amount and that no specific amount was ever amended by the landlord prior to the hearing for this portion of the landlord's monetary claim. As a result, I have not considered item 6, "TBD" electricity costs from May 15 to August 15 further.

Regarding item 7, which relates to the filing fee, I will deal with the filing fee later in this decision.

Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

Firstly, regarding the condition inspection reports, I find the landlord failed to comply with sections 23 and 35 of the *Act* which require that a landlord complete both an incoming and outgoing condition inspection report together with the tenant which the landlord failed to do. Therefore, I **caution** the landlord to comply with sections 23 and 35 of the *Act* in the future.

Item 1 - The landlord has claimed for loss of rent between May 1, 2017 and August 15, 2017 due to the tenants breaching a fixed term tenancy earlier and providing notice to end tenancy contrary to section 45(2) of the *Act*. The parties agreed that the tenants vacated on May 1, 2017. The landlord testified that he began to list the rental unit on a popular free online classifieds website as of May 5, 2017.

As the landlord confirmed that he removed the ad in the beginning of July 2017 I find the landlord failed to comply with section 7 of the *Act* which applies and states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[My emphasis added]

I find that as soon as the landlord removed the rental ad, the landlord failed to comply with section 7 of the *Act* and as a result is not entitled to any compensation for July or August of 2017. I do find that the landlord is entitled to the loss of May and June 2017 rent however due to the tenants breaching section 45(2) of the tenancy agreement. Section 45(2) does not permit the tenants to end a fixed term tenancy early by giving the landlord one month's notice. Also, I find the tenants breached section 26 of the *Act* that requires tenants to pay rent on the date that it is due and that by breaching the fixed term tenancy by vacating before the end of the fixed term, the landlord suffered a loss of May and June 2017 rent. Therefore, I find the landlord has met the burden of proof for May and June 2017 loss of rent in the total amount of **\$4,000.00**. The remainder of item 1 is dismissed without leave to reapply due to the landlord's breach of section 7 of the *Act*.

I note that I have considered the testimony of the witness and that due to a lack of specific details regarding what he told the landlord in his email inquiry, I afford little weight to the witness testimony and find that it does not outweigh the fact that the tenants breached a fixed term tenancy agreement and left damage in the rent unit which I will deal with further below.

Item 2 - The landlord has claimed \$250.00 for mould and moisture damage to the rental unit. The landlord confirmed that he did not submit receipts in support of this portion of this claim. The landlord stated that he arrived at the amount of \$250.00 comprised of 10 hours multiplied by \$25.00 per hour that he was charging the tenant for including 4 hours of work plus one hour of travel times for a total of 5 hours and that he had to make two visits for a total of 10 hours. I find the tenants' lack of response to this portion of the landlord's claim to be compelling as Policy Guideline 1, Responsibility for Residential Premises it states in part:

"WINDOWS

...

2. **The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy** The landlord is responsible for cleaning the outside of the windows, at reasonable intervals.”

[Reproduced as written with my emphasis added]

In addition, section 37(2) of the *Act* states in part:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[Reproduced as written with my emphasis added]

Based on the above, I find the tenants failed to clean the inside of the windows including the moisture and moisture related mould during and at the end of the tenancy and that the amount claimed by the landlord is reasonable. Therefore, I find the landlord has met the burden of proof and is owed the **\$250.00** amount claimed by the landlord for this portion of the landlord’s monetary claim. I find the tenants breached section 37(2) of the *Act* and Policy Guideline 1.

Item 3 - The landlord has claimed \$160.00 to repair holes to the walls of the rental unit. Policy Guideline 1 also states the following regarding nail holes:

“Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

3. The tenant is responsible for all deliberate or negligent damage to the walls.”

[Reproduced as written with my emphasis added]

Based on the above I find the tenants breached the policy guideline by using large screw holes that exceed a reasonable sized nail hole and that the tenants were negligent by causing at least one large hole in the wall which is supported by photographic evidence. I don't agree with the amount the landlord is claiming for labour however. Although the landlord is claiming \$40.00 per hour for labour and provided an ad for a handyman I have no evidence before me to support that the landlord is a handyman and should be paid any more than the \$25.00 per hour he charged the tenants for item 2. Therefore, I find the landlord has only proven 4 hours at \$25.00 per hour which I find to be a reasonable amount and I grant the landlord **\$100.00** accordingly for this portion of the landlord's monetary claim.

Item 4 - The landlord has claimed \$36.74 in materials to repair the holes in the walls of the rental unit. Consistent with my find for item 3 above, I find the tenants were negligent and caused holes that were larger than nail holes and that the screw holes created damage to the rental unit. Therefore, I find the landlord has met the burden of proof and I award the landlord **\$36.74** for this portion of the landlord's monetary claim.

Item 5 - The landlord has claimed \$945.00 for labour to repair water damage around the windows of the rental unit and has submitted an invoice in evidence supporting that amount. As the tenants confirmed that they did not communicate in writing to advise the landlord of any problems with the windows having moisture issues during the tenancy and consistent with my findings for items 3 and 4 above, I find the tenants were negligent in failing to regularly clean and dry the inside of the rental unit windows.

I find that it is reasonable to expect even with new construction that windows will sweat and moisture will begin to form whenever it is cold outside and hot inside; either from cooking or taking a hot shower etc. The use of fans and opening windows and wiping down moisture is the required actions for tenants to deal with moisture on windows. And if tenants are unsure, at the very least they should communicate in writing with the landlord for direction on how to address moisture and mould inside windows.

As the tenants confirmed the photos did look like the rental unit during the tenancy, I find the mould growth permitted to grow by the tenants is demonstrative of a lack of routine window cleaning during the tenancy and that the tenants were negligent in cleaning moisture and mould from the inside of windows during the tenancy which is the tenants responsibility under Policy Guideline 1. Based on the above, I find the landlord has met the burden of proof and that I award the landlord **\$945.00** for this portion of the landlord's monetary claim.

Item 6 – As described above, this item was dismissed during the hearing as the landlord wrote "TBD" which stands for "to be determined" which I find prejudices the tenants as the tenants would not be aware of an amount and that no specific amount was ever amended by the landlord prior to the hearing for this portion of the landlord's monetary claim.

Item 7 – As the landlord's application had merit, I grant the landlord **\$100.00** pursuant to section 72 of the *Act* for the recovery of the cost of the filing fee.

I find that the landlord has established a total monetary claim in the amount of **\$5,431.74** comprised of \$4,000.00 for item 1, \$250.00 for item 2, \$100.00 for item 3, \$36.74 for item 4, \$945.00 for item 5, plus \$100.00 for item 7.

As the landlord has claimed against the tenants' security deposit of \$1,000.00 which has accrued no interest to date and pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenants' full \$1,000.00 security deposit in partial satisfaction of the landlords' monetary claim. I grant the landlord a monetary order for the balance owing by the tenants to the landlord under section 67 of the *Act* in the amount of **\$4,431.74**.

I caution the tenants not to breach sections 45(2), 26 and 37(2) of the *Act* in the future.

Conclusion

The landlord's application is partially successful.

The landlord has established a total monetary claim in the amount of \$5,431.74. The landlord has been authorized to retain the tenants' full \$1,000.00 security deposit in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order for the balance owing by the tenants to the landlord under section 67 of the *Act* in the amount of \$4,431.74. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 2, 2017

Residential Tenancy Branch