



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on November 1, 2010. Rent in the amount of \$1,300.00 was payable on the first of each month. The tenant paid a security deposit of \$650.00 and a pet damage deposit of \$650.00. The tenancy ended on October 4, 2016.

The landlord claims as follows:

a.	Damaged floors (items 3, 4 & 5)	\$3,833.65
b.	Cleaning (items 6, 13 & 15)	\$ 1,453.17
c.	Yard clean up	\$ 360.00
d.	Cleaning supplies	\$ 130.00
e.	Stove repair (items 7 & 8)	\$ 135.11
f.	Key replacement	\$ 35.79
g.	Materials (items 11 & 12)	\$ 130.27
h.	Chimney clean & replace fireplace door (items 14 & 17)	\$ 482.87
i.	Glass in sunroom ceiling	\$ 1,245.00
j.	Unpaid rent from October 1 to 15	\$ 650.00
k.	Baseboards	\$ 129.22
l.	Filing fee	\$ 100.00
	Total claimed	\$ 8,685.12

Damaged floors (items 3, 4 & 5)

After considering the useful span of an item as defined by Residential Tenancy Policy Guideline #40, the landlord agreed to accept the amount that was offered by the tenant for the damaged floors in the amount of \$1,600.00.

Cleaning (items 6, 13 & 15)

At the outset of the hearing the tenant agreed that they are responsible for the cost of cleaning in the total amount of \$1,453.17.

Yard clean up

The landlord testified that the tenant did not clean the yard. The landlord stated that there was a large pile of cat litter that had to be removed, there was junk scatter about the property, and the grass was overgrown. The landlord seeks to recover the cost of yard cleanup in the amount of \$360.00.

The tenant testified that they asked the landlord if there was a compost area and the landlord told them that could find an area in the back of the property that they could dispose of the cat litter. The tenant stated that they were never told they were required to do the yard maintenance to the extent the landlord was seeking. The tenant stated the photographs show the trees overgrown.

Cleaning supplies

The landlord testified that they had hired a person at the tenant's request to help the tenant pack and clean the rental unit. The landlord stated that the tenant agreed in item 13 to pay for the persons wage; however, the also paid for their cleaning supplies. The landlord seeks to recover cleaning supplies in the amount of \$130.00.

The tenant testified that they do not believe they should be responsible for cleaning supplies.

Stove repair (items 7 & 8)

The landlord testified that the tenant was neglectful with the stove as they allowed water and other food products to boil over and not cleaning up the spills as they occurred. The landlord stated this caused the element bowl to rot and the electric terminal switch was damaged. Filed in evidence are photographs and a receipt.

The tenant testified that the stove was not new and the electrical elements were broken.

The landlord argued that the stove was replaced during the tenancy. The landlord stated the original replacement stove was not new; however, they discovered it did not work and it was returned and replaced with a new stove.

The tenant did not deny this.

Key replacement

The landlord testified that the tenant failed to return all keys that gave access to the rental unit. The landlord stated that because of that they had to replace the lock. The landlord seeks to recover the cost of replacing the lock in the amount of \$35.79.

The tenant testified that they must have been misplaced that key during the tenancy as that was not a door they frequently used.

Baseboards

The landlord testified that the baseboards had to be removed in order to replace the damage carpets. The landlord stated that the baseboards were outside and the tenant's movers stepped all over them breaking the boards. The landlord seeks to recover the cost to replace the baseboards in the amount of \$129.22.

The tenant testified that there movers broke the baseboards and they should not be responsible for the cost.

Materials (items 11 & 12)

The landlord testified that they had to purchase a trowel and scraper to remove the subfloor due to damage caused to the flooring by the tenant. The landlord seeks to recover the cost of these items in the amount of \$65.48.

The landlord testified that they had to buy paint and plainpatch for the baseboards that were broken by the tenant's movers. The landlord seeks to recover the cost of these items amount of \$64.79.

The tenant testified that they should not be responsible to pay for tools that the landlord is entitled to keep.

The tenant testified that the movers that they hired broke the baseboards.

Chimney clean & replace fireplace door (items 14 & 17)

The landlord testified that the tenant was informed that they were not to use the fireplace. The landlord stated that the tenant ignored them, and there was a massive amount of burnt garbage in the fireplace. The landlord stated that this caused excessive heat and damaged the fireplace door. The landlord stated that the tenant should be responsible for cost of repairing the glass door, removal of the ashes and the cost of having the chimney cleaned. The landlord seeks to recover the total amount of \$482.87. Filed in evidence are photographs of the fireplace door, the dirty fireplace. Filed in evidence is an estimate for replacement.

The tenant testified that they used the fireplace for the first two years of the tenancy. The tenant stated that landlord is responsible for cleaning.

Glass in sunroom ceiling

The landlord testified that the ceiling window in the sunroom was broken. The landlord stated that the tenant originally told them that it broke when the landlord was on the roof; however, the glass is broken on the inside of the window. The landlord stated that they do not know how the

glass broke, but believes the tenant broke it. The landlord seeks to recover the amount of \$1,245.00.

The tenant testified that they do not know how the glass was broken; however, the believed it was broken when the landlord was up on the roof.

Unpaid rent from October 1 to 15, 2016

The landlord testified that the tenant did not leave the rental premises until October 4, 2016 and due to the condition of the premises they were not able to re-rent the premises for any portion of October 2016. The landlord stated that they are trying to be fair to the tenant and are only requesting to recover rent from October 1 to 15, 2016 in the amount of \$650.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Damaged floors (items 3, 4 & 5)

The parties agreed that the tenant was responsible for damaging the floors. The parties agreed that the tenant would be responsible for \$1,600.00. Therefore, I find the landlord is entitled to recover a portion of the damage floors in the amount of **\$1,600.00**.

Cleaning (items 6, 13 & 15)

The tenant agreed that they are responsible for the cost of cleaning. Therefore, I find the landlord is entitled to recover cleaning costs in the amount of **\$1,453.17**.

Yard clean up

In this case, I am not satisfied that the tenant is responsible for the yard clean up. Although I accept the before and after photographs submitted by the landlord show the yard is over grown. I cannot determine if this is the same area, as they appear to be different. Further, a large amount of the overgrowth is from trees and shrubs that the tenant is not responsible to maintain. Therefore, I dismiss this portion of the landlord's claim without leave to reapply.

Cleaning supplies

I am satisfied that the cleaning supplies were purchased due to the tenant not cleaning the rental unit. I find the tenant breached the Act, when they failed to clean the rental unit, and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover cleaning supplies the amount of **\$130.00**.

Stove repair (items 7 & 8)

I accept the landlord's evidence that the tenant did not clean the element bowl during the tenancy causing the bowl to deteriorate. This is supported by photographic evidence. Further, I find it more likely than not based on the photographs the electric terminal switch was damaged when the tenant failed to wipe-up food products that spilled. I find the tenant breached the Act and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover the cost of the repair in the amount of **\$135.11**

Key replacement

The tenant admitted that the key was misplaced during their tenancy. I find the tenant breached the Act when they failed to return all keys that gave access to the premises and the landlord suffered a loss. Therefore, the landlord is entitled to recover the cost of replacing the lock in the amount of **\$35.79**.

Baseboards

I accept the tenant's movers broke the baseboards that had been removed by stepping on them. The tenant is responsible for the action of anyone they allow on the property. Therefore, I find the landlord is entitled to recover the cost of replacing the broken baseboards in the amount of **\$129.22**.

Materials (items 11 & 12)

Although, I accept the landlord required to purchase a trowel and scraper to remove the subfloor, I find the landlord did not suffer a loss as they have these tools for future use. Therefore, I dismiss this portion of the landlord's claim without leave to reapply.

However, I am satisfied that the baseboards need to be painted because of the tenants mover breaking them. I find the tenant breached the Act, and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover paint and plainpatch in the amount of **\$64.79**.

Chimney clean & replace fireplace door (items 14 & 17)

I accept the evidence of the landlord that the tenant caused damage to the fireplace door, as the photographs shows the door extremely discoloured. This is not normal wear and tear.

In this case the landlord has provided an estimate of \$342.87; however, I am unable to determine the useful life span of this particular item. Therefore, I find it appropriate to grant the landlord half the amount claimed in the amount of **\$171.43**.

The landlord is further claiming for cleaning the fireplace and the chimney. I find it appropriate to grant the landlord half the amount for cleaning, as the landlord is responsible for cleaning the chimney and the tenant is responsible for cleaning the fireplace for items they burnt during their tenancy. Therefore, I grant the landlord the amount of **\$70.00**.

Glass in sunroom ceiling

In this case, I am not satisfied that the glass in the sunroom ceiling was broken by the neglect or action of the tenant as this could be simply from the building settling. I find the landlord has failed to provide sufficient evidence to support that the window was broken by the action or neglect of the tenant. Therefore, I dismiss this portion of the landlord's claim without leave to reapply.

Unpaid rent from October 1 to 15

The tenant did not vacate the premises until October 4, 2016, after rent was due and owing. I am satisfied that the tenant did not leave the rental unit reasonably clean and undamaged at the end of the tenancy. I find that due to the condition the tenant left the premises was not rentable for the month October.

When a rental unit is left dirty and damage by a tenant the landlord may be entitled to recover loss of rent for the entire month; however, in this case the landlord seeks to recover rent from October 1 to October 15, rent. I find that reasonable as the tenant was living in the rental unit for a portion of this time, and they left the rental unit in a condition that was un-rentable. I find the tenant breached section 26 of the Act, when they failed to pay rent and section 37 of the

Act, when they failed to leave the rental reasonable clean and undamaged. Therefore, I find the landlord is entitled to recover unpaid and loss rent in the amount of **\$650.00**.

I find that the landlord has established a total monetary claim of **\$4,539.51** comprised of the above described amounts and the \$100.00 fee paid for this application.

In this matter the tenant has paid the landlord the amount of \$2,200.00 for damages and the landlord has the tenant-s security deposit of \$650 and pet damage deposit of \$650.00, for a total amount of **\$3,500.00**.

I order the landlord to retain the amount of \$3,500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,039.51**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: December 11, 2017

Residential Tenancy Branch