



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and submitted documentary evidence via Canada Post Registered Mail on July 25, 2017. The landlord confirmed receipt of the tenant's documentary evidence on December 26, 2017. There is no evidence recorded on the RTB File that an evidence package was submitted for this hearing by the tenant. However as the landlord has confirmed receipt of the same package and the contents listed by the tenant, both parties were advised that I would accept the listed missing tenant's documents verbally and reserve judgement on any issues submitted by either party concerning the missing evidence. The tenant confirmed receipt of the landlord's late documentary evidence package. Neither party raised any further issues with service or the late documentary evidence. As both parties have attended and confirmed receipt of the submitted documentary evidence, I am sufficiently satisfied that both parties have been properly served as per section 90 of the Act.

The hearing began, but was adjourned due to a lack of time. Both parties were cautioned that no further (new) evidence was to be submitted nor would it be accepted. On April 12, 2018 the conference call hearing was re-convened with both parties present. At the outset, the tenant had clarified that he had re-submitted the missing documentary evidence package that the landlord had confirmed receiving on December 26, 2017. The tenant state that the evidence package had been placed in a previous file by mistake. This was reviewed and accepted to assist with the hearing. As such, the physical documentary evidence package was accepted as it does not constitute new evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 1, 2016 on a fixed term tenancy ending on August 31, 2017 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated August 4, 2016. The monthly rent was \$1,400.00 payable on the 1st day of each month. A security deposit of \$700.00 was paid on September 1, 2016 and currently held by the landlord. No condition inspection reports for the move-in and the move-out were completed.

The landlord clarified that the monetary claim was amended to reflect the estimated cost to the actual costs incurred from \$5,000.00 to \$4,590.25 plus the recovery of the \$100.00 filing fee for a total of \$4,690.25 which consists of:

\$156.96	-Replace light fixture
\$233.29	-Paint \$15.67+\$15.81+\$20.98+\$32.29+\$148.59
\$500.00	-Painting Labour
\$1,500.00	-Landlord's General Labour
\$1,400.00	-Lost Rental Income, December 2016
\$350.00	-Early Move-In, 1 week rent
\$450.00	-Storage Costs
\$100.00	-Recovery of Filing Fee

During the hearing the landlord cancelled the \$183.01 claim for a cheque to the tenant for partial return of the security deposit. Both parties agreed that although the cheque was issued, the tenant did not cash it and as such may be cancelled from the claim.

The landlord claims that the tenant vacated the premises leaving it damaged. The landlord stated that a bathroom light fixture was missing a glass sconce. The tenant disputed that the bathroom light was broken, but confirmed that it was missing a glass sconce. The landlord relies upon a submitted copy of a photograph showing a missing glass sconce from the bathroom light fixture. In support of this claim the landlord provided a receipt for \$158.96 for the replacement of the bathroom light fixture as a replacement glass sconce was not obtainable.

The landlord seeks recovery of \$233.29 for paint material costs and \$500.00 in painting labour. The landlord claims that the tenant left wall damage in the form of many holes, and many leftover residue spots left on the walls. The tenant disputes this claim stating that his 7 photographs of the interior prove that no holes or residue were left on the walls. A review of the photographs reveal that only 2 of the tenant's photographs offer a view of the walls and that none of the photographs offer a comparable view. In contrast the 7 of the 14 photographs submitted by the landlord show numerous holes in the walls. In support of this claim the landlord has provided a handwritten receipt dated December 25, 2016 of \$500.00 for "for labour work 9780...". It was clarified by the landlord that this was a handwritten receipt made by the landlord to give to the contractor. No details were provided for the contractor. The landlord has also provided copies of the 5 receipts for paint costs.

The landlord claims that he seeks compensation of \$1,500.00 in general labour costs at \$50.00 an hour. The tenant disputed this claim. The landlord provided no further details of this claim.

The landlord seeks \$1,400.00 for the loss of rental income for December 2016 as the rental premises was un-rentable due to required repairs. The tenant disputed this claim.

The landlord seeks a \$350.00 claim for unpaid rent for the beginning of the tenancy when the landlord allowed the tenant an early move-in date by 1 week. The tenant disputed this claim. The landlord confirmed that he allowed the tenant to move-in 1

week early, but stated that no such agreement was made to charge the tenant a pro-rated amount for this 1 week period.

The landlord seeks a \$450.00 claim for storage costs from the tenant based upon a \$150.00 per month for 3 months beginning in October 2016. The landlord stated that the tenant stored various items in the garage without permission and was notified that this was unacceptable. The tenant disputed this claim stating that at no time was he notified of any storage issues. The tenant confirmed that the only items he stores in the garage are bicycles. The landlord clarified that this monetary amount was arbitrary and that no agreement was made for storage with the tenant.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the affirmed testimony of both parties and find on the first item of claim that the landlord has provided sufficient evidence that a light fixture had one glass scone missing from a bathroom fixture as confirmed by the tenant. The landlord provided undisputed affirmed evidence that a new light fixture was bought to replace an existing light fixture as a new glass scone could not be obtained. On this basis, I find that the tenant was responsible for the missing glass scone and the landlord has established the monetary claim for \$156.96 based upon the submitted receipt.

On the landlord's second item of claim painting and labour costs, I find that the landlord is partially successful. Although the tenant has disputed the landlord's claims, I find that

sufficient evidence has been provided by the landlord that the rental unit was given to the tenant in a "like new" condition". This is contrasted by the landlord's claims in the submitted photographs of damaged walls with holes and marks. However, the landlord relies upon a self-made hand written receipt for the labour cost of \$500.00. The landlord failed to provide sufficient evidence of the contractor for this paint labour. The landlord has also failed to provide sufficient details of the claim. On this basis, I grant the landlord recovery of the \$233.29 in paint material costs, but dismiss the landlord's claim for \$500.00 in labour costs due to insufficient details.

The landlord's claim for \$1,500.00 in general labour costs has been unsuccessful and is dismissed. The landlord has only provided details that he was seeking \$50.00 per hour, but failed to provide any details on the number of hours and what labour was performed.

The landlord's monetary claim of \$1,400.00 for lost rental income for December 2016 is dismissed. The landlord has only stated that the loss of rental income was due to not being able to re-rent the unit due to extensive repairs that delayed the premises from being rented. No details were provided by the landlord to mitigate any possible losses by attempted to re-rent the premises as soon as possible.

The landlord's claim for \$350.00 in unpaid rent due to allowing the tenant an early move-in date is dismissed. The tenant disputed this claim. The landlord stated that he allowed the tenant an early move-in at the beginning of the tenancy and that there was no notification regarding this claim until the end of tenancy.

The landlord's last item of claim for \$450.00 in storage costs is dismissed. The tenant confirmed that bicycles were stored in the garage, but that at no time was the tenant notified of a storage issue, nor was the tenant told that a charge would be imposed. I also find that the landlord's claim is arbitrary and that there is no foundation for the setting of a \$150.00 per month charge.

The landlord has established total monetary claim of \$390.25. I also find that as the landlord has only been partially successful that only a partial recovery of the filing fee is granted for \$50.00. The landlord has established a total claim for \$440.25.

In offsetting this claim against the \$700.00 security deposit held by the landlord, I grant the tenant a monetary order for the balance of \$259.75. The landlord is to return this amount forthwith.

Conclusion

The tenant is granted a monetary order for \$259.75.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: April 23, 2018

Residential Tenancy Branch