



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNDC, MNSD, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the cost of cleaning, replacing furniture and fly screens, for the cost of disposal of items and for the recovery of the filing fee. The tenant applied for the return of double the security and pet deposits, for compensation pursuant to a notice to end tenancy for landlord's use of property and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by her spouse. As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to a monetary order for the cost of cleaning, replacing furniture and fly screens, for the cost of disposal of items and for the recovery of the filing fee? Is the tenant entitled to the return of double the deposit, to compensation and to the recovery of the filing fee?

Background and Evidence

The parties agreed to the following: The tenancy started on October 01, 2015 and ended on June 20, 2018. The monthly rent was \$2,000.00 due on the first of each month. Prior to moving in the tenant paid a security deposit and pet deposit of a total of \$2,000.00.

The tenant testified that on May 26, 2018, the landlord visited the rental unit and requested that the tenant sign a mutual end to tenancy. The tenant did not agree to sign the document. During that visit the parties discussed plumbing issues.

On May 28, 2018, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The effective date of the notice was July 31, 2018. The tenant did not dispute the notice. On June 07, 2018, the tenant gave the landlord notice to end the tenancy effective June 20, 2018. The tenant moved out on that day.

The landlord stated that the unit was not properly cleaned and filed photographs to support his testimony. The tenant agreed that she had not cleaned the stove but objected to the landlord's claim for the cost of cleaning. The landlord made a claim for the cost of 2.5 hours of professional cleaning.

The landlord also stated that there were oil stains on the concrete floor of the sunroom and he filed photographs to support his testimony. The landlord stated that the stains could not be removed and he chose to cover the concrete with vinyl tile which was less expensive than replacing the concrete.

The landlord stated that the unit was partially furnished and the tenant caused damage that rendered the mattress and the kitchen table unusable and had to be disposed of. The landlord also stated that the damage to the fabric on the chairs appeared to be pet related. The photographs filed into evidence support the landlord's testimony. The tenant stated that the furniture was damaged at the start of tenancy and that she had put the furniture into storage and had not used it during the tenancy. The landlord argued that the move in inspection report does not show any such deficiencies.

The landlord is also claiming for the cost of replacing screens and has filed photographs that show considerable damage to the screens and an invoice for the cost he incurred.

The landlord is claiming the following:

1.	Damage to sunroom floor and driveway	\$500.00
2.	Replace mattress	\$446.88
3.	Replace kitchen table	\$222.88
4.	Replace 2 kitchen chairs	\$146.90
5.	Professional cleaning	\$233.63
6.	Replace screens	\$162.40
7.	Disposal of mattress and kitchen table	\$105.00
8.	Filing fee	\$100.00
	Total	\$1,917.69

The tenant testified that the landlord had evicted her illegally when he served her with a two month notice to end tenancy for landlord's use of property instead of a four month notice to end tenancy for demolition, renovation, repair or conversion of rental unit. The tenant stated that after she moved out on June 20, 2018, the landlord carried out repairs and then moved into the rental unit in early August.

The landlord responded by testifying that the notice to end tenancy was effective July 31, 2018 and therefore he had made plans to move into the rental unit in early August. He stated that he had not anticipated that the tenant would end the tenancy prior to the effective date of the notice. The landlord also added that the plumbing work referred to by the tenant was carried out in the yard and not inside the rental unit. The landlord added that the work that was done did not require the unit to be vacant and therefore a four month notice to end tenancy did not apply.

The tenant has applied for compensation in the amount of \$24,840.00 which is equal to rent payable for 12 months. The tenant agreed that she had received the last month of rent free stay.

The tenant testified that she agreed to allow the landlord to retain \$100.00 of the deposit towards cleaning of oil stains on the driveway. The landlord stated that after the tenant left he found additional damage which was not identified during the final walk through inspection and contacted the tenant with a request to retain an additional \$400.00. The tenant did not agree to any further deductions. The landlord proceeded to withhold a total of \$500.00 and returned the remainder of \$1,500.00 to the tenant. The tenant has applied for the return of double the security deposit and for the recovery of the filing fee.

Analysis

Landlord's application:

1. Damage to sunroom floor and driveway - \$500.00

The landlord filed photographs of the oil stains on the concrete floor of the sunroom. He stated that it cost less to cover the stains with vinyl tile rather than concrete. The landlord stated that with materials and his labor he is claiming a total of \$400.00 to repair the sunroom floor. The tenant had agreed to pay \$100.00 for the removal of oil stains from the driveway and the landlord has already made this deduction off the deposit.

Based on the testimony and photographs filed into evidence by the landlord, I find that he is entitled to his claim of \$400.00 to replace the flooring of the sunroom.

2. Replace mattress - \$446.88
3. Replace kitchen table - \$222.88
4. Replace 2 kitchen chairs - \$146.90

The parties agreed that the rental unit was partially furnished. The landlord stated that the stains on the mattress were discovered after the tenant moved out as the mattress had been turned over to conceal the stains. The landlord stated that the mattress was rendered unusable. The landlord filed a photograph of the stained mattress, an invoice for the cost of disposal and a printout of what a similar item would cost.

The landlord also described the damage to the kitchen table and provided photographs that show that the table was broken beyond repair. The landlord stated that he had to dispose of the table and is claiming the cost to replace the table and the cost of disposal. The landlord filed a copy of what a similar item would cost.

The landlord filed photographs of the chairs. The photographs depict considerable damage to the seat fabric which appears to be consistent with damage created by pets.

Based on the photographs and the testimony of both parties, I find that there was damage to the furniture and mattress at the end of tenancy that was beyond normal wear and tear. The tenant claimed that the damage was present at the start of tenancy and the landlord responded by saying that this damage was not reported on the move in inspection report. Upon viewing the report, I find that the landlord has noted other deficiencies but damaged furniture is not recorded in the report.

I find on a balance of probabilities that it is more likely than not that some of the damage was caused by the tenant's pets and some by the tenant. However the landlord is not entitled to the cost of replacement of these items with brand new items. I must now determine the depreciated value of the items at the end of tenancy.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the testimony of both parties and the documents filed into evidence, I find that it is appropriate to award the landlord a minimal total award of \$300.00 for items #2, #3 and #4.

5. Professional cleaning - \$233.63

Based on the photographs filed into evidence, I find that the sunroom needed considerable cleaning. The dirt that was very visible in the photographs filed by the tenant herself probably came from the same machine that caused the oil stains. The tenant agreed that she had not cleaned the stove. I find that the landlord's claim of 2.5 hours of professional cleaning is reasonable.

6. Replace screens - \$162.40

The landlord has filed photographs of the damaged screens and an invoice for the cost he incurred to replace them. I find that the landlord is entitled to his claim.

7. Disposal of mattress and kitchen table - \$105.00

Since the mattress and table were rendered unusable at the end of tenancy, I find that the landlord is entitled to recover the cost of disposal of these items.

8. Filing fee - \$100.00

Since the landlord has proven most of his claim, I award the landlord the recovery of the filing fee.

Overall the landlord has established a claim as follows:

1.	Damage to sunroom floor and driveway	\$400.00
2.	Replace mattress	\$300.00
3.	Replace kitchen table	\$0.00
4.	Replace 2 kitchen chairs	\$0.00
5.	Professional cleaning	\$233.63
6.	Replace screens	\$162.40
7.	Disposal of mattress and kitchen table	\$105.00
8.	Filing fee	\$100.00
	Total	\$1,301.03

Tenant's application:

The tenant applied for the return of double the deposit. Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the amount of the deposit.

In this case the tenancy ended on June 20, 2018, and the tenant has provided the landlord with a forwarding address on June 18, 2018. By July 05, 2018, the tenant had not received her deposit and made this application. The landlord made application to keep the deposit in partial satisfaction of his claim on September 25, 2018, which is well beyond the legislated time frame of 15 days.

Therefore, I find that the landlord failed to repay the deposit or make an application for dispute resolution within 15 days of the end of tenancy and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The total of deposits paid was \$2,000.00. The tenant agreed to allow the landlord to retain \$100.00 from the deposit. Therefore the landlord was obligated to return \$1,900.00 to the tenant or make application to keep all or a portion of the deposit within 15 days of the end of tenancy. The amount held by the landlord was \$1,900.00 and since the landlord failed to make application to retain a portion of the deposit within 15 days of the end of tenancy, the landlord must return \$3,800.00 to the tenant. The landlord has already returned \$1,500.00 and therefore the tenant is entitled to \$2,300.00.

The tenant is also claiming compensation in the amount of the equivalent of 12 months' rent for an illegal eviction. The tenant testified that the landlord intended to carry out repairs but did not serve the appropriate four month notice to end tenancy. Based on the testimony of the landlord regarding the extent of the plumbing repair that was carried out, I find that the landlord was not required to serve the tenant with a four month notice to end tenancy.

The tenant agreed that she received a two month notice to end tenancy for landlord's use of property and that she had received the last month of rent free stay. The tenant also agreed that the landlord moved into the rental unit and continues to occupy the rental unit at the time of the hearing.

Pursuant to Section 51 of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property and the rental unit is not used for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the landlord intended in good faith to occupy the rental unit. Based on the testimony of both parties, I find that the landlord moved into the rental soon after the effective date of the notice and continues to occupy the rental unit. Therefore I find that the landlord used the unit for the purpose stated on the notice to end tenancy. Accordingly, I find that the tenant has not proven her case and I dismiss her application for compensation pursuant to section 51.

The tenant has proven a portion of her application and is entitled to the recovery of the filing fee.

Overall the tenant has established a claim of \$2,300.00 for the return of the deposit and \$100.00 for the recovery of the filing fee for a total claim of \$2,400.00. The landlord has established a claim of \$1,301.03. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$1,098.97 which consists of the difference in the established entitlements of both parties.

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1,098.97. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,098.97**.

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: October 21, 2018

Residential Tenancy Branch