



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FFL

Introduction

On August 16, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for damage to the unit; to keep the security deposit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant attended the hearings. At the start of the hearings I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to compensation for damage to the unit?
- Is the Landlord entitled to keep the security deposit?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on November 16, 2009. The Tenant paid the Landlord monthly rent in the amount of \$1,460.00. The Tenant paid the Landlord a security deposit of \$600.00.

The tenancy ended based on the issuance of a 2 Month Notice To End Tenancy For Landlord's Use Of Property. The Tenant accepted the 2 Month Notice and moved out of the rental unit on August 31, 2017.

The Tenant subsequently applied for dispute resolution seeking compensation from the Landlord for issuing the 2 Month Notice in bad faith. The parties attended a hearing on August 13, 2018, and an Arbitrator found that the Landlord failed to move into the unit and awarded the Tenant two months' rent in compensation.

The Landlord testified that he re-rented the unit to new tenants on March 1, 2018.

The Landlord testified that when the Tenant moved out of the rental unit on August 31, 2017, the rental unit was left unclean and damaged.

The Landlord is requesting compensation for the following items:

Chimney Cleaning	\$168.00
Carpet Replacement	\$4153.31
Intercom Replacement	\$113.90
Disposal Costs	\$524.79
Garage Door Repair	\$703.43
Repairs	\$19,892.25
Landlords Time	\$3,250.00
Locks	\$450.00
Garage Door Opener	\$50.00

Chimney Cleaning

The Landlord testified that there were ash and wood remnants left in the fireplace at the end of the tenancy. The Landlord testified that he paid for a service to remove the ash and scrape the chimney. The Landlord testified that the fireplace was unused when the Tenant moved in. The Landlord testified that there is no specific term in the tenancy agreement that required the Tenant to clean the chimney or pay for the cleaning of the chimney at the end of the tenancy.

The Landlord provided a photograph of the fireplace containing ash and a receipt dated May 22, 2018, for the amount of \$168.00.

In reply, the Tenant provided testimony that the fireplace was clean when he moved in. He testified that the fireplace was there to be used and he used it very little. He testified

that he burned paperwork using kindling. The Tenant submitted that charging him for the cleaning cost is not warranted.

Carpet Replacement

The Landlord is claiming \$4,153.31 for the cost to replace carpets.

The Landlord testified that during the tenancy the Tenant informed him that the carpet needed to be replaced. The Landlord submitted that he replaced the carpets approximately four years prior to the end of the tenancy. The Landlord testified that the carpets were left stained at the end of the tenancy. The Landlord testified that he spent four or five hours trying to remove the stains but they could not be removed.

The Landlord testified that he replaced the carpeting with a lower quality carpet. The Landlord provided photographs of the rental unit showing the condition of the carpet and a receipt dated February 2018, in the amount of \$6,922.19 for the cost of the carpet, installation, and disposal.

In reply, the Tenant testified that he was in a rush and did not have the carpets cleaned at the end of the tenancy. **The Tenant testified that the carpets were replaced in 2012.** The Tenant submitted that he does not believe that the stains could not be removed with cleaning.

Intercom Replacement

The Landlord testified that there was a functional intercom at the start of the tenancy. The Landlord testified that the intercom came with the house in 1986. The Landlord testified that he found that the intercom had been removed at the end of the tenancy. The Landlord purchased a new intercom. The Landlord provided a receipt dated December 4, 2017, for a new intercom.

In reply, the Tenant testified that he does not recall ever seeing an intercom at the rental unit. The Tenant submitted that the condition inspection report completed at the start of the tenancy makes no mention of an intercom.

Disposal Costs

The Landlord testified that the Tenant abandoned furniture such as couches, mattresses, dressers and other assorted items in the rental unit.

The Landlord is seeking to recover the cost of disposing of the Tenant's items. The Landlord provided photographs of the abandoned items and a receipt dated September 21, 2017, for the cost of the disposal bin.

In reply, the Tenant testified that some of the furniture belonged to the Tenants who lived in the unit below.

The Landlord replied that the occupants living below vacated at the same time as the Tenant and that some of the furniture belonged to the other occupants. The Landlord testified that a lot of the furniture belonged to the Tenant.

Garage Door Repair

The Landlord testified that the garage door was new in 2000. The Landlord testified that a panel was broken and a hanger for the garage door was broken. The Landlord testified that the hinges are missing. The Landlord submitted that he does not believe the garage door was used in a normal manner.

The Landlord testified that it cost \$1,400.0 to repair the garage door. The Landlord provided an invoice dated March 2018 for renovation costs including the repair of both garage doors.

In reply, the Tenant testified that only one garage door was hooked up at the start of the tenancy. He submitted that the motor opener was not from the original equipment manufacturer and it did not open properly. He testified that the incorrect motor did not pull the door correctly. The Tenant testified that he did not cause intentional or accidental damage to the doors.

In reply, the Landlord testified that the motors for the garage doors are original.

Repairs

The Landlord is seeking compensation in the amount of \$19,892.25 for repair costs.

The Landlord was asked to explain his claim. The Landlord testified that his claim is due to the cost to patch some holes in walls due to pictures and shelving; to paint the rental unit; and to repair a closet door. The Landlord testified that one room had been

painted red. The Landlord testified that there was a wall patch in the Livingroom that was not repaired properly.

In reply, the Tenant testified that during the tenancy the Landlord permitted the Tenant to paint the rental unit. The Tenant testified that the Landlord paid for the cost of the painting materials and the Tenant completed the painting. The Tenant testified that the painting took place in 2012.

The Tenant testified that he is not aware of any wall patching required in the Livingroom.

The Tenant provided testimony that the majority of the Landlord's claims are for pre-existing damage that was present at the start of the tenancy. The Tenant referred to the condition inspection report that supports his position that the damage was pre-existing. The Tenant provided a copy of a condition inspection report completed at the start of the tenancy.

In reply the Landlord confirmed that the painting took place in 2012 and that he paid for the cost of the paint. The Landlord testified that there was no discussion on the paint color.

Landlord's Time for Disposal Costs

The Landlord is seeking compensation for the time it took him to dispose of used vehicle tires; used oil and lubricants and cleaners.

The Landlord clarified that his claim is not for the costs of disposal, only for his time. The Landlord testified that he had to research the locations of where the items could be disposed. The Landlord testified that he had to take the items to different locations.

The Landlord is seeking \$50.00 per hour for 65 hours for a total of \$3,250.00.

In reply, the Tenant testified that the garage was shared with other occupants of the rental property who moved out of the unit at the same time as the Tenant. The Tenant testified that he cleaned all of his items out of the garage at the end of the tenancy. He testified that he did not leave behind any of the items that the Landlord is claiming.

In reply the Landlord testified that he has a suspicion that the items belong to the Tenant because he was observed using items in the garage.

Locks

The Landlord testified that the Tenant left a pile of keys at the end of the tenancy. The Landlord testified that none of the keys worked on the rear door of the rental unit. The Landlord testified that the Tenant had changed the lock on the front door during the tenancy. The Landlord testified that he needed to secure the rental unit so he hired a company to re-key the locks. The Landlord provided a photograph of a new lock on the front door. The Landlord indicated that he provided an invoice for the cost of re-keying the unit but no document for this was located in his evidence.

In reply, the Tenant testified that he left the keys in the unit. He testified that he was never provided with a key for the back doors. The Tenant acknowledged that he had the front door lock changed and testified that he provided the Landlord with a key at that time.

In reply, the Landlord testified that he believes that the Tenant did provide him with a key for the front door at the time it was changed. The Landlord testified that he does not recall if the key was working.

Garage Door Opener

The Landlord testified that he provided the tenant with a garage door opener at the start of the tenancy. The Landlord testified that the Tenant failed to return the door opener at the end of the tenancy. The Landlord is seeking \$50.00 for the replacement cost of the door opener.

In reply, the Tenant testified that he does not recall ever receiving a garage door opener from the Landlord. The Tenant testified that he installed a keypad for the garage door. He testified that he accessed the garage by using the keypad.

In reply, the Landlord acknowledged that the keypad was installed and the Tenant provided him the pass code.

Security Deposit

The Landlord has applied to keep the security deposit of \$600.00 in partial satisfaction of his claims.

The Landlord testified that he never received the Tenant's forwarding address until he was served with documents regarding the hearing that the parties attended in August 2018.

Analysis

Section 59 of the Act provides that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

Section 2.5 of the Residential Tenancy Branch Rules of Procedure states an applicant must submit:

- *a detailed calculation of any monetary claim being made.*

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.

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

Chimney Cleaning

I find that there was no term in the tenancy agreement requiring the Tenant to have the fireplace and chimney professionally serviced at the end of the tenancy. I find that the Tenant left ash and wood debris in the fireplace at the end of the tenancy. The Tenant has an obligation to leave the rental unit clean. There is insufficient evidence from the

Landlord to establish the value of his loss for the cost to only clean out the ash. In the circumstances, I find it is reasonable to award the Landlord a nominal amount of \$50.00 for the cost of cleaning the ash from the fireplace.

Carpet Replacement

The Residential Tenancy Policy Guideline #40 provides that carpets have a useful life of 10 years. I find that the carpets were replaced approximately four years prior to the end of the tenancy and have a remaining useful life of six years.

I find that the Landlords photographs establish that the carpets in the living room and middle bedroom closet area were stained at the end of the tenancy. The stain on the living room carpet is a large pinkish stain of approximately 10 feet by 5 feet. Since the carpets were replaced during the tenancy, I find that the Tenant is responsible for the carpet stains.

Based on the testimony and photographic evidence before me, I accept that the Landlord could not remove the stains. I find that the Tenant is responsible for the replacement cost of the carpets after considering depreciation of the carpet based on its useful life. **I find that since the parties did not agree on the age of the carpet, the burden of proof rests with the Landlord. When two parties provide equally believable but differing testimony the burden of proof rest with the applicant. In this case, there is insufficient evidence from the Landlord to prove the age of the carpet. I therefore accept the Tenant's testimony that the carpets were replaced in 2012.** I have also considered that the Landlord has a right to be made whole and be put in the same position as if the damage never occurred. I find that the Landlord is entitled to have all the carpeting replaced so that it is all the same.

I find that the Tenant is responsible to pay the Landlord ~~6/10~~ **5/10** of the replacement cost of the carpeting. [$\$6,922.19 / 10 = \$692.21 \times 5 = \mathbf{\$3,461.05}$]

I grant the Landlord the amount ~~claimed~~ of ~~\$4,153.31~~ **\$3,461.05**.

Intercom Replacement

I find that there is insufficient evidence from the Landlord to establish that there was an intercom present at the start of the tenancy. I find that even if there was an intercom present, based on it being more than 30 years old, the Landlord would not be entitled to

compensation for the replacement cost due to its depreciated value. The Landlords claim is dismissed.

Disposal Costs

The Landlord is seeking compensation in the amount of \$524.79 for disposal costs.

I find that the occupants living below the Tenant vacated at the same time as the Tenant and that some of the furniture that was disposed of by the Landlord belonged to the other occupants. I accept the Landlord's evidence that the Tenant left furniture and belongings behind on the rental property; however, I find that the Landlord's costs for disposal are not entirely attributable to the Tenant. The Landlord has failed to prove the value of the loss.

In the circumstances, I find that nominal award of \$100.00 is reasonable.

Garage Door Repair

I find that the garage door was 17 years old at the time the tenancy ended. Garage doors and openers have a useful life of 10 years. I find that there is insufficient evidence from the Landlord that the Tenant caused intentional or accidental damage to the garage door.

The Landlord's claim for repair costs to the garage door is dismissed.

Repairs

The Landlord provided a monetary order worksheet which indicates that the Landlord is seeking \$19,892.25 for repair costs. The Landlord did not provide an itemized breakdown of the cost of each repair. The Landlord provided an invoice dated February 24, 2018, in the amount of \$33,153.75 which only provides a description of repairs made to the unit.

Since each repair claim does not include the specific cost for repair, it is not possible to establish the value of each loss. I am unable to determine the cost of each repair and the Respondent was not provided with full details of the Landlord's claim in order to consider and respond to the amount claimed for each repair.

The Landlord provided very little testimony in support of his claim for compensation in the amount of \$19,892.25. The Landlord testified about patching holes, painting, and repairing a closet.

With respect to painting, Residential Tenancy Policy Guideline #40 provides that interior paint has a useful life of four years. I find that the rental unit was last painted in 2012. A Landlord has a duty to periodically paint the interior of a rental unit. I find that the agreement for the Tenant to paint the unit was not conditional on the Landlord's permission regarding color. I find that the Tenant is not responsible for painting costs due to the color of paint selected in 2012. I find that the interior paint was beyond its useful life at the end of the tenancy and the Tenant is not responsible for the costs to repaint the unit.

With respect to the Landlords claims for patching holes and repairing a closet door, I accept the Tenant's evidence of the condition inspection report completed at the start of the tenancy. The inspection report provides that there were holes in the walls of the kitchen, living room, dining room and halls. I find that rental unit was in a poor condition and state of repair at the start of the tenancy and that there was pre-existing damage to walls.

The Landlord's claim for compensation in the amount of \$19,892.25 is dismissed in its entirety.

Landlord's Time

I find that the Landlord's claim to be compensated for his time in the amount of \$3,250.00 has no merit. I find the Landlord's claim amount to be excessively high and unreasonable. I do not accept that it is reasonable for the Landlord to claim 65 hours for researching and disposing of tires, oil and lubricants, at an hourly rate of \$50.00 per hour.

The Landlord's claim is inconsistent with his duty under section 7 of the Act to minimize loss.

Furthermore, I find that there is insufficient evidence from the Landlord to establish that the Tenant is responsible for any items left in the garage. The garage was shared and the occupants of the other unit moved out at the same time as the Tenant. The Landlord's claim is dismissed in its entirety due to insufficient evidence and a failure to mitigate.

Locks

The Landlord is seeking \$450.00 for the cost to re-key the rental unit. The Landlord did not provide an invoice to prove the value of his loss.

In addition, the Landlord testified that the Tenant did provide him with a key when the front door lock was changed. It is reasonable to expect that the Landlord would have tried the key at that time and addressed any issue with the key. The Tenant testified that the Landlord never provided keys for the back doors. There is insufficient evidence from the Landlord to prove that the Tenant was provided with keys for the back doors.

The Landlord's claim for the cost to re-key locks is dismissed.

Garage Door Opener

The Tenant refuted the Landlords claim that the Tenant was provided with a garage door opener at the start of the tenancy. There is no documentary evidence before me that supports the Landlords position that the Tenant was provided a door opener. The parties agreed that the garage door was opened by use of a keypad device.

There is insufficient evidence from the Landlord to support an award for the replacement cost of a garage door opener. The Landlords claim is dismissed.

Security Deposit

I authorize the Landlord to keep the security deposit of \$600.00 towards the monetary awards granted to the Landlord.

Monetary Awards

The Landlord has established a monetary claim in the amount of ~~\$4,303.31~~ **\$3,611.05** for cleaning costs, disposal costs, and carpet replacement costs.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a monetary claim in the amount of ~~\$4,403.34~~ **\$3,711.05**. After setting off the security deposit of \$600.00 towards the award of ~~\$4,403.34~~ **\$3,711.05**, I find that the Tenant owes a balance of ~~\$3,803.34~~ **\$3,111.05**.

I grant the Landlord a monetary order in the amount of ~~\$3,803.34~~ **\$3,111.05**. The monetary order must be served on the Tenant and may be enforced in the Provincial Court.

Conclusion

The Landlord established a monetary claim in the amount of ~~\$4,403.34~~ **\$3,711.05** for cleaning costs, disposal costs, carpet replacement costs and the filing fee.

After setting off the security deposit, I find that the Tenant owes the Landlord the amount of ~~\$3,803.34~~ **\$3,111.05**. I grant the Landlord a monetary order in the amount of ~~\$3,803.34~~ **\$3,111.05**.

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: February 6, 2019

Amended February 22, 2019

Residential Tenancy Branch