



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent and 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.

Preliminary and procedural matters

This hearing commenced on April 2, 2019 and was adjourned due to insufficient time. The interim decision should be read in conjunction with this decision.

On April 2, 2019, I made an order that both parties were to canvass their insurance company on the issue of damages caused by the flood and provide a copy of the said correspondence including their deductible no later than May 2, 2019. Both parties provided a copy as ordered.

On April 2, 2019, I made a further order that neither party are permitted to submit any further evidence, except for those that I requested. As the hearing had commenced and all evidence was required to be submitted and served in accordance with the Residential Rules of Procedures prior to the commencement of the hearing.

On May 30, 2019, the tenants filed a large volume of evidence, contrary to my Order. All evidence filed by the tenant contrary to my Order of April 2, 2019, will not be considered.

Issues to be Decided

Is the landlord entitled to a monetary order 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 parties agreed that the tenancy began on October 1, 2016. Rent in the amount of \$7,000.00 was payable on the first of each month. The tenant paid a security deposit of \$3,750.00. The tenancy ended on or about August 26, 2018.

The parties agreed a move-in condition inspection report was completed. The parties did not complete a move-out inspection as they disagreed to the condition of the rental unit at the end of the tenancy. File in evidence is a copy of the move-in condition inspection report.

The landlord claims as follows:

a.	Unpaid rent for August 2018	\$ 3,750.00
b.	Late payment of rent fee	\$ 225.00
c.	Water Damage	\$10,537.45
d.	Damage to landscape	\$ 5,852.00
e.	Paint damage	\$ 3,675.00
f.	Air Duct and dryer vent cleaning	\$ 399.00
g.	Door locks	\$ 392.00
h.	Irrigation damage, blind damage, light fixtures, light bulbs, hard wood flooring (value of deposits)	\$ 3,750.00
i.	Filing fee	\$ 100.00
	Total claimed	\$28,580.45

Unpaid rent for August 2018

The landlord testified that the tenants did not pay all rent for August 2018. The landlord stated that the tenants were paying rent in two payments. One payment on the first of the month and the other half on the 15th. The landlord stated that the tenants did not pay the second payment of rent for August 2018. The landlord seeks to recover unpaid rent for August 2018, in the amount of \$3,750.00.

The tenants testified that they did not pay the balance of rent for August 2018. The tenants stated that the landlord had their security deposit, which they felt it was not going to be returned.

Late payment of rent fee

The landlord testified that the tenants were late paying rent on several occasions. The landlord stated that under the tenancy agreement they are entitled to recover \$25.00 for each late payment of rent.

The landlord testified that they are claiming the late fee as rent was received on the following dates: October 2, 2017, July 24, 2017, January 3, 2017, April 2, 2018, May 3, 2018, June 5 and 18th, July 6, 2018 and all of rent for August 2018, was not paid.

The tenant testified that they always paid their rent. The tenant stated that they were paying the rent in two installments. The tenant stated that they are not sure the landlord's evidence is accurate.

Water Damage

The landlord testified that the tenants caused water damage to the property by flooding the toilet in the upper bathroom causing damage to the floor, and the drywall. The landlord stated that they had to hire a restoration company to repair the damage.

The landlord testified that they did not claim the damage against their insurance policy as the deductible was \$5,000.00 and their insurance would increase by about \$1,200.00 over a three year period. The landlord seeks to recover the cost of restoration in the amount of \$10,537.45. Filed in evidence are photographs, filed in evidence is a copy of letter from the landlord's insurance company. Filed in evidence is a receipt.

The tenant testified that there was a flood coming from the toilet on the second level that came down into the first floor causing damage to the drywall and the ceiling. The tenant stated that they cleaned up the water and notified the landlord; however, the landlord did not take care of this during their tenancy. The tenant testified that they believe there was a previous problem with the toilet overflowing as the ceiling had a bowed appearance. The tenant stated that after the toilet flooded, they did not use that toilet again. The tenant stated that they did not claim it against their insurance company; however, they have tenant insurance and their deductible was \$2,500.00. Filed in evidence is a copy of their insurance.

Damage to landscape

The landlord testified that the tenants did not maintain the yard in accordance with the tenancy agreement. The landlord stated that the trees and shrubs were overgrown and not pruned. The flower beds were not weeded and the lawn was dead. Filed in evidence are photographs taken at the end of the tenancy.

Filed in evidence is a statement of the landscaper, which in part reads.

“Being your gardener since September 2016 until present August 31, 2018, I note the property has not been maintained to the standard as it was in September 2016.”

[Reproduced as written]

The tenant testified that the gardens were overgrown when the tenancy started. The tenant stated there was never any grass, it was just moss. The tenant stated that they had their own gardener that did gardening. The tenant stated that the front garden was easy to maintain. The tenant disagrees with the testimony of the landlord and indicated they did the best they could.

Paint damage

The landlord testified that they had to repaint due to the tenants causing damage to the walls, ceiling, and trim. The landlord stated they had to pay to have these item repaired and painted. The landlord seeks to recover the cost of painting in the amount of \$3,675.00. Filed in evidence are colour photographs.

The tenant testified that they did not cause any damage. The tenant stated that they hung items on the walls, such as pictures. The tenant stated that they filled some of the holes with putty. The tenant stated that the copies of their photographs, provided by the landlord are not dated and are black and white which makes them difficult to review. The tenant stated that they are not responsible for painting.

Air Deduct and dryer vent cleaning

The landlord testified that the tenants did not clean the air vents or the dryer vent at the end of the tenancy. The landlord seeks to recover the cost of the cleaning in the amount of \$399.00. Filed in evidence is a receipt.

The tenant testified they did not clean the vents. The tenant stated that they are not responsible to clean the vents.

Door locks

The landlord testified that the tenant changed the garage door lock and the backdoor lock. The landlord stated all the doors were keyed so only one key was needed to access all the doors. The landlord stated that because the tenants changed the locks they had to have their locksmith install a new lock and they were able to have the other locks rekeyed so they would function with one key. The landlord seeks to recover the amount of \$392.00.

The tenant testified that they only changed the lock on the garage because it was rusted and difficult to open. The tenant stated that they did not change the backdoor lock.

Irrigation damage, blind damage, light fixtures, light bulbs, hard wood flooring

The landlord testified that they seek to retain the tenants' security deposit of \$3,750.00 for the above noted items.

The landlord testified that the tenants caused damage to the irrigation systems as some of the sprinkler heads were missing and the pipes cracked. The landlord stated that they have not had the system repaired and they do not know the cost to repair the system. Filed in evidence are photographs of the irrigation system.

The landlord testified that the tenants broke the shutter on the window. The landlord stated that the shutter was about 15 years old at the end of the tenancy. The landlord stated that they do not know the cost to replace or repair the shutter. Filed in evidence is a photograph of the shutter.

The landlord testified that the tenant removed the light fixtures during the tenancy and replaced them with their own. The landlord stated that at the end of the tenancy there were missing parts. The landlord stated that the parts are impossible to find. The landlord stated that it is impossible to determine the actual cost.

The landlord testified that some of the light bulbs were not matching and had water damage. The landlord stated that they do not know the actual cost of the light bulbs and indicate it is between \$100.00 and \$200.00.

The landlord testified that the tenants had a lot of furniture in the rental unit, causing damage to the hardwood floors. The landlord stated that the tenants did have coaster under the furniture. The landlord stated that they will have to resurface the wood floors and will have to look into various options. The landlord stated that they do not know the cost of the repair.

The tenant testified that they did not cause any damage to the irrigation system. The tenant stated that they never used the system during their tenancy.

The tenant testified that they did not cause any damage to the shutter as the only way you can open the shutter is by the handle.

The tenant testified that they did remove the light fixtures and this was discussed during the move-in condition inspection; however, they put everything back to its original state and all the fixtures were turned on at the end of the tenancy and everything was fine.

The tenant testified that they used the standard light bulbs for chandelier.

The tenant testified that they have a lot of antique furniture and they always use coaster or pads underneath the legs. The tenant stated that it was always their custom to protect the floors. The tenant stated that they had professional movers, to remove the furniture at the end of the tenancy.

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 7(2) of the Act states that 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

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.

Unpaid rent for August 2018

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

I accept the evidence of both parties that the tenants did not pay all rent owed for August 2018. I find the tenants breached the Act, as the tenants cannot withhold rent simply because they feel they are entitled to do so. I find the tenants' breached the Act, when they failed to pay all rent owed for August 2018 and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the balance of August 2018, rent in the amount of **\$3,750.00**.

Late payment of rent fee

In this case, I have reviewed the tenancy agreement. The agreement states the landlord is entitled to claim a late payment in the amount of \$25.00, if rent was late.

I accept the evidence of the landlord that the tenants were late paying rent. The landlord provided the dates of the late payments of rent. The tenant provided no evidence to the contrary and simply stated that they do not know if the dates are accurate. I find the landlord has met the burden of proof.

However, it does appear the landlord is claiming twice for the month of June 2018, which the Act only allows the late payment fee once per month. Therefore, I find the landlord is entitled to recover eight late payments fees for the total amount of **\$200.00**.

Damages

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

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

Water Damage

I am satisfied that the upper bathroom toilet flooded causing damage to the ceiling and drywall. This is supported by the testimony of both parties and the photographs. The move-in inspection does not support there was any damage to the ceiling at the start of the tenancy such as bowing.

I am satisfied that the damage was caused by the action of the tenants as there was no evidence that this was caused by a pipe breaking. I find the tenants have breached the Act, when they failed to make the necessary repairs and this caused losses to the landlord.

In this case, both parties had insurance that would have covered the cost of the repair. I find both parties failed to mitigate the loss as it would have been reasonable for either party to claim against their insurance policies.

In this matter the landlord is claiming the amount of \$10,537.45. This amount is significant greater than the cost of the deductible of \$5,000.00 and the three year penalty of \$1,200.00, which would have totaled the amount of \$6,200.00. I find the landlord failed to mitigate the loss, as required by section 7(2) of the Act. I find it

appropriate to ward the landlord the cost of the deductible and the penalties that they would have incurred had they used their insurance company in the total amount of **\$6,200.00.**

Damage to landscape

The move-in condition inspection report does not show that the parties inspected the gardens at the start of the tenancy, although the inspection is very detail in all other areas.

While I do accept the landlord provided a statement from their gardener, it just simply indicates it was not maintained to the level it was in September 2016, and lists area of concerns. It does not describe in any detail the condition of the gardens or lawn when the tenancy began. The evidence of the tenant was the gardens were overgrown and that there was no grass, just moss as a lawn.

I accept the tenancy agreement states the tenant is responsible for pruning all shrubs up to six feet. However, Residential Tenancy Policy Guideline (the "PG") #1 states that this this is generally the responsibly of the landlord to maintain the cutting of trees, and pruning.

Furthermore, the landlord did not provide any photographs of the gardens, and lawn prior to the tenancy commencing for me to review and compare with the move-out photographs. I am not satisfied that the landlord has met the burden of proof to support their claim. Therefore, I dismiss this portion of the landlord's claim.

Paint damage

In this case, I have reviewed the photographs of the landlord. I find the photographs do not support the tenants caused damage to the walls that was above normal wear and tear. The holes depicted in the photographs, support the holes were from the tenants hanging pictures, this was not excessive. The PG#1 states this is not considered damage as the tenants are entitled to hand pictures during their tenancy. I find it is the landlord's responsibility to fill and repaint these holes.

I also note that one of the photographs support there was very minor chipping on the edge of one wall. The photographs show that this area had been previously chipped as you can see the chips were simply painted over and not repaired. I find the small chips

do not support that this was caused by the neglect of the tenants; rather simply normal wear and tear.

While I accept one photograph shows a medium size chip in the trim; however, the photograph is blown up and I cannot determine the location of the damage.

I am also concerned the landlord did not provide the tenant with colour photographs, which only became apparent during the hearing. The Residential Tenancy Rules of Procedures stated that the evidence filed is to be provided in the same format. I find the landlord providing the tenants black and white photographs put the tenants at a disadvantage.

Based, on the above, I am not satisfied that the landlord has met the burden of proof that the tenants caused damage that were above normal wear and tear, which required painting. Therefore, I dismiss this portion of the landlord's claim.

Air Deduct and dryer vent cleaning

In this case, the landlord is claiming for duct cleaning and dryer vent cleaning. The PG #1, states that the landlord is responsible to clean air vent and dryer vents. I find cleaning of these items is the landlord responsibility and not the tenants. Therefore, I dismiss this portion of the landlord's claim.

Door locks

I accept that at least one of the locks was changed by the tenants, as the tenant admitted they changed the lock on the garage due to it rusting.

In this case, the landlord had to change the lock and have the entire premises rekeyed. Although I accept the landlord paid for this expense due to the lock being changed; however, the PG #40 states locks have a useful lifespan of 20 years. As the landlord did not provide the age of the locks, I cannot determine what, if any is the tenants' responsibility. I find the landlord has provided insufficient evidence. Therefore, I dismiss this portion of the landlord's claim.

Irrigation damage, blind damage, light fixtures, light bulbs, hard wood flooring

In this case, the landlord seeks to retain the security deposit for the above note items; however, the Act does not allow the landlord to keep the security deposit, simply because they feel entitled to the amount. The Act requires that the party claiming compensation to provide the actual cost of the repair or at the very least a proper estimate of the repair.

I accept the evidence of the tenant that they did not use the landlord's irrigation system during the tenancy. Further, I am not satisfied that any damage was caused by the action of the tenants as the move-in condition inspection report does not show the irrigation system was inspected. Therefore, I dismiss this portion of the landlord's claim.

I have reviewed the photograph of the shutter; the damage appears to be from one of the wood panels being disengaged from the lever that opens the shutter. This appears to be normal wear and tear and the aging process. I find the landlord has failed to prove the damage was caused by the neglect of the tenants. Therefore, I dismiss this portion of the landlord's claim.

The evidence of the landlord was that the light fixtures were missing parts at the end of the tenancy. The evidence of the tenant was the fixtures were return to their original condition. Even if I accept the evidence of the landlord, I cannot determine the value of the loss as the landlord did not provide the actual cost or even an actual estimate. I find the landlord has failed to provide sufficient evidence to the value of the loss. Therefore, I dismiss this portion of the landlord's claim.

The evidence of the landlord was that the light bulbs were mismatched and had to be replaced. The evidence of the tenant was that they used proper chandelier bulbs. Even if I accept the landlord evidence, I cannot determine the value of loss as the landlord did not provide the actual cost for the bulbs and was simply guessing to an amount at the hearing. I find the landlord has failed to provide sufficient evidence of the value of the loss. Therefore, I dismiss this portion of the landlord's claim.

In this case, the move-in condition inspection does not list any damage to the hardwood floors. The photographs show some damage. Even if I accept the evidence of the landlord that the damage was caused by the tenants' furniture, I cannot determine the value of the loss as the landlord did not provide the actual cost or estimate for repair. The evidence of the landlord was still that they were still considering their options. I find

the landlord has failed to provide sufficient evidence on the cost to repair the floor. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$10,250.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$3,750.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$6,500.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

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: June 13, 2019

Residential Tenancy Branch