



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, filed under the Residential Tenancy Act (the “Act”), for a monetary order for loss of rent and unpaid utilities, 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.

This hearing commenced on May 3, 2019, and interim decision was made which should be read in conjunction with this decision.

I have written in my interim decision that the landlord is entitled to keep the security deposit of \$700.00 pursuant to section 38(3) of the Act, as there was an outstanding monetary order in the amount of \$3,048.98 at the end of the tenancy and the landlord is entitled to keep the security deposit to offset the monetary order that was previously ordered. Therefore, I do not need to consider the security deposit at this hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for loss of rent and unpaid utilities?

Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The parties agreed that the tenancy began on October 1, 2017. Rent in the amount of \$1,400.00 was payable on the first of each month. The tenant paid a security deposit of \$700.00. The landlord stated the tenancy end on January 2, 2019. The tenant stated they vacated the rental unit on December 27 or 28, 2018 and does not remember the exact date.

The landlord claims as follows:

a.	Unpaid utilities for November & December 2018	\$ 110.43
b.	Window curtain	\$ 56.00
c.	Basement door damage	\$ 130.00
d.	Toilet plug	\$ 940.00
e.	Flooring damage	\$ 7,551.97
f.	Drywall repair and paint	\$ 300.00
g.	Bedroom door repair and paint	\$ 119.73
h.	Cleaning	\$ 140.00
i.	Loss of rent for January 2019	\$ 1,400.00
j.	Filing fee	\$ 100.00
	Total claimed	\$10,928.14

Unpaid utilities for November & December 2018

The tenant at the outset of the hearing stated they are not disputing the unpaid utilities.

Window curtain

The tenant at the outset of the hearing stated they are not disputing the window curtain.

Basement door damage

The landlord testified that the tenant caused damage to the basement door that is used by the occupant in the lower unit. The landlord stated that the tenant was angry and went down to the occupants unit and punched the door.

The landlord testified that the door was dented and they had to mud the door and then repaint. The landlord seeks to recover the cost of repairing the door in the amount of

\$130.00. Filed in evidence is a video of the incident which shows the tenant punching the door.

The tenant testified that they never saw any damage to the door.

Toilet plug

The landlord testified that the rental premise is on a septic system. The landlord stated that prior to this event they had the septic system pumped and everything was cleaned. The landlord stated that tenants of the units know that they are not to put anything foreign into the septic system.

The landlord testified that septic on the first level unit was backing up into the basement. The landlord stated they had the septic pump inspected and it was discovered that a rag had been put through the system.

The landlord testified that they believe the tenant put a rag down the toilet as there was obvious signs of water damage to the lower unit ceiling that water had overflowed from the tenant's toilet. The landlord stated that there also was obvious signs of damage to the tenant's toilet as the wax seal was broken from what they believe was extreme pressure used to flush the rag, which caused the toilet to shift.

The tenant testified that it is a mystery to them how a rag would have gone down into the septic pipe. The tenant stated that there are three other units in the house and there is no way for them to determine it came from their unit. The tenant stated that they deal with leaks on a daily basis. The tenant stated that the landlord is claiming they put something in the toilet causing the toilet to shift, which is impossible. The tenant denied putting anything down the toilet.

Flooring damage

The landlord testified that in July 2016, the floors were replaced in the rental unit. The landlord stated at the end of the tenancy the floors had significantly damage. The landlord seeks to recover the cost of the floor in the amount of \$7,551.97.

The tenant testified that when they moved into the rental unit the floors were not in perfect condition. The tenant stated that the floor that was installed was done in a substandard way, and was not done in a professional manner. The tenant stated that they did not cause any damage to the floor.

Drywall repair and paint

The landlord testified that the tenant caused damage to the walls. The landlord stated that 10 % of the damage was from the tenant hanging pictures and the other 90 % was beyond normal wear. The landlord stated that the tenant had pulled the towel rack from the wall which had to be repaired. The landlord seeks to recover the drywall repair and paint in the amount of \$300.00.

The tenant testified that they did hang pictures on the walls which the holes are normal wear and tear. The tenant stated other nicks and dent were likely from moving furniture in and out of the rental unit. The tenant stated that there was no significant damage beyond wear and tear. The tenant stated that the towel rack fell off from normal use and that the towel rack was not fastened into a wall stud.

Bedroom door repair and paint

The landlord testified that the tenant's daughter got locked in a bedroom and the tenant broke the door, which also caused damage to the frame. The landlord seeks to recover the cost to repair the door in the amount of \$119.73.

The tenant testified that they had to break the door down because their child had locked themselves in the bedroom. The tenant stated that there was a lock on the door in which they did not have a key. The tenant stated that their child was only 18 months old and it was a safety issue.

Cleaning

The landlord testified that the tenant did not tell them that they had vacated the rental unit. The landlord stated that there was a lot of moisture in the unit, causing mould on the window frames, which they had to clean. The landlord stated that the tenant did not clean the appliances, dry vent and there was garbage left behind. The landlord seeks to recover the cost of cleaning in the amount of \$140.00.

The tenant testified that they left the rental unit better than when they moved in.

Loss of rent for January 2019

The landlord testified that the tenant breached the Act, by failing to pay rent. The landlord stated that they did not know the tenant had vacated the rental unit until January 2, 2019.

The landlord testified that it took them two weeks to clean and paint the rental unit. The landlord stated that they did not have sufficient notice to get a new renter for January 2019 and due to the time of year the rental unit sat empty for two months. The landlord seeks to recover loss of rent for January 2019, in the amount of \$1,400.00.

The tenant testified that they thought they left before the end of December 2018.

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.

Unpaid utilities for November & December 2018

The tenant agreed that they owed utilities for November and December 2018. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$110.43.**

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.

Window curtain

The tenant agreed that they are responsible for the window curtain. Therefore, I find the landlord is entitled to recover the cost of the window blind in the amount of **\$56.00**.

Basement door damage

I accept the evidence of the landlord that the tenant punch the door of the occupant living on the first floor. This is supported by the video filed in evidence.

I further find it is more likely than not the door was dented from the punch based on the video. I find the tenant's action of punch another occupant's door unreasonable. Therefore, I find the landlord is entitled to recover the cost of repairing the door in the amount of **\$130.00**.

Toilet plug

I am not satisfied that the landlord has provided sufficient evidence that the tenant purposely put a rag down the toilet cause the septic pump to be blocked as there are two other rental units sharing the septic system..

While the landlord has provided a photograph of the ceiling in the lower unit to support damage; however, the photograph filed in evidence of the ceiling does not look like water damage that you would expect to see from water seeping into the drywall. Rather, the photograph looks like some foreign substance is on the ceiling which would have been for the interior of the unit. I also note I have no way to determine where this photograph was taken as it does not show the room.

Based on the above, I find I must dismiss this portion of the landlord's claim.

Flooring damage

I am not satisfied that the landlord has provided sufficient evidence that the tenant caused damage to the floor that required the floors to be replaced. The landlord did not provide a move-in condition inspection report to show the conditions of the floor at the start of the tenancy, so I can compare the inspection report with the photographs.

Based on the above, I find I must dismiss this portion of the landlord's claim.

Drywall repair and paint

I am not satisfied that the landlord has provided sufficient evidence to support the walls were damaged beyond normal wear and tear. The landlord did not provide a move-in condition inspection report to show what the condition of the walls were at the start of the tenancy, so I can compare the inspection report with the photographs. Further, the majority of the photographs support regular wear and tear.

Further, I find the towel rack likely fell off the wall from normal use.

Based on the above, I find I must dismiss this portion of the landlord's claim.

Bedroom door repair and paint

I accept the evidence of both parties that the bedroom door was broken by the tenant. While I accept the tenant broke the door because their young child had somehow locked themselves in the room; however, that was from the tenant not properly supervising their child. I find the tenant breached the Act, when they failed to repair the damage they caused to the door. I find the amount claimed by the landlord is reasonable. Therefore, I find the landlord is entitled to recover the amount of **\$119.73**.

Cleaning

I have reviewed the photographs filed in evidence by the landlord. The photographs show the windows frames were covered in mould, food left in the refrigerator and the interior of the dryer dirty. The photographs also show there was furniture left in the rental, a bed and garbage on the deck. The Residential Tenancy Policy Guideline #1 required the tenant to clean these items at the end of the tenancy and remove all items from the premises. I find the tenant has breached the Act when they failed to leave

these items reasonably clean. I find the amount claimed for cleaning is reasonable. Therefore, I grant the landlord for cleaning the amount of **\$140.00**.

Loss of rent for January 2019

In this case, the tenancy ended because the tenant failed to pay rent and on December 11, 2018, an Arbitrator dismissed the tenant's application to cancel the notice to end tenancy.

Under the Act the landlord is entitled to be in the same position as if the tenant did not breach the Act, this includes loss of rent.

In this case, the evidence of the landlord was they did not know the tenant had left the rental unit until January 2, 2019. The evidence of the tenant was they left on the 27 or 28th of December 2018

I find the landlord is entitled to loss of rent for January 2019, as there would be no way for the landlord to find a new renter by January 1, 2019, if they had no idea the tenant vacated earlier. Therefore, I find the landlord is entitled to recover loss of rent for January 2019, in the amount of **\$1,400.00**.

I find that the landlord has established a total monetary claim of **\$2,056.16** comprised of the above described amounts and the \$100.00 fee paid for this application.

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

Conclusion

The landlord is granted a monetary order in the above noted amount.

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: July 10, 2019

Residential Tenancy Branch