



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 filed by the landlord under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit, for loss of rent, for an order to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee.

This matter commenced on June 11, 2019 and was adjourned due to insufficient time. The interim decision should be read in conjunction with this decision.

On July 26, 2019, the reconvene hearing proceeded. The landlord did not attend, and the landlord’s application was dismissed, and the tenant was granted a monetary order for the return of their security deposit.

On August 6, 2019, the landlord applied for a review consideration, which was granted on the basis that the landlord was unable to attend as a result of medical issues. The matter was returned to the original Arbitrator, myself, to continue with the original hearing. Therefore, I find it appropriate to cancel the decision and order made on July 26, 2019.

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.**

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

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

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 January 12, 2012. Current rent in the amount of \$900.00 was payable on the first of each month. The tenant paid a security deposit of \$437.50 and a pet damage deposit of \$437.50. The tenancy ended on November 30, 2018, by an order of possession which was granted at a previous hearing.

The parties agreed a move-in condition inspection report was completed six month after the tenancy commenced. Filed in evidence is a copy of the move-in condition inspection report.

The landlord claims as follows:

a.	Cleaning and labour	\$ 1,964.50
b.	Paining	\$ 1,076.48
c.	Flooring and labour	\$ 5,486.29
d.	Glass woodstove	\$ 156.25
e.	Kitchen Countertop	\$ 1,231.76
f.	Blinds	\$ 386.95
g.	Garbage removal	\$ 172.50
h.	Kitchen sink	\$ 407.30
i.	Stove	\$ 250.00
j.	Fuel	\$ 579.84
k.	Office	\$ 66.95
l.	Change locks	\$ 26.87
m.	Loss of rent	\$ 900.00
n.	Filing fee	\$ 100.00
	Total claimed	\$12,805.73

Cleaning and labour

The landlords testified that the tenant left the unit in a deplorable state. The landlord stated that the walls were covered in dirt, food. The landlord stated that every wall had to be scrubbed. Filed in evidence are photographs of the walls.

The landlord testified that the windows, windows sills, were extremely dirty and covered with mould. The landlord stated that the windows inside the front entrance were thick with mould totally covering the window. Filed in evidence are photographs of the windows.

The landlord testified that the kitchen and all the appliances were left dirty, and the vinyl back splash was covered in dirt. The landlord stated that the tenant used the kitchen window to allow their cats to go in and out of the premises and you can see the dirt going straight up the wall and out the window where the tenant had built a ledge outside for their cats. Filed in evidence are photographs.

The landlord testified that bathroom was dirty, and all the bedrooms were not cleaned. Filed in evidence are photographs.

The tenant testified that was cleaned, they vacuumed and did a basic clean. The tenant stated that they pay a cleaning person to come to the rental unit on a regular basis. The tenant stated that they believe the landlord's photographs are from a previous tenancy.

The tenant testified that the landlord is claiming for double receipts filed in evidence and they do not know why the landlord would need three gallons of bleach for cleaning, door hinges, painters' tape and a 9 pack of light bulbs.

NE witness for tenant testified that they are the tenant's mother. NE stated they were at the house during the month of November 2018 and it was clean, except there may have been some green buildup by the back-patio door from what they believe was from lots of tree debris that blows in.

NE testified that the tenant had a regular cleaning person that they think comes about once per month. NE stated that this person was there shortly before the tenancy ended.

NE testified that the stove either had a roller missing or no rollers and it could not be moved to clean behind.

JE witness for tenant testified that they moved into the premises in 2013 for approximately 5 months. JE stated that when they got to the house it was an older home, which was dingy and unkept. JE stated that the tenant kept a very clean house and there was someone there to help clean on a weekly basis.

CW witness for tenant testified that they cleaned off and on for the tenant from 2012 to 2016. CW stated that they did not do any cleaning for the tenant in the last two years of the tenancy.

VW witness for tenant testified that all the tenant's stuff was out of the house and there was nothing left behind. VW stated that unit was left neat and tidy.

The tenant responded that they have other cleaners in the house during the last two years of their tenancy.

Painting

The landlord testified that the rental unit needed to be painted at the end of the tenancy. The landlord stated one room was painted purple, the windows sills were so bad due to neglect and the walls had marks from drawing lines to hang a television and there were large screw holes everywhere, including holes to hang up a blanket or something. The landlord stated that the rental unit was painted three years before the tenancy commenced.

The tenant testified that they never painted the room purple as it was that colour when they moved into the premises. The tenant stated that the premises was not freshly painted when they moved in and any painting is the landlords responsibility. Filed in evidence is a text message between the tenant and the previous renter.

CH witness for the tenant testified that they knew the previous tenant and the room was purple at that time and it was purple when they were hired to clean the rental unit at the start of the tenancy.

CH witness for tenant testified that they did a move-in clean for the tenant when they took possession of the unit in 2012. CH stated that the room was purple when the tenant took possession. CH stated that they knew the previous renter and it was purple at that time.

Flooring and labour

The landlord testified that the carpet was left so dirty with stains and dirty they had to have the flooring replaced. The landlord stated that the carpets were approximately 3 years old when the tenancy commenced. Filed in evidence are photographs.

The tenant testified that the carpets were not in good condition when they moved into the premises. The tenant stated that they vacuumed the carpets. The tenant stated that they believe they rented a steam cleaner to clean the carpets one time during their tenancy. The tenant stated that they have one dog and two cats.

JM testified that the carpets were not three years old when they stayed at the unit. They were not plush.

Glass woodstove

The landlord testified that the glass in the woodstove was broken during the tenancy and was replaced with a metal panel.

The tenant testified that there was never glass in the woodstove that there was a metal panel when they moved in.

NE witness for the tenant testified that they did not notice anything about the glass in the woodstove, except that there was glass in the door.

Kitchen Countertop

The landlord testified that the tenant caused damage to the kitchen counter as it appeared be broken from what they suspect was someone crawling through the window as it was broken down the center. The landlord stated that the laminate also had hundreds of burn marks. The landlord stated that the counter was approximately 20 years old at the time. Filed in evidence are photographs.

The tenant testified that the kitchen was super damaged and messed up when they moved into the rental unit.

Blinds

The landlord testified that the blinds were so dirty and covered with mould and dust. The landlord stated that the blinds were approximately eight years old when they were replaced. The landlord seeks to recover the cost of blinds in the amount of \$386.95.

The tenant testified that the blinds were not new when they moved in to the rental unit. The tenant stated that the sliding glass blind was made of hard plastic. The tenant stated they did not clean the blinds during their tenancy.

Garbage removal

The landlord testified that the tenant left food and other garbage on the premises, which they had to have it removed and disposed of. The landlord seeks to recover disposal fees in the amount of \$172.50.

The tenant testified that they did not leave any garbage in the yard. The tenant stated that the garbage was from the downstairs renter's garden.

Kitchen sink

The landlord testified that the kitchen sink was bent by what they believe was someone crawling through the window. The landlord stated that they could not reinstall the sink into the new countertop because it would not sit flat due to the bend.

The tenant testified that there was a piece of wood missing which could be seen when they moved into the premise. The tenant stated that is why it caused the countertop to sag and maybe causing the sink to bend. The tenant stated that they are not sure about the sink; however, the landlord has purchased a luxury sink that is double the value of the sink.

Fuel

The landlord testified that they seek to recover the cost of fuel as they had to make trips to the dump to remove garbage, and they had to get all the supplies needed to fix the rental unit.

The tenant testified that they are not sure what the landlord needs fuel for. The tenant stated some of the receipts are dated prior to their tenancy ending.

The landlord responded that they are related to issues of the tenancy that was the subject of previous hearing.

Stove

The landlord testified that the stove cannot be cleaned, and it was unusable. The landlord stated that the stove was purchased in 2010. The landlord stated they did not purchase a new stove as they were able to find a second-hand stove that was about five years old. Filed in evidence are photographs.

The tenant testified the stove was not working probably during the tenancy and two elements did not work. The tenant stated they were not too worried about it, as they did not do a lot of cooking.

NE witness for the tenant testified that they used the stove several time when at the rental unit. NE stated that the stove was not safe to use as the elements of the stove top would fluctuate and you would have to be extremely careful. NE stated that the oven was working fine.

EM witness for the tenant testified that there was one element on the stove that did not work. EM stated that the stove was too old to replace the element.

MS witness for the tenant testified that they house sat for a little while to care for the pets. MS stated that stove top worked great and they even made fries.

Office

No evidence was required to be heard as both parties are responsible for their own cost of preparing for the hearing.

Change locks

The landlord testified that the tenant returned some keys at the end of the tenancy; however, those keys would not work in the door. The landlord stated that they had to change the locks to the rental unit. The landlord seeks to recover the amount of \$26.87.

The tenant testified that they returned the keys to the rental unit, which was witness by several people. The tenant stated that it was only through the landlord's application that this became an issue.

Loss of rent

The landlord testified that due to the deplorable state the rental unit was left in by the tenant they were unable to re-rent the unit for any portion of December 2018. The landlord seeks to recover loss of rent in the amount of \$900.00.

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.

Evidentiary weight of a condition inspection report is defined in the Residential Tenancy Regulations

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

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.

Cleaning and labour

I accept the landlord's evidence over the tenant's that the rental unit was left dirty. The tenant's witness CH, who cleaned the premises for the tenant from 2012 to 2016, testified that they had not been at the rental unit to clean in two years. Although the tenant argued that they had other cleaners come in, I find that highly unlikely because it makes no sense to call a witness that cannot state the condition of the rental unit at the end. It would have been reasonable for the tenant to call the cleaner who cleaned the unit at the end of the tenancy.

I accept the photographic evidence of the landlord, which show the rental unit extremely dirty. I do not accept that the photographs were taken from a prior renter. Further, the text message from DS states that they left the rental unit clean and there were no issues with the return of the security deposit. Which supports the move-in condition inspection report.

I find the tenant breached the Act, when they failed to maintain a reasonable state of tenancy during the tenancy and when they failed to clean the unit at the end of the tenancy.

I am satisfied that the landlord incurred a loss; however, I am not satisfied on the amount claimed. I will allow the cost of the cleaner's receipt in the amount of \$301.75, and I have determined a reasonable amount for cleaning supplies is the amount of \$100.00. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount of **\$401.75**.

Painting

The evidence supports the paint in the rental unit was approximately 10 years old at the end of the tenancy. I find the paint had exceed the useful lifespan of 4 years.

Further, I am not satisfied the tenant painted the room purple as the colour of the rooms are not indicated in the move-in condition inspection report. Further, I accept the text messages filed in evidence that the previous renter DS painted the room purple. Therefore, I dismiss this portion of the landlord's claim.

Flooring and labour

The move-in condition inspection report indicates the flooring was damaged at the start of the tenancy. As there were no photographs of the flooring at the start of the tenancy to compare what was pre-existing, I am unable to determine what damage is the tenant's responsibility.

However, I am satisfied that the tenant did not clean the carpets on a regular basis as required, as the evidence of the tenant was that they may have cleaned them once during their tenancy. I find the photographs submitted by the landlord support the carpets were in a horrible dirty state at the end of the tenancy. There is no dirt noted in the move-in condition inspection report.

I find the tenant did not comply with the Residential Tenancy Policy Guideline 1 as they are required to have the carpets cleaned on a regular basis. Simply because the carpets were not in good condition does not give the tenant the right to neglect the landlord's property.

As I am satisfied that the tenant breached the Act, and the flooring was not in good condition at the start of the tenancy, I find a nominal amount is appropriate to recognize the tenant's breach of the Act. I have based this amount on what would have been a reasonable cost had the tenant cleaned the carpets during their tenancy. Therefore, I award the landlord the amount of **\$500.00**.

Glass woodstove

I accept the evidence of the landlord that the glass to the woodstove was broken during the tenancy. I do not accept the tenant's evidence that there was always a metal plate. This is not supported by the tenant's witness NE. I find the tenant breached the Act, when they failed to repair the woodstove. Therefore, I find the landlord is entitled to recover the cost of the glass in the amount of **\$156.25**.

Kitchen Countertop

The move-in condition inspection report shows the countertop was damaged at the start of the tenancy. As the landlord has not provided any before picture, I am unable to determine what damage was actually cause by the tenant. Further, the countertop was approximately 20 years old, which is close to the useful lifespan and replaced with a better product. I find the landlord has not suffered a loss. Therefore, I dismiss this portion of the landlord's claim.

Blinds

I am satisfied based on the evidence of the landlord, the move-in condition inspection report that the blinds were in good condition at the start of the tenancy. The blinds were left in a stated of dirtiness that required the landlord to replace the blinds. I find the tenant breached the Act, when they failed to clean the blinds during the tenancy, and when they allowed animals to use the window as a door. This is not normal wear and tear, rather it is neglect.

As the blinds were approximately 8 years old at the time of the replacement and the useful lifespan of the blinds is 10 years, I find the landlord is entitled to the depreciated value of **\$77.39**.

Garbage removal

I do not accept the tenant's evidence that they did not leave any garbage on the property. The tenant's evidence was that it was from another tenant.

However, the tenant submitted a previous decision which was made on June 13, 2018, and at that hearing the tenant testified the majority of the garbage was theirs. The tenant presented no evidence that they had the garbage removed after the June 13, 2018, hearing. I find the tenant breached the Act, when they failed to remove their garbage. Therefore, I find the landlord is entitled to claim the amount of **\$172.50**.

Kitchen sink

I am satisfied based on the evidence of the landlord, the move-in condition inspection report that the sink was in good condition at the start of the tenancy.

I do not accept the tenant's evidence that the sink would be bent simply because a wood board was missing, I find it more likely than not that is damaged from someone crawling through the kitchen window. Further, it was the tenant's responsibly to notify

the landlord if a problem existed. I find the tenant breached the Act, when they failed to repair the sink at the end of the tenancy.

However, I do accept the tenant's evidence that the sink the landlord purchased far exceeded the quality of the sink that was damaged. Therefore, I will award a nominal amount to recognize the breach of the Act in the amount of **\$80.00**.

Fuel

I am not satisfied that the receipts submitted for fuel are strictly related to the end of the tenancy, as there are some receipts dated prior. While I accept these receipts may have been related to previous hearing, those cannot be claimed at a later date.

While I accept some are related to the landlord have to dump garbage and other things required to be repaired in the rental unit. I find these are not the sole responsibility of the tenant. Therefore, I will grant the landlord a nominal amount as I have found the tenant did not remove the garbage from the premise. Therefore, I grant the landlord the amount of **\$50.00**.

Stove

I accept the evidence of the landlord that the stove was in good condition at the start of the tenancy. This is supported by the move-in condition report.

While I accept there may have been a problem with one element, I do not accept that the stove was so old that it could not be replaced. The replacement of the element is the landlord's responsibility if notified a problem existed.

In this case the tenant's witness provided conflicting evidence. One witness stated that the stove element heat fluctuated and the other said it worked perfect. Therefore, I cannot put any weigh on their testimony.

However, I am satisfied the photographs submitted evidence show the stove was left in an extremely dirty state. The stove was approximately eight years old at the time of replacement, which was replaced with a stove that was approximately five years old.

As the useful lifespan of a stove is 15 years old, I find the depreciated value was \$116.66; however, the stove purchased has three additional years of lifespan of a value

of \$49.98. Therefore, I find the landlord is entitled to recover the difference in the two amounts for a total of **\$66.68**.

Office

Cost to prepare for hearings is not recoverable under the Act, both parties are responsible for their own costs. Therefore, I dismiss this portion of the landlord's claim.

Change locks

The evidence of the tenant's was they returned the keys to the rental unit. The evidence of the landlord was the ones returned did not work in the door. I find both versions are probable. As the onus is on the landlord to prove the keys did not work, I find I must dismiss this portion of the landlord's claim.

Loss of rent

I am satisfied that the landlord could not rent the premise to due to the dirty state the tenant left the unit; however, I am also satisfied that the premise could not be rented due the unit being old and outdated. Therefore, I will grant the landlord loss of rent for one week, as that would be a reasonable amount of time to clean the unit and remove garbage in the amount of **\$225.00**.

Based on the above, I find the landlord has established a total monetary order of **\$1,829.57**, comprised of the above amount and the cost of the filing fee.

I order that the landlord retain the security deposit of **\$437.50** and pet damage deposit of **\$437. 50** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$954.57**.

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 and may keep the security deposit and pet damage 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: October 23, 2019

Residential Tenancy Branch