



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

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, for damages to the unit, for an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim and to recover the cost of 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 tenant confirmed receipt of all evidence. The landlord and the Residential tenancy did not receive any evidence from the tenants. The tenant stated that they provide a copy of evidence by mail. The tenant stated they are prepared to proceed without their evidence.

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 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 April 1, 2016. Rent in the amount of \$884.34 was payable on the first of each month. The tenants paid a security deposit of \$400.00 and a pet damage deposit of \$200.00. The tenancy ended on March 1, 2020.

The parties agreed a move-in and move-out condition inspection report was completed. The tenants did not agree with the move-out condition inspection report.

The landlord claims as follows:

a.	Loss of rent 1 day	\$ 28.53
b.	Cleaning	\$ 220.00
c.	Repairing bathtub	\$ 322.01
d.	Replacing lightbulbs and covers	\$ 40.00
e.	Bedroom blind	\$ 35.00
f.	Broken patio glass and damage blind	\$ 397.01
g.	Damaged flooring	\$ 246.00
h.	Filing fee	\$ 100.00
	Total claimed	\$1,388.55

Items a – e

At the outset of the hearing the tenant indicated that they are not disputing items a – e.

Broken patio glass and damage blind

The landlord's agents testified that they believe that the tenant's boyfriend shot at the window causing damage to the patio glass and blind. The agents stated that the tenant should be responsible because this person is known to her.

The male tenant testified that they rented the premise for his daughter to live in. The tenant stated that their daughter was not at home when the window was shot by someone from outside. The tenant stated that it is a real possibility that the person alleged by the landlord is responsible; however, no one knows for certain at this point.

The male tenant testified that this person was not a guest of their daughter and in fact there was a restraining order on this person.

Damaged flooring

The landlord's agents testified that the flooring was new at the start of the tenancy and it was damaged by a flood at the end of the tenancy. The agents stated that they are not sure how the flood occurred as they were not notified by the tenants. The agents stated it could have also been damaged by wet mopping or the tenant's cat urinating on the floor.

The male tenant testified that they inspected the floor after their daughter had moved her belongings as they would have no issue paying for damage if it was caused by their child.

The male tenant testified that there was never a flood in the rental unit during the tenancy, and their daughter does not have a wet mop, only a Swiffer. The tenant stated that they inspected their daughter's furniture for any signs of a flood, such as the box spring, which was directly on the floor and the footing of other furniture. The tenant stated there was no signs of water damage to her belongings.

The male tenant testified that they did some investigating by speaking to neighbors. The tenant stated that neither neighbors knew nothing about any flooding during the tenancy, which their daughter would have sought their help, if such a flood occurred.

The male tenant testified that during these conversations they found out that there was a flood in the unit sometime in 2015, and the flooring was replaced after that. This was shortly before the tenancy started.

The male tenant testified that because the damage is so general, and not consistent with what you would expect, such as spilling a drink, as it is throughout the flooring. The tenant stated that it appears that the damage could be coming from moisture from under the floor. The tenant stated that they informed the landlord of the possibility.

The landlord's agent argued that the flooring was new and was damaged at the end of the tenancy and the tenant is responsible for the cost, on the depreciated value. The agents stated that the previous flood is not relevant.

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

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.

Items a – e

In this case, the male tenant accepts the responsibility for these items listed in the above table. Therefore, I find the landlord is entitled to recover the cost for these items in the amount of **\$645.54**.

Broken patio glass and damage blind

I accept the evidence of the landlord's agents that someone shot at the rental unit causing damage to the window and patio blind. While I accept the tenant may have known this person, they were not a guest of the tenant. This person was prohibited from having contact with the female tenant by way of a restraining order.

I find the tenant cannot be held responsible simply because they know this person. The female tenant had a restraining order against this person, and she was the victim of a serious criminal offence by someone shooting at the rental unit. Thankfully, no one was injured. I find the landlord's claim unreasonable as you cannot hold a victim of crime responsible for the actions of their abuser. Therefore, I dismiss this portion of the landlord's claim.

The landlord should keep in contact with the police on this issue as they may be entitled to restitution should this person be charged and convicted, or they have the option of going through their insurance company to recover their loss.

Damage flooring

I accept the evidence of both parties that the floor was in good condition at the start of the tenancy and was water damaged at the end. The tenant denied they caused the damage in the move-out condition inspection report.

I am not satisfied that the damage was caused by the action or neglect of the tenants for the following reasons.

Firstly, if there was a flood within the rental unit there would have been some damage to the tenant's property, such as the box spring that was on the floor. I accept the male tenant inspected his daughter's furniture and found no evidence of a flood, I found the male tenant to be credible.

Secondly, if it was from the tenants wet mopping the floor, it would only be expected to be around the furniture areas, not throughout the premise as suggested. Although I accept this is a possible cause of damage. However, it is just as possible that there is an issue with moisture in the foundation as presented by tenant from a previous flood. While the landlord's agents argued this is not relevant, I find I must consider all the evidence. The landlord did not provide an expert opinion from a qualified person for me

to consider, which would have been reasonable as they knew the tenants were disputing this issue.

Thirdly, I do not accept the damage was caused from the tenant's cat urinating on the floor. Cat urine is foul smelling and it would be impossible to cause damage to the floor without leaving a smell. No such smell was present.

Base on the above, I find the landlord has not met the burden of proof that the damage was caused by the actions or neglect of the tenants. Therefore, I dismiss this portion of their claim.

I find that the landlord has established a total monetary claim of **\$745.54** 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 **\$400.00** and pet damage deposit of **\$200.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$145.54**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: April 22, 2020

Residential Tenancy Branch