



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNSD, MNDC, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to sections 67, 38 and 72 of the *Residential Tenancy Act*. The landlord applied for a monetary order to recover loss of income, the cost of cleaning, repair, and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

These parties have both filed applications against each other and hearings took place on January 20, May 19, June 15 and July 07, 2020. The file numbers are located on the first page of this decision.

Issues to be decided

Is the landlord entitled to a monetary order to recover loss of income, the cost of cleaning, repair, and the filing fee? Is the landlord entitled to retain the security deposit in satisfaction of his claim?

Background and Evidence

The background facts are generally undisputed. The parties agreed that the tenancy started in June 2017 and that the monthly rent was \$1,127.50 due in advance on the 1st of each month. Prior to moving in the tenant paid a security deposit of \$550.00 which the landlord is currently holding.

The rental unit consists of a 20-year-old half duplex which the landlord purchased just prior to the start of this tenancy. A move in inspection was not conducted.

On October 31, 2019, the tenant provided notice to end the tenancy effective November 30, 2019. On November 07, 2020, the landlord carried out an inspection after providing adequate notice to the tenant. The landlord stated that he found the rental unit was damaged, cluttered and had a bad odour. He also noticed that considerable repairs were required and decided that the unit was not in a condition to show to prospective tenants. The landlord filed photographs to support his testimony.

The landlord noticed that a portion of the carpet was cut out in the closet that held the hot water tank and in the adjoining room along the baseboard. The tenant stated that there was a lot of condensation from the hot water tank and the carpet was soaked with water. The tenant agreed that he did not inform the landlord of the problem, prior to cutting away the carpet.

The landlord testified that there was nothing wrong with the hot water tank and it is currently in use without problems of condensation. The landlord stated that the tenant admitted to air drying his laundry near the hot water tank and this was probably the cause of the humidity and the water damage to the carpet in the enclosure in which the hot water tank is located.

On November 25 and 29, 2020, the landlord emailed the tenant regarding setting up an appointment for a handover and move out inspection. The tenant responded late on November 29, 2020 informing the landlord that he would leave the key in the suite after 1:00pm. The tenant's reply did not address a time to do the move out inspection.

During the hearing the tenant stated that he was busy moving out with two young children and did not have the time to participate in an inspection. The landlord carried out the inspection himself after the tenant moved out and filed photographs depicting the condition of the rental unit at the end of tenancy.

The landlord testified that the tenant left the unit in a dirty and damaged condition with a foul odour. The landlord's initial application had estimates to restore the unit but prior to this hearing, the landlord had carried out repairs and cleaning and provided actual costs accompanied by receipts.

The landlord stated that the work took almost 4 months to complete and a new tenant moved in on April 15, 2020. The landlord is claiming a loss of income for December 2019.

The landlord is claiming the following:

1.	Fix Hole in wall	\$31.50
2.	Toilet seat	\$46.86
3.	Toilet paper holder	\$30.28
4.	Oven range element	\$15.75
5.	Window – sliding mechanism	\$7.88
6.	Window – lock	\$19.06
7.	Window screens	\$325.50
8.	Carpet	\$442.05
9.	Closet doors	\$495.19
10.	Apartment cleaning	\$196.88
11.	Blinds	\$152.30
12.	Loss of rent for December 2019	\$1,127.50
13.	Filing fee	\$100.00
	Total	\$2,990.75

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find as follows:

1. Fix Hole in wall - \$31.50

The tenant agreed to cover the cost to fix the hole and therefore I grant the landlord his claim in the amount of \$31.50.

2. Toilet seat – \$46.86

The landlord testified that he had replaced the toilet seat 3-4 months before the end of the tenancy, and that the tenants did not advise him of any problems with the new toilet seat, during the tenancy. The tenant stated that the seat broke soon after it was replaced and agreed that he did not notify the landlord of the broken seat. If the seat was defective, the landlord could have returned it to the vendor for a replacement.

Since by failing to inform the landlord of the problem, the tenant failed to take steps to mitigate the loss. The landlord submitted a receipt for the amount claimed plus labour. I find that the landlord is entitled to his claim for the cost to replace the toilet seat.

3. Toilet paper holder - \$30.28

The landlord filed a photograph that shows a broken toilet paper holder. The tenant claimed that it was broken prior to the start of tenancy and that he and his family kept the toilet roll on the countertop. I do not accept the testimony of the tenant as I find it is unlikely and impractical that a toilet roll would be placed on a countertop while in use. I find on a balance of probabilities that the damage to the holder was beyond wear and tear and therefore I award the landlord his claim.

4. Oven range element - \$15.75

The tenant did not dispute this claim and therefore I award the landlord \$15.75.

5. Window – sliding mechanism - \$7.88

The tenant agreed that on occasion, he would allow his children to climb out of the windows. I find it more likely than not that that this action caused damage to the window sliding mechanism and I prefer the evidence of the landlord over that of the tenant for this claim. Therefore, I grant the landlord his claim to repair the window.

6. Window – lock - \$19.06

The landlord stated that the bedroom window lock was broken at the end of tenancy. The tenant denied breaking the lock and stated that it was broken prior to the start of tenancy. The landlord replied that he was not sure about whether the lock was broken prior to or during the tenancy but stated that the tenant failed to inform him of the broken lock. In the absence of a move in inspection report, I will give the tenant the benefit of the doubt and dismiss the landlord's claim.

7. Window screens - \$325.50

The landlord testified that seven window screens were damaged and filed photographs to support his testimony.

Based on the photographs., I find that the damage to the screens was not a result of wear and tear and therefore I find that the landlord is entitled to his claim.

8. Carpet - \$442.05

The landlord testified that the carpet was heavily stained and had a bad odour. The tenant also cut out a portion of the carpet without the landlord's permission. The tenant denied the staining of the carpet and stated that he always covered the carpet with sheets or rugs to prevent staining. The tenant filed photographs to support his testimony. I find that the landlord did his best to mitigate his losses and is claiming only a portion of what it cost him to have the carpet replaced with laminate.

Based on the above, I find that the landlord is entitled to his claim.

9. Closet doors - \$495.19

I accept the landlord's testimony that the closet doors were removed and stored near the hot water tank which caused water damage to the wood of the doors. In addition, the landlord stated that the hardware was damaged or missing and filed photographs and an invoice to support his claim. I find the landlord is entitled to his claim.

10. Apartment cleaning - \$196.88

The landlord filed photographs of the rental unit which depict a dirty stove and dirt scattered all over the rental unit. The tenant's defense was that the rental unit was dirty at the start of tenancy and therefore he did not have to leave it in a better condition than when he moved in. I find that the landlord is entitled to his claim.

11. Blinds - \$152.30

I accept the landlord's testimony and evidence that the blinds were left in a damaged condition and the landlord incurred a cost of \$152.30 to replace the damaged blinds. I find the landlord is entitled to his claim.

12. Loss of rent for December 2019 - \$1,127.50

I accept and agree with the landlords that the unit was left in a damaged and dirty condition and had an odour of feces and urine.

Based on the photographs and testimony, I find that the landlord had to carry out significant repairs, mould removal and cleaning before the unit was in a condition that it could be rented out.

Residential Tenancy Policy Guideline #3 addresses claims for rent and damages for loss of rent. This guideline states even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent.

Based on the above, I find that the landlord is entitled to his claim for loss of rent.

13. Filing fee - \$100.00

Since the landlord has proven his case, I grant him the recovery of the filing fee of \$100.00.

The landlord has established an entitlement as follows:

1.	Fix Hole in wall	\$31.50
2.	Toilet seat	\$46.86
3.	Toilet paper holder	\$30.28
4.	Oven range element	\$15.75
5.	Window – sliding mechanism	\$7.88
6.	Window – lock	\$0.00
7.	Window screens	\$325.50
8.	Carpet	\$442.05
9.	Closet doors	\$495.19
10.	Apartment cleaning	\$196.88
11.	Blinds	\$152.30
12.	Loss of rent for December 2019	\$1,127.50
13.	Filing fee	\$100.00
	Total	\$2,971.69

Overall, the landlord has established a claim of \$2,971.69. I order that the landlord retain the security deposit of \$550.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$2,421.69. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$2,421.69**.

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: September 09, 2020

Residential Tenancy Branch