



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MND MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on August 27, 2020, and October 13, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act;
- a monetary order for unpaid rent;
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Landlord attended both hearings. However, the Tenant did not. The Landlord stated that she sent the Tenant a copy of the Notice of Hearing and evidence by registered mail on April 24, 2020 (to the forwarding address the Tenant provided at the end of the tenancy). Proof of mailing was provided into evidence. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed to have received these documents on April 29, 2020, the fifth day after their mailing.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord uploaded a new monetary worksheet with an increased amount for her claim. The Landlord did not submit an amendment form. As stated in the hearing, without an amendment, the Landlord's claim is limited to amount she initially listed on her application. Any change to that application would require an amendment, on the approved amendment form, which would need to be provided to the Tenant as well as our office. The Landlord chose to proceed with her initial claim at the reduced amount, rather than re-apply or withdraw her application.

The hearing proceeded based on the amounts listed at the time she served the Tenant with her application and evidence in April 2020. These items are detailed below.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent, for damage to the unit and for damage or loss under the Act?
- Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

During the hearing, the Landlord testified the following:

Monthly rent was set at \$2,308.00 and was due on the first of the month. She currently holds the Tenant's security and pet deposit totalling \$1,500.00.

The amounts listed below are what the Landlord had on her initial application. Any amounts modified since that time will not be addressed further, as they were not updated with a proper amendment form.

In her initial application, the Landlord indicated that the Tenant failed to pay February, March, or April rent. The Landlord stated that the Tenant moved out very slowly and he was very unclear about when he was leaving, and whether he would be back to pick up and clean up the remaining items he left behind.

The Landlord stated that she kept having conversations with the Tenant about paying his outstanding rent or else moving out. The Tenant kept giving false promises about making payments, and the Landlord stated she was strung along up until March 2020,

when it became apparent he was not going to be able to pay the accumulating balance (February 2020 onwards).

The Landlord stated that she was never given proper written notice from the Tenant that he would be moving out. The Landlord indicated that the Tenant kept sending her text messages throughout February 2020 saying he would pay rent but he never did. The Landlord stated that on March 1, 2020, she went over to the rental unit and started helping the Tenant clean up the yard, as it was full of old paint cans, and garbage. The Landlord stated that she tried to set up a move-out inspection with the Tenant each weekend throughout February, and most of this was done verbally. The Landlord stated that the Tenant failed to show up to any of the proposed times. The Landlord stated that it appeared as though the Tenant was moving out slowly over February and March, and the Tenant was seen coming and going from the property up until March 10, 2020, which is the last time the Landlord saw the Tenant on the premises.

The Landlord stated that she offered the Tenant, via text message, another chance to do the move-out inspection on March 2, 2020. The Tenant failed to show up, and the Landlord did the inspection in his absence. The Landlord did not fill out and present the Tenant with a Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22)

The Landlord stated that on March 10, 2020, which was the last day she saw the Tenant on the property, she saw him packing his belongings into a minivan. The Landlord stated that he said he would come back to finish cleaning up but he never did. The Landlord stated that there were some personal items left behind, but much of it was worthless and had to be thrown out. The Landlord stated that she went and changed the locks around March 14, 2020.

The Landlord stated that she continued to try to email and text message the Tenant to set up a time to do the move-out inspection. However, he would ignore her offers. The Landlord stated that she reposted the ad for re-renting the unit on March 31, 2020 for the same price, but there was no interest due to all the damage that was present. The Landlord stated that she continued to repair and fix the damage and the mess while the ad was posted.

Once the Landlord finished fixing the critical issues, and the visible mess, such that it was re-rentable, she posted a new ad in May on Facebook. The Landlord stated that once the unit was fixed and cleaned, it re-rented quickly, and she managed to find new renters for June 1, 2020.

The Landlord is seeking to recover lost rent for February, and March, as these months were unpaid despite the fact that the Tenant lived in the unit. The Landlord is also seeking April rent, as it took nearly the whole month to fix, and clean up the rental unit after the Tenant vacated. The Landlord noted that it was difficult to find trades to come in a timely manner, due to COVID. Although the Landlord also asked for May rent as well, as stated above, this was not filed for properly, and an amendment was not filed.

The Landlord also applied to recover costs for many damaged items and for other damage/loss under the Act. The items are as listed on the initial monetary worksheet, and are as follows:

- 1) \$13.91 – Registered Mail
- 2) \$11.08 – Registered Mail

The Landlord is seeking to recover the costs she incurred for having to send registered mail packages to the Tenant as a result of this proceeding.

- 3) \$12.00 – Dump Fees

The Landlord noted that she paid the above the above fees to throw out all of the Tenant's abandoned items and garbage. The Landlord provided photos taken at the end of the tenancy to show the many piles of garbage and debris left both in the yard, and in the house. A receipt was provided.

- 4) \$26.25 – Castanet house ad

The Landlord is seeking to recover the amount she paid on March 31, 2020, for a monthly ad listing to re-rent the unit after the Tenant left. The Landlord provided a copy of the receipt for this item. The Landlord also used other websites without the same fees, such as Facebook.

- 5) \$975.00 – Cleaning invoices

The Landlord pointed to the photos she took after the Tenant moved out to show that there was an extreme amount of dirt, debris, and garbage left behind. The Landlord noted that nearly every surface in the house was covered in stains, and garbage. The Landlord stated she did some of this work herself but she had to hire a local cleaner to come in and help with the clean up. The Landlord provided several copies of invoices showing she paid the following:

- March 7, 2020 – 12.5 hours
- March 8, 2020 – 9 hours
- March 11, 2020 – 6.5 hours
- March 13, 2020 – 9 hours
- March 14, 2020 – 2 hours
- Total: 39 hours @ \$25.00/hour = \$975.00

6) \$250.00 - Garbage Removal

The Landlord provided an invoice to show she hired someone to come and help clean up the property on March 1, 2020. The Landlord stated that the Tenant was still in and out of the house at the time the Landlord hired help to clean up. The Landlord stated that the Tenant was around while this cleanup was happening and stated that this amount is mostly for the disposal of old paint cans, old rotting wood, and outside debris.

7) \$82.55 – Rona receipt – Wall panels

The Landlord explained that the Tenant had punched holes in the walls in the bathroom downstairs. The Landlord stated that the panelling on the walls in thin wood sheathing, which needed to be replaced. The Landlord provided a receipt to show that she paid this amount for a replacement wall panel to replace part of the bathroom wall where the Tenant had left a large hole. The Landlord stated that this panelling, although older, was in perfect shape before this tenancy.

8) \$40.00 – Upstairs bathroom door

The Landlord explained that the door was in good shape before the tenancy started, and when the Tenant moved out there was a hole punched in the door of the upstairs bathroom. The Landlord provided a copy of an email exchange she had to purchase a used door online for the above noted amount. The Landlord stated that she tried to keep costs as low as possible by buying a used door.

9) \$912.50 – Handyman Hourly Rate

The Landlord explained that although she did some of the cleanup and work herself, most of it had to be done by a local handyman at a rate of \$25.00 per hour. The Landlord provided a series of invoices showing the following services were hired:

- March 7, 2020 – 8.5 hours
- March 8, 2020 – 9 hours
- March 11, 2020 – 7 hours
- March 14, 2020 – 3 hours
- March 13, 2020 – 9 hours
- Total 36.5 hours @ \$25.00 per hour = \$912.50

The Landlord stated that this handyman was brought in to try and restore a variety of things on the property. For example, the Landlord stated the handyman had to repair broken sinks, taps, missing lights, broken tiles, damaged trim, and many other items. The Landlord pointed to the photos to show the variety of damaged finishings that had to be fixed and repairs due to the Tenant's neglect and misuse.

10) \$2,600.00 – Painting costs

The Landlord stated that the rental unit was last repainted in March of 2016, right before she bought the house. The Landlord further stated that that the walls were in great shape at the start of the tenancy, and after the Tenant left, there were holes in the drywalls, jiffy marker drawings/scribbles all over the walls in almost all rooms (which would not wash off). The Landlord stated that as a result of all this damage, the only option was to repaint the entire interior of the house. The Landlord provided photos of some of the markings, to show the nature of the damages. A receipt for this item was provided.

11) \$2,024.40 – Carpet Replacement

The Landlord explained that the carpets were last replaced in March of 2016, and were in decent shape before the Tenant moved in. The Landlord stated that the Tenant caused cigarette burns in several areas, widespread staining, and food spills. The Landlord stated that she tried to steam clean the carpets but none of the staining would come up. Due to the damage and staining, she had to replace the carpets at the above noted cost. The Landlord provided a quote for the above amount to show the costs to replace the carpet in the downstairs bedroom, the downstairs living room, and the upstairs sunroom. The Landlord provided photos to show the damage.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

First, I turn to the issue of how and when the tenancy ended. I accept that the Tenant failed to give any formal written notice or clear communication as to when he would be leaving/vacating the rental unit. It appears the Tenant ran into difficulties paying his rent early in the year, and largely avoided any direct or clear communication regarding what he could pay, and whether he would be moving out. I accept that it did not become clear that the Tenant was actually moving out until the Landlord saw him packing up a van on March 10, 2020, which is the last day he was seen on the premises. I note the Tenant appears to have left behind some belongings at that time, but took with him all items of value by that date, or shortly after. Having reviewed this matter, I find the tenancy ended on March 10, 2020, the date the Tenant abandoned the rental unit, and left with the majority of his belongings. It appears the Tenant came back to collect a couple of stray items, without the Landlord present, but I find the tenancy had already ended by that time.

Next, I turn to the Landlord's request to recover unpaid rent for February and March. I note the Tenant lived in the unit in February, and appears to have vacated on March 10, 2020, with very unclear notice and direction as to what he was doing. Given the Tenant did not vacate the property until at least March 10, 2020, and did so without proper Notice, I find he is liable for both February and March rent, in full.

Also, I note the Tenant left behind substantial damage, mess, and a large amount of garbage and debris. I accept that the multitude of issues would have taken significant time to repair, especially given the availability of trades and materials during the pandemic.

I turn to Policy Guideline #3 – Claims for Rent and Damages for loss of Rent, which states the following:

This guideline deals with situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy agreement.

[...]

Even where a tenancy has been ended by proper notice, if the premises are unrentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

I find the Tenant is liable for April rent, in full, as it appears the premises were unrentable due to damage he left.

In summary, I award 3 months rent, as noted above totalling \$6,924.00.

The Landlord also applied to recover costs for many damaged items and for other damage/loss under the Act. The items are as listed on the initial monetary worksheet, and are as follows:

- 1) \$13.91 – Registered Mail
- 2) \$11.08 – Registered Mail

Having reviewed this matter, I note the Landlord was not required to use registered mail to serve her documentation to the Tenant. Other methods could have been utilized that would not have incurred the same fees. I do not find her choice to serve by registered mail is an amount that is recoverable under the Act. I dismiss these items in full.

- 3) \$12.00 – Dump Fees

Having reviewed this item, I find the Tenant is liable for this amount, in full, as the photos clearly show he left behind a significant amount of debris that needed to be disposed of.

4) \$26.25 – Castanet house ad

Having reviewed this item, I note that there is no evidence to show that the Tenant was in a fixed term tenancy agreement. Given the Tenant appears to be on a month-to-month tenancy, it should be expected that the unit will need to be reposted and shown to new renters at the end of the tenancy. I find this is a normal cost of doing business, particularly given this was a month-to-month tenancy. Furthermore, I note there are many other sites available which do not charge any fees to post the ad. Although the tenancy did not end on a good note, I find it is the Landlord's responsibility to advertise and re-rent the unit. I dismiss this item, in full.

5) \$975.00 – Cleaning invoices

Having reviewed this matter, I accept that the Tenant was unclear about when he was vacating, and the Landlord was doing her best to try and restore and repair the unit while the Tenant was in and out of the rental unit and slowly moving out. Despite all of this unclear communication, I find the Landlord should have waited until the Tenant had either provided proper notice that he was moving out, or until he had clearly vacated or abandoned the rental unit, prior to starting cleaning and or repairs. By cleaning the house before the Tenant had clearly vacated/abandoned the unit, the Landlord pre-emptively started doing work, which the Tenant could have done prior to moving out. I previously found the tenancy ended on March 10, 2020, the date the Tenant was last seen on the property and was seen loading the majority of his things into a van. I dismiss cleaning costs incurred before this time, but award the costs incurred after, as it was clearly left in an unsanitary manner.

Residential Tenancy Policy Guideline #1 states the following:

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit

As the unit was not left in a reasonably clean state, the Landlord is awarded the costs incurred after March 10, 2020, to restore the unit to a re-rentable condition. The

Landlord is granted the costs for March 11, 13, and 14th for 17.5 hours of cleaning at \$25.00 per hour totalling \$437.50 for this item.

6) \$250.00 - Garbage Removal

Having reviewed this matter, I note that the Tenant is expected to leave the rental unit in a reasonably clean and sanitary manner when he moves out. However, it appears the Tenant was still occupying the unit at the time this cleanup occurred. I find the Landlord pre-emptively paid for and hired this contractor to help with cleanup, prior to allowing the Tenant a chance to clean it up before he vacated or abandoned the rental property. I find the Landlord should have either obtained the Tenants written permission to do the cleanup on his behalf, and at his expense, or she should have waited until the Tenant had actually moved out to allow him the chance to clean up his own debris. I dismiss this item, in full, as I find it was a pre-emptively done.

7) \$82.55 – Rona receipt – Wall panels

Having reviewed this matter, I accept the undisputed testimony that the Tenant put a hole in the wood panelling of the downstairs bathroom wall. I find the Tenant is liable for this cost in full. The Landlord did this work herself and is just seeking the replacement panel cost. I award this item, in full.

8) \$40.00 – Upstairs bathroom door

Having reviewed this matter, I accept the undisputed testimony that the Tenant caused damage to the bathroom door. I find the Landlords costs to replace this door are reasonable. I award this item, in full.

9) \$912.50 – Handyman Hourly Rate

Having reviewed this matter, and as stated above with respect to the cleaning costs, I find the Landlord should have waited until the Tenant had either provided proper notice that he was moving out, or until he had clearly vacated or abandoned the rental unit, prior to starting repairs.

I find the work hired and complete on March 7 and 8, 2020, are not recoverable, as that work was done prior to the tenant vacating. As such, the hired work from those days is not recoverable. However, as stated above, I find the tenancy ended on March 10,

2020, the day the Tenant left with the majority of his belongings, in a van. The Landlord did not see the Tenant at the rental property after that day.

I accept that there were a multitude of issues left behind, including damaged lights, walls, plumbing fixtures, tiles, appliances etc. I find the amounts and invoices for handyman services rendered after March 10, 2020, are the responsibility of the Tenant, as he never returned to remedy the issues. I award the March 11, 13, and 14th invoices for a total of 19 hours @ \$25.00 per hour = \$475.00.

10) \$2,600.00 – Painting costs

Having reviewed this matter, I accept the undisputed testimony that the Tenant caused significant staining, and damage to interior wall surfaces, most of which would not wash off. I find this damage goes well beyond reasonable wear and tear.

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises provides the following guidance with respect to walls and painting:

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

Pursuant to *Residential Policy Guideline #40 - Useful Life of Building Elements*, the useful life expectancy of interior painted walls is 4 years. I note these walls were painted 4 years ago and they were at the end of their useful life expectancy. I note that if the landlord makes repairs to a rental unit due to damage caused by the tenant, then I may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement. I find the Landlord should have expected to have to repaint, given it had been 4 years since it was last painted. However, the Tenant's use of the house went well beyond reasonable wear and tear.

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find a nominal award is appropriate in this case, as the rental unit was due to be repainted. However, the damage was well beyond what it should have been under normal use. I award a nominal award of \$500.00.

11)\$2,024.40 – Carpet Replacement

Having reviewed this matter, I turn to *Residential Policy Guideline #40 - Useful Life of Building Elements*, which specifies that the useful life of interior carpets is around 10 years. I find these carpets were 4 years old and had around 60% of their useful life expectancy left. I award the Landlord 60% of the costs incurred to replace the heavily damaged carpet, which amounts to \$1,214.64. I accept that the Tenant caused damage well beyond normal wear and tear, which ultimately required them to be replaced.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with her application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

Item	Amount
Rent	\$6,924.00
Dump Fee	\$12.00
Cleaning costs	\$437.50
Rona	\$82.55
Used door	\$40.00
Handyman services	\$475.00
Painting – Nominal	\$500.00
Carpet	\$1,214.64
PLUS: Filing Fee	\$100.00
Subtotal:	\$9,785.69
LESS: Security Deposit	\$1,500.00

Total Amount	\$8,285.69
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Conclusion

The Landlord is granted a monetary order in the amount of **\$8,285.69**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 14. 2020

Residential Tenancy Branch