



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; unpaid rent; and authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that he served the tenant with the landlord's application and notice of hearing in person on May 12, 2011. The landlord's evidence package was given to the tenant's girlfriend, who lives with the tenant, on August 14, 2011. I accepted the tenant was served with the landlord's application in accordance with the requirements of section 89 of the Act and that the evidentiary documents were sufficiently served in accordance with section 88 of the Act. Therefore, I accepted the documents before me and proceeded to hear from the landlord without the tenant present.

At the commencement of the hearing the landlord requested the monetary claim be amended to a lesser amount. I accepted the request as I found a reduction in the amount claimed to not be prejudicial to the tenant.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit?
2. Has the landlord established an entitlement to compensation for unpaid rent?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy commenced May 1, 2007 and rent was \$750.00 per month. Approximately two years ago an additional occupant moved into the rental unit and the parties verbally agreed that the rent would be \$800.00 per month.

On February 26, 2011 the tenant removed much of his possessions from the rental unit but left abandoned possessions and garbage on the side of the house. Also on February 26, 2011 the parties signed a document agreeing to the following:

- Outstanding rent and utilities totalled \$2,300.00;
- A “damage deposit” in lieu of unpaid rent of \$375.00 plus interest for 4 years;
- After the rental unit is cleaned both parties would go through the suite;
- The tenant would pay at least \$200.00 per month starting March 1, 2011; and,
- A schedule recording the amounts paid would be signed by both parties.

The landlord testified that since signing the February 26 document, the tenant made one payment of \$200.00.

In support of the outstanding rent of \$2,300.00, the landlord pointed to a 10 Day Notice to End Tenancy for Unpaid Rent issued January 2, 2011 in the amount of \$1,800.00, then the landlord subtracted a \$300.00 payment made January 8, 2011; and added \$800.00 for February 2011 rent.

The landlord is seeking to recover the following amounts from the tenant and provided the following reasons for his claims:

<u>Item</u>	<u>Reason</u>	<u>Amount</u>
Loss of rent for March, April and May 2011	Unit still requires repairs and is not re-rented. Landlord works full time and cannot devote a lot of time to repairing unit.	\$2,400.00
Garbage disposal	4 loads of garbage left by tenant. Claim includes labour, dump fees, and fuel.	200.00
Stove	Stove left unclean and broken knobs were glued on by tenant. Stove unusable. Stove is 8 – 10 years old. Estimated cost of similar stove.	200.00
Fridge	Bar missing from freezer. Left unclean. Estimated cost of similar fridge.	250.00
Blind in main bedroom	Broken by tenant's dog. Vinyl blind 5 – 10 years old. Replaced with used vinyl blind costing \$50.00	50.00
Carpets	Urine and fecal stains by tenant's dog. Tenant tried cleaning but strong smell persisted. Carpet 1 – 2 years old at beginning of tenancy. Replaced with laminate flooring costing \$700.00 plus 6 – 8 hours of the landlord's time. Replacement	700.00

	carpeting estimated to cost \$1,500.00.	
Bathroom walls	Shower walls had to be waterproofed as water wicked up from bottom of tub surround. Tenant did not use shower curtain properly and wall adjacent to shower had to be patched. Claiming for cost of drywall mud, waterproofing paint, cement and grout and new tile.	515.00
Cleaning	Unit left unclean. Paid landlord's mother \$300.00 for 20 hours of labour to clean cupboards, tile floor, etc.	300.00
Sub-total		\$ 6,915.00
Less: security deposit		(375.00)
Less: payment		<u>(200.00)</u>
TOTAL CLAIM		\$ 6,340.00

The landlord provided a copy of the tenancy agreement entered into in April 2007; the 10 Day Notice issued January 2, 2011; the February 26, 2011 document; and photographs of the rental unit in support of his claims.

Analysis

Upon consideration of all of the evidence before me, I make the following findings and provide the following reasons with respect to the landlord's claims against the tenant.

Unpaid rent

The tenancy agreement provides that rent is \$750.00 per month. In order to legally increase the rent, the Act provides that the landlord must issue a proper Notice of Rent Increase. The landlord did not increase the rent using a Notice of Rent Increase.

The tenancy agreement does not limit the number of occupants or provide for payment additional rent if the tenant allows an additional occupant to move in.

In light of the above, I find the landlord did not have an entitlement to require or collect the increase of \$50.00 for the past two years. Where a tenant overpays rent, the tenant is entitled to recover the overpaid rent by deducting it from rent otherwise payable, as provided by section 43(5) of the Act. Therefore, I find the landlord's entitlement to recover unpaid rent from the tenant must be offset by the tenant's overpayment of \$50.00 for the past two years. The landlord is awarded \$1,100.00 [\$2,300.00 less \$1,200.00] for unpaid rent.

Damage to the rental unit

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 section 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. Value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

With respect to value of the loss, I find it reasonable to expect that the applicant provide copies of receipts, invoices or written estimates where available. Where receipts or invoices are not generally provided, other evidence would be sufficient.

Garbage disposal – I accept the landlord's undisputed verbal testimony that the tenant left abandoned possessions and garbage behind and the landlord hauled four loads away. The February 26, 2011 document also refers to the rental unit needing to be cleaned up. I was not provided any dump receipts and I do not award that portion of the claim. However, I find it reasonable that the landlord lost his own time and used his gas to remove the garbage and I award the landlord \$146.00 as claimed for these items.

Stove – The photographs supplied by the landlord depict the inside of the oven and the oven door and I accept that it was left very greasy and grimy. However, I am not satisfied that the stove is unusable or not repairable. I will award the landlord cleaning costs, as provided below, but I do not award the landlord costs for replacement of the stove.

Fridge – The photographs depict a fridge that requires cleaning and a bar in the freezer door is broken off. I find the landlord is entitled to cleaning costs, as provided below, and diminished value due to the broken freezer door bar. However, I do not award the landlord the cost of a replacement fridge as I am not satisfied it is unusable. I estimate \$40.00 as the diminished value associated to the broken freezer door bar and I award that amount to the landlord.

Window blind – Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred.

Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37. The Policy Guideline provides that blinds have an average useful life of 10 years. Given the blinds were vinyl I find that the useful life would be less than metal blinds. Since the vinyl blinds were 5 – 10 years old I find they were at or near their life expectancy and the depreciated value to be nominal. Nor was I provided a copy of the receipt for the replacement blind. Therefore, I make a nominal award of \$10.00 for the damaged blind.

Carpet – The photographs supplied by the landlord satisfy me that the carpeting was removed and laminate flooring installed. I accept the landlord's undisputed testimony that the carpets smelled strongly of dog urine and feces despite the tenant's efforts to clean the carpets. However, the landlord did not provide receipts or estimates to show the cost of new flooring. Even if the landlord had provided receipts for the laminate flooring he would not be entitled to the full cost of the flooring as depreciation of the carpets would have to be factored in to the award. Therefore, I award the landlord an amount for his labour only. The landlord is awarded 8 hours @ \$20.00 per hour for an award of \$160.00.

Bathroom walls – Walls surrounding the bathtub should be sufficiently maintained by the landlord to ensure water does not penetrate the tub surround. I find insufficient evidence to conclude the tenant's actions caused water to wick up behind the bathroom tiles. The landlord has made repairs to the wall adjacent to the tub and that may or may not have been due to negligence on part of the tenant; however, the landlord did not provide copies of receipts to verify the amounts claimed. Therefore, this claim is denied entirely.

Cleaning – Based upon the photographs, I accept that the rental unit was not left in a reasonably clean state by the tenant and that a significant amount of cleaning was required. Since the cleaning was done by the landlord's mother I find it reasonable that there is no receipt to support this claim. I find the amount claimed to be reasonable and I grant the landlord's claim of \$300.00 for cleaning.

Loss of Rent

Upon review of the February 26, 2011 document, photographic evidence and the landlord's undisputed testimony, I am satisfied the tenant did not leave the rental unit in a reasonably clean state or repaired of damages he caused; therefore, I award the landlord loss of rent for March 2011. However, I find the landlord's decision to do the repair work himself, in his spare time, the primary reason for the lengthy delay in the

getting the unit re-rented and that decision is not a cost that should be borne by the tenant. The landlord is awarded \$750.00, the amount the landlord was entitled to under the tenancy agreement, for loss of rent for March 2011.

With respect to the filing fee, the landlord paid \$100.00 for this application since his claim exceeded \$5,000.00; however, the amounts awarded to the landlord are less than that amount so I award the landlord \$50.00 towards the cost of filing this application.

I authorize the landlord to retain the security deposit and interest in partial satisfaction of the amounts awarded to the landlord. I calculate accrued interest on the security deposit to be \$9.46 and I have included this amount in calculating the Monetary Order. The landlord is provided a Monetary Order calculated as follows:

<u>Item</u>	<u>Award</u>
Loss of rent	750.00
Garbage disposal	146.00
Stove	Nil
Fridge	40.00
Blind in main bedroom	10.00
Carpets	160.00
Bathroom walls	Nil
Cleaning	<u>300.00</u>
Sub-total	\$ 2,506.00
Less: security deposit and interest	(384.46)
Less: payment	(200.00)
Plus: award for filing fee	<u>50.00</u>
MONETARY ORDER	\$ 1,971.54

To enforce the Monetary Order it must be served upon the tenant and may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord was partially successful in this application. The landlord has been authorized to retain the security deposit and interest and has been provided a Monetary Order for the balance of \$1,971.54 to serve upon the tenant.

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 15, 2011.

Residential Tenancy Branch