Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of repairs, unpaid rent, and for the filing fee. The landlord also applied to retain the security deposit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim for costs of repairs, unpaid rent and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on December 01, 2010. Rent was $800.00 per month due on the first of the month and did not include utilities. Prior to moving in, the tenant paid a security deposit of $400.00. The landlord stated that the tenant failed to pay rent for February and also did not pay utilities through the tenancy.

The tenant stated that he paid utilities to the landlord's agent but did not have any documentary evidence to support his claim.

The tenant stated that on or about "end January to early February" he verbally informed the landlord that he would be moving out. The tenant stated that he moved out mid February and returned at the end of February to clean up. After cleaning the rental unit, he placed the keys on the kitchen counter and left without informing the landlord's agent. The tenant stated that he did not contact the representative of the landlord because of the poor relationship between the two.

The landlord stated that the tenant moved out mid March and left the unit in a damaged condition. The landlord filed photographs of the damage. The tenant filed photographs that show that the unit is clean and there is no sign of damage. The testimony of both parties differed in this regard.

The landlord stated that a shower head was missing and he had to replace it. The tenant stated that when he left the unit, the shower head was in place.

The landlord also stated that the tenant damaged the marble floor and walls in the bathroom by using the wrong cleaning fluid. The landlord provided an estimate along with a note from the contractor regarding the cause of the damage to the marble being the use of a wrong cleaning product. The tenant stated that the landlord did not inform him about the type of cleaning product he should have used.

The landlord filed photographs of a damaged door and an estimate to replace it. Included in this estimate is the cost of repairing damage to the bedroom walls. The landlord also stated that the tenant changed the locks and broke a window. The tenant denied having changed the locks but agreed to replace the broken window.

The landlord also stated that the tenant damaged the kitchen stove and filed a receipt for its repair. The tenant stated that the use of the laundry machines was included in the rent and that the washer did not work well right from the start of the tenancy. The landlord replaced the washer in January 2011 and is claiming the cost of replacing it. The invoice filed states that the washer was damaged from overloading and that it would be cost effective to replace it rather than repair it.

The landlord is claiming the following:

1.	Unpaid rent for February and March	$1,200.00
3.	Repair marble floor/walls	$780.00
4.	Replace shower head	$69.99
5.	Replace exterior door and repair bedroom walls	$1,958.00
6.	Change door lock	$250.00
7.	Repair window	$403.00
8.	Service stove	$134.49
9.	Repl.ace washer	$1,891.68
6.	Filing fee	$100.00
	Total	$7,201.67

Analysis
   1. Rent - $1,200.00

Section 45 of the *Residential Tenancy Act,* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. The tenant owed $800.00 for February rent. Based on the testimony of the

tenant I find that he did not give the landlord adequate notice to end the tenancy. Accordingly, I find that the landlord is entitled to **$1,200.00**, which is the amount of his claim for the period of February 01 to March 15.

2. Hydro $414.51

The tenant stated that he had paid his share of hydro to the landlord's representative through the tenancy. The landlord stated that he received an overdue bill and paid it. The landlord filed copies of the hydro bills. Based on the evidence and testimony, I find that the landlord is entitled to $414.51.

3. Replace marble floor/walls

Residential Tenancy Policy Guideline #1 provides as follows:

The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises. Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

Based on the evidence in front of me, I find that the tenant damaged the marble tiles by using an inappropriate cleaning fluid. However, the landlord has not yet incurred the expense to fix the damage and I also find that the damage is cosmetic. The landlord has filed a quotation for the repair in the amount of $780.00. I find that while the flooring has lost its sheen, this damage does not affect its functionality. However, the damage has reduced the value of the flooring and I will award the landlord an arbitrary amount towards this loss of value.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Based on the estimate filed by the landlord, the age of the marble (six years) and the useful life of flooring as per *Residential Tenancy Policy Guideline #37* (10 years), I award the landlord a minimal award of $300.00.

4. Replace shower head - $69.99

The landlord stated that the shower head was missing and he replaced it with one that he had in his possession.

He stated that the replacement is worth $49.99 and he is claiming $20.00 for his labour. Even though the tenant denied having anything to do with the missing shower head, I

find that I prefer and therefore accept the evidence of the landlord in this regard. Again based on the estimate filed by the landlord, the age of the faucet (six years) and the useful life of the faucet as per *Residential Tenancy Policy Guideline #37* (15 years), I award the landlord $50.00 towards the replacement.

5. <u>Replace exterior door and repair bedroom walls - $1,958.00</u>

The landlord has filed an estimate for the replacement of the door and for repair and painting of the bedroom walls. This estimate does not provide a breakdown of the cost of individual items. The landlord has also filed photographs depicting the damage. The landlord stated that he had not yet incurred the expense.

In this case, I find that the damage was done during the tenancy, but the landlord has not provided adequate evidence to establish the cost of repair. Therefore pursuant to *Residential Tenancy Policy Guideline #16* as stated above, I will award the landlord a nominal amount for the replacement of the door and the repair of the walls. I base this award on the age of the door and the painting (approximately six years old) and the useful life of the door (20 years) and interior painting (four years). Based on the above I find it appropriate to award the landlord $800.00 towards his claim.

6. <u>Change door lock - $250</u>

Pursuant to section 25 of the *Residential Tenancy Act,* at the request of a tenant or at the start of a new tenancy, the landlord must rekey or otherwise alter the locks and pay all associated costs. Therefore I find that the landlord is not entitled to the cost of changing the locks.

7. <u>Repair window - $403.00</u>

The tenant agreed to cover the cost of repairing the window. The landlord filed a receipt and therefore, I find that the landlord is entitled to the cost of repair.

8. <u>Service stove - $134.49</u>

The landlord is responsible for the maintenance of appliances and therefore the landlord's claim for the cost of servicing the stove is dismissed.

9. <u>Replace washer - $1,891.68</u>

The landlord testified that the washer was replaced during the early part of the tenancy. The use of the laundry machines was included in the rent and therefore it is the responsibility of the landlord to provide functioning machines. I find that the landlord must bear the cost of replacing the machine.

10. Filing fee - $100.00

The landlord has proven a major portion of his claim and is therefore entitled to the recovery of the filing fee.

Overall the landlord has established the following claim:

1.	Unpaid rent for February and March	$1,200.00
3.	Repair marble floor/walls	$300.00
4.	Replace shower head	$50.00
5.	Replace exterior door and repair bedroom walls	$800.00
6.	Change door lock	$0.00
7.	Repair window	$403.00
8.	Service stove	$0.49
9.	Repl.ace washer	$0.00
6.	Filing fee	$100.00
	Total	**$3,268.00**

I order that the landlord retain the security deposit of $400.00 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 $2,868.00. 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 for the amount of **$2,868.00.**

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.*
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Dated: November 16, 2011.

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Residential Tenancy Branch