



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF, 0

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit, compensation for loss under the Act and an order to retain the security deposit in partial satisfaction of the claim.

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 to me.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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.

Issue(s) to be Decided

Is the landlord entitled to a monetary order compensation for damages?
Is the landlord entitled to a monetary order for compensation for loss under the Act?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a three month fixed term tenancy agreement which began on June 18, 2011. The parties renewal the tenancy under a new fixed term agreement. Rent in the amount of \$825.00 was payable on the first of each month. A security deposit of \$412.50 was paid by the tenant. The fixed term agreement ended on July 31, 2012.

On August 3, 2012, the parties appeared at a dispute resolution hearing, and at that hearing the Dispute Resolution Officer granted the landlord an order of possession as

the tenant had not vacated the rental unit as specified in the fixed term agreement. The landlord was also given permission to retain \$50.00 from the security deposit.

The parties agreed a move-in inspection was completed. The parties agreed the tenant moved out of the rental unit on August 17, 2012 and on that day the tenant refused to participate in the scheduled move-out inspection

The landlord claims as follows:

a.	Compensation for loss of rent	\$372.58
c.	Carpet cleaning	\$134.40
d.	Cleaning	\$175.00
e.	Light bulb replacement	\$22.89
f.	Time waiting for tenant to leave	\$75.00
g.	Filing fee	\$50.00
	Total claimed	\$929.87

Compensation for loss of rent

The landlord testified that she had arranged for a contractor to come into the rental unit on August 1, 2012, to renovate the majority of the unit. The landlord stated the contractor was to have the full month of August to complete the renovation and a new tenant was to move into the renovated unit on September 1, 2012.

The landlord testified due to the tenant breaching the fixed term and not leaving until August 17, 2012, the contractor was not able to complete the renovation on schedule, and as a result the new tenant was not able to move into the unit on September 1, 2012, and found new rental accommodations. The landlord seeks to be compensated for half a month's loss of rent.

The tenant testified the landlord allow her to stay in the unit until August 17, 2012 and was not aware that there was a new renter scheduled for September 1, 2012. The tenant believes the any renovations could have been completed in the last two weeks of August.

Carpet repair – estimate

The landlord testified that the tenant snagged the carpet in the living room and seeks compensation in the amount of \$100.00. The landlord stated she did not have an

estimate from a carpet repair company and the estimate was merely a guess. Filed in evidence is a photograph of the carpet.

The tenant acknowledges that she snagged the carpet. The tenant stated it was not from neglect as the snagged occurred at the seam where the carpets were joined. The tenants stated the landlord was aware of the problem and told her to cut-off the snag and glue the ends. The tenant stated the snag was not very visible.

Carpet cleaning

The landlord testified the tenant did not steam clean the carpets at the end of tenancy. Filed in evidence is a receipt for carpet cleaning.

The tenant acknowledged she did not have the carpets steam cleaned.

Cleaning

The landlord testified the tenant did not clean the rental unit to a reasonable standard and that she spent seven hours cleaning the unit. The landlord stated she had to try to remove the mould from the window sill, cleaning the bathroom as there was still a ring in the bathtub, clean spots off the walls and clean the stove. The landlord stated she also tried to remove the stains from the linoleum floor in the kitchen without success. Filed in evidence are photographs the window sills, stove, flooring, and bathroom.

The tenant testified after her belongings were removed, she did not do any further clean as the landlord told her she would be keeping the security deposit. The tenant stated that the unit was always kept clean.

Light bulb replacement

The landlord testified that there were two light bulbs burnt out in the front bedroom, one in the bathroom and one in the back bedroom.

The tenant testified that she agrees that the two light bulbs were burnt out in the front bedroom, but stated the other two light bulbs were merely unscrewed to save energy.

Time waiting for tenant to leave

The landlord testified she is seeking to recover her time for waiting for the tenant to leave.

Analysis

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The landlord has the burden of proof to prove a violation of the Act by the tenant and a corresponding loss.

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.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear.

Compensation for loss of rent

In this case, the parties entered a fixed term agreement which expired on July 31, 2012. The tenant breach the provision of the fixed term agreement by not moving from the unit on the date specified in that agreement. On August 3, 2012, at a dispute resolution hearing the landlord was granted an order of possession, which was effective two days after served upon the tenant. As a result, I find the tenant has violated the Act.

Due to the tenant violating the tenancy agreement the contractor was no able to have the rental unit renovated as scheduled and the new tenant could not move in and found new rental accommodation. The unit was not rented until October 1, 2012. I find the landlord did suffer a loss of rent due to the tenant's actions. Therefore, the landlord is granted compensation for half a month of loss rent in the amount of **\$372.58**.

Carpet repair – estimate

In this case, the landlord is claiming for carpet repair, the landlord has not provided any documentary evidence as to the actual cost of repairing the carpet as it was merely a guess by the landlord. I find the landlord has not proven the actual amount required to be compensated. Therefore, I dismiss the landlord's claim for compensation for carpet repair.

Carpet cleaning

Under Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is generally expected to clean the carpets the tenancy exceeds one year.

In this case, the tenancy exceeded one year, and the evidence of by both parties was the carpets were not cleaned at the end of tenancy. It was the tenants responsible to have the carpets cleaned. I find the tenant breached the Act and the landlord suffered a loss. The landlord has filed a receipt in support of her claim. Therefore, the landlord is granted compensation for carpet cleaning in the amount of **\$134.40**.

Cleaning

In this case, the landlord's evidence was it took her seven hours to clean the unit to a reasonable standard. The evidence of the tenant was the unit was always reasonable cleaned. The photographs submitted in evidence support the landlord's claim, as mould is shown on the window sill, the kitchen floor needed additional clean, and the stop top need further cleaning. I find the tenant has breach Act and the landlord has suffered a loss.

The landlord seeks compensation at the rate of \$25.00 per hour, I find the hourly rate high, therefore, I will allow seven hours at \$15.00.00 per hour. The landlord is granted compensation for cleaning costs in the amount of **\$105.00**.

Light bulb replacement

The evidence of the landlord was four light bulbs were burnt out and the landlord has provided a receipt for replacement of those bulbs. The evidence of the tenant was only two of the bulbs were burnt out and the other two were unscrewed. I find that it was reasonable for the landlord to assume all four light bulbs were burnt out as it was the tenants responsible to replace any burnt out bulbs at the end of tenancy. I find the tenant did breach the Act and the landlord suffered a loss. The landlord has filed a

receipt in support of her claim. Therefore, the landlord is granted compensation for replacing the light bulbs in the amount of **\$22.89**.

Time waiting for tenant to leave

The landlord has claimed an amount for her time while waiting for the tenant to leave the rental unit. There is no provision under the Act, that would allow compensate for the landlords time for waiting for a tenant leave. Therefore, I dismiss the landlord's claim for compensation for time waiting.

I find that the landlord has established a total monetary claim of **\$684.87** comprised of the above described amount and the \$50.00 fee paid for this application.

The security deposit paid was **\$412.50**; the landlord was authorized on August 3, 2012, by a Dispute Resolution Officer to deduct **\$50.00** from the security deposit. Based on that I find the balance of the security deposit held is **\$362.50**.

I order that the landlord retain the security deposit of **\$362.50 in** partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$322.37**.

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 and may keep a the security deposit in partial satisfaction of the claim and is granted an 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: November 15, 2012.

Residential Tenancy Branch