



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit 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 at the hearing.

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.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy which began on April 1, 2013 and was to expire on March 31, 2013. The fixed term was to continue on a month-to-month basis thereafter. Rent in the amount of \$800.00 was payable on the first of each month. A security deposit of \$400.00 was paid by the tenant. The parties agreed that the unit was fully furnished.

The landlord claims as follows:

a.	Unpaid rent	\$ 800.00
b.	Damages	\$ 749.30
c.	Filing fee	\$ 50.00
	Total claimed	\$1,599.30

Unpaid rent

The landlord testified that on April 2, 2013, she posted a notice to end tenancy for unpaid rent on the door of the rental unit. The landlord stated she kept checking to see if the notice was removed and was informed by the neighbor that they thought the tenant had moved from the rental unit. The landlord stated the tenant did not provide any notice to end the tenancy and seeks to recover loss of rent for April 2013.

The tenant testified that on April 1, 2013, the landlord attempted to have him signed a new tenancy which he did not agree with. The tenant stated the landlord told him he could move.

The landlord disputed telling the tenant that he could move without giving sufficient notice.

Damages

Clean rental unit

The landlord testified the tenant did not clean the rental unit. The landlord stated the entire unit needed to be cleaned, which included the appliances and shampoo the rugs. The landlords stated she paid \$50.00 to have the carpets cleaned and \$60.00 to have the rental unit cleaned. Filed in evidence are photographs of the rental unit and the stove.

The female witness for the landlord testified that the pictures accurately reflect the condition of the unit after the tenancy ended.

The male witness for the landlord testified that the pictures accurately reflect the condition of the unit after the tenancy ended.

The tenant testified that they do not agree with the photographs as there was a previous tenant before him and believes that these photographs were taken then as they are not dated. The tenant stated he spent the whole day cleaning. The tenant acknowledged the photograph of the stove accurately reflects the condition of the stove at the end of the tenancy. The tenant stated they did not clean the carpets at the end of the tenancy.

The landlord argued that the only person who has lived in the unit was a family member and they were only there for one month.

Keys

The landlord testified that the tenant did not return the keys and the locks were required to be changed. The landlord seeks to recover the amount of \$109.74. Filed in evidence is a receipt.

The tenant testified that he left the keys on the landlord's door steps.

Mirror door

The landlord testified that the tenant broke the mirrored door in the bedroom. The landlord seeks to recover the amount of \$212.79. Filed in evidence is a photograph of the mirror door. Filed in evidence is a receipt for replacing the door.

The female witness for the landlord testified that she saw the mirrored door and it was shattered. The witness stated the photograph of the mirror door accurately reflects the condition of the door.

The male witness for the landlord testified that he saw the mirrored door and it was shattered. The witness stated the photograph of the mirror door accurately reflects the condition of the door

The tenant testified that the door was loose and did not fit well and the door fell out and broke, because of the children above him were jumping on the floor. The tenant stated he did not to tell the landlord that there was a problem with the door and did not notify the landlord when it shattered.

The landlord denied that the door was not properly fitted.

Futon cover

The landlord testified that the cover of the futon was covered in oil, glue and burn marks. The landlord stated that she purchased a furniture cover to hide the stains. The landlord seeks to recover the amount of \$77.88. Filed in evidence is a receipt for the cover. Filed in evidence are photographs of the futon at the start of the tenancy and photographs of the futon at the end of the tenancy.

The female witness for the landlord testified that she saw the futon cover prior to the tenancy commencing and it was in good condition and she also saw the futon at the end of the tenancy and the futon cover was a mess. The witness stated the photograph of futon cover accurately reflects the condition of the futon at the end of the tenancy.

The male witness for the landlord testified that he saw the futon cover and it was dirty. The witness stated the photograph of the futon accurately reflects the condition of the futon at the end of the tenancy.

The tenant testified that is not how he left the futon and believes that must be a photograph of the condition the futon was left in by the previous tenant.

Kitchen table

The landlord testified that the tenant caused damage to the kitchen table, by scratching and leaving glue on the surface as he made fishing tackle. The landlord stated she had to sand the surface and paint it with a walnut stain to repair the surface. The landlord stated it cost her \$75.00. The landlord stated she has provided a photograph of the table that showed the condition of the table top at the start of the tenancy.

The tenant testified that he did not scratch the table and that the table was not new when he moved in.

Coffee table

The landlord testified that the tenant caused damage to the coffee table as one of the legs was broken off. The landlord stated she purchased a use coffee table and stripped and refinished the table and the total cost was \$24.52. Filed in evidence is a photograph of the coffee table. Filed in evidence is a receipt for the purchase of a used coffee table.

The female witness for the landlord testified that she saw that the coffee table leg was broken and lying on the floor. The witness stated she did not look at it closely to see how the table leg was broken.

The male witness for the landlord testified that is probable that the leg could have fallen off, but believes it was more likely from a kick or from something heavy being placed on the table.

The tenant testified that the coffee table leg was not properly bolted on and was wobbly as it was held on with two little nails. The tenant stated he did not damage the table and it could have been easily fixed.

Winter car plug

The landlord testified the tenant was supposed to pay \$20.00 per month for the winterized car plug. The landlord seeks to recover \$80.00.

The tenant testified the cost of the winterized car plug was included in the rent.

Oil stains on driveway and plywood

The landlord testified that the tenant's car caused damage to the driveway by leaving oils stains and they purchased a cleaner to remove the stains. The landlord stated the treatment was unsuccessful. The landlord stated that the tenant also used a piece of plywood to place under his vehicle to avoid having the oil drip on the driveway. The landlord stated this caused damage to the plywood. The landlord seeks to recover the cost of the cleaner and the cost of the plywood in the amount of \$40.78.

The tenant testified that he cleaned most of the stain up and that there were also stains in the driveway by the landlord car and rust from another vehicle. The tenant stated the piece of plywood that he used was an old piece of wood that was in the back.

Mattress cover

The landlord testified that the tenant damaged the mattress cover as there were stains everywhere. The landlord seeks to recover the amount of \$20.00.

The tenant testified that the mattress cover was not new and it was worn when his tenancy started.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming 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.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Unpaid rent

Section 45 of the Residential Tenancy Act states:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

The evidence of the landlord was the tenant did not give notice to end the tenancy and it was only after they posted a notice to end tenancy for non payment of rent, that they discover the tenant had abandoned the rental unit. The evidence of the tenant was that the landlord told him he could move out. This was disputed by the landlord.

Under section 45 of the Act, the tenant is required to provide the landlord with at least one month notice to end the tenancy. I find that the tenant has breached the Act as the earliest date they could have legally ended the tenancy was May 31, 2013.

As a result of the tenant not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for April 2013, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy. Therefore, I find the landlord is entitled to recover unpaid rent for April 2013, in the amount of **\$800.00**.

Damages

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. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Clean rental unit

The evidence of the tenant was that he did not clean the carpet or clean the inside of the stove at the end of the tenancy. The tenant admitted the photograph accurately show the condition of the stove.

Under the Residential 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 if vacating after a tenancy of one year and the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.

I find the tenant has breached section 37 of the Act, when they failed to clean the carpets or the appliances at the end of the tenancy. Therefore, I find the landlord is entitled to compensation for the cost of having the carpets cleaned and the rental unit cleaned in the amount of **\$110.00**.

Keys

In this case, the evidence of the tenant was that he left the keys of the landlord's door step. The evidence of the landlord was that they never received the keys from the tenant. As a result, I find the tenant breached the Act as the key were required to be returned to the landlord and not left on a door step. Therefore, I find the landlord is entitled to compensation for having the locks changed in the amount of **\$109.74**.

Mirrored door

The evidence of the tenant was the mirrored door was loose and fell off, causing damage when the children living above his unit were jumping. The tenant evidence was he never informed the landlord that there were any problems with the door being loose and never informed the landlord of the damage caused to the door. The photograph submitted support that the mirrored door was damaged.

I find based on the evidence of the tenant that it is highly unlikely that children jumping in the upper unit would cause such damage to the door and I find if the damage occurred by children jumping it would have been reasonable for the tenant to inform the landlord as soon as the incident occurred. Therefore, based on the balance of probably, I find the mirrored door was damaged by action or neglect of the tenant. I find the landlord is entitled to compensation for having the door repaired in the amount of **\$212.79**.

Futon cover

The evidence of the landlord and both of the landlord's witness was that the futon cover was in good condition prior to the tenancy starting. The before pictures submitted support their position as the photograph show the futon cover in good condition. The evidence of the tenant was he believes the after photographs were taken when the prior person living in the unit moved out.

In this case, I prefer the evidence of the landlord and the landlord's witnesses as they were consistent through their testimony and the photographs submitted show the futon cover prior to the tenancy commencing in good condition. While the tenant alleges the

after photographs were taken from the prior person living in the unit. I find that is highly unlikely due to the numbering system on the back of the photographs. I further find that it would also be highly unlikely that the tenant would accept the futon in the condition shown in the photographs and then continue to use the futon for the duration of his tenancy. Therefore, I accept the landlord evidence and find the tenant breached section 37 of the Act, when they failed have the stains removed from the futon cover. Therefore, I find the landlord is entitled to compensation in the amount of **\$77.28**.

Kitchen table

In this case, the tenant denied damaging the surface of the kitchen table. While the landlord has submitted into evidence a photograph of the table surface at the end of the tenancy, the landlord has not provided a photograph of the table surface at the start of the tenancy as the photograph submitted of the table at the start of the tenancy is covered with a decorative table cloth. As a result, I cannot determine the condition of the table top at the start of the tenancy. I find the landlord has failed to provide sufficient evidence to support that the tenant cause damage to the table top. Therefore, I dismiss this portion of the landlord's claim.

Coffee table

In this case, the tenant denies damaging the coffee table. The evidence of the tenant was the coffee table was not properly bolted and was wobbly as it was held on with two little nails. The evidence of the landlord was the table leg was broken. The evidence of the landlord's male witness was that the tenant version was possible, however, believed it was more likely from a kick or something heaving being place on the table. The landlord has submitted of the coffee leg on the floor, however, there is no close-up of the table leg. As a result, I cannot determine if the table was broken as indicated by the landlord or broken by wear and tear as suggested by the tenant. I find the landlord has failed to provide sufficient evidence to support that the tenant cause damage to the coffee table. Therefore, I dismiss this portion of the landlord's claim.

Winter car plug

The evidence of the landlord was the tenant was required to pay \$20.00 per month for the winterized car plug. The evidence of the tenant was the car plug was included in the rent. The tenancy agreement submitted as evidence indicates the tenant has one car space and there is no indication in that agreement that the tenant was responsible for any additional cost. As a result, I accept the tenant evidence that the winterized car plug was included in the rent. Therefore, I dismiss this portion of the landlord's claim.

Oil stains on driveway and plywood

The evidence of the landlord was that the tenant's car caused damage to the driveway and a piece of plywood by leaving oils stains. The evidence of the tenant was that he cleaned most of the stain up and that there were also stains in the driveway by the

landlord's car and rust from another vehicle. The evidence of the tenant was the piece of plywood that he used was an old piece of wood that was in the back.

In this case, while the photographs support there are oils stains in the drive, I find the landlord has provided insufficient evidence to support the damage was caused by the tenant as the tenant did not have exclusive possession of the driveway and it was used by other vehicles. I also accept the tenant's evidence that the piece of plywood used to protect the driveway was not new, as the photographs support the wood to be fairly weathered. Therefore, I dismiss this portion of the landlord's claim.

Mattress cover

The evidence of the landlord was that the tenant damaged the mattress cover as there were stains everywhere. The tenant evidence of the tenant was that the mattress cover was not new and it was worn when his tenancy started.

While I accept the evidence of both parties that the mattress cover was not in good condition, I find the landlord has failed to provide sufficient evidence as to the actual amount to be compensated. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$1,359.81** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$400.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$959.81**.

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 the security deposit in partial satisfaction of the claim and the landlord is granted a formal 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: July 31, 2013

