



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit and unpaid rent and utilities. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has the landlord established an entitlement to compensation for damage; unpaid rent and utilities, in the amount claimed?

Background and Evidence

The tenancy commenced December 1, 2011 for a fixed term sets to expire December 1, 2012 and then continue on a month-to-month basis. The tenants paid a security deposit of \$575.00. The tenants were required to pay rent of \$1,150.00 on the 1st day of every month plus electricity. The electricity bill is in the landlord's name. The landlord did not prepare a move-in condition inspection report. The tenants moved out of the rental unit November 5, 2012 without prior notice.

Below, I have summarized the landlord's claims against the tenants and the tenant's responses.

Unpaid rent

It was undisputed that the tenants' rent cheques for August and September 2012 were returned for insufficient funds and the tenants put a stop payment on their November 2012 rent cheque. The landlord seeks to recover three months of rent or \$3,450.00.

The tenant submitted that the November 2012 rent cheque was cancelled to provide sufficient funds to pay for moving costs. The tenants notified the landlord's property manager, via email, that they discovered the roof was leaking and moved out on about that same day. The tenants decided to move so as to avoid further damage and because they believed their child was sick due to the water ingress.

Hydro

The landlord submitted that the tenants owe him \$323.38 for hydro they consumed between August 2012 and November 2012. The tenant was agreeable to paying this amount.

Replacement flooring

The landlord submitted that the tenants were negligent by not reporting a roof leak to the emergency contact person for at least a week. The landlord pointed to an email written by the tenants on November 5, 2013 in support of his position. The landlord had the carpeting in the hallway and two bedrooms replaced. The landlord's contractor estimated that the amount attributable to new flooring was \$2,400.00.

The tenant submitted that she and her husband did not notice water leaking into the middle bedroom initially because that room was used by their daughter and their daughter was staying at her grandfather's home at that time. When the tenant went into her daughter's room to put away laundry she noticed the wet carpeting. The tenant looked up and discovered three water stains on the ceiling and observed water on the wall. The tenants could not locate the document that had the landlord's emergency contact person information but were able to make contact with that person a couple of days later when their internet was hooked up.

Upon discovering the roof leak, the tenant's father climbed a ladder to see if he could fix the problem. As the roof is a flat tar and gravel roof he could not do anything about it. But, the tenant understood from her father that the roof looked very old and the downspouts were clogged.

The landlord acknowledged that he does not know the age of the roof and that it may have been as old as the house, which was built in 1976. Upon learning of the roof leak the roof was temporarily patched, and no further water entered the unit. Then the roof was replaced in January 2013.

The tenant stated that the carpeting that was in the house during their tenancy was old and worn. The landlord acknowledged that he did not know the age of the carpeting but did not believe it was in as bad condition as the tenant stated.

Repainting and repairing walls

It was undisputed that there was a hole in the wall and crayon markings on the walls at the end of the tenancy which were not there at the beginning of the tenancy. The landlord submitted the rental unit was painted just before the tenancy began. The tenant was agreeable to compensating the landlord for wall repairs and painting but was of the position the claim of \$650.00 was high considering all of the damage was in one area. The landlord explained that he had paid the contractor a total of \$20,000.00 to do several repairs, including the roof and floor replacement and that the contractor had estimated the portion attributable to repairing and repainting the walls.

Plumbing repairs

The landlord claimed and the tenant agreed to pay \$87.62 for plumbing repairs.

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 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. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or 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. In this case, the landlord bears the burden of proof.

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 appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40.

Upon consideration of everything before me, I provide the following findings and reasons with respect to each of the landlord's claims against the tenants.

Unpaid rent

A tenant is required to pay rent in accordance with the terms of the tenancy agreement, even if the landlord does not comply with the Act, regulations or tenancy agreement, unless the tenant has the legal right to withhold rent.

In this case, it is undisputed the tenants failed to pay rent for the months of August and September 2012 and I award the landlord unpaid rent for those months. With respect to November 2012 I find the tenants are also liable to pay the landlord for rent for that month for the following reasons:

- The tenants were bound to a fixed term tenancy set to expire December 1, 2012;
- The tenants occupied the rental unit in November 2012,
- The tenant did not give the landlord advance notice of their intent to end the tenancy or of a breach of a material term of the tenancy agreement so as to provide the landlord an opportunity to mitigate his losses and/or correct the breach.

Therefore, I grant the landlord's request to recover three months of unpaid rent from the tenants for an award of \$3,450.00.

Hydro

As it was undisputed the tenants were required to pay for their hydro consumption and the tenant agreed to compensate the landlord the amount claimed I grant the landlords request to recover \$323.38 from the tenants.

Replacement flooring

It is undisputed that water ingress soaked the carpets in two rooms and the hallway and the landlord subsequently replaced the carpets. The issue is whether the landlord is entitled to recover the cost of replacement flooring from the tenants and as such, the landlord must meet all four parts of the test for damages described above.

Carpets have an average useful life of 10 years according to Residential Tenancy Policy Guideline 40. I accept the carpets that were replaced were at or near the end of their useful life considering the following:

- the tenant testified the carpets were old and worn during the tenancy;
- the tenant was very forthcoming about responsibility for other damage she or her family caused during the tenancy;
- the landlord was uncertain of the age of the carpeting
- the landlord did not have any other evidence, such as a move-in inspection report, to demonstrate the condition of the carpets at the beginning of the tenancy.

In light of the above, I find the landlord's loss with respect to the old carpeting to be nil and it is unnecessary to determine whether the tenants were negligent in delaying the report of the roof leak. Therefore, I make no award to the landlord for replacement flooring costs.

Repainting and repairing walls

Given the tenant agreed to the wall damage as described by the landlord I am satisfied the landlord is entitled to compensation for repairs and repainting. However, interior paint has an average useful life of four years and the rental unit had been last painted one year prior. As I was not provided a breakdown of the cost of repairing the hole versus the cost of repainting I reduce the entire claim of \$650.00 by 25% to reflect depreciation of the interior paint. Therefore, I award the landlord \$488.00

Plumbing repairs

As the tenant agreed to compensate the landlord \$87.62 for plumbing repairs I award this amount to the landlord.

Monetary Order and security deposit

As the landlord continues to hold the tenant's security deposit I find his actual losses have been reduced by the amount of the security deposit and I have offset it against the amounts awarded to the landlord in providing the landlord with a Monetary Order. Accordingly, the landlord is by way of this decision the landlord is authorized to retain the security deposit.

Given the landlord's level of success in this application I award the landlord \$50.00 toward the filing fee he paid for this application.

In light of all of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid rent	\$3,450.00
Hydro	323.38
Repainting and repairing walls	488.00
Plumbing repairs	87.62
Filing fee	50.00
Less: security deposit	<u>(575.00)</u>
Monetary Order	\$3,824.00

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

Conclusion

The landlord has been provided a Monetary Order in the sum of \$3,824.00 to serve and enforce as necessary.

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: June 28, 2013

Residential Tenancy Branch