



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNSD, MNR, MNDC, MND, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. Both parties appeared and had an opportunity to be heard.

The tenants had moved out of the rental unit by the date of the hearing rendering the application for an order of possession unnecessary.

The landlord's original claim was for \$6257.97. After receiving additional invoices the landlord amended its' claim to \$9210.20. Both the original claim and the amended claim were served personally on the tenant. At the beginning of the hearing the tenant acknowledged receipt of the documents and indicated he was prepared to go ahead with the hearing.

I heard the landlord's testimony and then the tenant's. The landlord had arranged to have the carpenter and a police officer give testimony. After hearing the tenant's evidence I decided that it was not necessary to hear the landlord's other witnesses.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced July 1, 2010. The monthly rent of \$800.00 was due on the first day of the month. The tenants paid a security deposit of \$400.00. A move-in inspection was conducted and a move-in condition inspection report completed on July 3, 2010. The rental unit is a duplex that had been renovated just prior to the start of this tenancy.

On July 2, 2013 the landlord issued and served a 1 Month Noticed to End Tenancy for Cause with an effective date of August 31, 2013. This was followed by a 10 Day Notice to End Tenancy for Non-Payment of Rent posted on the rental unit on August 3. The effective date of the 10 Day Notice was stated to be August 12.

The landlord testified that she went to the rental unit on August 5. The tenant was packing. He told the landlord they would be out by the middle of the month. The tenant's version is that he told her he hoped they would be out by the middle of the month.

The landlord testified that she went back to the rental unit on August 20. The doors were unlocked and the unit was a complete shambles. Not only was there extensive damage to the doors, walls, and electrical fixtures and broken furniture and garbage everywhere, the refrigerator was unplugged with rotting meat in it, the freezer had rotting meat in it, and there was a box of meat in the basement also rotting. The landlord also found drug paraphernalia. The landlord changed the locks on that date.

The tenant testified that he and his family moved out within the first five days in August. He was working straight nights in August. This, together with the fact that neither he nor his partner drive, made it difficult for them to get their stuff out of the rental unit. He said he had everything arranged to finish moving on August 23 but when he was on his way to work on August 20 he saw his stuff in the yard of the rental unit. He did not stop.

The tenant testified that they lost the keys some time earlier so were not able to lock the doors. He also testified that he had wanted to give himself time to fix the holes and to clean up. He said it was his intention to clean after they had finished moving but that the landlord took possession before he could do so.

The tenant testified that he never provided his new address to the landlord.

The landlord claimed the following:

Unpaid August rent	\$800.00
Cleanup:	
Labour – 2 people for 78 hours @\$25.00/hour	1950.00
Trucking to the dump – 7 hours @\$30.00/hour	210.00
Dump receipts	120.75
Dolly rental	22.40
Repairs:	
Carpenter – 96 hours @\$30.00/hour	2880.00
Home Hardware – supplies	1656.20
Electrician – labour and supplies	1024.05
Glass company	16.80

The only items the tenant challenged were the replacement of the baseboard heaters which he said were working and the repairs to the tiled kitchen floor, which he said were

loose at the start of the tenancy. He also said the refrigerator had been unplugged by accident. He did not offer any explanation for the state of the freezer.

Analysis

Section 44(1)(d) of the *Residential Tenancy Act* states that a tenancy ends when a tenant vacates or abandons the rental unit. I find that the landlord was justified in concluding that the tenants had abandoned or vacated the rental unit when she went there on August 20. The tenant had told her they intended to be out by mid-month; the tenants had not paid the August rent; the doors were unlocked; there was nothing but garbage left in the unit; and there was rotting meat in three locations in the unit.

I do not accept the tenant's evidence that he intended to clean and repair the unit before the end of the month. If he had intended to do so he would have done some work between August 5 and August 20. There is no evidence that he did. In fact, his testimony that he did not know the refrigerator was unplugged and its' contents rotting is confirmation that he was not at the unit or, if he was, he did not do anything to start the clean-up.

Secondly, when he saw that the landlord was taking possession on August 20 he did not make any effort to contact the landlord to see if he could retrieve any personal possessions or mitigate the damages.

Thirdly, the sheer volume of material left in the unit indicates how unlikely it was that the tenants had any realistic plan to clean up this unit before August 31. The weigh tickets from the dump tell the story:

August 20	170 kg
August 21	295 kg
August 21	255 kg
August 21	220 kg
August 23	205 kg

These tickets represent literally a ton of refuse.

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord for damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser.

The Residential Tenancy Branch has developed a schedule for the expected life of fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Branch Guideline 40: Useful Life of Building Elements* and is available on-line at the Residential Tenancy Branch web site.

The landlord testified that the baseboard heaters were about ten years old. The estimated useful life of baseboard heaters is fifteen years. Therefore, I must reduce the claim for the replacement of the heaters by two-thirds. Accordingly, the claim for the electrician's bill is reduced to \$400.00.

The landlord also claimed the cost of registered mail. The *Act* does not allow an arbitrator to award any party the costs of preparing or serving their application for dispute resolution or evidence. This part of the landlord's claim is dismissed.

The balance of the landlord's claim is allowed in full.

I find that the landlord has established a monetary claim of \$8156.15 calculated as follows: unpaid August rent in the amount of \$800.00; cleaning in the amount of \$2303.15; repairs in the amount of \$4953.00; and the \$100.00 the landlord paid to file this application. 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 for the balance due of \$7756.15.

Conclusion

A monetary order has been made in favour of the landlord. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

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 22, 2013

Residential Tenancy Branch

