



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding QUAY PACIFIC PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND, MNSD, MNR, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for unpaid rent, loss of income, for the cost of cleaning, painting, repairs and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of the claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent, loss of income, for the cost of cleaning, painting, repairs and for the recovery of the filing fee?

Background and Evidence

The tenancy started in June 2010 and ended on or about September 10, 2013. The monthly rent at the end of the tenancy, was \$1,320.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$650.00.

The landlord stated that the tenant failed to pay rent for August and on August 28, 2013; the landlord served the tenant with a notice to end tenancy for non payment of rent, to be effective on September 10, 2013. The tenant did not pay rent, did not dispute the notice and moved out on or about September 03, 2013, without informing the landlord. The landlord made attempts to contact the tenant to carry out a move out inspection, but was unable to. The tenant did not provide the landlord with a forwarding address.

The landlord testified that the unit was cleaned and repaired in preparation for a new tenant. The landlord filed a copy of the advertisement he placed on line. A new tenant was found for October 15, 2013. The landlord is claiming unpaid rent for August and loss of income for September 2013.

The landlord stated that the tenant left the unit in a condition that required repair, cleaning and painting and has made a claim of \$2,500.00. The landlord did not provide a breakdown of the cost of each item and also did not provide any photographs of the damage. The landlord filed an invoice in the total amount of his claim.

The claim for \$2,500.00 includes the cost of painting, fixing closet doors, fixing holes, fixing the tub surround, cleaning and fixing the light fixtures. Each of these items was discussed. The landlord could not provide information regarding the date the rental unit was last painted. The tenant agreed to putting holes in the wall and agreed to pay \$150.00 towards the cost of repair. The tenant also agreed to pay \$100.00 for cleaning the rental unit.

The tenant stated that the previous manager visited the rental unit for an inspection every three months and despite informing him about the closet doors, the repair work was not carried out.

The landlord stated that in July 2010, the tenant reported a plumbing problem which was determined to be the fault of the tenant. The landlord incurred a cost of \$1,355.20 to fix the blockage. The landlord stated that several efforts were made over the course of the tenancy, to recover this cost from the tenant but the tenant did not pay. The landlord testified that the charge was not aggressively pursued because the landlord was a "good" landlord.

The landlord is claiming the following:

1.	Rent for August 2013	\$1,370.00
2.	Loss of income for September 2013	\$1,370.00
3.	Plumbing	\$1,355.20
4.	Repairs	\$2,500.00
5.	Filing fee	\$100.00
	Total	\$6,695.20

Analysis

1. Rent for August 2013 - \$1,370.00

The tenant agreed that she did not pay rent for August and therefore I find that the landlord is entitled to his claim.

2. Loss of income for September 2013 - \$1,370.00

Residential Tenancy Policy Guideline#3 refers to claims for loss of income. This guideline states that in a month to month tenancy, if the tenancy is ended by the landlord for nonpayment of rent, the landlord may recover any loss of rent suffered for the next month, as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by making attempts to re-rent the premises at a reasonably economic rent. In this case, the tenant moved out in early September 2013, pursuant to a notice to end tenancy for nonpayment of rent. The landlord advertised the availability of the rental unit but was not successful in finding a tenant for September. Accordingly, I find that the landlord is entitled to recover the loss of income he suffered in the amount of \$1,370.00.

3. Plumbing - \$1,355.20

The landlord is making a claim for plumbing costs that he incurred in July 2010.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the landlord's failure to collect \$1,355.20 for plumbing costs in a timely fashion, or shortly after when it became due, pursuant to the doctrine of laches, I find that this aspect of the landlord's application must hereby be dismissed.

4. Repairs - \$2,500.00

The landlord has filed a claim for this amount for various items, but has not provided a breakdown of the cost of each item. If I find that the tenant is responsible for all items listed on the claim, then I will award the landlord the entire claim. However, if I find the tenant responsible for some of the claims, I will assess the amount of the damage based on the testimony of both parties.

The landlord has made a claim for painting the interior of the rental unit. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the painting. As per this policy, the useful life of interior painting is four years.

The tenancy lasted for three years and two months. The landlord was unable to provide information on when the rental unit was last painted. Since at the end of the tenancy there was only ten months of useful life left and the landlord was unable to provide information regarding the age of the paint, I dismiss this portion of the landlord's claim.

The landlord has claimed the cost of fixing the closet doors or replacing them. In the absence of photographs and information regarding whether the doors were replaced or fixed, I am unable to determine whether the repairs were as a result of neglect on the part of the tenant or from wear and tear. The tenant testified that she reported the broken doors during the tenancy and the landlord did not carry out repairs. Based on the above, I find that it is more likely than not that the damage to the doors was a result of wear and tear during the three year tenancy and accordingly I dismiss the landlord's claim to repair the doors.

The landlord did not file photographs to support his testimony regarding damage to the light fixtures and tub surround. The tenant denied having caused damage to these items. Therefore I find on a balance of probabilities that any damage to the light fixtures and the tub surround are more likely than not a result of wear and tear. Accordingly I dismiss this portion of the landlord's claim.

The tenant agreed to having put holes in the wall to install shelves. I find that the tenant's offer of \$150.00 for repairs is reasonable and I award the landlord this amount.

The tenant stated that she cleaned the rental unit but agreed that she did not clean the floors and the oven. The tenant offered \$100.00 towards the cost of cleaning. Since the rental unit is a five bedroom, 2,500 square foot home, I find it reasonable to award the landlord \$200.00 towards the cost of cleaning.

Overall the landlord has established a claim of \$350.00 towards his claim for damages.

5. Filing fee - \$100.00

The landlord has established a total claim that is under \$5,000.00. Therefore I award the landlord \$50.00 towards the filing fee.

Overall the landlord has established a claim as follows:

1.	Rent for August 2013	\$1,370.00
2.	Loss of income for September 2013	\$1,370.00
3.	Plumbing	\$0.00
4.	Repairs	\$350.00
5.	Filing fee	\$50.00
	Total	\$3,140.00

I order that the landlord retain the security deposit of \$650.00, 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 \$2,490.00. 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 in the amount of **\$2,490.00**.

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*.

Dated: January 23, 2014

Residential Tenancy Branch