



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MND, MNSD, F

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for a monetary order for damages to the unit, for a monetary order for money owed and an order to retain the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on April 17, 2014, a Canada post tracking number was provided as evidence of service, the tenant did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I refer only to the relevant facts and issues in this decision.

Preliminary matter

Section 59 (2) of the Act states an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. In this case, the landlord has checked the box for unpaid rent, however the monetary order requested in the application does not include any compensation for unpaid rent or

loss of rent and the details of dispute do not specifically state that they are seeking compensation.

The only issues that are clearly requested in the details of dispute are the claims for compensation for damages to the rental unit and to recover the strata fine. As the principles of natural justice require that a person be informed and given particulars of the claim against them. I find the only issues to be heard at today's hearing are the landlord's claim to recover the cost of damages, the cost of the strata fine and the landlord request to retain the security deposit to offset the amount owed. The landlord is at liberty to reapply for unpaid rent and loss of revenue.

Issues to be Decided

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 tenancy began on March 1, 2013. Rent in the amount of \$1,400.00 was payable on the first of each month. A security deposit of \$700.00 was paid by the tenant.

The landlord testified that although the tenant gave notice to end the tenancy for March 31, 2014, he failed to vacate the premise until April 6, 2014 and because of that the new renter was unable to move into the premise on April 1, 2014, and found new accommodations elsewhere.

The landlord claims as follows:

a.	Damages	\$ 955.50
b.	Strata fine	\$ 200.00
c.	Filing fee	\$ 50.00
	Total claimed	\$1,205.50

Damages

The landlord testified that the tenant failed to clean the rental premises at the end of the tenancy and he had to pay to have the rental unit cleaned, this included all the appliances, cabinets, floors and the bathroom. The landlord stated that all the walls had to be thoroughly washed as the tenant has flicked snot all over them.

The landlord testified that the tenant had also caused damage to the walls as there were several 2 inch by 2 inch holes that had to be filed, sanded and painted. The landlord stated the tenant also attempted to repair a wall as a portion of the wall was painted with white primer and did not match the colour of the other walls. The landlord stated that the only the walls that were painted were the ones the tenant caused damage to. The landlord stated the rental unit was newly painted at the start of the tenancy.

The landlord testified that he hired a company and they did all the cleaning and repairs that were required. Filed in evidence is a copy of the receipt which support cleaning was completed and damages were repaired in support of the landlord's testimony.

Strata fine

The landlord testified that the tenant signed a Form K - Notice of Tenant's Responsibility at the start of the tenancy, agreeing to abide by all strata rules. The landlord stated the tenant failed to abide by the rules, as he was required to book with the strata the date of the move-out to ensure the elevator was available. The landlord stated as the tenant failed to comply with this rule, he was fined by the strata \$200.00 in accordance with the bylaw. The landlord seeks to recover the fine in the amount of \$200.00. Filed in evidence is a letter from the strata and a receipt for the fine paid in support of the landlord's testimony.

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 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

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.

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.

I accept the undisputed evidence of the landlord that the tenant failed to clean the rental premises to a reasonable state of cleanliness and failed to repaired damage they caused to the walls. I find the tenant breached section 37 of the Act, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the amount he paid for cleaning and repairing damage in the amount of **\$955.50**.

Strata fine

I accept the undisputed evidence of the landlord, that the tenant signed a Form K - Notice of Tenant's Responsibility and that the tenant failed to comply with the rules of the strata when he failed to book the elevator prior to his move. I find the tenant breached the tenancy agreement, when he failed to book the elevator as the form K becomes a part of that agreement this. I find the tenant's actions caused losses to the landlord. Therefore, I find the landlord is entitled to recover the bylaw fine, in the amount of **\$200.00**.

I find that the landlord has established a total monetary claim of **\$1,205.50** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$700.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$505.50**.

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: August 08, 2014

Residential Tenancy Branch

