



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Sections 45, 46 and 67 for rent owed due to insufficient Notice to end the tenancy and for damages;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenant agreed she received the Application for Dispute Resolution by registered mail. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant owes rent and did damages to the property, that they were beyond reasonable wear and tear and the cost to cure the damage? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. A large amount of documentary evidence was submitted by both parties and much of their evidence was conflicting. The undisputed evidence is that the tenancy commenced on February 1, 2014 on a fixed term lease to January 31, 2017, rent was \$1600 a month and a security deposit of \$800 was paid on February 1, 2014.

It is undisputed that the tenant gave Notice to end her tenancy dated March 2, 2015 and vacated that week. There were two move out inspections on March 6, 2015 and March 8, 2015. The landlord said the tenant refused to sign the report. The landlord and his contractor witness said the house was substantially renovated between December 2013 and January 2014 with a new laminate floor and patching, repairing, priming and painting all walls. The landlord said that during the walk through for the report, five of

six light bulbs were burned out and after these were replaced and the floor vacuumed, he noticed many more blemishes to the laminate flooring downstairs.

He said that some dings and dents in the walls were patched prior to the walk through in an unsatisfactory manner with the mudding uneven or spots showing through the walls. He said after the lights were replaced, he saw many more problems in the walls and realized touch-ups would not suffice as so many marks would not wash off and there were too many holes and dints so the walls needed repainting. He said there were lots of holes in the downstairs family room caused by a bb gun fired at the wall and bb pellets were on the floor. He noted closet tracks bent out of shape, two holes in the garage wall, graffiti on the wall and that the doors to the garage were left half painted. He also noted all keys were not returned and the garage remote and pointed out the lease agreement stated there would be a \$150 charge for rekeying if all keys were not returned.

He was able to re-rent the unit for March 16, 2015 and claims half of one month's rent due to insufficient notice to end the tenancy and breach of a fixed term lease. The tenant did not dispute the charges of \$40.30 for the garage remote replacement, or the \$21 to pick it up and recode it. She also agrees to the rekeying charge of \$150 and the \$42 for replacing the damaged closet tracks. She strongly disputes the charges for prep work and painting as she said there were minor pinholes in the walls and the landlord has exaggerated the holes in his 92 photographs by having large white patches over them. She provided 38 photographs showing a very different condition of the walls and floors but the landlord said hers were taken at a distance whereas his were focussed on the problems.

The landlord's witness said he had done the work originally in the home and saw it again after the tenancy and the condition of the home was as the landlord stated with many dings, dents and marks on the walls and damage to the floors. The tenant provided a statement by a witness who said he was present at the time of the inspection reports. He noted the home was clean with no damage to walls or flooring but painting was needed in some rooms due to light wear and there were some holes from hanging pictures. He noted the landlord, his wife and another man (the contractor, it appears) were present and did a very close-up examination of everything and noted no damages but said some painting was needed. He said they commented on how pleased they were with the condition of the home and were excited to rent it immediately for more than the current rent. He said he saw no bb holes or bb s or pellets anywhere and nothing like this was mentioned. The landlord's wife noted issues with the garage but the landlord said it was not part of the move-in report and had been improved. At the end of the inspection, they asked for some additional cleaning and no responsibility for

additional rent or damages was noted. He said they implied if the additional cleaning was done, the tenant would get a good portion of her security damage back. He said the landlords wanted the tenant to sign the move out report when it was incomplete; the landlords said she never signed it.

The landlord claims as follows:

1. \$800 for half of March's rent as he was able to re-rent for March 15, 2015
2. \$80 for wall washing
3. \$336.00 for prep work on walls
4. \$8.25 for patching compound
5. \$220.50 for painting in house
6. \$42 for patching holes in garage
7. \$68.43 Supplies for painting main wall
8. \$16.80 white garage door supplies
9. \$22.40 white interior trim paint
10. \$11.20 white interior primer
11. \$40.30 for garage remote and \$21 to pick up and decode (Tenant agrees)
12. \$50.94 for closet track repair (Tenant agrees)
13. \$150 to rekey all locks (Tenant agrees)
14. \$480 for reduced life of new laminate floor costing \$1200.

Invoices were provided to support the amounts claimed. An email from the female landlord dated March 7, 2015 notes she added some missed items to the move out inspection and notes some cleaning required, the garage doors needing painting, some holes needing mudding and painting and a gouge in the bedroom floor. The tenant states she cleaned the place again after this, the garage was not part of the move-in report as it was in such bad shape and the holes were pinholes and not extensive. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Awards for compensation are provided in sections 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.

I find the tenant violated the Act and her tenancy agreement by ending her fixed term tenancy in March 2015 contrary to section 45 of the Act. I find the landlord fulfilled their duty to mitigate damages and re-rented by March 15, 2015 so only lost half of one month's rent. I find the landlord entitled to recover \$800 for rental loss due to the tenant's breach of her fixed term tenancy.

I find the tenant agreed she was responsible for certain items. Therefore I find the landlord entitled to recover \$40.30 for the garage remote and \$21 to pick up and recode \$50.94 for closet track repair and \$150 to rekey all locks.

The testimony of the tenant and the landlord is conflicting with regard to the damage to the unit which mainly involved washing walls, prepping and painting and damage to the floors. The onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof on a balance of probabilities, and the claim fails. I find the landlord has provided close up photographs of damage and the tenant has provided equally probable more distant photographs which show walls with minimal scuff or nail marks.

Both parties have filed the move out inspection report as evidence of the damage. The move out inspection is an opportunity for the tenant and landlord to identify damage and come to an agreement on any deductions that can be made to the security deposit. The inspection should be conducted diligently using a flashlight if necessary as it is the only opportunity to identify damage that the tenant is responsible for. Since the testimony of both parties is conflicting with regard to the extent of the damage, I will put significant weight on the move out inspection report which is evidence filed by both parties, to assist in assessing the damage that the tenant is responsible for.

I find the weight of the evidence is that the landlord had two opportunities to inspect but still added items after the report was completed and a copy given to the tenant. I invited the tenant to indicate which items were added and she pointed to 'black sticky mark on stairwell floor, metal hook installed and holes beside it in bedroom 2 downstairs, 1" gouge in floor in bedroom 2 downstairs and 'wax or something on new floor in family room. The tenant did not note her disagreement on the report with anything else that was written. I find the report often notes dirty walls, paint scratches and paint touch ups required. Therefore I find the landlord entitled to recover \$80 for costs of washing walls. I find insufficient evidence that the walls needed the extensive prep work and complete repainting claimed by the landlord. I find the tenant's evidence more credible that there were no bb shots on the walls or bb pellets as this was not noted in the move out report and it is hard to believe that 3 adults and two inspections failed to note these. While it might be nice or convenient to paint all the walls after a tenancy, I find the landlord has not satisfied the onus of proving that this tenant's behavior necessitated this. Likewise, I find his contractor's evidence credible that he repainted the unit but I find insufficient

evidence that it needed such extensive repainting. However, there is some evidence of touch ups required and the tenant's witness noted some walls needed repainting so I allow him the nominal sum of \$100 for labour as provided in the Residential Policy Guideline 16 plus \$68.43 for painting supplies; I note even if no significant loss caused by the tenant is proven, I find the move out report notes marks requiring touch up.

I find also that the garage was not included in the move-in report so I find insufficient evidence that the tenant caused damage or left it in a worse condition than at move-in. I therefore disallow any claims with respect to damage to the garage. In respect to the claim for the laminate flooring, I find insufficient evidence that this tenant caused the amount of loss claimed. It was not noted in the move-out report at the time, and as noted above, it is up to the landlord to inspect thoroughly at move out and put any such damage on the report at the time and not add it later as was done in this case.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the amount owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Half of one month's rent	800.00
Washing walls	80.00
Nominal amount for touch up of paint	100.00
Painting supplies allowance	68.43
Garage remote & pick up and recode	61.30
Closet tracks repairs	42.00
Rekeying all locks	150.00
Filing fee	50.00
Less security deposit	-800.00
Total Monetary Order to Landlord	551.73

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 09, 2015

Residential Tenancy Branch

