



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNDC MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for unpaid rent, damage and loss pursuant to section 67; authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties acknowledge receipt of the evidentiary materials of the other party for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage or loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenants' security deposit towards any monetary award?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on November 1, 2013 as a one year fixed term tenancy. During the tenancy, the rental amount of \$1750.00 was payable on the first of each month. The tenants paid an \$875.00 security deposit on October 2, 2013. This landlord and tenants have been parties to dispute resolution hearings prior to this hearing. As a result of one of these previous Residential Tenancy Branch ("RTB") hearings, the tenants and the

landlord entered into a Mutual Agreement to End Tenancy for October 31, 2014. There is no dispute that the tenants vacated the rental unit on November 1, 2014.

The landlord testified that there was no condition inspections conducted with respect to this tenancy on move-in or move-out. In this application, the landlord sought \$8564.81 from the tenants as a result of costs for cleaning, repairs, replacement of items in the rental unit as well as junk removal and associated services.

The landlord submitted photographs in support of her monetary claim. She testified that the photographs showed the tenants' belongings in the rental unit on November 5, 2014, after the tenants had vacated the rental unit. She submitted that the photographs illustrated the substantial amount of work to be done by the landlords after the tenants moved out. The photographs show; damage to the unit (holes in walls and marks on doors); light switch covers removed; dirty stove and kitchen; clothes left in closets and on furniture that was left behind (dressers, mattresses, etc.); general refuse and garbage in the yard; and the carport enclosed with lattice and filled with possessions. The landlord testified that the tenants did not have permission to make any changes. The photographs also show workers using a junk removal company truck to load belongings from the rental property. There are over 50 photographs and they show an excessive amount of belongings in every room and under every opening around the house.

The landlord testified, supported by the photographic evidence submitted that the tenants left a substantial amount of junk and garbage after vacating the rental unit. She testified that she spent approximately \$700.00 to clear all of the items left behind by the tenants. She submitted three receipts from a junk removal company in the amounts of \$236.25; 433.76; and 223.91. Those receipts indicate, "*paid by credit card*".

The landlord testified that one window was broken within the rental unit. She submitted an invoice from a glass company in the amount of \$89.91. The landlord testified that, instead of having an entirely new window installed, she bought replacement glass at an auto glass shop to minimize the cost.

The landlord submitted an invoice from a tile company in the amount of \$458.65 to replace tiles that the tenants had bought and laid in the rental unit. The landlord testified that she made a verbal agreement with the tenants that they could replace the carpet in one room of the home and lay tile. She testified that the tenants had told her it was necessary to ensure that their allergies and asthma did not overact in the home. The landlord testified that the tenants own tile work was done so poorly it had to be

replaced when they moved out. The landlord submitted an invoice for the labour to install the tiles, in the amount of \$1200.00. It indicated,

removed some tiles improperly installed at the rear room of the house. Treated sub-floor due to dogs urine smell and removed nails and staples. Prepared sub-floor to install tiles. Installed tiles Applied grout and wiped grout and finished.

The landlord provided numerous receipts for home renovation stores in the following amounts:

Items purchased	Purpose	Amount
Rubber gloves (4x) and 2 small towels	Cleaning supplies	\$16.80
Paper towel, dishwasher detergent, other	Cleaning supplies	\$ 24.47
Not identified		\$14.74
Lock	Replacement	\$27.99
Lock, deadbolt	Replacement	\$106.36
Door	Replacement	\$139.61
Nails	Repairs	\$40.67
Grout	Repairs	\$51.50
Paint and equipment for painting	For painting	\$67.62
Light bulb and light switch covers	Replacement	\$9.98
Spackle	Repairs	\$9.17
Caulking and equipment for tiling	Repairs	\$76.48
Gypsum	Repairs	\$7.26
Total of receipts submitted		\$592.65

The landlord also testified that she provided compensation to the next tenant moving in for the clean-up they undertook at the beginning of their tenancy. She testified that her cost was \$700.00 and she submitted an invoice reflecting that cost. Some of the receipts submitted by the landlord were issued to people she knew personally. She testified that a receipt in the amount of \$1500.00 was paid to her husband; a receipt in the amount of 120.00 was paid to her cousin; a receipt in the amount of 625.00 was paid to one of her other tenants; and one receipt (\$2280.00) showed a payment issued to herself for work done and time off work to arrange and oversee repairs. The landlord testified that she used her own contacts to reduce the costs that she would incur. The landlord acknowledged that she had not paid her husband or her cousin at this point but had paid her other tenant in the amount of \$625.00.

The landlord submitted evidence with respect to the following costs that she sought to recover from the tenant;

LANDLORD COSTS		Amount
UNPAID RENT		\$1750.00
RENT REFUND: move		\$700.00
CONTRACTOR INVOICES		\$2245.00
LANDLORD TIME OFF WORK		\$2280.00
CITY ELECTRICAL BILL		\$302.02
RECEIPTS FOR PURCHASES: cleaning and repairs		\$592.65
TILES + TILE WORK		\$1658.65
TOTAL AMOUNT		\$9528.32

I note that the landlord's application provided a compensation amount of \$8564.81. However, the landlord did not provide a detailed monetary worksheet to document the details of her monetary loss nor did she provide evidence with respect to other amounts not identified in this decision.

In response to the landlord's application and testimony, the tenant testified that it was unfair that her personal items were disposed of. The tenant testified to facing difficult personal circumstances that lead to financial difficulties. She testified that her husband is ill and that she has incurred expenses related to his illness and her inability to work because of her need to care for him.

The tenant raised a number of issues that she says affected her tenancy. She stated, among other complaints of poor behaviour by the landlord, that the landlord required her to move out on the final day of tenancy despite the fact that it was raining that day. She testified it was difficult to remove all of her items because of the circumstances (rain) the day she was scheduled to move. The tenant also denied that the window was broken. The tenant testified that the door was broken when they moved in to the rental unit. She testified that the rental unit was clean when she left. She also testified that she bought ceramic tile for the residence, improving the rental space. She testified that she did not believe it needed to be replaced. She also testified that she had paid the electrical bill.

The tenant conceded that she did not pay rent for the month of October, 2014, the last month of her tenancy. She testified that she simply could not afford to pay rent. The

landlord submitted copies of receipts for all rental payments made by the tenant as evidence.

The photographs submitted by the landlord show excess furniture, storage bins and other household items piled at the exterior of the house as well as many personal items and furniture left behind inside the house. The tenant made little comment about those photos except to say that she did leave items behind as she was very busy. She testified that the landlord had told her she was permitted to move out slowly because it was raining.

Analysis

Section 37 of the *Act* sets out the requirements for a tenant leaving the rental unit at the end of a tenancy: the tenant must, according to the *Act*, “leave the rental unit reasonably clean and undamaged except for reasonable wear and tear...” Based on the photographs submitted and the testimony of the landlord, I accept that the rental unit was not left clean. I find that, based on the evidence before me, the rental unit was dirty and messy, requiring the landlord to take extra steps in preparing to re-rent the unit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord has shown the existence of damage to the rental unit and financial loss incurred by the landlord to make repairs to the rental unit. The evidence presented includes documentary and photographic evidence that shows the need for cleaning, repairs and replacement of some items within the rental unit. The damage requiring repair in the rental unit was not all as a result of wear and tear over the course of a tenancy. I note that this tenancy was approximately one year in duration.

The landlords’ photographic evidence reflects a rental unit with damage to walls, a dirty kitchen and a multitude of personal items and furniture left behind by the tenant. The photographs showed light switch covers missing and the exterior of the home littered with refuse. The landlord’s undisputed testimony is that two junk removal vehicles were

required to take away all of the items left behind by the tenants. The photographs support that testimony.

The landlord also has the burden to show that this damage stemmed from an action, a violation of the *Act* or other rule by the tenant. The landlord's evidence is that this damage occurred over the course of the tenancy while the tenant denied some of the damage and other damage the tenant stated was already present. Despite the fact that the landlord did not have evidence to reflect the condition of the unit at its outset, I accept her testimony that the tenants received the rental unit in reasonably good condition. The landlord's other testimony is corroborated by the admissions of the tenant and by documentary and photographic evidence. I do not find that the tenant would have rented the unit were it in this condition at the start of the tenancy.

The *Act* sets out obligations for both the tenant and obligations of the landlord with respect to the end of tenancy, particularly in regard to condition inspection of the rental unit.

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

If the conditions set out in section 35(2) are not met, "unless the tenant has abandoned the rental unit, the right of the landlord to claim against the security deposit ... for damage to residential property is extinguished..."

Residential Tenancy Regulation No. 21 provides guidance on the consideration to be given to the condition inspection report at a dispute resolution hearing.

Evidentiary weight of a condition inspection report

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The landlord has been unable to provide condition inspection reports to support her claim. These reports represent the best evidence of the condition of the unit at move in and move out. However, I find the landlord has provided sufficient evidence, on a balance of probabilities, to show that the tenant did not meet their obligations at the end of the tenancy.

I find that the landlord is entitled to a monetary order for the following;

Items purchased	Amount
Lock	\$27.99
Door	139.61
Nails	40.67
Grout	51.50
Paint and equipment for painting	67.62
Light bulb and light switch covers	9.98
Spackle	9.17
Caulking and equipment for tiling	76.48
Gypsum	7.26
Payment to next tenant for cleaning unit	700.00
Payment to other tenant for work on unit	625.00
Payment for tile work and cost of tiles	1658.65
Payment to junk removal company 3 x (\$236.25 + \$433.76 + \$223.91)	903.92
Unpaid Rent: October	1750.00
Total Amount Owing to Landlord	\$6067.85

The landlord is entitled to the costs above that reflect damage proven by the landlord using photographic and documentary evidence to support her testimony. She has

shown that repairs were required in the bathroom, and to the walls requiring spackle, nails, grout and caulking. I find that the landlord has proven with photographic evidence that the light switch covers and the lock had to be replaced and that the unit had to be cleaned extensively. Furthermore, I find that there is substantial evidence to support the need for the landlord to pay for junk removal on three occasions, given the state of the residence at the end of the tenancy.

The evidence of both parties, landlord and tenant, show that the tenant owes October rent, that there was painting that needed to be redone in the rental unit and that the tiles needed to be replaced. I am satisfied that the landlord has met the burden on a balance of probabilities to show that these costs were incurred by the landlord, the costs were the responsibility of the tenants and that they are appropriate costs in all of the circumstances.

I note that, with respect to items not included in the amount owing to the landlord;

- The tenant denies the broken window and the landlord provided no proof that the window was broken or that it was broken by the tenant – only a receipt for a replacement piece of glass. I find this is not sufficient proof.
- I find the tenant is not responsible to the landlord to supply rubber gloves, paper towel and cleaning material.
- I find that the tenant is not responsible for the cost of multiple locks but only one, given the testimony of the landlord that one lock required replacement.
- I find the landlord is not entitled to costs that she has not yet incurred and may not incur at all. Therefore, I do not find she is entitled to be compensated for the invoice produced with her husband's name or the invoice produced with her cousin's name.
- I do not find that the costs that the landlord labelled as having incurred personally for time off work are sufficiently supported by the evidence. The landlord provided no information with respect to her work, the nature and times of her work or her payment amount.
- The tenant denies an outstanding balance on the electrical bill and I find that the evidence (the outstanding notice letter) does not sufficiently provide a timeline for the costs incurred on that invoice so that it has been shown that the tenant would be responsible for that invoice.

In accordance with section 72(2) of the *Act* (as reproduced here), that amount may be deducted from the security deposit.

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

(emphasis added)

I find the landlord is entitled to a monetary order in the amount of \$6067.85 for damage and loss incurred as a result of this tenancy. I further find that the landlord may retain the security deposit in partial satisfaction of this monetary order. Finally, having been successful in this application, I find further that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary award payable by the tenants to the landlord as follows;

Item	Amount
Amount owed to Landlord	\$6067.85
Less Security Deposit to be retained by Landlord	-875.00
Filing fee for this application	50.00
Total Monetary Amount to Landlord	\$5242.85

The landlord is provided with an Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: July 9, 2015

Residential Tenancy Branch

