



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF, MNDC, MND

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order, an order to recover the filing fee and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking a monetary order, an order to recover the filing fee and the return of the deposit. Both parties confirmed that they received each other's Notice of Hearing letter, Application for Dispute Resolution and evidence. I am satisfied that the parties have exchanged said documents in accordance with the service provisions of the Act and the Rules of Procedure.

Issue to be Decided

Is either party entitled to a monetary order as claimed?
Is either party entitled to the recovery of the filing fee?
Is either party entitled to the security deposit?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on May 1, 2014 and ended on July 12, 2015. The tenants were obligated to pay \$1500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$750.00 security deposit. The landlord stated that the tenants rented his 2500 square foot home. The landlord stated that the tenants advised him on July 11, 2015 that they would be moving out the following day. The landlord stated that the tenant put a stop payment on the rent for July. The landlord stated that along with the lost rent he incurred a bank charge of \$35.00 as a result of the tenants' actions.

The landlord stated the tenants made many alterations to the interior of the house without his permission. The landlord stated that they painted over a beautiful stone fireplace which made the character of the home suffer. The landlord stated that the tenants left without paying their final water bill. The landlord stated that due to the

tenants actions they have also done the following; damaged the hardwood floors by the numerous amount of scratches they made, damaged a light fixture, damaged a kitchen sink by melting part of it, damaged a crisper drawer in the fridge, left garbage and debris behind, did not clean the carpets at move out, and did not clean the home at move out. The landlord stated that the tenants have caused an extraordinary amount of damage to which he seeks compensation.

The landlord is applying for the following:

1.	Fireplace	\$4181.10
2.	Paint	\$2817.45
3.	Floor	\$2431.63
4.	Carpets	\$103.95
5.	Lighting and Altered wiring	\$325.00
6.	Disposal	\$20.00
7.	Cleaning	\$589.40
8.	Kitchen Sink	\$122.50
9.	Crisper Pan in Refrigerator	\$27.50
10.	Returned Cheque	\$35.00
11.	Loss of Rent July	\$1500.00
12.	Loss of Revenue August	\$1500.00
13.	Intangible Loss	\$1000.00
14.	Utility (water bill)	\$78.67
15.	Filing fee	\$100.00
	Total	\$14,732.20

The tenants gave the following testimony. The tenants stated that the landlord not only gave them permission to conduct repairs and decorating but asked them to do it. The tenants stated that they increased the value of the home substantially because of all the work they did. The tenants deny causing any damage beyond reasonable wear and tear. The female tenant stated that she fractured her back while conducting some of the work for the landlord and seeks to be compensated for it. The female tenant was unable to work because of the injury and seeks an award on that basis. The tenants stated that the stress they incurred dealing with this landlord also entitles them to compensation. The tenants stated that they seek to be compensated for storing the landlords personal

items in the basement, the filing fee for this hearing, banking charges incurred as a result of the landlords actions, and the cost of registered mail.

The tenants are applying for the following:

1.	Labour	\$2500.00
2.	Medical Bills and Loss of Income	\$6471.00
3.	Stress	\$5000.00
4.	Storage fees	\$4800.00
5.	Registered Mail	\$20.00
6.	Filing fee	\$50.00
7.	Banking Fees	\$57.00
	Total	\$18,898.00

Both parties request that they be awarded the security deposit, I will address that issue in the analysis portion of this decision.

Analysis

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements for each claim.** In the matter before me, each party bears the burden of providing sufficient evidence to support their claim.

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Landlords Application

I address the landlords claim and my findings as follows.

1. Fireplace \$4181.10

The landlord stated the fireplace is over 50 years old and had a special character to it. The landlord stated that the tenants painted the rock work without his approval. The landlord stated that he obtained two quotes from masonry companies to obtain an “average” cost to have it returned to its original state. The landlord advised that he is on a disability pension and has not conducted the repair as he is not financially able to do so.

The tenants dispute this claim. The tenants stated that the landlord and the tenants had ongoing discussions about it and that due to some miscommunication they understood that the landlord gave them his blessing to paint the fireplace.

Policy Guideline 40 addresses the “useful life” of building elements during a tenancy and lists masonry at 20 years. Applying the above guideline, the rock work has far exceeded its useful life and therefore the landlord would not be entitled to an award. In addition, the landlord has not suffered any out of pocket costs and has rented the home to another party since September 1, 2015, which clearly shows that the unit has not suffered any ill effects because of this change. The landlord has failed to meet the criteria listed above and I therefore must dismiss this portion of his application.

2. Paint - \$2817.45

The landlord stated that the tenants’ did such a poor job of painting that the home will require a full painting. The landlord stated that he obtained two quotes from painting companies to obtain an “average” cost to have the work done. The landlord stated that the interior of the home was painted in 2012. The landlord has not conducted this work.

The tenants dispute this claim. The tenants stated that they in fact corrected many of the deficiencies from the previous painters. The tenants stated that they painted the areas as agreed to by the landlords’ property manager using only approved colours as directed. Policy Guideline 40 addresses the “useful life” of building elements during a tenancy and lists paint at 4 years. Applying the above guideline, the painting has now exceeded its useful life and therefore the landlord would not be entitled to an award. The landlord was able to rent the unit as of September 2015. The landlord has not suffered any out of pocket costs nor has he provided a timeline to when and if this work will be done while tenants live in the home. Based on the insufficient evidence before me and the landlord not meeting the four part criteria outlined above, I dismiss this portion of the landlords’ application.

3. Floor - \$2431.63.

The landlord stated that the tenants were negligent and careless in how they treated the floors and as a result, numerous scratches occurred. The landlord stated that the original wood floors were refinished in 2012. The landlord stated that the tenants repaired one scratch but there are many scratches still remaining that the landlord states is far beyond wear and tear.

The tenants dispute this claim. The tenants stated that the landlords' property manager conducted a move in condition inspection report with them; however the landlord did not conduct a move out condition inspection. The tenant stated that floors were not damaged and that it was reasonable wear and tear. The landlord stated that he e-mailed the tenants about dropping off keys and doing a walk thru but was told to cease contact with them. The tenants stated that the landlord did not offer them any opportunity to participate in a condition inspection report nor did he offer them an opportunity to address and mitigate the alleged deficiencies.

Section 35 of the Act reads as follows:

Condition inspection: end of tenancy

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.

The landlord did not provide the tenant two opportunities to participate in the move out condition inspection report. Also, the move out condition inspection report does not have the landlord or tenants name on it, the address of the suite or a section for the tenants to dispute the condition of the unit and therefore does not comply with the regulations; the report as submitted by the landlord is not helpful or valid. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any.

In addition and as stated in the above claims, the landlord has only submitted an "estimated average cost". The landlord has not paid any out of pocket costs nor has he suffered any financial loss as he rented the unit since September to present at an elevated rental amount. Based on the insufficient evidence before me and the landlords failure of showing that the damage was a direct result of the tenants neglect or recklessness and not meeting the criteria listed above, I dismiss this portion of the landlords application.

4. Carpet Cleaning – \$103.95

The landlord stated that the carpets were left dirty and that he hired a carpet cleaning company to clean the carpets at a cost of \$103.95. The landlord stated that there were paint stains on the carpet from the tenant.

The tenants dispute this claim. The female tenant stated that her mother had a professional carpet cleaner and that the carpets were in fact cleaned. The tenant stated that the paint stains were from the previous painters and were not in the areas of the home that they painted. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

5. Lighting and Altered Wiring - \$325.00

The landlord stated that the tenant removed a light fixture without his authorization and altered the wiring. The landlord stated that the light fixture was installed in 2004. The

landlord stated that he had to hire an electrician at a cost of \$325.00 to repair the wiring and re-install the fixture.

The tenants acknowledge that they removed the fixture but didn't know they weren't allowed to make any alterations. The tenants signed an addendum that states no alterations were to be made without the landlords' permission.

Based on the tenants own testimony and the tenancy agreement, I find that due to their actions the landlord incurred this cost and I find that the landlord is entitled to \$325.00.

6. Disposal - \$20.00

The landlord stated that he paid a handyman "twenty dollars cash" to remove a mattress.

The tenants dispute this claim. The tenants stated that "I have no idea what mattress he's talking about"

Based on the disputing testimony of the tenant and the lack of supporting documentary evidence, I dismiss this portion of the landlord's application.

7. Cleaning \$589.40

The landlord stated that the tenants left the house extremely dirty that required him and his partner to clean the home.

The tenants dispute this claim. The tenants stated that they left the home cleaner than when they got it.

The landlord has not been successful in this portion of his application for the following reasons; the landlord did not provide a condition inspection report at move out, the landlord did not quantify the amount of hours he and his partner cleaned the unit, and the landlord provided an average cost to clean a home of his size without having the cleaning companies come and attend at the home to give an "actual" amount to clean the home. For the above reasons I dismiss this portion of the landlords application.

8. Kitchen Sink - \$122.50

The landlord stated that the tenant melted parts of the sink and made scratches all over it. The landlord stated that a new sink would cost \$245.00. The landlord stated that the sink was ten years old and felt 50% depreciation is appropriate.

The tenants dispute this claim. The tenants stated that the sink was in fine condition at move out and it had already had some scratches on it. The tenants stated “at most, a little bit of wear and tear”.

The landlord stated that he has not replaced the sink. The landlord has not suffered any loss nor has he met the four part criteria as outlined above, accordingly; I dismiss this portion of the landlords’ application.

9. Crisper Pain in Refrigerator - \$27.50.

The tenant agrees with this claim. Based on the tenants’ acceptance of responsibility, I find that the landlord is entitled to \$27.50.

10. Returned Cheque - \$35.00.

The landlord stated that the tenant put a stop payment on the July 2015 rent and incurred a \$35.00 bank charge.

The tenant acknowledged that she put a stop payment on the cheque. The tenant felt that since they vacated before the required date of July 31, the landlord wasn’t entitled to the full month’s rent.

Based on the tenants’ own testimony, I find that the landlord is entitled to \$35.00.

11. Loss of Rent July 2015

The landlord stated that the tenants didn’t pay the rent for the month of July 2015 by putting a stop on their cheque.

As stated in the previous claim, the tenants felt that since they moved out on July 12, 2015, the landlords wasn’t entitled to a full month’s rent and have not paid the rent for July.

Section 26 of the Act addresses this issue as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Although the tenants vacated the unit early; they did so on their own volition and are still responsible for the entire rent payable until the last day of the tenancy. Based on the above and on the tenants' acknowledgement of withholding the rent, I find that the landlord is entitled to \$1500.00.

12. Loss of Revenue for August 2015

The landlord stated that due to the poor condition that the tenants left the unit in, he was unable to rent the unit again until September, 2015. The landlord stated it took over a month to clean the unit and was not ready for advertising until August 16, 2015.

The tenants dispute this claim. The tenants stated that the landlord started to advertise the unit 4 days after they moved out and rented it for \$1000.00 a month more.

The landlord stated that he has not conducted any of the repairs as claimed except to reinstall a light fixture and some cleaning of the unit. The scope of work does not justify a one month delay in attempting to rent the unit. In addition, the landlord did not attempt to mitigate losses as he raised the rent by a thousand dollars a month. Based on the above I dismiss this portion of the landlords claim.

13. Intangible Loss - \$1000.00.

The landlord stated that the home has lost some character due to the tenants' actions.

The tenants dispute this claim. The tenants stated that if the landlord is charging \$2500.00 a month in rent, how he can justify any loss?

The landlord was silent and did not dispute this point as made by the tenants. I agree with the tenants that the landlord has not suffered any financial loss as he has claimed nor has he been able to provide sufficient evidence to quantify the amount. Based on the above, I dismiss this portion of the landlords' application.

14. Utility (water bill)

The landlord stated that the tenants have an amount owing of \$78.67 for the water bill.

The landlord submitted a tenancy agreement that states water is included with the rent. Based on the landlords' own documentation I dismiss this portion of his application.

As the landlord has only been partially successful in this application, I find that he is not entitled to the recovery of the filing fee and he must bear that cost.

The landlords' total entitlement is \$1887.50.

Tenants' application

I address the tenants claim and my findings as follows.

1. Labour - \$2500.00.

The tenants stated they conducted numerous repairs on the suite at the behest of the landlord. The tenants stated that they feel that \$2500.00 is a very low and conservative estimate for all the cleaning, painting, debris removal, staining, and power washing they did.

The landlord stated that he did not authorize or ask for any of this work to be done. The landlord stated that this was in direct contravention of their tenancy agreement.

Based on the disputing testimony of the landlord and the lack of sufficient documentary evidence outlining a work agreement or arrangement, the tenants have failed to provide sufficient evidence to prove this claim and I therefore dismiss this portion of their application.

2. Medical Bills and Income – \$6471.00

The female tenant stated that she fractured her back while painting the basement for the landlord. The tenant stated that she lost employment income and incurred medical bills as a result of her injury. The tenant feels that the landlord should be held responsible and compensates her for those costs.

The landlord disputes this claim. The landlord restated his position that all of this work was unauthorized and breached a material term of their tenancy agreement.

The tenants did not provide sufficient evidence to meet all of the criteria as listed above, specifically; "*Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement*". Based on the disputing testimony of the landlord and the lack of sufficient documentary evidence outlining a work agreement or arrangement, the tenants have failed to provide sufficient evidence to prove this claim and I therefore dismiss this portion of their application.

3. Stress - \$5000.00

The tenants stated that having to deal with this landlord was extremely stressful. The tenants stated that the landlord continually intimidated them by threatening to sell the home, raise the rent above the regulations and issuing eviction notices. The tenants

stated that it was difficult to find a place to rent so that their child could attend the same school.

The landlord disputes this claim. The landlord stated that the tenants left almost three weeks earlier than required and that they put the stress upon themselves. The landlord stated that this situation has been equally stressful for him to deal with as he is on a disability pension and fears his financial future because of these tenants.

I fully accept that this tenancy had its challenges. It's clear to me that this is an acrimonious relationship, however, the tenants have failed to prove any of the four grounds as listed above and I therefore dismiss this portion of their application.

4. Storage Fees - \$4800.00.

The tenants stated that the landlord stored some personal items in the basement of the home. The tenants feel that since they were storing the items they should be charging the landlord \$400.00 per month for 12 months = \$4800.00.

The landlord stated that this was a ridiculous claim as this was the arrangement from the outset of the tenancy. The landlord stated that there were only a few personal items that did not affect the enjoyment of the tenants or the usage of the rest of the home.

The tenants have not provided a basis as to why they felt \$400.00 a month was appropriate. In addition, they have not provided sufficient evidence of what steps, if any, that they took to resolve this matter and for those reasons I dismiss this portion of the tenants application.

5. Registered Mail - \$20.00

The tenants are seeking to recover the costs of registered mail associated with this application. The Act does not give an arbitrator the jurisdiction to award the recovery of the costs to litigate one's claim and I therefore dismiss this portion of their application.

6. Banking Fees - \$57.00

The tenants stated that the landlord did not return their post-dated cheques as required at the end of the tenancy. The tenants' stated that they were weary of this and at the advice of their bank; they changed their account and got new cheques.

The landlord acknowledged that he did not return them. The landlord stated that he was waiting to see what would happen at this hearing.

A landlord is required to return all unused cheques back to the tenant at the end of the tenancy. Based on the landlord's own acknowledgement that he did not return the cheques, I find that the tenants are entitled to \$57.00.

As the tenants have been only partially successful in this application I decline to award them the recovery of the filing fee and they must bear that cost.

The tenants' total award is \$57.00.

Using the "offsetting" provision under Section 72 of the Act, I apply the tenants' award of \$57.00 against the landlords' award of \$1887.50 for an amount of \$1830.50 in the landlords favour.

Conclusion

The landlord has established a claim for \$1830.50. I order that the landlord retain the \$750.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1080.50. 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: February 09, 2016

Residential Tenancy Branch

