



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSC, MND, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for monetary orders for unpaid rent or utilities, for damage to the residential property, and for loss or damage under the Act, regulation or tenancy agreement. The landlord also seeks authorization to retain the security deposit and to recover the application filing fee.

The landlord attended the hearing and was given a full opportunity to give oral and documentary evidence and to make submissions.

As the tenants did not attend the hearing, service of the landlord's application and notice of hearing was considered. The landlord testified that he sent each of the tenants a package containing these materials and all supporting evidence by registered mail to their most recent mailing address. The landlord submitted copies of the Canada Post registered mail receipts and the tracking information for the registered mail. The tracking information shows that both packages were picked up by one of the tenants. Based on this evidence I accept that the tenants were served in accordance with the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid utilities and rent?

Is the landlord entitled to a monetary award for damage to the rental unit?

Is the landlord entitled to a monetary order for money owed for loss under the Act, regulation, or tenancy agreement?

Is the landlord entitled to retain the security and/or pet damage deposit?

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

Background and Evidence

The landlord gave affirmed and undisputed evidence at the hearing as the tenants did not attend. He testified that tenancy began on June 1, 2013 for a one year term, and that at the end of the one year term the parties agreed to an additional three year term, expiring May 31, 2017. At the time the tenants vacated, monthly rent was \$1,600.00 and was due on the last day of the month for the following month.

A copy of the tenancy agreement was in evidence. It includes an addendum indicating that the tenants are responsible for the utilities and that they will steam clean the carpets when they vacate. It also

provides that if the tenants default on the lease they will pay the landlord two months' rent. The landlord collected and continues to hold a security deposit in the amount of \$780.00 and a pet damage deposit of \$500.00 (for a total of \$1,280.00). A condition inspection report was completed at move in and was included in the landlord's evidence. It indicates that the rental unit was in good repair.

The landlord testified that the tenants advised him on November 2, 2015 that they would be defaulting on the lease at the end of November. The landlord and the tenants then had one or more conversations which the landlord recorded in a document dated November 6, 2015 and which one of the tenants then signed. The landlord testified that the parties agreed in conversation that the landlord could retain both the security and pet damage deposits towards cleaning and damage. The November 6 document includes the following: "Also discussed during the last call was having me clean the floors . . . with the damage deposit once they have moved out as it will be easier once the rooms are empty. I have agreed to this."

The landlord testified that the tenants paid November's rent in or around mid-November and that he is therefore not claiming for November's rent.

A copy of a text exchange between the landlord and the tenant indicating that the parties agreed to meet for a move-out inspection on November 13, 2015 was also in evidence, as was subsequent correspondence from the tenants establishing that they vacated before the planned meeting and were on their way out of the province. In that correspondence the landlord says: "Found your note. Sorry you felt you had to leave like this. If you are still in town I have some papers for you to sign. Would give you a year to pay the money owing. I am trying to help you out and have not started payments until next year. What do you want me to do with the stuff left in the house." In response the tenant says: "Ya sorry for that but we had no choice we had to leave couldn't even afford to feed our kids . . . We are not on the island anymore and I will send you some money every child tax day of each month to pay off the 2 months. As for the stuff in the house our cousin should have gotten it out already but if not it can be donated as well or tossed not my stuff and can't be worried about others stuff."

The landlord also submitted correspondence from March, May, and September of 2016 with one of the tenants, in which she commits to making installment payments to the landlord, along with a record of an electronic transfer for \$100.00 that tenant to the landlord dated March 20, 2016.

The landlord further testified that both he and the tenants attempted to find other tenants for the residence in question. The tenants advertised on Facebook and the landlord advertised on Craigslist, kijiji, and on his employer's internal website. Copied of the landlord's advertisements were in evidence. He stated that his advertisements ran between December and March but that was not clear on the face of the advertisements themselves.

The landlord further stated that about six people or couples viewed the suite in November. None of them were interested in renting the residence because of the condition the tenants had left it in. The landlord then cleaned and repaired the residence. By the end of November it was an attractive rental, but by that point he has also listed the property for sale, and no one wanted to move into a home that was about to be sold. The landlord accepted an offer on the home on or about March 29, 2016.

The landlord seeks \$6,400.00 for loss of rental income for the four months that the rental unit was vacant (December to March, inclusive). Alternatively, he seeks liquidated damages in the amount of \$3,200.00 under the terms of the tenancy agreement.

The landlord also testified that the tenants closed their utility accounts in mid-November, and that he subsequently opened accounts in order to keep the residence warm enough to avoid freezing and to show to prospective tenants and purchasers. The landlord claims the cost of electricity and gas for the months the unit was vacant. Alternatively, he claims these costs for the two months based on the clause in the addendum requiring that the tenants pay two months' rent in the even they break the lease.

The landlord also testified that the tenants left the rental unit unclean. The carpets were badly soiled. The residence had not been cleaned (the oven was dirty, there was considerable garbage left in almost every room, including 12 garbage bags of clothing that the Salvation Army would not accept because it was soiled and five mattresses and/or box springs). Several things had been broken (a bathroom mirror, a toilet paper holder, toilet seats, components of the inside of the fridge). Other things had been damaged (the metal front door and the surrounding wood and weather stripping had been damaged by the tenants' dog, there were holes in the drywall in two rooms, the toilet paper holder had been ripped out of the bathroom wall, a bedroom window sill was considerably water damaged). The landlord provided substantial photographic evidence of the state of the rental unit in support of his claims, including photographs of all off the items mentioned in this paragraph with the exception of the damaged front door. The landlord further stated that with the exception of one lighting unit, bulbs were burnt out in every lighting fixture in the residence.

The tenants returned only one of two mailbox keys and only two of three house keys, and the landlord changed the locks as a result.

The landlord seeks the following based on the condition of the rental unit:

Item	Amount
Cleaning company (largely kitchen cleaning)	\$532.88
Carpet cleaning	\$498.15
Windsor plywood materials (replacement of damaged front door)	\$32.07
Home Depot materials (exterior door paint; locks, lightbulbs, toilet seats, plumbing supplies, interior paint for repairs, paint and cabinet supplies)	\$488.61
Dump fee	\$10.00
Canadian Tire materials (replacement mirror)	\$52.63
Garage Door Doctor	\$96.08
Canada Post and Staples (for RTB claim)	\$136.50
Labour (80 hours x \$25.00/hr)	\$2,000.00

Receipts for all of the items claimed under each category set out above were in evidence. Also included in the evidence was a breakdown of the landlord's time claimed (80 hours) as follows:

November 13, 2015	9.5 hours	cleaning/lock changing/replacing lightbulbs
November 14,	8 hours	two showings/cleaning/fix toilet seats/yard

2015		clean up
November 16, 2015	6 hours	clean garage
November 17, 2015	2 hours	clean garage
November 18, 2015	1.5 hours	clean garage
November 19, 2015	7 hours	move stuff/empty shed/fill nail holes
November 20, 2015	4 hours	fill nail holes/fix bath vanities
November 21, 2015	8 hours	clean/paint
November 22, 2015	8 hours	paint
November 23, 2015	8 hours	let Garage Door Doctor in/fix bathroom fixtures/dump and restore run
November 24, 2015	7 hours	fix broken pocket door/fix bathroom fixtures/put up mirror
November 25, 2015	5 hours	paint/fix front door weather stripping
January, 2017	6 hours	researching and preparing RTB application

The landlord stated that he had not been able to hire a contractor to make the many small repairs necessary. Accordingly, he did the work himself, charging \$25.00/hour for his time. He did not charge for the use of his truck, and he worked to keep the cost of repairs low, including by purchasing the smallest amounts of paint (sample size) necessary. He further stated that all of the painting itemized above was painting over repairs and not routine repainting of the interior of the rental unit. The interior of the rental unit did not require repainting. It only required washing.

Analysis

Sections 7 and 67 of the Act provides that where an arbitrator has found that damages or loss results from a party not complying with the Act, regulation, or tenancy agreement, an arbitrator may determine the amount of the damages or losses and order the wrongdoer to pay compensation to the claimant.

The claimant must prove the damage or loss and that it stemmed directly from a violation of the agreement or a contravention of the Act. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to minimize the loss pursuant to subsection 7(2) of the Act.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. I find the tenants responsible for the required repairs and cleaning set out by the landlord above.

Loss of rental income/liquidated damages

I find that the addendum to the tenancy agreement includes a liquidated damages clause. It provides that if the tenants breach the term of the agreement then they will pay the landlord two months' rent. Residential Tenancy Branch Policy Guideline #4 defines a "liquidated damages clause" as a clause under which the parties agree in advance on the damages payable in the event of a breach of the tenancy agreement.

The landlord cannot now, contrary to the liquidated damages provision, say that the tenants should pay for an additional number of months during which the rental unit was vacant. Absent the liquidated damages clause, the landlord might have been able to claim for the number of months the unit was vacant. However, by including this provision in the agreement, he has capped his entitlement to loss of rental income. It functions as an upper limit on damages (see Policy Guideline #4). Accordingly, I award the landlord two months' rent, or \$3,200.00, under this category.

Even if the landlord had not included the liquidated damages provision in the addendum, I note that his decision to list the property for sale would be contrary to his duty to minimize his losses. This is set out in Residential Tenancy Policy Guideline #3, "Claims for Rent and Damages for Loss of Rent." The landlord himself observed that the fact that the rental unit was listed for sale interfered with his ability to re-rent it. It is therefore unlikely that the landlord would have been able to recover four months of rent even without the liquidated damages provision.

Utilities

I do not accept the landlord's claim for utilities. The amounts claimed were not for months during which the tenants occupied the rental unit but for the months between the end of the tenancy and the sale of the rental unit. Had the landlord wanted to include the cost of utilities in addition to the two months of rent set out in the liquidated damages provision then he could have included language to that effect in the addendum. Again, the liquidated damages clause functions as a cap on the damages the landlord can claim. I also note that the utilities costs were required largely so the landlord could market the residence for sale.

Cleaning

The landlords has provided compelling evidence that the rental unit was left dirty and required substantial cleaning. I award the \$532.88 claimed.

Carpet cleaning

The landlord has provided compelling evidence that the carpets were badly soiled. He has also provided supporting documentation for the cost of removal and replacement. I therefore award the \$498.15 claimed.

Materials and other costs

I accept the landlord's evidence on all of the materials required to replace and repair the rental unit and award the \$32.07 claimed from Windsor Plywood, the \$488.61 from Home Depot, and the \$52.63 from Canadian Tire, the \$96.08 for garage door repair, and the \$10.00 dump fee, for a total of \$679.39.

Costs of bringing this claim

The Act does not allow for the recovery of the costs of bringing a claim. Accordingly, I make no award for the costs associated with Canada Post or Staples.

Labour costs

The landlord has testified as to the amount of work required to repair and clean, and has supported his testimony with photographs. The tenants have not attended to take issue with any of the amounts claimed by the landlord. I accept the hours the landlord has claimed for labour with the exception of the six hours claimed for preparing for this application, as those costs are not recoverable under the Act. I also accept that \$25.00 is a reasonable rate. Accordingly, I award the landlord \$1,875.00 (74 hours x \$25.00) for his labour.

Security and pet damage deposit

The landlord testified that the November 6 document captures the tenants' written consent that the landlord retain the security and pet damage deposits, and in the absence of contrary evidence from the tenants I accept the landlord's testimony. Accordingly, I authorize the landlord to retain the \$1,280.00 in deposits in partial satisfaction of the money owing by the tenants.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlords' favour in the amount of **\$5,605.42**, comprised of the following:

Item	Amount
Liquidated damages	\$3,200.00
Cleaning	\$532.88
Carpet cleaning	\$498.15
Materials and other	\$679.39
Landlord's labour	\$1,875.00
Less security deposit	-1,280.00
Recovery of application filing fee	100.00
Total Monetary Order	\$5,605.42

The landlord is provided with an order in the above terms and the tenants must be

served with this order as soon as possible. Should the tenants fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

Dated: May 5, 2017

Residential Tenancy Branch