



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order for damages and unpaid rent and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The landlord also seeks an Order to keep the tenants security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the tenant on March 03, 2011. The tenant confirmed receipt of these documents.

Both parties appeared along with a witness for the tenant. They all gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both parties agree that this tenancy started on February 01, 2010. This was a fixed term tenancy which was due to expire on April 30, 2011. Rent for this unit was \$900.00 per month due on the 1st day of each month in advance. The tenant paid a security deposit of \$450.00 on February 01, 2010.

The landlord testifies that the tenant broke the fixed term leased and moved from the rental unit on February 17, 2011. The landlord testifies that the tenant lived in the unit with her son and the other tenant named on the lease agreement is the tenants' mother who never actually lived in the unit. The landlord states the tenant has wanted to break the lease and is looking for a way to blame the landlord.

The landlord seeks to recover unpaid rent for March and April to the sum of \$1,800.00 as the unit was not re-rented until May 16, 2011. The landlord states he had the unit advertised from January 23, 2011 to May 20, 2011 and has provided copies of this advert in his evidence.

The landlord testifies that the tenant caused damage to the rental unit. He states she allowed a roommate to move into the unit on July 31, 2010. This roommate was not included on the tenancy agreement but had signed a document to state he had the same rights and responsibilities as a tenant but had to move out if either the tenant or the landlord requested it. The landlord states there were problems with this roommate so he was served a One Month Notice to End Tenancy and he moved out at the end of January, 2011. The landlord states this roommate brought his cat to the unit when he moved in however there is a no pet policy at the unit. The tenants' mother told him the roommate would not get rid of the cat and the roommate had become abusive towards the tenant and had caused damage to the unit.

The landlord testifies that his handy man did the move in inspection with the tenant at the start of the tenancy. He states he gets his handy man to do this because if there are any repairs identified at the inspection he can do this work. The landlord testifies that he carried

out the move out inspection with the tenants' father and although he used a different form he had the move in inspection to hand to refer to. The landlord testifies that during the move out inspection he found the carpets had stains on. The tenants' father told him he had shampooed the carpets but there was still staining on them and they had to be cleaned again at a cost of \$95.20 (receipt provided). The landlord testifies that the tenant had not thoroughly cleaned the unit and he had to pay his cleaner \$42.00 for three and half hours work at \$12.00 per hour (receipt provided). The landlord testifies that the tenant or her roommate had caused some damage to the walls in the unit. The landlord states he had to pay his handyman \$48.00 for four hours work to touch up the baseboards and doorframes, paint one wall in the living/dining room and paint one and a half walls in a bedroom (receipt provide) The landlord also states a lampshade was left broken and he seeks to recover \$7.27 to replace this (receipt provided).

The landlord seeks to keep the tenants security deposit of \$450.00 to offset against the unpaid rent and damages. He states that on the move out security deposit form the tenants' agent (her father) signed to agree the landlord could keep the sum of \$119.20 from the deposit.

The tenant testifies that she had to end her tenancy before the end of the fixed term due to the landlords' intrusive behaviour. The tenant states the landlord would check up on her, knock on her door and allow her four year old son to let him into her unit, he would come over with a camera and take pictures and refused to show the tenant or her mother these pictures. The tenant states on one occasion she was unwell on the day the landlord had arranged to come to the unit. She states he showed up and she told him she was sick so he went away but then turned up on another day to take pictures. The tenant states her roommate would let the landlord into the unit to take pictures.

The tenant states she gave the landlord Notice to end the tenancy and attempted to find new tenants to take over her tenancy however she states everyone she asked told her they did not want to live in this landlords unit.

The tenant testifies that the landlord did not want her to clean the carpets during her tenancy. She states her father cleaned the carpets before she moved out but the landlord cleaned them again. The tenant states her roommate did have a cat but the carpets were already stained at the start of her tenancy. The tenant states she did clean the unit and the remainder of the landlords claim for damages with the exception of the lampshade was all down to normal wear and tear.

The tenant calls her witness who is her father who attended the move out inspection with the landlord. The witness states the landlord did not have the original move in inspection with him when he did the move out inspection. He states the landlord had to rub hard on the blinds to get some dust off. He states the landlord also commented on the damages as being normal wear and tear and noted the fridge was not cleaned. However, the witness states the fridge was clean. The witness agrees the oven was not fully cleaned and there was dust left on a fan but states it was dusty when his daughter moved into the unit.

The witness testifies that he did clean the carpets and agrees there were a couple of stains left on them. He states the landlord said he would have to get a professional cleaner in and the witness states he agreed to pay \$75.00 for this. The witness states he vacuumed out the closets during the inspection and cleaned under the washer and dryer which were his daughters' and which he removed. He states he agreed the landlord could deduct \$12.00 for one hours cleaning and \$12.00 for one hours painting not the sums the landlord later charged. The witness states the landlord never gave his daughter a copy of the move out condition inspection she only got a copy of the security deposit agreement with the deductions on. He states he only agreed to the sum of \$119.20 being deducted from the security deposit.

The landlord cross examines the witness and asks if the tenant vacuumed the unit prior to the end of the tenancy and did the witness see the stains on the carpets. The witness replied that he vacuumed the unit prior to the end of the tenancy and does not know which stains the landlord is referring to. He states the carpet was stained at the start of the tenancy as stated in the move in condition inspection report.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness. With regard to the landlords claim for unpaid rent or a loss of rental income. I refer the tenant to the s. 45(b) of the *Act* which states:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

The tenant agrees she gave the landlord Notice to end the tenancy at the beginning of February, 2011 and paid rent for February and moved out on February 17, 2011. The tenant argues that she no longer felt comfortable living in the unit due to the landlords' intrusions however the tenant did not follow the correct procedures if she felt the landlord was acting in an unwelcome or intrusive manner by filing an application for Dispute Resolution.

The Residential Tenancy Policy Guidelines #3 discusses the landlords right to damages if a tenant ends a tenancy before the end of the fixed term this states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. The landlord must also show how he has mitigated his loss by attempting to re-rent the unit as soon as possible after the tenant has vacated the unit. The landlord has shown that he advertised the unit for rent even before the tenant gave Notice because she had told him she was looking for low cost housing. This advertisement continued until the unit was re-rented in May, 2011. Consequently it is my decision that the landlord has established his claim for a loss of rental income for March and April, 2011 to the sum of **\$1,800.00** and may recover this sum from the tenant.

With regard to the landlords claim for damage to the rental unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

In this matter the landlord has provided a copy of the condition inspection reports however the move in inspection report provides very little information and is not as comprehensive as the move out report done on a separate document by a separate person. The move in report shows chips around a door frame and the floor coverings have wear and tear throughout. The landlord is seeking costs for touch up paint to door frames along with other areas and seeks costs for having the carpets cleaned even after they were cleaned by the tenants' father. The Residential Tenancy Policy Guidelines #1 discusses the tenants' responsibility for carpets and states: The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

As this tenancy was longer than a year and as the tenant did allow a cat to live in the unit she would be responsible to shampoo or steam clean the carpets. The tenant, her witness and the landlord all agree the tenants father did shampoo the carpets at the end of the tenancy, the move in condition report shows the carpets were already suffering from wear and tear so I find the tenant would not normally be responsible for the landlords' additional charges for carpet cleaning. However the tenants' father did agree to pay **\$95.20** towards the landlords' carpet cleaning charges and agreed this sum could be deducted from the security deposit. Therefore, I will allow this portion of the landlords claim as it has been previously agreed between the parties.

With regard to the landlords claim for cleaning costs of \$42.00; the tenant states she did clean the unit with the exception of the oven and fan. The landlord contradicts this and has provided a copy of the move out report which indicates some minor cleaning to be done and the cleaners invoice shows she cleaned the fridge and freezer, the oven, ceiling fan, light fixture, mirror and bathtub and mopped the kitchen floor. Under the *Residential Tenancy Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore, the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required with the exception of the oven cleaning which the tenant agrees was not done. The tenants agent agreed the landlord may deduct **\$12.00** from the security deposit for one hours cleaning therefore I limit the landlords claim to this amount.

With regard to the landlords claim for touch up painting; The Residential Tenancy Policy Guidelines #1 discusses painting and states: The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The landlord has provided no evidence to show when the unit was last painted. The move in condition report shows some chips around a door frame and the move out inspection shows scrapes and smudges on some walls. However the landlord has the burden of proof to show that these marks are more than the normal wear and tear the tenant has stated they are and has provided no corroborating evidence to support this for example with photographs. However, the tenants

agent agreed the landlord could deduct **\$12.00** towards painting therefore I limit the landlords claim to this amount.

With regards to the landlords claim for the broken lampshade; the tenant agrees this was broken during her tenancy. Consequently, I uphold the landlords claim for the replacement costs of **\$7.27**.

The landlord is entitled to keep **\$126.47** from the tenants' security deposit for the amounts agreed upon plus the cost of the lampshade. The remainder of the security deposit will be offset against the landlords claim for a loss of rental income pursuant to s. 38(4)(b) of the *Act*.

As the landlord has been partially successful with his claim I find he is entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*. The landlord will receive a Monetary Order pursuant to section 67 of the *Act* for the following amount:

Loss of rental income for March and April, 2011	\$1,800.00
Plus filing fee	\$50.00
Total amount due to the landlord	\$1,400.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,400.00**. The order must be served on the respondents and is enforceable through the Provincial Court 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: June 17, 2011.

Residential Tenancy Branch