



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNR MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit site or property, for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Tenant confirmed receipt of the Landlord's hearing documents and evidence.

Issue(s) to be Decided

- 1) Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
- 2) If so, has the Landlord met the burden of proof to obtain a monetary order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement that began in September 2009 and switched to a month to month tenancy after August 3, 2010. Rent was payable on the first of each month in the amount of \$1,900.00 and on August 15, 2009 the Tenant paid \$950.00 as the security deposit. A move in inspection report was completed on August 9, 2009. The Tenant had rented the entire house which had an upper suite and a separate lower suite.

The Landlord testified that the Tenant had been accumulating a balance of unpaid rent since September 2010 however he usually paid a portion of the rent. When the Tenant failed to pay rent for February 2011 a 10 Day Notice to End Tenancy was posted to the Tenant's door on February 4, 2011.

When the Landlords did not hear from the Tenant they contact him at his place of employment, sometime after February 14, 2011 at which time the Tenant informed the Landlords he had moved out but had a couple of things left in the house that he would make sure were removed before that weekend.

The following Saturday, February 20, 2011 the Landlords attended the unit to find it cluttered with debris, inside and out, with some damage and had not been cleaned. When they were at the rental house a man showed up and told the Landlords he was subletting from the Tenant. The Landlord told this person that he needed to vacate the property because the Tenant's tenancy had ended. The Landlords stated they did not schedule a move out inspection because the Tenant had already informed them that he had abandoned the unit.

The Landlords referred to the photos they provided in evidence which were taken between February 20th and March 1, 2011 to support their claim as follows:

- 1) \$2,600.00 for accumulated unpaid rent as supported by the ledger they provided in their evidence.
- 2) \$52.11 to purchase replacement locking door handles because the Tenant did not return any keys. A receipt was provided in their evidence.
- 3) \$345.00 to remove shelves from the walls, patch and repaint the upstairs suite that had been freshly painted at the onset of the tenancy, remove all of the debris and furniture from the house and stacked in the carport. The work was performed by the male Landlord. They pointed out that the move in inspection report notes that the upstairs unit was just painted.
- 4) \$117.60 to hook up the natural gas again. They advised the Tenant had the natural gas disconnected sometime at the end of August or September 2010. They felt it was urgent to have it reconnected and requested that it be completed on Saturday February 20, 2011 and incurred after hour charges to have this done as soon as possible. They required the account to be put in the Tenant's name.
- 5) \$260.00 for removal of debris and cleaning of two bathrooms, the kitchen cupboards and appliances, washer, dryer, basin, floors and all windows. At total of 13 hours of work that was performed by the female Landlord.
- 6) \$500.00 for the cost paid to hire a company to remove and discard all of the debris and furniture left behind by the Tenant. This cost includes labour and landfill fees. The work was performed on March 4, 2011.
- 7) \$64.06 for the cost to purchase the paint that was used by the male Landlord to repaint the upstairs unit, as support by the invoice they provided in their evidence.

The Tenant testified and stated that he does not dispute that he left some stuff at the rental unit. He does dispute that the weight would add up to a charge of \$500.00. He stated that he vacated the property during the third week of January 2011 and therefore should not be responsible for February 2011 rent. He did not provide the Landlords notice that he was moving however he did tell them via email that he could not handle the rent. He did leave another person living in the house. He confirmed this other person was an occupant that he had brought in to assist with the rent and he was not added to the tenancy agreement with the Landlords.

The Tenant confirmed the Landlord called him at work mid February 2011 and that he informed them that he had already vacated the property. He did not say he had left anything there that he was returning to get.

In closing the Tenant stated that he was trying to rent out the space so he could make the rent payments however when that did not work he could not continue as it was just too much on his shoulders to handle by himself.

Analysis

I have carefully considered the aforementioned testimony and all of the evidence which included, among other things, photographs, a move-in inspection report, a copy of the tenancy agreement, a ledger of payments made by the Tenant, a copy of the 10 Day Notice for unpaid rent, and copies of invoices.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 26 of the Act provides that a tenant must pay rent when it is due in accordance with the tenancy agreement.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must (a) leave the rental unit reasonably clean and undamaged and (b) give the landlord all the keys.

Section 32(3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 45(1) of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice.

The evidence supports the Tenant abandoned the unit, without proper notice, did not return the keys, and left the unit with damage, full of debris and not cleaned.

I find the Landlords have met the burden of proof that they suffered losses as the result of the Tenant breaching sections 26, 37, 32, and 45 of the Act as listed above, as follows:

- 1) \$2,600.00 for accumulated unpaid rent
- 2) \$52.11 to purchase replacement locks
- 3) \$345.00 of labour for the male Landlord to clean and repair the unit
- 4) \$260.00 of labour for the female Landlord to remove garbage and clean the bathrooms, kitchen and laundry areas
- 5) \$500.00 removal and disposal of debris
- 6) \$64.06 for the cost paint

For the total amount of **\$3,821.17**

In addition to the amounts awarded above, the Landlords applied to recover the cost of having the natural gas reconnected in the amount of \$117.60. The evidence supports the natural gas had been disconnect six months previously and was not connected during the winter months. There is insufficient evidence to support that this situation warranted an emergency hook up after hours, considering it had been disconnected for six months by that point. Furthermore the Landlords would have been charged to have the account put back into their own names when they listed the property for sale. In the

absence of what the regular cost to connect service is during regular working hours, I find there to be insufficient evidence to support the Landlord's claim and I hereby dismiss their application for \$117.60 natural gas reconnection, without leave to reapply.

The Landlords have primarily succeeded with their application, therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$3,871.17** (\$3,821.17 + 50.00). This Order must be served on the Respondent Tenant and may be filed in 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: June 08, 2011.

Residential Tenancy Branch