



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, OPR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order permitting her to retain the security deposit. The hearing was originally scheduled to take place on August 18, 2011 but was adjourned by consent to September 21, 2011 and which time it was again adjourned by consent to October 26, 2011. The corporate tenant was represented by K.M. who stated that he was not representing the individual tenant, N.K. but stated that N.K. was suffering the ill effects of a medical event which had occurred some months ago and could not attend the hearing as a result. N.K. did not appoint an agent to represent him at the hearing nor did he request an adjournment. I was satisfied that N.K. had ample notice of the date of the hearing and ample opportunity to arrange for an agent to represent him at the hearing and the hearing proceeded in his absence.

At the hearing, the parties agreed that the tenant had vacated the rental unit. I therefore consider the claim for an order of possession to have been withdrawn.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The rental unit is comprised of the upper 2 floors of a residence in which the lower floor contains a separate rental unit (the "Lower Unit"). The landlord testified that the tenancy agreement originally provided that the tenants were obligated to pay \$2,200.00 per month and 2/3 of the utilities payable for the property. She stated that in or about March 2011, the arrangement was renegotiated by N.K. and the rent was reduced to \$2,200.00 per month and the tenant assumed the entire amount of utilities payable for the property.

The landlord testified that the tenant failed to pay rent in the months of June, July and for that portion of August in which he occupied the rental unit. The landlord seeks an

award of \$5,000.00 which represents \$2,000.00 in rent for each of the months of June and July and a further \$1,000.00 in rent for the first half of August. K.M., representing the corporate tenant, did not dispute that rent had not been paid for that period.

The landlord testified that N.K. had either arranged for hydro and natural gas services to be disconnected or had failed to pay for utilities, causing the providers to stop service to the rental unit in June. She testified that N.K. had told her that he had the utilities disconnected. The landlord maintained that as a result of this disconnection, the occupants of the Lower Unit lost to spoilage food in their refrigerator and freezer and could not occupy the unit for the more than 10 week period in which there were no utilities. Because they did not occupy the unit during that period, they also did not pay rent and the landlord lost \$1,990.00 in income for the Lower Unit. The owner of the rental unit appeared at the hearing and testified that she gave the occupants of the Lower Unit 3 months of occupancy rent free, a value of \$3,300.00, to compensate them for their losses. The landlord seeks to recover the lost income from the Lower Unit as well as the \$3,300.00 in compensation she gave the occupants of that unit. The landlord provided a written statement from the occupants of the Lower Unit in which they state that they were unable to occupy the rental unit from June 20 – August 11, 2011.

K.M. took the position that the landlord had to prove that N.K. arranged for utilities to be disconnected or that he failed to pay utilities and argued that neither he nor the corporate tenant would be liable if the disconnection resulted from a mere failure to pay utilities. K.M. further argued that the landlord had not proven the time period in which utilities were unavailable to the occupants of the Lower Unit.

The landlord testified that in order to reconnect the utilities, the residence had to be inspected for safety. The landlord provided an invoice showing that she paid \$896.00 for this inspection and seeks to recover the cost of the inspection. She further testified that N.K. had changed the locks to the rental unit and had not provided a key, so in order to admit the inspector, she had to change the locks at a cost of \$117.60, which she seeks to recover.

K.M. did not respond to the claim other than to repeat his argument that the landlord had not met her burden of proof.

The landlord testified that N.K. had deducted \$1,399.42 from the rent in an effort to compensate himself for what he believed were overpaid utilities. The landlord relied on the tenancy agreement which provides that up until March 1, 2011, the tenant was responsible to pay 2/3 of the utilities. The agreement provides that after March 1, 2011,

the tenant would pay 100% of the utilities and his rent would be reduced to \$2,000.00 per month.

K.M. did not dispute that N.K. had deducted money from his rental payments, but argued that the provision in the tenancy agreement was unconscionable as it required the tenants to pay more than their fair share of the utilities when the Lower Unit was occupied by 6-7 people who naturally used more utilities than the 2 people who resided in the rental unit.

The landlord testified that after changing locks to admit the electrical inspector, she gave copies of the keys to N.K. who did not return the keys when he vacated the rental unit in August 2011. The landlord paid a further \$476.00 to have the locks changed again. K.M. did not dispute that N.K. had failed to return keys.

The landlord seeks to recover the \$100.00 filing fee paid to bring her application.

Analysis

As there is no dispute that the tenants failed to pay rent for the period from June 1 – August 15, 2011 and that N.K.'s possessions remained in the rental unit during that period, I find that the landlord is entitled to recover \$5,000.00 in rent and I award her that sum.

The landlord testified that N.K. had told her that he had disconnected the utilities. N.K. did not appear at the hearing to refute this allegation and in the absence of his denial, I find that N.K. caused the utilities to be disconnected. The landlord did not give specific dates on which the utility service ceased and began again, but provided a letter from the occupants of the Lower Unit in which they state that the unit was uninhabitable from June 20 – August 11. I find that it would have been reasonable for the landlord to demand rent from the occupants for the period in which the Lower Unit could have been occupied. Those occupants were obligated to pay \$1,150.00 per month. I find that the Lower Unit could not have been occupied for 11 days in June. Per diem rent for the 30 day month of June is \$38.33. I find that the landlords lost \$421.63 in income for June 2011. I find that the Lower Unit could not be inhabited at all in July and I find that the landlord lost \$1,150.00 in rent for that month. I find that the Lower Unit could not have been occupied for 11 days in August. Per diem rent for the 31 day month of August is \$37.10. I find that the landlords lost \$408.10 for that month. I find that the actions of N.K. in disconnecting the utilities caused the Lower Unit to become uninhabitable and I award the landlord \$1,979.73 in lost income. I dismiss the landlord's claim for the compensation paid to the occupants of the Lower Unit. While it is reasonable for them not to have paid rent for the period in which the Lower Unit could not be occupied, I find

it highly unlikely that had they advanced a claim against the landlord, they would have been permitted to withhold their rent and also would have been awarded an amount equivalent to the rent in compensation. The landlord's generosity in giving the occupants a significant settlement to which they would have had difficulty establishing a legal entitlement should not be visited on the tenants.

I accept that in order to reconnect the utility service, the landlord had to conduct a safety inspection. I further accept the landlord's undisputed testimony that N.K. had changed the locks to the rental unit and that the landlord had to change the locks to permit the inspector access to the unit. I find that the landlord should recover both the cost of the inspection and the cost of changing the locks and I award the landlord \$1,013.60.

I accept the landlord's undisputed evidence that N.K. deducted \$1,399.42 from his rent. I find that the term of the tenancy agreement requiring the tenant to pay 2/3 of the utilities is not unconscionable. In order to be found unconscionable, the term must be oppressive or grossly unfair. While there may have been some unfairness in the arrangement, I am not satisfied that this unfairness was so extreme as to be characterized as grossly unfair. I find that N.K. had no basis on which to make these deductions and I find that the landlord is entitled to recover the amount deducted. I award the landlord \$1,399.42.

I accept that N.K. received new keys after the locks were changed and that he failed to return the keys to the landlord at the end of the tenancy, necessitating a change of locks. I find that the landlord is entitled to recoup this cost and I award her \$476.00.

As the landlord has been substantially successful in her claim, I find she should recover the \$100.00 filing fee and I award her that sum.

Conclusion

In summary, the landlord has been successful in the following claims:

Unpaid rent	\$5,000.00
Inspection and lock change	\$1,013.60
Unauthorized deductions	\$1,399.42
Lock change	\$ 476.00
Filing fee	\$ 100.00
Total:	\$9,968.75

The landlord has established a claim for \$9,968.75. I order that the landlord retain the \$1,100.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$8,868.75. 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: October 26, 2011

Residential Tenancy Branch