



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 hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

During the hearing I ordered the parties to provide current statements from the utility accounts under dispute no later than the end of business on Friday, November 18, 2011. The landlord provided a copy of her utility account statement and an explanation of payments on November 10, 2011. The tenant provided no additional submissions.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities; for damage to the rental unit; for cleaning the rental unit ; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on August 10, 2008 for a 1 year fixed term tenancy beginning on September 1, 2008 and converted to a month to month tenancy effective September 1, 2009 for a monthly rent of \$1,775.00 due on the 1st of each month and a security deposit of \$887.50 paid on August 10, 2008.

The landlord also submitted in to evidence a copy of a Condition Inspection Report recording the condition at both the start and end of the tenancy. The report is signed by the tenant and landlord at the start of the tenancy but by neither at the end of the tenancy. The parties agree that tenant provided the landlord with his forwarding address in writing on July 19, 2011.

The landlord has also provided several photographs with explanations and accompanying receipts and/or invoices to substantiate the monetary claims for each of the items she is requesting compensation for.

The landlord makes the following financial claim against the tenant:

Description	Amount
Utility (water) bill	\$415.20
Repairs	\$1,136.74
Carpet Cleaning	\$31.08
Stove Cleaning	\$29.46
Hauling away belongings	\$156.80
Lock Replacement	\$195.55
Car Storage	\$650.00
Towing of Car	\$56.00
Total	\$2,670.83

The tenant acknowledges that he owes for carpet and oven cleaning; for utilities; and for towing of his car. However, the tenant testified that he had paid the utilities. The landlord acknowledged that if the tenant has paid the utilities directly then she does not expect him to pay her for them.

The parties agree the tenant left his car parked in the driveway at the rental unit and that on July 27, 2011 the landlord had the car towed to the tenant's new home. The tenant submitted the landlord had agreed to let him leave his car on the residential property and there was no mention of any daily charges until after he had left the car there for some time.

In relation to the items covered under the title of repairs the landlord replaced 3 interior doors because of profane graffiti written on them and after several coats of paint the graffiti still showed through. The tenant testified that he had offered to paint the doors brown to eliminate the graffiti. The landlord testified that she first agreed to this and then decided that she just didn't want the doors in her house because of what was written on them, even if it was covered up by paint.

The landlord also claims for replacing the front door; fixing a hole in the downstairs bathroom; a broken window in the basement; painting the 3 doors; a bathroom wall and a bedroom wall; and laying a new (partial) floor in the basement. The tenant testified that he should not have to pay for these items because he did so much work to the property that he didn't get the landlord to take care of during the tenancy that he should not have to replace and repairs items now.

As to the landlord's claim for hauling items away the tenant asserts these items were on the property at the start of the tenancy and either belonged to a previous tenant or to the landlord. The landlord testified that she had had the entire property cleaned up before this tenancy began and no items had been left by previous tenants or her.

The landlord testified that she is seeking compensation for the replacement of locks because the tenant only provided her with the return of one key. The tenant stated that he had changed the lock during his tenancy and he should not have to change it again at the end of the tenancy.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I accept the tenant acknowledges he owes the landlord for carpet cleaning; oven cleaning; towing and the utilities for a total of \$531.08. Based on the documentary submission received on November 10, 2011 and in the absence of any additional comments or evidence from the tenant, I accept the tenant owes the landlord \$414.54 for utility charges.

Section 37 of the *Act* stipulates that when a tenant vacates the rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find the landlord has established, in relation to repairs, that she has suffered a loss and that the loss results from a violation of Section 37 of the *Act*, with the exception of replacing the window. Through her own testimony the landlord was unaware how the window was broken and based on the tenants testimony that it was caused by vandalism, I find the landlord has failed to establish the tenant was at fault for this window's condition.

I find the landlord has established the value of that loss through her submissions and that the landlord has taken all reasonable steps to mitigate the damage or loss with the exception of the replacement of interior doors. I accept that the graffiti on the interior doors could have been eliminated by painting the doors a dark colour and there was no reason to replace them.

As the tenant has provided no evidence to support his claim that the articles the landlord had removed from the property (such as a barbecue and bed frame) and the Condition Inspection Report signed by the tenant at the start of the tenancy does not indicate any of these items were on site when the tenancy began, I find the landlord is entitled to compensation for hauling.

There is no requirement under the *Act* to have a tenant vacating a rental unit pay to have the locks changed, however, if a tenant fails to provide any keys to a landlord and the landlord does not have a key of their own the landlord may be entitled to compensation from the tenant. In the case before me, it is clear the landlord had been provided with a key and had access to the rental unit and I find the landlord is therefore not entitled to have the tenant pay for changing the locks.

In relation to the landlord's claim for storage of the tenant's vehicle, I find, as the rental unit was not re-rented for the month following the tenancy and there was no evidence that the landlord's contractors charged her additionally for work because of the car in the driveway the landlord has failed to establish that she suffered a loss as a result. Further, I find the landlord has failed to establish how she determined that parking in the driveway was equivalent to almost half of the amount of rent for the entire rental unit.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,353.82** comprised of \$414.54 utilities owed; \$31.08 carpet cleaning; \$29.46 stove cleaning; \$56.00 towing; \$156.80 hauling; \$615.94 repairs; and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$892.74 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$461.08**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 21, 2011.

Residential Tenancy Branch