



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession because the tenant breached an agreement with the landlord; for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on November 29, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- 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

The landlord's agent testifies that this tenancy started on August 01, 2011. Rent for this unit was \$1,200.00 per month. Rent was due on the 1st of each month. This was a fixed term tenancy which was due to expire on July 31, 2012. The tenant abandoned the rental unit on or about December 08, 2011.

The landlord's agent testifies that there was one named tenant on the tenancy agreement and the tenant has allowed other occupants to live in the rental unit without permission from the landlord. The tenant therefore breached the tenancy agreement and a One Month Notice to End Tenancy for cause was served upon the tenant on November 15, 2011. This notice had an effective date of December 30, 2011

The landlord's agent testifies that the move in condition inspection was conducted with the tenant at the start of the tenancy. At the end of the tenancy the tenant moved out and the move out condition inspection was completed in the tenant's absence as he had abandoned the rental unit. The landlord's agent testifies that the tenants or other persons residing at the rental unit broke the toilet tank. This tank could not be repaired and was replaced at a cost of \$459.20 and a receipt has been provided for this cost.

The landlord's agent testifies that the tenant left the rental unit in a disgusting condition. The landlord paid \$60.00 to have garbage removed and disposed off, Items had been left in kitchen cupboards which was removed, the kitchen cabinets had to be cleaned inside and out, the fridge, oven, stove top and filters were all left dirty and had to be cleaned, the shower, vanity, toilet, walls and floor in the bathroom had to be cleaned, the windows had to

be cleaned, The top floor excluding one bedroom had to be vacuumed, garbage and debris was removed from a bedroom, the floors were mopped twice and the baseboards were all cleaned. The landlord has provided a cleaning receipt showing this work was completed over six hours at \$25.00 per hour to the sum of \$150.00.

The landlord's agent testifies the tenant caused many holes in the walls and as the tenant or his guests smoked in the unit there was also smoke damage to the walls and the trim had been damaged by the tenant's dog. The tenant was aware there was no smoking in the unit and he did not have permission to keep a dog. The landlord's agent testifies that they used contractors to replace a missing baseboard, paint the entrance, kitchen, stairwell, two walls in the living room, both bedrooms, patch holes in the walls in these areas, and repair two doors, paint four door trims and baseboards in various rooms. The landlords agent has provided a receipt showing this work and the cost for materials and labour including HST of \$1,533.07.

The landlord's agent testifies the tenant left the carpets extensively stained and these were cleaned at the sum of \$90.00. A receipt for this work has been provided.

The landlord's agent testifies that the tenants did not return all the keys to the unit and the locks were changed to protect incoming tenants at a cost of \$122.88. The receipt for this work has been provided.

The landlord's agent also seeks to recover the sum of \$9.95 for an air freshener used to mask the odour when the unit was shown to prospective tenants the receipt for this has been provided.

The landlord's agent states they are the landlord's management company and the landlord is charged a fee of \$672.00 for new tenant placement when a tenant breaks a fixed term lease. The landlord seeks to recover this sum from the tenant and a copy of the ledger has been provided in evidence to show this amount has been charged to the landlord.

The landlord requests an Order to keep the tenants security deposit of \$600.00 in partial payment of the costs incurred in damages and cleaning.

The landlord states that the tenant failed to pay rent for December, 2011 of \$1,200.00. The landlord states they did apply for a loss of rental income from December to the end of the term of the lease however as the unit has been rented from January 01, 2012 the landlord revises this portion of the claim for Decembers loss of income only. The landlord also seeks to recover the \$100.00 filing fee paid for this proceeding.

Analysis

The tenant did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have considered the landlords documentary evidence and affirmed testimony before me.

With regards to the landlords application for a Monetary Order for damage and cleaning to the unit, site or property; I have considered the landlords application and part of this consideration was to review the move in and move out condition inspection reports. The landlord has claimed that the tenant left the kitchen cupboards dirty inside and out; however, the move in inspection shows the cupboards were dirty on the outside at the start of the tenancy. The move in condition inspection also details the condition of the walls at the start of the tenancy and states the walls have some dents, scruffs and nails in the entry, kitchen, living room, master bedroom and bedroom two. The move out condition report also details that the stove top was left in the same condition as before and does not detail that the filter was dirty. The move out condition report also details that the fridge and freezer were left in the same condition as at the start of the tenancy. The move in inspection report details that the ceiling, walls and trim in the stairwell and hall required painting at the start of the tenancy and details that there were minor stains on the carpet at move in and major stains at move out in the master bedroom and bedroom two. The landlord has provided no other evidence such as photographic evidence to show the walls were stained by smoke or any evidence to show the tenant had a dog or that the dog caused damage to the unit.

Consequently, I find many sections of the condition inspection report contradicts the landlords testimony and I must limit the landlords claim, to damage and cleaning created by the tenant during his tenancy as a landlord is responsible to ensure the rental unit is in a clean condition at the start of a tenancy pursuant to s. 32 of the *Act*. I have therefore considered the invoices for the garbage removal and will allow the landlords claim of **\$60.00**, I have limited the landlords claim for cleaning costs to **\$100.00** and have limited the repair and painting costs to **\$700.00**. I limit the landlords claim for carpet cleaning to **\$45.00**. I will allow the landlords claim for the air freshener of **\$9.95**, replacement locks of **\$122.88**, toilet replacement of **\$459.20** and have allowed the landlords claim for management fees to find new tenants of **\$672.00**.

The landlord has revised their claim for a loss of rental income for December, 2011 only. I find this was a fixed term tenancy that was due to end on July 31, 2012. The tenancy was ended early and the tenant did not appear at the hearing to dispute the landlord's claims and abandoned the rental unit on or about December 08, 2011 without paying rent for December. Therefore, I find the landlord is entitled to recover a loss of income for December of **\$1,200.00** pursuant to s. 67 of the *Act*.

As the landlord has been partially successful with their claim I find the landlord is entitled to recover the **\$100.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. The landlord will receive a Monetary Order pursuant to s. 67 and s. 72(1) of the *Act* for the following amount:

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|---------------------|----------|
| Garbage removal | \$60.00 |
| Cleaning costs | \$100.00 |
| Painting and repair | \$700.00 |
| Carpet cleaning | \$45.00 |
| Air freshener | \$9.95 |
| Replacement locks | \$122.88 |
| Toilet replacement | \$459.20 |
| Management fees | \$672.00 |

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|--|-------------------|
| Loss of rental income for December, 2011 | \$1,200.00 |
| Subtotal | \$3,369.03 |
| Less security deposit | (-600.00) |
| Plus filing fee | \$100.00 |
| Total amount due to the landlord | \$2,869.03 |

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 **\$2,869.03**. The order must be served on the tenant 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: December 29, 2011.

Residential Tenancy Branch