



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The hearing did not conclude on the first day that it was scheduled to be heard and was adjourned for a continuation of the testimony. The landlord provided evidence in advance of the hearings to the Residential Tenancy Branch and to the tenant. The landlord and the tenant both attended on both days of the hearing, both provided affirmed testimony, and were given the opportunity to cross examine each other on the evidence. All evidence and testimony provided have been reviewed and are considered in this Decision.

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 unpaid rent or utilities?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This fixed term tenancy began on May 1, 2010 and expired on November 1, 2010 and then reverted to a month-to-month tenancy. The tenancy ultimately ended on August 15, 2011. Rent in the amount of \$1,850.00 per month was originally payable in advance

on the 1st day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$925.00.

The landlord testified that the tenancy agreement had originally been prepared for another tenant who did not move into the rental unit, and the agreement was amended for this tenant and signed by the parties. A copy of the agreement was provided in advance of the hearing. The parties did not change the portion of the agreement that indicates the amount of security deposit and pet damage deposit the landlord was to collect, however the landlord provided a copy of a receipt issued for the security deposit in the amount of \$925.00 and testified that the tenant did not pay a pet damage deposit.

The landlord also testified that the tenant was served with a notice of rent increase on March 24, 2011 personally, a copy of which was provided in advance of the hearing. The notice states that the increase of \$42.55 was effective July 1, 2011. The tenant did not pay the increase, but paid the original amount of rent, being \$1,850.00 for July, 2011. The tenant also paid rent for the month of August, 2011 in the amount of \$1,850.00, did not pay the increase, and then put a stop payment on the rent cheque on August 4, 2011. The landlord claims unpaid rent in the amount of \$1,892.55 for August as well as the unpaid balance from July, for a total of \$1,935.10 in unpaid rent. The landlord further claims \$50.00 for each of those months for late payments stating that the tenancy agreement provides for it under paragraph 2 of the addendum which states as follows: "2. There is a \$50 penalty for every rent cheque returned due to non-sufficient funds."

The landlord further testified that the tenant gave notice to vacate the rental unit in an email dated July 22, 2011 however the notice is not signed and does not contain an address of the rental unit as required under the *Act*. A copy of the email was provided for this hearing. Then, on August 2, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on August 2, 2011 for the unpaid rental increases for July and August. The tenant acknowledged receipt of that notice in an email dated August 4, 2011 wherein the tenant also stated that the tenant would vacate the rental unit on August 15, 2011. The rental unit was re-rented on September 1, 2011.

The landlord also testified that the tenant owes the landlord \$1,323.85 for unpaid utilities. The tenancy agreement provides that the tenant will pay half of the utilities, which the landlord stated are for gas and hydro. Bills were given to the tenant in October, 2010, which were paid, and then in July, 2011 which have not been paid. Copies of the bills were provided for the hearing. Each bill was examined during the landlord's testimony, and the landlord testified that some bills have HST credits, but the landlord did not calculate those credits to the tenant's portion. One bill also has a late

payment charge, which the landlord did not deduct before calculating the tenant's portion. The landlord testified that the utilities are in the name of the landlord, and the tenant was expected to reimburse the landlord. During the second day of the hearing the landlord testified that the utilities were recalculated and the landlord took off the HST credits and late payment charges, but the amount increased to \$1,396.25.

The landlord also claims \$857.01 for damages to the rental unit after the tenant had vacated. Copies of the move-in and move-out condition inspection reports were provided for the hearing. The landlord claims:

- \$23.49 for lawn damage due to the tenant parking the moving van on the lawn, and provided a receipt for that amount for grass/fertilizer, garbage bags and a spreader. The landlord also provided photographs of the lawn area;
- \$44.78 for a broken remote control for the garage, and provided a receipt;
- \$60.00 for carpet cleaning;
- \$5.38 for replacing keys to the garage and the rental unit that were not returned by the tenant (receipt provided);
- \$57.99 + HST for a broken track light fixture (receipt provided);
- \$161.20 for 3 LED bulbs; the landlord purchased 4 bulbs costing \$39.98 each plus HST (receipt provided);
- \$17.90 for sink strainers which the landlord discovered were missing after the tenant moved out (receipt provided);
- \$68.00 for 4 hours of cleaning.

The landlord also stated that the invoice for carpet cleaning also includes the \$68.00 for general cleaning of the rental unit, as well as for preparing (cleaning and filling nicks and holes) the walls and painting the kitchen, living room and bedroom. Those rooms were freshly painted at the tenant's request at the outset of the tenancy. The invoice for the paint is for \$1,500.00 for painting the entire rental unit, for which the landlord claims \$300.00.

The tenant testified that the grass was dry and parched, and there is no evidence that the moving truck caused the dirt to be exposed.

With respect to the remote control for the garage door, the tenant testified that the electric door worked but the remote control did not; the tenants parked outside and kept the remote control in a drawer and didn't know that it didn't work until the tenants moved out. Perhaps it needed batteries, the tenant does not know. The remote control was given to the landlord with the keys.

The tenant further testified that the carpets were very old and stains were wear and tear already on the carpets at move-in. The tenants shampooed the carpets before departing and the residue mentioned in the move-out condition inspection report is from the shampoo.

The tenant further testified that the garage door and mailbox keys were returned, and pointed out that they are not mentioned on the move-out condition inspection report.

The track light claimed by the landlord was not broken. The tenant testified that the tenants took it out and didn't replace it because there were 3 other lights, and there is no mention of a broken track light on the move-out condition inspection report. Further, the landlord has testified that the light bulbs were missing and therefore must be working. Further, the landlord claims \$161.20 for LED bulbs but the ones on the landlord's photographic evidence are not LED, nor are they mentioned on the move-out condition inspection report.

The tenant further testified that there were no sink strainers at the outset of the tenancy. The tenants bought 2 of them during the tenancy, and none are noted on the move-out condition inspection report.

With respect to cleaning costs, the tenant testified that they had the rental unit cleaned before moving out. There were no scribbles on the walls, contrary to the landlord's photographic evidence.

The painting invoice of the landlord has not been established; it appears that the new tenant wanted other rooms painted and the amount claimed is not an objective amount. The tenant is not satisfied that the landlord even paid the invoice.

The tenant does not dispute that utilities are owed, but disputes the rent increase and loss of revenue for September's rent. The landlord's evidence package contains an email that confirms the landlord received the tenant's notice to vacate in July, 2011. Further, the email to the landlord from the tenant dated August 4, 2011 confirms that the tenant did not receive notice of a rent increase. The landlord attempted to increase the rent illegally prior and the parties exchanged emails from March, 2011 onward, but the landlord refused to acknowledge the notices of the tenant. Also, the notice to end the tenancy issued by the landlord was posted to the door of the rental unit which puts the effective date of vacancy at August 15, 2011 and that's the date the tenant moved out. The tenant denies that all of August rent was payable which is why the tenant stopped payment on that rent cheque.

Analysis

Firstly, with respect to the tenancy agreement, the *Residential Tenancy Act* states that landlords and tenants may not contract outside the *Act*, and any attempt to avoid or contract outside the *Act* is of no effect. The tenancy agreement contains a clause providing the landlord with a \$50.00 penalty payable by the tenant for every rent cheque returned due to non-sufficient funds. The *Act* states that a landlord may charge a fee for late or returned cheques in accordance with the regulations, but the regulations specify that amount may not exceed \$20.00 plus the cost of bank fees charged to the landlord. In this case, the landlord has not provided any evidence of bank fees charged to the landlord, and therefore, I find that the landlord is entitled to a fee of \$20.00 for late rent for the month of August, 2011 due to the stop-payment caused by the tenant. With respect to late fees for July, 2011, the landlord claims that the tenant still owes a portion due to a Notice of Rent Increase served on the tenants in March, 2011. The landlord testified twice that the notice of rent increase was served on the tenant personally, and I accept that evidence. I further find that the amount of the increase complies with the *Act* and the regulations. Therefore, I find that the landlord's claim for late fees and unpaid rent for July is justified in the amounts of \$20.00 and \$42.55 respectively.

With respect to the landlord's claim for unpaid rent for the month of August, 2011, the tenant testified that the landlord was provided with a notice to end the tenancy from the tenant in July, 2011. The landlord provided a copy of the tenant's email and testified that the notice does not comply with the *Act*, in that the notice does not contain the address of the rental unit and is not signed by the tenant. I agree with the landlord, and I find that the tenant is required to pay rent for the entire month of August, including the rental increase. The landlord's loss of revenue up to the end of August is justified in the circumstances as the tenant's notice, if it was provided in accordance with the *Act*, would not have ended the tenancy any earlier than August 31, 2011.

The tenant did not dispute the unpaid utilities and I have recalculated the bills provided, and I find that the landlord is entitled to a monetary order in the amount of \$924.40 for BC Hydro and \$460.57 for the gas bills, for a total of \$1,384.97.

With respect to the landlord's claim for damages, the onus is on the landlord to pass the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and

4. What efforts the landlord made to mitigate, or reduce the damage or loss suffered.

With respect to lawn damage due to the tenant parking the moving van on the lawn, I find that the landlord has failed to establish that the moving van caused the damage. Therefore, I do not accept the landlord's claim for \$23.49. I further find that the landlord did not dispute the tenant's testimony that the battery in the garage door opener may have been dead, nor do I have any testimony from the landlord that a new battery was tried. The move-in/out condition inspection report is unclear as to whether or not it was tried at the commencement of the tenancy, and I find that the landlord has failed to establish that the landlord mitigated any damage or loss suffered.

I have reviewed the photographs provided by the landlord and compared them to the move-in/out condition inspection report, and I find that the landlord has established a claim for carpet cleaning in the amount of \$60.00 and cleaning the rental unit in the amount of \$68.00. I further find that the photographs and the move-in/out condition inspection report justify the landlord's claim for painting. With respect to the quantum of damages, the landlord testified that the unit was re-painted after the tenant moved out, however the landlord claims one fifth of the actual cost, and I find that is justified in the circumstances.

With respect to replacing keys to the garage and the rental unit, the move-in/out condition inspection report shows that 2 building keys were provided at the outset of the tenancy and 2 were returned by the tenant at the end of the tenancy. Therefore, the landlord's claim for replacing keys cannot succeed.

The landlord also claims \$161.20 for 3 LED bulbs, but did not dispute the tenant's evidence that the lights in the rental unit at the outset of the tenancy were not LED. Any award for damages must not place the landlord in a better financial situation than the landlord would be in had the damage or loss not existed. Therefore, I cannot be satisfied that the landlord has established that claim.

The move-in/out condition inspection report does not mention sink strainers, and the tenant has disputed that sink strainers existed at the outset of the tenancy, and therefore I find that the landlord has failed to establish that the tenant is responsible for any cost or for replacing those items.

With respect to the landlord's claim for a broken track light fixture, the tenant has disputed the landlord's testimony that the light fixture was broken. The tenant testified that it wasn't working at the commencement of the tenancy and the tenant did not use it because there were other lights. I have reviewed the photographs provided by the

landlord and the move-in/out condition inspection report and note that there is no mention of a broken track light on the move-out condition inspection report.

In summary, I find that the landlord is entitled to a monetary order in the amount of \$428.00 for damages; a further monetary order for \$1,935.10 for unpaid rent; \$40.00 for late fees; and \$1,384.97 for unpaid utilities. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application, and I find that the landlord is entitled to keep the security deposit in partial satisfaction of the claim.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit in the amount of \$925.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$2,913.07. This order is final and binding on the parties and may be enforced.

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 20, 2011.

Residential Tenancy Branch