



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for a Monetary Order for unpaid rent; 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 and pet deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants, the property owner and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The parties advised me there was an error in the last name of one of the tenants. The parties did not raise any objections to the error being corrected and this has now been amended.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?

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

Background and Evidence

Both parties agree that this month to month tenancy started on February 01, 2011. A written tenancy agreement is in place and has been provided in evidence. The tenancy ended on July 31, 2011. Rent for this unit was \$1,350.00 per month and was due on the first day of each month in advance. The tenants would receive a \$150.00 rent reduction each month for yard maintenance. The tenants paid a security deposit of \$550.00 on June 14, 2010. A Move in condition inspection was completed at the start of the tenancy with the owner and the tenants. A Move out condition inspection was completed by the landlord at the end of the tenancy.

The landlord testifies that they were unable to contact the tenants at the end of the tenancy to arrange a date and time to do the inspection as the tenants had moved out without providing a forwarding address. The tenants gave their address to the landlord on August 25, 2011 by telephone.

The landlord testifies that the tenants failed to pay rent for July, 2011 of \$1,350.00. The landlord states the owner disagreed that the tenants were entitled to a rent reduction for yard and lawn maintenance as the tenants had failed to do this work to a satisfactory standard in July, 2011. The landlord now states however that they are willing to accept that the tenants can continue to receive this rent reduction for July and the landlord amends their claim for unpaid rent to \$1,200.00.

The tenants' testify they could not do the yard work for the second half of July, 2011 as the owner came to the unit and removed the lawn mower, weed eater and all other tools from the garden shed. The tenants' testify that they were behind with their rent for July

and the owner gave the tenants until July 15, 2011 to pay the rent. The tenants testify that they had a verbal agreement with the landlord that as the downstairs tenants child had damaged their car, the downstairs tenant would agree the landlord could keep the downstairs tenants security deposit of \$500.00 at the end of her tenancy and this would be used to offset these tenants rent for July instead of the downstairs tenant having to pay for the damage to these tenants car. The tenants state that landlord and the downstairs tenant agreed to this arrangement. The tenants state that they then owed the landlord \$700.00 for July rent but they withheld this amount as the landlord owed the tenants money for painting a fence, sheds and basement unit.

The owner testifies that these tenants claimed the downstairs tenant's son had caused damage to their car. The owner states that at first the downstairs tenant agreed that the owner could keep her security deposit of \$500.00 to offset against the damage to the upstairs tenants car and the downstairs tenant sent the owner a letter to that effect. However the owner states the downstairs tenant rescinded this and sent another letter to the owner requesting that the owner return her security deposit. The owner testifies that she had told these tenants that she could only apply the downstairs tenant's security deposit to their July rent if the downstairs tenant gave the owner signed instruction to do so. The owner states she was obligated to return the downstairs tenants security deposit to her under the *Residential Tenancy Act (Act)*.

The owner testifies that the tenants did paint a fence in the back yard and they were paid \$200.00 for this work. The landlord testifies that she has no knowledge that the tenants have painted the basement suite and states she had agreed to pay the tenants \$250.00 for that work.

The landlord testifies that the move in condition inspection report shows that the rental unit was in a good condition at the start of the tenancy. At the end of tenancy the move out condition report shows that the tenants had not cleaned the rental unit to a reasonable standard. The landlord testifies the unit had to be professionally cleaned at

a cost of \$225.00 (12.5 hours at \$18.00 per hour). The landlord has provided the invoice from the cleaner which gives full details of the areas of the unit which were cleaned.

The landlord testifies that the tenants had not cleaned the carpets and these were left in an unclean condition. The landlord had the carpets professional cleaned at a cost of \$134.40 and has provided the invoice for this work. The owner testifies that the carpets were new in October 2010 and were only three months old when the tenancy started

The landlord testifies that there were garden items missing from the property at the end of the tenancy. The landlord states a hedge trimmer, a sprinkler and two hoses were missing. The landlord seeks to recover the sum of \$220.00 for these missing items and has provided the original sale receipt for the hedge trimmer and receipts for the other items.

The landlord testifies that the tenants did not remove all their garbage at the end of the tenancy and left an entertainment unit in their unit and items in a shed and the yard. The landlord seeks to recover the cost of \$100.00 for this work but has not provided a receipt.

The tenants testify that they cleaned the unit for two days at the end of the tenancy and the unit was left in a satisfactory condition at the end of the tenancy. The tenants dispute that the cleaner would have had to clean the unit for 12 hours. The tenants state the landlord did not inform them that an inspection was taking place and did not give them two opportunities for an inspection before the tenancy ended. They state the landlord told them she would come to the unit on August 02, 2011 to do an inspection however the tenants state the landlord did not arrive so they had to leave the unit and left the keys with the downstairs tenant.

The tenants agree they did leave an entertainment unit in the unit as the new downstairs tenants wanted this unit and had agreed to remove it to their own unit. The tenants testify that the garbage left outside in the yard belonged to the previous

downstairs tenant. The tenants draw the landlord's attention to the photographs which show a child's plastic car and plastic pool, a child's pool toy and other items. The tenants state the items in this shed were not there's as their shed was the other one and their children are much older and do not have toys or chairs such as depicted in the landlord's photographic evidence.

The tenants' testify that the carpets had not been cleaned at the start of their tenancy and the owner had verbally agreed that the tenants did not have to worry about cleaning the carpets when they moved out.

The tenants' testify that they did not remove any of the landlords gardening tools at the end of their tenancy. The tenants' testify that the landlord came to the unit and removed these items along with the lawnmower and some items belonging to the tenants. The tenants' testify that one of the hoses the landlord is claiming the tenants have taken was left at the unit as the previous downstairs tenant's child had cut the hose up with scissors.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regards to the landlords claim for unpaid rent for July, 2011; Section 26 of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenants argue that they had an agreement with the landlord to use the downstairs tenant's security deposit to offset against their rent due to damage caused by that tenant's child to these tenants car. The tenants also argue that they had a verbal agreement with the landlord to paint the basement unit, two sheds and a fence. The

tenants have provided no evidence of this agreement or that any painting was done by them other than the fence. The landlord agrees the tenants painted the fence and states she paid the tenants \$200.00 for this work. The landlord disagrees that the tenants painted any other areas. By their nature, disputed verbal terms are not clear and are often impossible for a third party to interpret. I am not prepared to find a verbal arrangement to be an enforceable term between these two parties concerning payment for painting and in any event tenants are not entitled to withhold their rent pursuant to s. 26 of the *Act*. The landlord is not entitled to apply a security deposit from another tenant to rent for these tenants without written permission from the other tenant. As the other tenant rescinded her written permission, it is my decision that the tenants continue to owe rent for July, 2011 of **\$1,200.00** as a sum agreed by the landlord. The landlord is entitled to a monetary award for this sum pursuant to s. 67 of the *Act*.

With regard to the landlords claim to keep the security deposit; there is no evidence that the landlord gave the tenants at least two opportunities for inspection of the rental unit before they vacated the unit. The landlord would therefore have extinguished their right to file a claim to keep the security deposit for damages. However as part of the landlords claim is for unpaid rent the landlord is entitled to file a claim to keep the security deposit and has established this claim to keep it against the rent owed for July, 2011. Consequently the security deposit of **\$550.00** will be offset against the unpaid rent pursuant to s. 38 (4)(b) of the *Act*.

With regards to the landlords claim for cleaning the rental unit; the information contained within the move out condition inspection report shows the unit was not left in a reasonable clean condition at the end of the tenancy. The tenants dispute this and argue that they did clean the unit. In light of this the landlord would be required to provide additional corroborating evidence to support her claim for cleaning. The landlord has provided an itemized list and invoice from the person who carried out the cleaning of the unit and I am satisfied from this corroborating evidence that the unit did require cleaning. Therefore, I find the landlord has established their claim for cleaning to the

sum of **\$225.00** and the landlord is entitled to a monetary award for this amount pursuant to s. 67 of the *Act*.

With regard to the landlords claim for carpet cleaning; the tenants argue that the owner told the tenants they did not have to clean the carpets at the end of the tenancy because the carpets were unclean at the start of the tenancy. The move in condition inspection report does not state that the carpets were unclean at the start of the tenancy. The report shows that the carpets were in a good condition when the tenants moved in and the tenant have signed to agree with the condition of the unit on this report. Consequently, the landlord has established her claim for carpet cleaning at the end of the tenancy and a monetary award has been issued to the landlord for the sum of **\$134.40** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for the loss of a hedge trimmer, a sprinkler and two hose pipes. The burden of proof falls to the landlord in this matter to establish that the tenants did remove these items from the property. Both parties agree that the landlord came to the property and removed all other gardening equipment towards the end of the tenancy. I am not satisfied that the landlord has meet the burden of proof in this matter that the tenants are responsible for this loss and the landlords claim for \$220.00 is dismissed without leave to reapply.

With regard to the landlords claim for garbage removal; the tenants argue that the only items left at the unit was an entertainment unit which the new downstairs tenants were supposed to remove to their unit. The tenants deny that the items left in the yard belonged to them and I am satisfied with the tenants' arguments due to many of the items clearly being children's belongings and the tenant's children are all older. I further find in order to be successful a landlord must provide a receipt showing the actual amount paid to dispose of these items. Consequently, the landlord has not met the burden of proof in this matter and her application for \$100.00 is dismissed without leave to reapply.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for July, 2011	\$1,200.00
Cleaning	\$225.00
Carpet cleaning	\$134.40
Subtotal	\$1,559.40
Plus filing fee	\$50.00
Less security deposit	(-\$550.00)
Total amount due to the landlord	\$1,059.40

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 **\$1,059.40**. The order must be served on the respondents 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: January 13, 2012.

Residential Tenancy Branch