



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 was convened by way of conference call in repose to the landlords application for a Monetary Order for unpaid rent or utilities; 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.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*. The landlords gave sworn testimony that they served the tenant in person on August 05, 2011.

The landlords appeared, gave sworn testimony, were provided the opportunity to present their 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 *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent and utilities?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords entitled to keep the tenants security deposit?

Background and Evidence

The landlords' testify that this month to month tenancy started on October 08, 2008. A written tenancy agreement has been provided in evidence. Rent for this unit is now \$1,566.00 and was due on the first day of each month in advance. The tenant paid a security deposit of \$750.00 on October 15, 2008. The tenant moved from the rental unit on or about June 20, 2011.

The landlord testifies that the tenant failed to pay rent for June, 2011 of \$1,566.00 and failed to pay the water bill of \$111.67 after the bill was given to her. The landlord testifies that the tenant was served with a 10 Day Notice to End Tenancy on June 07, 2011. This Notice was posted to the tenant's door and was deemed served three days later on June 10, 2011. The 10 Day Notice states the tenant owes rent and utilities for June, 2011 and had an effective date of June 18, 2011.

The landlord testifies that the tenant did not pay the outstanding rent or utilities and moved out of the unit around June 20, 2011 without informing the landlords. The tenant did not provide a forwarding address so the landlords testify they had to serve the tenant in person at her place of work. The landlord seeks to recover the outstanding rent and utilities.

The landlord testifies the tenant attended the move in condition inspection however at the end of the tenancy she was given four dates to attend the move out inspection but failed to respond to the landlord and a Final Opportunity For Inspection Notice was given in person to the tenant. The tenant failed to appear for the move out inspection so this was completed in her absence by the landlords and a copy of the report has been given to the tenant.

At this inspection the landlords found the carpets extensively stained with pet urine. The landlord had the carpets professionally cleaned twice and also cleaned them themselves to a cost of \$143.36. However the stains and smell of urine could not be removed successfully so the carpets in the sunroom and basement had to be replaced. The carpets in the sunroom were eight years old and the basement carpets were approximately 10 years old.

The landlords explain the carpets were in excellent condition at the start of the tenancy as these areas are both low traffic areas. The landlord seeks to recover these replacement costs of \$672.00 for the sunroom and \$1,344.00 for the basement.

The landlord testifies the tenant caused damage to the back door and wall behind the door where the door handle had been pushed through the wall. Repairs were also required to the china cabinet and the kitchen cupboard door hinges. The back door and frame also had to be repainted due to dog scratches. The landlord seeks to recover the sum of \$310.00 paid to a handyman for this work.

The landlords testify that the tenant smoked in the sunroom which was connected to the house by patio doors. The cigarette smoke went into the crown moulding and the walls were stained yellow. The tenant was aware she must smoke outside but continued to smoke in the sunroom. The landlords testify that the walls and corn moulding had to be scrubbed clean and they seek to recover the cost for this work to the sum of \$96.00.

The landlords testify that the tenant was responsible for the yard maintenance as per their tenancy agreement. They state the tenant kept up with this work for the first two years of her tenancy but in the last year the tenant failed to maintain the yard to the extent that it became rundown and overgrown. The landlords obtained a written quote from a landscape company to bring the yard back to its original condition. This quote came in at \$3,300.00. The landlords testify that they reached an agreement with their new tenants to do the yard work for a rent reduction of \$500.00 per month for three months. The landlords seek to recover this sum of \$1,500.00 from the tenant.

The landlords testify that they had to pay \$22.09 to have three sets of photographs printed for their evidence. They state this is a cost they would not have incurred if the tenant had not caused these damages to the rental unit so they seek to recover this cost from the tenant.

The landlords also seek to recover their \$100.00 filing fee from the tenant. The landlords also seek an Order to keep the tenants security deposit of \$750.00 in partial satisfaction of their claim.

The landlords have provided the following documentation in evidence: The tenancy agreement, the water bill, The 10 Day Notice to End Tenancy, the inspection reports, photographs of the unit and property, Notice of final opportunity for inspection, landscaping quote and invoices and receipts.

Analysis

In the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me. With regard to the landlords claim for unpaid rent and utilities; I am satisfied that the tenant failed to pay rent and utilities for June, 2011 and consequently the landlord is entitled to a Monetary Order to recover the sum of **\$1,677.67** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for damages to the unit, site and property; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then

provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords have provided sufficient evidence to support their claim and they are able to meet all of the components of the above test with regard to their claim for carpet cleaning of **\$143.36**, repairs to the wall and door, the china cupboard, the kitchen cupboard doors and the repainting of the backdoor and frame for **\$310.00**. I further find the landlords have established their claim for washing the walls and crown molding for \$96.00 and yard maintenance for **\$1,500.00**.

The landlords have also established their claim, in part, for replacing the carpets in the sunroom and basement however due to the age of these carpets (useful life of a carpet being 10 years) I have limited their claim for the sunroom room carpet to \$400.00 as this is a low traffic area and they have testified that the carpet was in good condition at the start of the tenancy. I have also limited their claim for the basement carpet to \$672.00 as this carpet was also in a low traffic area and was in very good condition at the start of the tenancy despite its age. The landlords will receive a monetary award for **\$1,072.00** pursuant to s. 67 of the *Act*.

I have considered the landlords claim for photograph processing and find in favor of their claim as the landlords would not have incurred this cost had the tenant complied with s. 32 of the *Act* and ensured any damage done to the unit and property during the tenancy was corrected before the tenancy ended. Consequently, the landlords are entitled to recover the sum of **\$22.09** from the tenant pursuant to s. 67 of the *Act*.

As the landlords have met the burden of proof in their claim for damages I find the landlord is entitled to keep the tenants security deposit of **\$750.00** in partial satisfaction of their claim pursuant to s. 38 (4)(b) of the *Act*.

As the landlords have been partially successful with their claim I find they are also entitled to recover the **\$100.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlords for the following amount:

Unpaid rent and utilities	\$1677.67
Carpet cleaning	\$143.36
Damages	\$310.00
Cleaning smoke damage	\$96.00
Yard maintenance	\$1,500.00
Carpet replacement	\$1,072.00
Photograph processing	\$22.09
Subtotal	\$4,821.12
Less security deposit	(-\$750.00)
Plus filing fee	\$100.00
Total amount due to the landlords	\$4,171.12

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$4,171.12**. The order must be served on the respondent 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: November 03, 2011.

Residential Tenancy Branch