



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in repose to the landlords application for a Monetary Order for damage to the unit, site or property; a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security and pet 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.

Both Parties 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 landlord has applied to keep the tenants security and pet damage deposits. However the landlord referred to a previous hearing held on June 29, 2011 in which he was permitted to keep the security and pet damage deposits. The landlord questioned this decision.

Section 77 of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order is final and binding on the parties. Therefore any findings made by the Dispute Resolution Officer that presided over the prior hearing are not matters that I have any authority to alter and any decision that I render must honour the existing findings. The portion of the landlord's application relating to the request for an order to retain the security

deposit is therefore dismissed as this matter has already been determined in the previous hearing where the landlord was ordered to keep the security and pet deposits.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the unit?
- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

This tenancy started on June 01, 2010. This was a fixed term tenancy with an effective date of May 10, 2010. Rent for this unit was \$750.00 due on the first day of each month in advance.

The landlord testifies that the tenant moved from the rental unit on June 30, 2011. The landlord testifies that after the tenant moved out they found damage to the rental unit and tenant had not thoroughly cleaned the unit. The landlord testifies that the tenant did not repair damages caused by her cats during her tenancy. The landlord testifies the tenant had kept her cats litter box in a closet. After the tenant moved out the landlords found cat urine had soaked through the laminate flooring and saturated the cement subfloor in this area. The smell of cat urine was very strong in the unit. The landlord states he had to pull up the flooring in this area and clean the cement subfloor with a special cleaner then seal the subfloor and lay new laminate flooring. The landlord also testifies the tenant had removed half of the screening on the screen door so her cats could come and go and the cats had caused additional damage to a door seal. The landlord seeks to recover the cost of materials for this work as follows:

\$45.01 for paint and supplies to seal the cat urine

\$3.91 for construction adhesive

\$61.56 for new flooring

\$30.96 for T-moulding and stain for flooring

\$167.45 for flooring supplies for the new floor and for new screening material.

The landlord testifies the tenant caused damage to: the bathroom cabinet leaving marks in the paint finish which could not be removed; damage to the sills and baseboards with gouges in the woodwork; the kitchen drawers were marred and the finish inside the drawers had to be redone, the kitchen counter top was damaged, the laminate flooring was marred through neglect, there were scratches in the door frame; there were gouges in some of the walls and there was a large dent in the freezer door.

The landlord seeks to recover some of these costs for repairs as follows:

Paint for bathroom cabinet and kitchen drawers, filler and paint for walls, door frames, window sills and baseboards - \$59.62 and \$46.98

Replacement of the damaged freezer door panel - \$433.08

Labour costs for the landlord and his wife to do repair work at \$25.00 per hour - \$250.00.

The landlord testifies that he did complete a preliminary move in inspection report however the landlord states this was never completed with the tenant present. The landlord testifies that the unit was in good condition at the start of the tenancy and the landlords have provided copies of photographs taken of the unit at the start of the tenancy. The landlord testifies he did not complete a move out condition inspection but did take photographs of the unit at the end of the tenancy. All photographs have been provided in evidence.

The landlord testifies that due to the condition of the unit and the repair work that had to be completed, they could not start to advertise the unit for rent until July 11, 2011. The unit remained unrented until September 01, 2011. The landlords seek to recover a loss of rental income for July of \$750.00. The landlord states they could not start to advertise the unit before July 11, 2011 due to the smell of cat urine.

The tenant testifies that during her tenancy there was a flood in the unit. The tenant states this flood could have caused the floor in the closet to become wet as her cats did not urinate on the floor. The tenant states the landlord had been in her unit during this time and did not

complain about a cat urine smell. The tenant states it is possible that her cats may have missed the litter box but states she never smelt cat urine during her tenancy.

The tenant testifies that the unit was not left uninhabitable. The tenant testifies the landlord did not do the move in condition inspection and states the unit was left in the same condition as it was when she moved in. The tenant disputes the landlords' photographs and states these are undated and could have been taken at any time. The tenant testifies that when the workers came to replace the bathroom floor after the flood they caused damage to the walls and the bathroom cabinet. The tenant agrees she did remove the screening in the door screen and failed to replace this when she moved out. The tenant disputes causing any damage to the freezer door and states it was undamaged at the end of her tenancy. The tenant suggests the landlord may have done this damage himself in temper.

The tenant disputes that the landlords claim for a loss of rental income for July as the unit was not left in a condition as described by the landlord.

The landlord testifies that the closet flooring could not have been damaged during the flood. The flood was relatively minor and the restoration company who did the repair work at that time tested the surrounding areas with a moisture gauge and found no moisture in the closet area.

The landlord has applied for a Monetary Order for unpaid rent however this has been dealt with under a loss of rental income and this section of the landlords claim has been withdrawn.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for damages to the rental unit; 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.

The landlord argues that the tenant did not repair damages caused by her actions or actions of her cats or her neglect of the rental unit during her tenancy. The tenant argues that the landlord has insufficient evidence to show that these damages were caused by her or her cats during her tenancy as he failed to complete the condition inspection reports at the start and end of the tenancy.

Sections 23 and 35 of the Act say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if a tenant has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence

of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

In this matter the tenant has disputed the landlords' evidence concerning the damage, repairs and cleaning. I have carefully considered the landlord additional evidence in this matter and although the landlords' photographs are undated these photographs do show the rental unit in a clean and undamaged condition and have been dated by the landlord and the remainder of the photographs show the damage to the same rental unit and the remedial work completed by the landlord. The tenant argues that she did not damage the freezer door and suggests the landlord may have done this in temper. I find it unlikely that a landlord would cause this level of damage to his own freezer and therefore on a balance of possibilities it is my decision that the landlords have met the burden of proof that the tenant is responsible for some of the damage and cleaning in the rental unit. I further find the landlords have met the burden of proof in regards to the actual cost required to rectify the damages and the dates on the invoices show that this work was completed in the first two weeks of July, 2011. The landlords have also shown how they have mitigated their loss by doing the repair work themselves completing this in a timely manner to get the unit advertised for rental.

However some of the claimed damage I would consider to be normal wear and tear such as the marks on the bathroom cabinet and inside the kitchen drawers. If these cabinets and drawers are used as they are intended the landlord would have to expect there would be some minor wear and tear such as the wear and tear shown in the landlords' photographic evidence. I also find some of the gouges on the bathroom wall have not been clearly determined to be the fault of the tenant. Therefore, I must limit the landlords claim for damages and deduct an amount of \$50.00 for normal wear and tear.

In light of this I find the landlords have established their claim in part for damages to the sum of **\$1,048.57**.

With regard to the landlords claim for loss of rental income; I refer the Parties to the Residential Tenancy Guidelines #3 which state, in part, even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the

tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner. I have considered the landlords request for a loss of income and find that this tenancy ended on June 30, 2011 and the landlords spent two weeks making repairs to the unit in order to make it presentable for viewings. The landlords advertised the unit on July 11, 2011 after eliminating the cat urine odor amongst other repairs. Therefore, it is my decision that the landlords did act in a timely manner to rectify the damage to the unit and consequently I find they are entitled to a Monetary Order for a loss of rental income for July, 2011 of **\$750.00**.

As the landlords have been largely successful with their claim I find they are entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*.

A Monetary Order has been issued to the landlords for the following amount pursuant to section 67 and 72 (1) of the *Act*:

Damages to the rental unit	\$1,048.57
Loss of rental income	\$750.00
Subtotal	\$1,798.57
Plus filing fee	\$50.00
Total amount due to the landlords	\$1,848.57

Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,848.57**. 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 08, 2011.

Residential Tenancy Branch