



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, 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 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 landlord attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. However, the landlord provided evidence of having served the tenant with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on September 14, 2011, and the tenant did not attend. All testimony and evidence of the landlord has been reviewed and is 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 a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 1, 2011 and ended on July 16, 2011 when the tenant abandoned the rental unit. Rent in the amount of \$850.00 per month was 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 \$425.00 which the landlord has returned to the tenant in full. No move-in condition inspection report had been completed, however the landlord caused a move-out condition inspection to take place and provided a copy of that document in advance of the hearing.

The landlord also testified that another tenant within the apartment complex emailed the landlord stating that the tenant of this rental unit had a medical emergency and that this rental unit was now available for rent. The tenant was asking permission to move into the abandoned rental unit and had been given the keys.

The landlord also testified that the mother of the tenant called the landlord on July 19, 2011 stating that the tenant was in hospital near death, and that the mother was the legal guardian and would be removing the tenant's valuable antiques from the rental unit. The tenant's mother also stated that the other tenant should be able to move in and would advise in a few days of the acceptable date. The tenant's mother subsequently changed her mind and advised that the other tenant could not move in until the 31st of July. The landlord testified that everyone in the building was trying to assist the tenant. A property manager was asked to deal with it, and the other tenant was told that moving into this rental unit would have to wait until July 31, 2011. The unit of the other tenant was advertised on KIJl and Craigslist as well as Used Victoria. The rental unit was rented for September 1, 2011. The other tenant continued to pay the rent on the unit previously rented, but the landlord has not collected any rent for the month of August, 2011 on this rental unit. The tenant did not provide the landlord with any notice to vacate the rental unit and the landlord claims \$850.00 for unpaid rent for the month of August, 2011.

The landlord also testified that furniture and garbage were abandoned by the tenant, and provided receipts for 3 trips to the local landfill in the amounts of \$28.25 dated August 2, 2011, \$31.50 dated August 2, 2011, and \$32.50 dated August 30, 2011. Also provided were photographs of furniture left outside and copies of emails wherein the landlord testified that other tenants confirmed that the furniture left at the outside of the rental complex belonged to the tenant. The email exchanges provided by the landlord also include email from the mother of the tenant who states that the landlord re-rented the rental unit and is therefore not entitled to recover additional rent from the tenant. The emails also provide a forwarding address of the tenant and a request for return of the security deposit to that address.

The landlord also stated that on August 2, 2011 the landlord started to move garbage from inside and outside the rental unit. The landlord also paid the tenant who moved into the rental unit the sum of \$180.00 for 9 hours of cleaning. The landlord claims reimbursement of that amount from the tenant in addition to \$180.00 for 9 hours of the landlord's time to remove refuse. The landlord further testified that garbage removal is available to the tenants within the complex, however excess garbage is subject to a fee, and the landlord paid \$12.41 including HST for that service.

The landlord also provided copies of cell phone charges for dealing with the tenancy and the end of the tenancy for which the landlord claims \$63.45, as well as \$12.71 for registered mail and \$9.70 for photocopy fees to prepare for this hearing.

The landlord summarized the landlord's claim in a document as follows:

- Rent for August \$850.00;
- Cleaning 9 hours at \$20.00 per hour \$180.00;
- Landfill August 2 \$28.25;
- Landfill August 6 \$31.50
- Landfill August 30 \$32.50;
- Apartment cleanup-removing furniture and garbage to landfill 9 hours x \$20.00 per hour \$190.00;
- Gas and truck expenses for 3 trips to landfill 3 x 30 kms @ .50 per km \$45.00
- Renting, showing apartment caused by vacancy 8 hours x \$20.00 per hour \$160.00;
- Registered letters \$11.03
- Phone calls and rim data on cell phone \$33.52; and
- Excess garbage charges \$12.41;

for a total of \$1,574.21, however the landlord acknowledged an error in that apartment cleanup of 9 hours x \$20.00 per hour ought to read \$180.00, not \$190.00.

Analysis

Firstly, I find that the tenant did not give the notice required under the *Residential Tenancy Act* to the landlord to vacate the rental unit. I also accept the evidence of the landlord that the unit was re-rented to another tenant within the complex, but the landlord did not collect the rent; the landlord collected rent from that tenant on the unit that that tenant rented prior to moving into this rental unit, and the landlord has suffered a loss of rental revenue from this unit as a result of the tenant abandoning it. Therefore, I find that the landlord is entitled to a monetary order for unpaid rent in the amount of \$850.00.

With respect to cleaning, dump runs and excess garbage removal fees, I find that the landlord has failed to establish that the tenant is responsible for those amounts. The landlord testified that the emails prove that the tenant left the garbage and furniture outside of the rental complex. I have read those emails and find no conclusive evidence that any of the garbage or furniture belongs to this tenant. The landlord also testified that page 59 of the evidence provided by the landlord includes proof of payment in the amount of \$180.00 to another tenant for cleaning the rental unit. That document does not include any payment in that amount to any person. Further, in the absence of any

move-in or move-out condition inspection reports I cannot be satisfied that the rental unit was in any different condition at move-out than it was at move-in.

The landlord's fees for cell phone charges, registered mail and photocopies are not recoverable under the *Act*. The *Act* permits recovery of the filing fee and for damages arising out of the tenancy, but not for preparation for a hearing or for phone calls. Further, I find that the gas and truck expenses for 3 trips to landfill in the amount of \$45.00 have not been established by the landlord.

I further find that the landlord's claim in the amount of \$160.00 for renting and showing the apartment caused by the unexpected vacancy is not recoverable. The *Act* specifically states that the landlord may not charge a person anything for accepting an application for a tenancy, processing the application, investigating the applicant's suitability as a tenant, or accepting the person as a tenant.

In summary, I find that the landlord has established a claim for unpaid rent in the amount of \$850.00. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$900.00. This order is final and binding on the parties and may be enforced.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

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 18, 2011.

Residential Tenancy Branch