



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 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; and to recover the filing fee from the tenant for the cost of this application.

The hearing was originally scheduled to convene on January 10, 2012, however the tenant had applied for an adjournment, which was consented to by the landlord. The matter was reconvened on February 1, 2012, at which time an agent for the landlord company attended with a witness, and the tenant also attended. The parties provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other. The parties and the witness gave affirmed testimony and the parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which 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 keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on February 1, 2011 and expired on July 31, 2011 and then reverted to a month to month tenancy which ultimately ended on October 14, 2011. Rent in the amount of \$1,150.00 per month was payable in advance on the 1st day of each month. On January 22, 2011 the landlord

collected a security deposit from the tenant in the amount of \$575.00 and no pet damage deposit was collected.

The landlord's agent testified that on September 27, 2011 the tenant gave the landlord notice to vacate the rental unit. The tenant did not pay rent when it was due for the month of October, 2011 and the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 6, 2011. A copy of the notice was provided prior to the hearing and it states that the tenant failed to pay rent in the amount of \$1,195.00 that was due on October 1, 2011 and contains an expected date of vacancy of October 16, 2011. The landlord's agent testified that the amount includes a \$45.00 fee for parking, which was included in the rent for the first 6 months of the tenancy. A copy of the tenancy agreement was also provided prior to the hearing, and it states that parking is an additional \$45.00 per month after the first 6 months. The tenant moved from the rental unit on October 14, 2011, but did not pay any rent for October, 2011 and did not pay for parking for that month.

The tenant left the rental unit without correcting damages; something had been spilled on the carpet in the living room and in the bedroom which was discoloured from the tenant's attempt to clean it. The tenant had a carpet repair person attend who cut holes around the stains and replaced the holes with carpet cut out of a closet in the hallway. The repair job was not acceptable to the landlord, and photographs of the damage were provided for this hearing. The landlord's agent also testified that the carpet was 4 years old when the tenant moved in. The landlord provided evidence of paying \$1,535.05, and the landlord claims 50% of the cost due to the age of the carpets. The invoice also states that a 1.5% discount applies if payments are received within 15 days from the invoice date, and the landlord claims half of the discounted amount of \$1,512.03, or \$756.01.

The landlord's agent further testified that the tenant left the rental unit in good condition otherwise.

The witness for the landlord testified to speaking with the carpet installer who advised that the old carpet could not be coloured or repaired.

Further, a hearing was held on September 6, 2011 under file number 777943, wherein the tenant had applied for dispute resolution asking for a rent reduction due to un-working elevators. The resulting decision was a dismissal of the tenant's application. During the course of that hearing, the landlord's agent, who was not the same agent who appeared for this hearing, offered the tenant an opportunity to move from the rental unit without being required to give a full month's notice if the tenant was unhappy with the lack of full-time elevator service. The tenant did not take the landlord up on that

offer. The tenant had sent an email to the landlord on September 26, 2011 stating that the tenant would be moving and expected the landlord to allow the tenant to move without being charged for October's rent. An agent for the landlord company replied in a letter dated September 27, 2011 which does not acknowledge that offer at all, but states that the tenant is responsible for all rental charges associated with the rental unit until the end of the tenancy.

The landlord claims \$1,195.00 for rent and parking fees for the month of October, 2011 as well as \$756.01, being half the amount of carpet replacement, and recovery of the \$50.00 filing fee for the cost of this application, however the landlord's application states that the claim is \$1,869.00. No explanation of how the landlord arrived at that figure was provided.

The tenant testified that the agent attending the hearing in September, 2011 told the tenant that rent for October, 2011 would be forgiven if the tenant moved out, so the tenant gave notice to vacate the rental unit. Copies of email exchanges by the parties were provided by the landlord prior to this hearing. The copies show that the tenant sent several emails to the landlord, but the landlord did not respond to all of them. In the first email, dated September 26, 2011, the tenant advised the landlord that the tenant was suffering from disturbances due to constant banging every 30 seconds in the wall of the rental unit. The tenant also reminds the landlord's agent of the September 6, 2011 conversation during the hearing in which the landlord's agent offered to allow the tenant to move without the required month's notice, and the tenant asks for that allowance. The landlord's response is by way of a letter dated September 27, 2011 wherein the landlord's agent states that the offer was to vacate the property prior to the end of the fixed term tenancy, but since the fixed term expired on July 31, 2011 and the tenancy converted to a month-to-month tenancy, one month's written notice is required.

The tenant further testified that in July, 2011 the tenant reported to the landlord bleach stains on the carpet and wanted it fixed and agreed to pay for it. The landlord did not reply to the request. The tenant again requested repairs in August and again in September, but no action was taken by the landlord. The tenant called a restoration company and paid \$150.00 for services in completing the carpet repairs. The tenant also asked the landlord for a carpet piece to assist with the repairs but the landlord refused.

Analysis

I have reviewed the Decision resulting from the September 6, 2011 hearing, and it is clear that the sole issue was inconvenience to the tenant caused by elevators not working. I have also reviewed the email from the tenant dated September 26, 2011 which states that the tenant intended to move out of the rental unit as a result of banging in the walls, and the email makes no mention of elevators not working. I also reviewed the letter of the landlord's agent dated September 27, 2011 which makes little sense at all. Firstly, if the fixed term of the tenancy expired on July 31, 2011, the fixed term had expired before the September 6, 2011 hearing, and therefore prior to the offer by the landlord to vacate without the required month's notice. In the circumstances, I find that the landlord's agent refused to acknowledge the offer in the letter, and the tenant has attempted to use that offer to justify not paying rent knowing that the offer was due to the inconvenience of having elevators that didn't work periodically. I further find that the landlord's agent did make the offer. I am not satisfied, however, that the offer was indefinite. The tenant's notice was almost 3 weeks after the hearing date, and the offer was no longer applicable, and the tenant was put on notice of that when the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued. Therefore, I find that the landlord has established a claim for the unpaid rent. With respect to the parking charges, the landlord had notice that the tenancy would end by mid-October, and I find that the tenant ought to be held to 14 days of parking, or \$20.32.

With respect to the damaged carpets, I appreciate that the tenant attempted to have the landlord's agents assist with the damage, and to no avail, and I appreciate that the tenant did what the tenant thought would be a satisfactory remedy by contacting a restoration company to assist with the repair, and that the tenant paid \$150.00 for that repair. However, the landlord is not required to bear any cost associated with damages caused by a tenant. I am not satisfied with respect to the landlord's accounting, having claimed \$1,869.00 (including unpaid rent), however in the circumstances, I am satisfied that the landlord has requested a monetary order for half of the discounted cost due to the age of the carpets. I find that the landlord has established a claim in the amount of \$756.01 for damages.

In summary, I find that the landlord has established a claim in the amount of \$756.01 for damages, \$1,150.00 in unpaid rent and \$20.32 for parking. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application. The landlord currently holds \$575.00 in trust on behalf of the tenant, and I order the landlord to keep the security deposit in partial satisfaction of the claim, and I order the tenant to pay the landlord the difference in the amount of \$1,401.33

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit in the amount of \$575.00 and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,401.33

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: February 6, 2012.

Residential Tenancy Branch