



Dispute Resolution Services

Page: 1

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 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; 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.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. A witness for the landlord also attended and gave affirmed testimony. However, despite being personally served with the Landlord's Application for Dispute Resolution, evidence and notice of hearing documents personally on December 17, 2011, the tenant did not attend. The landlord's witness testified to being present when the witness' daughter personally handed the documents to the tenant, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided 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?
- 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

This fixed term tenancy began on August 15, 2010 and expired on July 31, 2011, and then reverted to a month-to-month tenancy. The tenancy ultimately ended on August 29, 2011 after the tenant had given the landlord written notice on July 6, 2011 to vacate the rental unit at the end of August, 2011. Rent in the amount of \$1,100.00 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 \$550.00, which is still held in trust by the landlord. No pet damage deposit was collected. A move-in and a move-out condition inspection report, both on the same form, was provided for the hearing.

The landlord's agent testified that the tenant did not pay any rent for the month of August, 2011, and the landlord claims \$1,100.00 in addition to a late fee in the amount of \$25.00 which is provided for in the tenancy agreement. A copy of the tenancy agreement was provided for this hearing, and it states: "Late payment, returned or non-sufficient funds (N.S.F.) cheques are subject to an administrative fee of not more than \$25.00 each, plus the amount of any service fees charged by a financial institution to the landlord." The landlord also claims \$25.00 for an N.S.F. fee and \$25.00 for a late fee for a late payment of rent for the month of March, 2011 because the landlord's agent testified that the rent cheque for that month was returned N.S.F. on March 3, 2011. Further, the tenant's rent cheque for April, 2011 was returned N.S.F. on April 5, 2011, and on May 4, 2011 the tenant's rent cheque for that month was returned because the tenant's account was frozen and the landlord claims \$50.00 for N.S.F. and late fees for April, and \$25.00 for a late fee for May, 2011.

The landlord further claims that the tenant did not leave the rental unit reasonably clean and undamaged except for normal wear and tear, and provided photographs of the rental unit as it was left by the tenant. The photographs show that food was left in the cupboards and refrigerator, debris was left behind in virtually every room, the appliances were not cleaned, nor were cupboards or the bathroom.

The landlord provided a carpet cleaning receipt in the amount of \$170.00 but the receipt is undated and contains a different address than this rental unit.

The landlord has also provided two receipts for cleaning the rental unit, one for \$150.00 and one for \$160.00 and testified that two receipts were provided by the cleaners because all of the work that was required did not fit on one invoice.

Also provided as evidence by the landlord is an invoice for dump fees for this rental unit and another, and the invoice is broken down to separate the two rental units. This rental unit cost shows \$137.75, which is claimed by the landlord in addition to HST in the amount of \$16.53, for a total of \$154.28.

The landlord's agent also provided a "Quotation" in the amount of \$181.27 for replacing drapes in the living room. The drapes were new when the tenant moved into the rental unit and they were gone after the tenant had vacated. The move-out condition inspection report shows that the drapes required cleaning, and there is no mention of any drapes missing.

The landlord's witness testified to being a manager of the apartment building. The witness gave the tenant a cleaning checklist to follow for move-out upon receiving the tenant's notice to vacate the rental unit. The witness and the tenant had arranged to complete the move-out condition inspection report on August 29, 2011 at 9:00 a.m. The witness arrived at the rental unit at that date and time, but the tenant did not show. The witness completed the inspection report in the absence of the tenant and stated that the tenant had abandoned the rental unit. The landlord's agents did not give the tenant a second opportunity to complete the move-out condition inspection report.

The witness stated that the carpets had to be cleaned after the tenant vacated, and the standard cost for a 2 bedroom unit is \$120.00 but \$170.00 was paid because of the stains left in the carpet. The carpet cleaners charge extra if extra chemicals are required due to stains.

When asked when the cleaning was completed, the witness stated that it was in September, 2011 after the unit was re-painted.

The witness also testified that the rental unit had an L-shaped living room and dining room, and was a corner unit. Therefore, there were 3 windows in the L-shaped area; 2 in the living room and one in the dining room. The drapes on one window were missing and the others required cleaning. The notation on the move-out condition inspection report was an error, and the landlord claims \$181.27 to replace the missing drapes. No receipts or invoices were provided for cleaning the remaining drapes.

The witness also testified that the tenant did not provide a forwarding address to the landlord's agents. The witness tracked the tenant down through the tenant's work in order to serve the tenant with the Landlord's Application for Dispute Resolution, evidence package and notice of hearing.

Analysis

Firstly, with respect to the landlord's claim for unpaid rent, I find that the landlord has established a claim for unpaid rent for the month of August, 2011 in the amount of

\$1,100.00. With respect to the landlord's claim for late fees and N.S.F. fees, I find that the tenancy agreement provides for late fees or N.S.F. fees in the amount of \$25.00 each, plus the amount of service charges charged by the landlord's financial institution. The Residential Tenancy Regulations specify that a landlord may charge a service fee charged by a financial institution to the landlord for the return of a tenant's cheque and an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. The landlord did not provide any testimony or evidence of the amount of money charged by the landlord's financial institution for returned cheques, and therefore no award can be made. I find that the landlord has established a claim in the amount of \$25.00 for late fees for each of the months of March, April, May and August, 2011, for a total of \$100.00.

With respect to the landlord's claim to keep the security deposit, the *Residential Tenancy Act* states that if the landlord does not provide the tenant with at least 2 opportunities to complete the move-out condition inspection report, the landlord's right to claim against the security deposit for damages is extinguished, unless the tenant has abandoned the rental unit. During the hearing, the landlord's agent and witness both argued that the tenant had abandoned the rental unit. Although the *Residential Tenancy Act* does not define "abandoned," I find that the tenant did not abandon the rental unit because the tenant gave the landlord the required notice to vacate. The tenant may have abandoned food and other unwanted items in the rental unit, but the landlord had notice of the tenant's intention to move out. The regulations also set out that if the tenant is not available at the time offered, the landlord must propose a second opportunity, different from the first opportunity, by providing the tenant with a notice in the approved form. I find that the landlord failed to provide the tenant with a second opportunity in the approved form and the landlord's request to keep the security deposit cannot succeed.

The landlord's right to claim for damages, however, is not extinguished. In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

In this case, I find that the landlord made efforts to mitigate any damage or loss by providing the tenant with a checklist for moving out of the rental unit. I have no

evidence before me what that list detailed, however, I do find that the tenant did not comply with the *Act* or regulations by leaving the rental unit reasonably clean and undamaged except for normal wear and tear. The tenant left debris in virtually every room, cupboard and closet, failed to clean appliances or bathroom, and obviously took no time to clean the rental unit before departing. I further find that the condition inspection report cannot be totally relied on because the landlord's witness testified that an error exists with respect to drapes. I accept the testimony of the witness, and I find that the landlord has established a claim in the amount of \$181.27 for replacement of the drapes, \$310.00 for cleaning the rental unit, and \$154.28 for hauling debris to the local landfill. With respect to carpet cleaning, the receipt provided for this hearing does not apply to this tenancy, and therefore cannot be considered. The landlord's witness testified that \$120.00 is the standard charge for cleaning a 2 bedroom unit and that more money is charged for extra chemicals for stains. The landlord was given the opportunity to provide a copy of the correct receipt but did not do so.

In summary, I find that the landlord has established a claim as against the tenant in the amount of \$1,100.00 for unpaid rent for the month of August, 2011, \$100.00 for late fees during the tenancy, \$181.27 for replacement of drapes, \$310.00 for cleaning the rental unit after the tenant had vacated and \$154.28 for hauling debris to the local landfill, for a total of \$1,845.55. The landlord's application for a monetary order for carpet cleaning is dismissed. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The *Residential Tenancy Act* states that where a tenant is ordered to pay an amount to a landlord, the amount may be deducted from any pet damage deposit or security deposit held by the landlord, and I find it prudent to set off those amounts from one another. The landlord will have a monetary order for the difference in the amount of \$1,345.55.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for unpaid rent or utilities is hereby awarded at \$1,200.00.

The landlord's application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit is hereby dismissed.

The landlord's application for a monetary order for damages is hereby awarded at \$1,845.55.

The landlord's claim for recovery of the filing fee for the cost of this application is hereby awarded at \$50.00.

I further order that the security deposit currently held in trust by the landlord be set off from the monetary amounts awarded to the landlord as described above, and I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* for the difference, in the amount of \$1,345.55.

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: March 2, 2012.

Residential Tenancy Branch