



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 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 tenants for the cost of this application.

One of the tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant 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.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid utilities?
- 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 money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on April 15, 2011. Rent for this unit was \$1,150.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of \$575.00 on March 22, 2011. The tenants and landlord attended a move in and a move out condition inspection of the unit and the tenants gave the landlord their forwarding address in writing on September 25, 2011.

The landlord testifies that the tenancy agreement indicates that the tenants are responsible for paying their own utilities including water and garbage. The landlord testifies that the tenants have been paying a portion of the water bill up to the end of September, 2011 but have failed to pay the garbage portion of that utility bill from the start of their tenancy in the middle of April, 2011. The landlord explains there is a flat rate for water for each quarter's bill of \$86.50, on top of this there is a metered water rate. The landlord explains that there is a flat rate each quarter for garbage and recycling of \$54.71. The landlord seeks to recover the unpaid portions of these bills from April 15 to October 31, 2011 for garbage and recycling of \$118.56 and for the October, 2011 water portion of the bill for \$28.83 for the flat rate and \$3.33 for the metered portion. The landlord seeks a total sum of \$150.72 from the tenants.

The tenants dispute this amount as they state they were not aware they were responsible to pay for garbage and recycling bills. The tenants agree they paid for the water portion of the bills of \$95.68 from April to July, 2011 and \$120.13 from July to September, 2011.

The landlord testifies that the tenants removed a bathroom fan from the unit without written permission from the landlord. The landlord states she attended the unit in July, 2011 to do an inspection and to replace the kitchen faucets. The landlord stayed in the basement suite during that time and discovered the old fan from the bathroom in a bag in the garage. The landlord testifies that she asked the tenant about this and he told her he had replaced the fan because it was noisy. The landlord testifies that she asked the tenant if she should throw the old fan out and states the tenant told her to do so.

The landlord testifies that she instructed her agent to issue the tenants with a caution letter to inform them not to change any permanent fixtures. The landlord states the tenant said he would change the fan back when he moved out and in an e-mail he informed the landlord he would be taking the fan he fitted with him when they moved out. The landlord testifies as she had thrown the old fan out by this time the tenant could not replace it and when the tenancy ended they removed the new fan and left the hole in the ceiling. The landlord testifies she had new tenants moving into the unit so had to pay to have a new fan fitted at a cost of \$263.20 including parts and labour. The landlord has provided a receipt for this work. The landlord testifies that the tenants did not make an offer to replace the fan before the landlord had it replaced and she did not know anything about this offer until the tenants served the landlord with evidence for this hearing.

The tenant testifies that he informed the property manager that the fan was noisy and testifies that he was told the property manager had spoken to the landlord and the landlord would not replace the fan. The tenant testifies he then obtained a fan from his parents and replaced the landlords fan with the new one. The tenant states he then got a caution letter about work he had done in the unit. The tenant testifies that when he moved out he did remove the fan but his father offered to reinstall the fan back into the bathroom but by then the landlord had replaced it with a more expensive fan.

The landlord testifies that the tenant replaced a bathtub drain and spout. The landlord testifies that the property manager had marked on the move in condition inspection that the bathtub drain was faulty however this was later corrected with the tenant once the landlord explained how the drain operated and it was not faulty. The move in report was supposed to have been updated and initialled but the landlord's property manager failed to do this. The landlord testifies that the original drain and spout were brass and the tenant changed them with cheap chrome ones. The landlord states she did not want the tenant doing plumbing or electrical work in her house without permission. The landlord states these items were included on the caution letter sent to the tenant and the tenant tried to replace the original drain stopper and spout but the stopper fell apart and had to be replaced by the landlord at a cost of \$286.43. The landlord states the spout also had to be repaired as the silicone was damaged but the landlord has amended her claim to withdraw this item and will accept the

cost of repair to the spout herself. The landlord has provided e-mails from her property manager in which they discussed the fan and the bath drain and spout.

The tenant testifies that when he lifted the stopper out it was not attached to the drain and they could not use the shower because the stopper would plug the drain. The tenant states he took it out and just used a regular shower drainer to prevent hair going into the drain. The tenant states he did not replace the stopper with a chrome one but agrees he did replace the spout with a chrome spout because it was leaking and after speaking to the property manager about it nothing was done.

The landlord testifies that the tenants refused to return the keys to the unit at the end of the tenancy. The landlord states her new property manager did the move out inspection with the female tenant. The landlord testifies that the tenants sent the landlord an e-mail (copy provide) that indicates that the tenants were keeping the keys for 'leverage'. The tenants eventually returned the keys on November 29, 2011. The landlord testifies that the new tenants had to change the entry code on the door lock and the unit has not yet been re-keyed. The landlord seeks to recover \$100.00 to have the unit re-keyed.

The landlord testifies that there is a clause in the tenancy agreement which notifies the tenants that they are responsible to have the carpets professionally cleaned at the end of the tenancy. The landlord testifies that the carpets had been professionally cleaned before the tenants moved into the unit. The landlord testifies that the tenants agreed that they are responsible for this work and the landlord seeks to recover the sum of \$140.00 from the tenants.

The tenant testifies that they ensured the carpets were clean at the end of the tenancy, they were not stained in any way and they did not have any pets. The tenants therefore dispute that they are responsible for the landlord's carpet cleaning claim.

The landlord seeks to recover the sum of \$22.00 for her registered mail costs in sending documents to the tenants.

The tenants dispute this cost and claim they are not responsible for the landlord's registered mail costs.

The landlord requests an Order to be permitted to keep the tenants security deposit to offset against her costs. The landlord has adjusted her claim from \$1,351.97 to \$962.38.

Analysis

With regard to the landlords claim for unpaid utilities; I have considered the arguments put forth by the parties and have reviewed the tenancy agreement which indicates that water and garbage are not included in the rent. Consequently, I find in favor of the landlords revised claim for utilities and award the landlord a Monetary Order to the sum of **\$150.72** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for the bathroom fan; I refer both parties to s. 32(3) of the *Act* which states:

A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

With this in mind the tenant agrees he did replace the bathroom fan and failed to either leave the replacement fan or return the old one to the ceiling. The tenant argues he could not do this because the landlord threw the old fan away, the landlord argues she throw the old fan away because the tenant told her he had replaced the fan. It was not till later that the landlord found that the tenant intended to remove the new fan at the end of the tenancy. Consequently, I find the tenants are responsible for the removal of the fan and they have no corroborating evidence to show that the landlord agreed they could remove the fan. The landlord has therefore established her claim for the costs incurred to replace the fan including the labour costs. The tenants argue that the landlord replaced the fan with a more expensive model however I have no evidence to support this claim. The landlord is therefore entitled to recover the cost of **\$263.20** from the tenants and a Monetary Order has been issued to the landlord pursuant to s. 67 of the *Act*.

With regard to the landlords claim for the cost of replacing the bathtub drain. The move in condition report does indicate that the drain stopper is damaged; the landlord argues that this was a mistake on the part of her property manager and the tenants were later informed that the drain was not damaged and how they should use it. The tenants argue that the stopper was damaged and they removed it. The landlord has shown that by removing this drain and replacing it when her repair man came to refit the stopper it broke in pieces. The landlord therefore holds the tenants responsible for this damage and seeks to recover the costs incurred in replacing this damaged section. I have considered the arguments in this matter and find that the tenants did not have the authorization from the landlord to remove this part of the drain system and as such its removal caused some damage to the drain system which resulted in costs to the landlord of \$286.46. If the tenants found a problem with the drainage of the bathtub they should have notified the landlord in writing and either requested permission to repair any damage or request that the landlord repairs any damage. As the tenants did not do this and did not have the authorization of the landlord to remove or replace any items such as this drain stopper the landlord is entitled to recover costs from the tenant to the sum of **\$286.46** and will receive a Monetary Order pursuant to s. 67 of the *Act*.

With regard to the landlords claim of \$100.00 to rekey the locks; The landlord has testified that there is a touch pad lock on the front entry and the new tenants were able to change the code for this when they moved in. the landlord also testifies that she has not yet incurred any costs in having to rekey the locks. As no costs have been incurred and there is no loss in this matter as the tenants have since returned the keys to the landlord; this section of the landlords claim is dismissed without leave to reapply.

With regard to the landlords claim for carpet cleaning; s. 32 of the *Act* states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The Residential Tenancy Policy Guidelines #1 also deal with the matter of carpet cleaning and state:

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

The landlord argues that the tenants signed the tenancy agreement in which there is a clause which stipulates that the tenants must have the carpets professionally cleaned at the end of a tenancy. However the tenants are only required to comply with the *Act* and if the carpets have been left in a clean condition at the end of the tenancy, the tenancy was only six and half months long, there are no stains on the carpets and the tenants have not had pets or smoked in the unit this clause in the tenancy agreement is not enforceable as the *Act* takes precedent over a tenancy agreement.

Consequently, I find the landlord is not entitled to recover carpet cleaning costs as there is no evidence to show that the tenants left the carpets in an unclean condition as specified under s. 32 of the *Act*. This section of the landlords claim is therefore dismissed without leave to reapply.

With regard to the landlords claim to recover her costs for sending documents to the tenants by registered mail; There is no provision under the *Act* for a Monetary award of this nature and therefore this section of the landlords claim is dismissed without leave to reapply.

As the landlord has established part of her claim I find the landlord is entitled to keep the tenants security deposit of **\$575.00** in partial satisfaction of her claim pursuant to s. 38(4)(b) of the *Act*.

I further find as the landlord has been partially successful with her claim that the landlord is also entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid utilities	\$150.72
Replacement fan	\$263.20
Repair and replacement bath drain	\$286.46
Subtotal	\$700.38
Plus filing fee	\$50.00
Less security deposit	(-\$575.00)
Total amount due to the landlord	\$175.38

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$175.38**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The remainder of the landlords claim is 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: February 07, 2012.

Residential Tenancy Branch