



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, damages to the unit site or property, compensation for damages and losses, recovery of the filing fee and an order to keep the security deposit.

The Landlord provided affirmed testimony that the Tenant, KC, was personally served with the Application for Dispute Resolution and Notice of Hearing on December 22, 2011. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 89 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Issue(s)

The Landlord testified that they made a typographical error on their Application for dispute resolution in the digits of the Tenant's address. The Landlord requested to amend the digits in the Tenant's address to state the correct address which is where the Tenant resides and where personal service of the Application was made. I find that it is reasonable to grant the Landlord's request to change the digits of the Tenant's address on the Landlord's Application to reflect the correct address.

The Landlord listed two Tenants, KC and BL, on the Application for dispute resolution. The tenancy agreement provided into evidence only states that KC is a Tenant. The Landlord provided insufficient evidence that parties signed an agreement with BL to add him as a tenant to the tenancy agreement at any time. As a result, I do not find that BL had a tenancy agreement with the Landlord. I find that it is appropriate to only proceed against Tenant KC who is named on the tenancy agreement. The Landlord did not dispute this at the hearing.

Any references to “the Tenant” in the balance of this decision are referring to KC and not BL.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent or utilities, damages to the unit site or property, compensation for damages and losses, recovery of the filing fee and an order to keep the security deposit?

Background and Evidence

The Landlord testified that they had a written tenancy agreement with the Tenant from August 31, 2007 to October 31, 2011. The Landlord stated that the Tenant was living in subsidized housing and in the last part of the tenancy the Tenant was no longer eligible for subsidized housing and was paying economic rent in the amount of \$1,400.00 due on the first of each month. The Landlord provided a copy of the signed tenancy agreement into evidence which states that the economic rent of the rental unit is \$1,400.00 per month. The Landlord stated that the rental unit is a large four bedroom two bathroom house. The Landlord stated that a move-in inspection report was done with the Tenant at the start of the tenancy, and provided a copy of the report into evidence. The Landlord stated that the Tenant paid a \$300.00 security deposit August 31, 2007 when the tenancy commenced. The Landlord stated that the Tenant abandoned the rental unit on October 31, 2011, without providing the Landlord with their move-out date and time; as a result a move-out inspection could not be done with the Tenant. The Landlord stated that the Tenant has not requested return of their deposit or filed an application for dispute resolution.

The Landlord stated that the Tenant did not provide a written forwarding address, but the Landlord located the Tenant in the weeks after the tenancy ended and utilized a process server to ensure the Tenant was personally served with the Application, Hearing Notice Package, and evidence. The Landlord stated that they received a written affidavit from the process server to confirm the Tenant was personally served with the documents on December 22, 2011 at 11:00 AM at her residence.

The Landlord stated that the Tenant was in rent arrears when the tenancy ended, and that she owes \$700.00 in unpaid rent for October 2011. The Landlord stated that they served a Notice to End Tenancy on the rental unit on the morning of October 31, 2011 by posting it on the door and that later that afternoon they saw a moving truck at the rental unit. The Landlord stated that when they checked the rental unit later, it was vacant and the Tenant had moved out abandoning the rental unit without providing a

forwarding address. The Landlord is requesting to keep the security deposit of \$300.00 plus interest towards the amounts owed by the Tenant.

The Landlord stated that the rental unit was cleaned and freshly painted prior to the Tenant moving in. The Landlord provided a copy of the move-in condition inspection report they did with the Tenant and a copy of the move-out condition inspection report which they did without the Tenant as she abandoned the rental unit. The Landlord also provided copies of receipts, work orders, and invoices they paid for supplies and for contractors for the cleaning, repairs and painting costs they incurred in relation to the rental unit.

The Landlord stated that the Tenant left the rental house and property in dirty condition and that no cleaning was done by the Tenant when the tenancy ended. The Landlord stated that the Tenant left garbage, broken furniture, and debris at the house and on the property. The Landlord stated that they had to hire a contractor to remove debris and garbage and do the cleaning. The Landlord also incurred a cost for use of a disposal bin due to excessive debris and broken furniture left in the rental unit and to remove linoleum ruined by the Tenant. The Landlord submitted the cleaning bill for \$900.00 representing \$20.00 per hour x 45 hours and a disposal bin receipt for \$491.32.

The Landlord stated that they had installed new linoleum in the kitchen and entry way June 22, 2005 and that the linoleum was in good condition when the Tenant moved in two years later in August 2007, as indicated on the move-in condition inspection report. The Landlord also stated that they had installed new carpet in the basement and adjoining utility room June 22, 2005 and that the carpet was in good condition and had been freshly cleaned when the Tenant moved in two years later in August 2007, as indicated on the move-in condition inspection report. The Landlord stated that the Tenant ruined the linoleum in the kitchen with excessive stains and brown paint marks that could not be removed when the Landlord tried to clean it. The Landlord stated that the Tenant removed the carpet and underlay from the basement and utility area exposing the concrete floor and did not replace it before she moved out. The Landlord stated they had to replace the linoleum in the kitchen and put linoleum in the basement and utility area as a result. The Landlord stated that they also used the disposal bin obtained for the cleaning to dispose of the linoleum ruined by the Tenant. The Landlord provided an invoice for the linoleum and installation costs incurred in the amount of \$1,547.96.

The Landlord stated that the rental unit was freshly painted off-white prior to the Tenant moving in. The Landlord stated that the Tenant had painted the walls of the rental unit dark blue and brown during their tenancy which the Landlord had to prime and paint

over to return to their original off-white color. The Landlord submitted a receipt for primer paint purchased in the amount of \$151.76 and an invoice from the painting contractor for which they are only claiming 30% in the amount of \$1,855.20, rather than the full amount of the invoice (\$6,184.00). The Landlord stated that the reason they are claiming 30% is because, while they normally are required to paint before a new tenant moves in, however, in this case they had to re-prime the walls extensively to cover the brown and dark blue paint the Tenant had put on the walls.

The Landlord stated that they normally clean the air ducts and connected furnace system at the end of each tenancy which costs the Landlord \$224.00 (\$200 plus HST). The Landlord stated that when the furnace contractor came to clean the air ducts and furnace of the rental unit they found that the Tenant had removed the air duct covers and not replaced them and had swept food and debris into the air ducts. The Landlord stated that the furnace contractor advised them that the air ducts were contaminated and contained mould from the food and debris placed there by the Tenant. The Landlord stated that the furnace contractor charged the Landlord double as a result of the extra work they had to do to disinfect and clear the blocked air ducts. The Landlord stated they also had to purchase duct covers to replace the ones removed by the Tenant. The Landlord submitted a copy of the contractor's invoice in the amount of \$560.00 and a copy of a receipt for \$13.50 for purchase of furnace parts.

The Landlord stated that the rental unit needed significant repairs and replacement of broken items. The Landlord stated that they had installed a new toilet in the rental unit in 2005 and that the Tenant cracked this toilet during their tenancy as a result it had to be replaced. The Landlord stated that the Tenant broke drawers in the kitchen and vanity and that these had to be replaced and repaired. The Landlord stated that the Tenant removed all the finishing trim from the upstairs of the rental unit, as a result the Landlord had to replace this. The Landlord also stated that the Tenant painted over the doorbell chime, the phone jacks, the smoke alarm, receptacles and light switch covers with dark paint, as a result the Landlord had to replace all of these items. The Landlord provided a list of the repairs they had done into evidence. The Landlord submitted a receipt for supplies including vent covers purchased in the amount of \$48.60, a receipt for finishing trim purchased in the amount of \$207.76, and an invoice from the contractor who performed the replacements and repairs for which they are only claiming 30% in the amount of \$750.00, rather than the full amount of the invoice (\$2,500.00). The Landlord stated that the reason they are claiming 30% is because, while they normally are required to pay for certain wear and tear, in this case they had to deal with significant damage to the rental unit by the Tenant.

The Landlord is also requesting to recover the \$100.00 filing fee for their Application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the first of the month. I accept the Landlord's evidence and undisputed testimony that the Tenant was in rent arrears when the tenancy ended on October 31, 2011 and that the Tenant owes the Landlord a total of \$700.00 for the balance of the rent for October 2011. I find that the Landlord has established a monetary claim of **\$700.00**.

With regards to the Landlord's damages claim, section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord suffered a loss pursuant to section 67 of the Act for the following reasons:

In a claim for damage or loss under the Regulation the Applicant (in this case the Landlord) has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent (in this case the Tenant) pay for the loss the Applicant (the Landlord) must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent (Tenant) in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant (the Landlord) followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

As part of the evidence submissions which I considered, the Landlord provided receipts and invoices for the actual costs, and verbal testimony about the condition of the rental unit and work performed. I find that the Landlord attempted to mitigate or minimize their losses by undertaking work on the rental unit within a reasonable period of time after the tenancy ended. I find that with the exception of the furnace duct cleaning the Landlord has claimed reasonable and appropriate amounts based on the length of the tenancy and the condition of the rental unit at the end of the tenancy.

As a result, I find that the Landlord is entitled to the following amounts as claimed:

Cleaning of the rental unit **\$900.00**;
Disposal bin service for refuse left, garbage left, and ruined linoleum **\$491.32**;
Linoleum flooring purchase and install cost **\$1,547.96**;
Paint supply cost for primer **\$151.76**;
Painting contractor cost (30%) **\$1,855.20**;
Supplies for furnace **\$13.50**;
Supplies for rental unit repair and duct covers **\$48.60**;
Purchase of finishing trim **\$207.76**;
Repair and replace contractor cost (30%) **\$750.00**.

With regards to the furnace and air duct cleaning, the Landlord's testimony indicated that they normally spend \$224.00 (\$200 plus HST) at the end of each tenancy. In this case the Landlord's contractor invoice and evidence support that they incurred an increased cost for the furnace and air duct cleaning, and the invoice submitted in evidence stated the amount of \$560.00. As a result, I find that the Landlord is only entitled to claim the difference in the increased cost, which results in \$336.00 (\$560.00-\$224.00). I find the Landlord has established a monetary claim of **\$336.00** for the increased cost of the air duct and furnace cleaning.

Section 72 of the Act specifies that the filing fee can be awarded as determined by the Dispute Resolution Officer. As the Landlord has mostly succeeded in their Application, I find that the Landlord is entitled to recover the \$100.00 fee for this proceeding. I grant the Landlord a monetary order for \$7,102.10, which represents the unpaid rent, the rental unit cleaning, painting, repairs, and related supplies and the filing fee.

The Landlord filed their Application for dispute resolution on December 20, 2011. The Tenant did not file an application for return of their security deposit plus interest and I find that the Tenant did not provide the forwarding address to the Landlord in writing as required by the Act. I find that the Landlord did perform an move in inspection with the

Tenant based on the undisputed testimony and I find that the Tenant abandoned the rental unit on October 31, 2011 as a result the Landlord was unable to perform a move out inspection with the Tenant. I find that the Tenant extinguished her right to the security deposit plus interest, pursuant to section 36 of the Act.

The Landlord confirmed that they hold a \$300.00 security deposit plus interest in the amount of \$6.05. As I have found that the Tenant owes the Landlord \$7,102.10 and that they have extinguished their right to the security deposit plus interest, I order that the Landlord retain the deposit plus interest totalling \$306.05 in partial satisfaction of the claim. I grant the Landlord a monetary order pursuant to section 67 for the balance of the amount owing to the Landlord of **\$6,796.05**.

Conclusion

I find that the Landlord is entitled to an order for unpaid rent, damage to the unit site or property, compensation for damage and loss, the filing fee and an order to keep the security deposit plus interest.

I find that the Landlord is entitled to \$7,102.10, and I have ordered that the Landlord retain the security deposit and interest totaling \$306.05. I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenant in the amount of **\$6,796.05**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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 14, 2012.

Residential Tenancy Branch