



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, was served with the Application for Dispute Resolution and Notice of Hearing on January 06, 2012 by registered mail. The Landlord provided copies of the Canada Post receipt and registered mail tracking information into evidence. 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.

Issue(s) to be Decided

Is the Landlord entitled to 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?

Background and Evidence

The Landlord testified that they had a written tenancy agreement with the Tenant for December 01, 2011, however they allowed the Tenant to move in early on November 26, 2011. The Landlord stated that the Tenant paid a security deposit of \$350.00 prior to the tenancy commencing. The Landlord stated that when the Tenant moved in he brought two dogs with him. The Landlord stated that they had only approved one dog and that the Tenant had not paid a pet deposit. The Landlord stated that the Tenant gave written notice on November 30, 2011 to end the tenancy for December 31, 2011 as he was not permitted to keep the second dog in the rental unit. The Landlord stated

that the tenancy agreement was for a fixed term to end June 01, 2012 with a monthly rent of \$700.00 per month due on the first of each month. The Landlord stated that the Tenant rented a self contained basement suite from them and that they resided upstairs but did not share a kitchen or bathroom with the Tenant. The Landlord stated that the Tenant breached the tenancy agreement by bringing an unauthorized pet into the rental unit and by smoking in the rental unit and breached the fixed term tenancy agreement. The Landlord provided a copy of the tenancy agreement into evidence.

The Landlord stated that a move-in condition inspection report was done with the Tenant on November 26, 2011 and a move-out condition inspection report was done with the Tenant on December 31, 2011 when the tenancy ended. The Landlord provided a copy of the condition inspection reports into evidence. The Landlord stated that the Tenant provided his written forwarding address on the move-out inspection report which he signed. The Landlord stated that the Tenant and his dogs caused significant damage to the rental unit during his tenancy and that the unit was not cleaned by the Tenant before moving out. The Landlord stated that they noted all of the issues with the Tenant on the move-out condition inspection report which he signed. The Landlord stated that the Tenant did not agree with all of the Landlord's concerns about the condition of the rental unit, however, they stated that the Tenant has not requested return of their deposit or filed an application for dispute resolution. The Landlord stated they filed an application for dispute resolution with regards to the damages to the rental unit and rental income lost as a result of the tenancy ending early, and sent this by registered mail on January 06, 2012 to the forwarding address indicated by the Tenant on the move-out condition inspection report.

The Landlord is claiming 4 days of lost rental income for January 01-04, 2012 as the Landlord stated they were not able to get a new Tenant until January 05, 2012. The Landlord estimated the 4 days of lost rental income at \$100.00.

The Landlord stated that they purchased the home and moved into it October 2011. The Landlord stated that the floors were like new when the Tenant moved in and that they were installed in 2010. The Landlord provided a letter from their realtor into evidence which states the realtor's observations about the condition of the floors before the tenancy commenced and the condition of the floors after the tenancy commenced. The Landlord stated that the Tenant's dogs damaged 330 square feet of wood laminate flooring and the underlay in the living room/dining room area and hallway. The Landlord stated that the Tenant's dogs urinated on the floors, rather than outdoors, which caused the wood laminate and underlay to swell and become damaged, and that the Tenant tried to mop it up but that he used excessive water which worsened the situation. The Landlord stated that the Tenant had brought a second dog into the rental unit without

their permission and the dog had health issues including a bladder control issue. The Landlord stated that they had to install new floors and underlay as a result of the damage caused by the Tenant and his dogs, and that it cost them \$202.39 to purchase the flooring and underlay. The Landlord provided a copy of the receipt for the flooring and underlay purchase into evidence. The Landlord provided estimates of comparative costs for a contractor to do the work. The Landlord stated that they installed the flooring and underlay themselves to save costs, and that they feel an hourly rate of \$12.00 per hour is reasonable for the 25 hours it took them to dispose of the ruined flooring and underlay and install the new flooring and underlay. The Landlord is requesting \$300.00 for their labour on this and \$202.39 for the replacement flooring and underlay purchased.

The Landlord stated that the Tenant had been smoking in the rental unit in breach of the tenancy agreement and the Landlord stated they had to speak to the Tenant about his smoking during the tenancy several times as they were concerned about the fire hazard and risk to their health, as they resided in the upstairs portion of the house. The Landlord provided into evidence a copy of a warning letter they issued to the Tenant about the smoking in the rental unit. The Landlord stated that the rental unit was not cleaned by the Tenant before he moved out, as itemized on the move-out condition inspection report. The Landlord also stated that the rental unit smelled of excessive pet urine and smoke. The Landlord stated that they feel an hourly rate of \$10.00 is reasonable for the 3.5 hours they spent cleaning the rental unit. The Landlord is requesting \$35.00 for their labour to do the cleaning.

The Landlord stated that the rental unit had been freshly painted when the Tenant moved in. The Landlord stated that the Tenant's dogs urinated on the walls of the rental unit and the Tenant smoked in the rental unit. As a result, the Landlord stated that they had to wash the walls and repaint the rental unit. The Landlord provided estimates of comparative costs for contractors to do the work. The male Landlord stated that to reduce costs, he did the work himself. The male Landlord stated he is a professional painter by trade and he feels that his hourly rate of \$20.00 is reasonable for the 10 hours he spent washing and repainting the walls of the rental unit so that they would be suitable for a new occupant. The Landlord is requesting \$200.00 for their labour to do the painting work.

The Landlord is requesting reimbursement by the Tenant for costs involved with photocopying (\$37.77) evidence for this hearing and for the Canada post registered mailing costs (\$10.92).

The Landlord is also requesting to recover the \$50.00 filing fee for their Application.

Analysis

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

With regards to the Landlord's 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.

I find that the Tenant breached the tenancy agreement by bringing a second dog into the rental unit, by smoking in the rental unit, and by breaking the fixed term tenancy agreement. I find that the Landlord mitigated and minimized their rental income losses by obtaining a new Tenant for the rental unit for January 05, 2012, so that they only incurred four days of rental income loss. The Landlord has claimed \$100.00 for rental income loss for the four days prior to a new tenant renting the rental unit for January 05, 2012. I find that the Landlord's calculation is incorrect and that the correct amount owed to the Landlord is \$92.32 calculated as follows: $\$700.00 \text{ per month} \times 12 \text{ months} \div 52 \text{ weeks} \div 7 \text{ days a week} = \$23.08 \text{ day} \times 4 \text{ days}$. I find that the Landlord is entitled to loss of rental income for four days in the amount of **\$92.32**.

As part of the evidence submissions the Landlord provided the tenancy agreement, a warning letter to the Tenant about smoking, receipts for the actual costs, the condition inspection reports, a witness letter, and verbal testimony about the condition of the rental unit and work performed to support their claim. 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 and at reasonable cost. As a result, I find that the Landlord is entitled to the following amounts as claimed:

Cleaning of the rental unit **\$35.00**;
Laminate flooring and underlay purchase **\$202.39**;
Labour to remove and install flooring and underlay **\$300.00**;
Labour to wash walls and repaint rental unit **\$200.00**;

I find that the Landlord is not able to claim the registered mail costs (\$10.92) or the photocopying costs (\$37.77) associated with their claim against the Tenant as the Act does not allow parties to recover the costs that are outside of our jurisdiction. Costs connected with serving documents or preparing the Application are outside the jurisdiction of the Act. As a result I dismiss these portions of the Landlord's claim totalling \$48.69.

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 **\$50.00** fee for this proceeding. I grant the Landlord a monetary order for **\$879.71**, which represents the rental income loss, the rental unit cleaning, painting; flooring and underlay removal and installation, and the filing fee.

The Landlord filed their Application for dispute resolution on January 05, 2012 within 15 days of receiving the Tenant's forwarding address. The Tenant did not file an application for return of their security deposit. I find that the Landlord did perform a move-in and move-out inspection with the Tenant.

The Landlord confirmed that they hold a \$350.00 security deposit from the Tenant. As I have found that the Tenant owes the Landlord \$879.71, I order that the Landlord retain the security deposit 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 **\$529.71**.

Conclusion

I grant the Landlord's claim in part for unpaid rent/ rental income loss, damage to the unit site or property, compensation for damage and loss and the filing fee, however, the Landlord's claim for registered mail costs, and photocopying costs are dismissed.

I find that the Landlord is entitled to \$879.71, and I have ordered that the Landlord retain the security deposit of \$350.00. 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 **\$529.71**. 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 21, 2012.

Residential Tenancy Branch