



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent or rental income loss, compensation for damage and loss under the Residential Tenancy Act (the "Act"), regulation or tenancy agreement, recovery of the filing fee, and an order to retain the security deposit in full or partial satisfaction of the claim.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent or rental income loss, compensation for damage and loss under the Act, regulation or tenancy agreement, recovery of the filing fee, and an order to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The Landlord and Tenant agree that they had a verbal tenancy agreement which commenced on November 11, 2011 on a month to month basis. The parties agree that the rent was \$1,000.00 per month, due on the first of the month. The parties agree that the Landlord currently holds a security deposit from the Tenant in the amount of \$500.00. The rental unit is a manufactured home of the Landlord's property.

The Tenant stated that she gave the Landlord verbal notice on November 29, 2011 and then again on December 18, 2011 that she would be moving by the end of December 2011.

The Landlord stated that the Tenant did not provide notice to them until December 18, 2011 and that she never provided any formal written notice. The Landlord stated that

when the Tenant left on December 27, 2011 she did not provide a written forwarding address and that they had to locate her new address through friends.

Unpaid Rent/Rental income loss

The Landlord stated that because the Tenant did not give them notice until December 18, 2011, the Landlord did not begin advertising for new tenants until December 19, 2011. The Landlord stated that the Tenant had not provided them an exact move out date, but stated that she would be moving out for the end of December 2011. The Landlord stated that she saw the Tenant moving out on December 27, 2011 and found the keys left on the counter of the rental unit later that day. The Landlord stated that the earliest she was able to get new tenants was for January 15, 2012. The Landlord is claiming \$500.00 for half a month's rent for unpaid rent/rental income loss for January 2012 due to the Tenant providing less than one month's written notice as required by the Act.

The Tenant disagrees with the Landlord's position and stated that she gave the Landlord verbal notice on November 29, 2011 that she was looking to move to a town closer to her child's school and that she would be moving by end of December 2011. The Tenant stated that her call to the Landlord on December 18, 2011 was just a reminder that she be moving out by the end of December 2011. The Tenant stated that she feels the Landlord had enough notice to look for other tenants.

Oil tank usage/oil costs

The Landlord stated that the Tenant was required to pay for oil usage at the rental unit as a term of their verbal tenancy agreement. The Landlord had a professional oil company dip the tank twice to assess and calculate the value of the oil used by the Tenant prior to the end of the tenancy. The Landlord stated that the oil tank was dipped on November 17, 2011 when \$250.38 was in the tank and then dipped again on December 20, 2011 when \$27.84 was left in the tank, as a result \$222.54 worth of oil was used by the Tenant. The Landlord submitted copies of the two oil dips by the oil company into evidence.

The Tenant stated that she agrees with the amount calculated by the Landlord. The Tenant agreed that oil usage was a term of her tenancy agreement and that she owes the Landlord for the oil tank usage/oil costs in the amount of \$222.54.

Cleaning, yard work, yard repairs, and painting

The Landlord stated that the rental unit was not properly cleaned by the Tenant. The Landlord stated that the Tenant left shower scum, toothpaste on the counters of the main bathroom, residue in the cupboards, and candle wax on the walls. The Landlord stated that it took her one to two hours to clean the rental unit.

The Tenant stated she had the rental unit cleaned by a professional cleaner who is friend of hers before the tenancy ended.

The Landlord stated that she found that the Tenant had done a poor job of painting a wall in the rental unit. The Landlord provided photographic evidence with regards to the condition of the wall in the rental unit that required repainting. The Landlord stated that she had to repaint the wall painted by the Tenant as a result. The Landlord also stated that she had to cover nail holes in the rental unit as well. The Landlord stated that it took her one to two hours to repaint the wall in the rental unit.

The Tenant agreed that she had painted over a wall in the rental unit with a different color of paint than what had been there before. The Tenant stated that she first painted the wall red and then later changed her mind and painted it mocha. The Tenant disagrees that it needed to be painted over and thought that the Landlord was satisfied with the wall as is.

The Landlord stated that the Tenant's dog had dug a significantly large trench in the yard of the rental unit and that there was dog poop around the yard which had not been cleaned up. The Landlord provided photographic evidence with regards to the condition of the yard. The Landlord stated that she had to get soil and fill the hole in the yard and clean up the dog poop. The Landlord stated that this took her two and a half hours to fill and fix the hole and clean up the yard.

The Tenant agreed that her dog dug a large hole in the back yard as depicted by the photographs and that the Landlord had to fill the hole with soil and repair the yard as a result.

The Landlord stated that she is a receptionist and is not a professional contractor or cleaner, however, she values her time at \$25.00 per hour for the work she has done on the rental unit.

Garbage removal and dump fee

The Landlord stated that the Tenant left junk at the rental unit that needs to be taken to the dump. The Landlord provided photographic evidence of the junk which is currently being stored outside the rental unit. The Landlord stated that she has not taken the items to the dump yet, but she estimates the cost at \$50.00.

The Tenant stated that not all of the items are junk and that some of the items could be recycled.

Replacement of outdoor carpet

The Landlord that the outdoor carpet was not new when the Tenant moved in but it did not have any rips in it. The Landlord stated that they value the outdoor carpet to install new at \$300.00. The Landlord stated that they have not yet replaced the outdoor carpet and that the current tenants are using it.

The Tenant stated that the outdoor carpet was stained and wet due to a water leak that the Landlord was aware of but had not repaired. The Tenant stated that although her dog caused some rips in the outdoor carpet, it was not a new carpet at the start of the tenancy and got progressively worse due to the water leak and stains.

Security deposit

The Landlord is requesting a monetary order for the amounts claimed and an order to keep the security deposit to cover the unpaid rent and other costs incurred.

The Tenant stated that she authorized the Landlord to keep the entire amount of the security deposit of \$500.00 to cover any costs including filling the holes in the backyard her dog dug up, for oil tank usage, and for outdoor carpet replacement. The Tenant confirmed that did not provide the Landlord her forwarding address but that the Landlord tracked her down through friends.

Analysis

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

Unpaid Rent/Rental income loss

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. The Tenant had a month to month tenancy agreement with the Landlord which was a verbal tenancy agreement. The Tenant moved out by December 27, 2011, but has not provided sufficient evidence that she gave the Landlord thirty days written notice prior to the first of December 2011 as required by the Act. As a result, I find that the Tenant breached the requirements of section 52 of the Act. I accept the Landlord's evidence that they began to look for a new tenant as of December 19, 2011 and that they did not receive notice in writing from the Tenant as required by the Act. I am satisfied with the evidence that the Landlord was not able to find a new tenant for the rental unit until January 15, 2012, and that they attempted to mitigate or minimize their losses by advertising for a new tenant within a reasonable period of time. I find that the Landlord is entitled to loss of rental income of **\$500.00** representing half a month's rent for January 2012.

Section 67 of the Residential Tenancy 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.

In a claim for damage or loss under the Act or tenancy agreement the Applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent pay for the loss the Applicant 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 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 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 parties provided verbal testimony and the Landlord provided testimony about labour hours and work performed and provided photographs of the rental unit and yard.

Oil tank usage/oil costs

The Tenant does not dispute that oil usage was a term of her tenancy agreement and that she owes the Landlord for the oil tank usage/oil costs in the amount of \$222.54. The Landlord had a professional oil company dip the tank twice to assess and calculate the value of the oil used by the Tenant prior to the end of the tenancy. The oil tank was dipped on November 17, 2011 when \$250.38 was in the tank and then dipped again on December 20, 2011 when \$27.84 was left in the tank; as a result \$222.54 worth of oil was used by the Tenant. The Tenant stated that she agreed with this amount. As a result, I find that the Landlord is entitled to **\$222.54** for the Tenant's oil usage for the rental unit.

Cleaning, yard work, yard repairs, and painting

The testimony and evidence of the parties and photographs were helpful in determining the condition of the rental unit and yard at move out.

The Landlord provided insufficient evidence of cleaning required in the rental unit and the photographs were not helpful in this regard. The Tenant stated she had the rental unit cleaned by a cleaner. I dismiss the Landlord's request for one to two hours of cleaning in the rental unit as the Landlord has provided insufficient evidence that cleaning was required.

The Tenant agreed that her dog dug a large hole in the back yard as depicted by the photographs and that the Landlord had to fill the hole with soil and repair the yard as a result.

The Tenant agreed that she had painted over a wall in the rental unit with a different color of paint than what had been there before. I find that the repainting done by the Tenant as depicted in the photograph provided by the Landlord was insufficient to cover the color underneath and that the Landlord had to repaint the wall painted by the Tenant as a result.

I find that the Landlord should not be reimbursed for painting and yard work at the same rates as a professional contractor. I find that the Landlord is entitled to partial compensation, at a rate of \$15.00 per hour, as the Landlord was not able to do the job as efficiently as a professional contractor. I find that the Landlord's testimony that it took one to two hours to repaint the wall to be reasonable, as a result I find that the Landlord is entitled to 1.5 hours x \$15.00 per hour for repainting the wall in the rental unit. I find

the Landlord's testimony that it took 2.5 hours to fill dog holes in the yard and clean the yard to be reasonable, as a result I find that the Landlord is entitled to 2.5 hours x \$15.00 per hour for yard work and yard repairs.

Garbage removal and dump fee

I dismiss the Landlord's claim for garbage removal and dump fee which they estimate at \$50.00. The Landlord stated that they have not removed the garbage or taken it to the dump at this time.

Replacement of outdoor carpet

I dismiss the Landlord's claim for replacement of the outdoor carpet which they estimate at \$300.00. The Landlord stated that they have not replaced the outdoor carpet and that the current tenants are using it.

In summary, I find that the Landlord has established a monetary claim of **\$782.54** (rental income loss for January 2012 \$500.00; oil usage/oil costs \$222.54; Landlord yard work, yard repairs, and repainting wall in rental unit \$60.00).

Section 72 of the Act specifies that the filing fee can be awarded as determined by the Dispute Resolution Officer. As the Landlord has in part succeeded in their Application, I find that the Landlord is entitled to recover the **\$50.00** fee for this proceeding. This brings the total amount the Landlord is entitled to **\$832.54**.

Security deposit

I find that the Tenant did not provide a written forwarding address to the Landlord when she vacated the rental unit. I also find that the Tenant did not apply for dispute resolution for recovery of the security deposit. The Tenant also testified that she agreed the Landlord could keep the security deposit. As a result, I order that the Landlord retain the security deposit (\$500.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$332.54**.

Conclusion

The Landlord's claims for replacement of the outdoor carpet, garbage removal and dump fee are dismissed.

I grant the Landlord's claim in part for unpaid rent/rental income loss, compensation for damage or loss, the filing fee and to keep the security deposit. I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$332.54**.

The order accompanies the Landlord's copy of this decision. The order must be served on the Tenant and may be filed in the Supreme Court.

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 27, 2012.

Residential Tenancy Branch