



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for a Monetary Order for unpaid rent and 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; and to recover the filing fee from the tenants for the cost of this application.

One tenant (TB) and the agent for the 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 to recover unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both parties agree that this tenancy started on November 01, 2011. This was a fixed term tenancy for six months and was due to expire on April 30, 2012. A signed tenancy agreement has been provided signed by both tenants and the landlord. Rent for this unit was \$1,300.00 per month plus 60 percent of the Hydro and Gas bills. The original tenant

paid a security deposit of \$650.00 on October 06, 2010 and the new tenant TB paid half the security deposit to the existing tenant. A Move in condition inspection was conducted on October 18 2010 with the tenant DH who rented the unit on his own at that time. A Move out condition inspection was conducted with the tenant TB on February 17, 2012 and this tenant provided his forwarding address to the landlord on the inspection report.

The landlord testifies that the tenant DH rented this unit from October, 2010. On November 01, 2011 a new tenancy agreement was entered into with the existing tenant DH and a new tenant TB. The landlord agrees that they did not conduct a move out inspection at the end of the previous tenancy with DH or a new move in inspection at the start of this tenancy. The landlord testifies that the new tenant TB said he was happy to accept the unit as it was. The landlord testifies that the tenant TB gave notice to end tenancy immediately on January 29, 2012 therefore breaking the terms of the tenancy and not providing proper notice. The landlord testifies she was unsure when the tenants did vacate the unit but two opportunities for inspection of the unit were given to the tenants and a final move out inspection was completed with TB on february17, 2012. The tenant TB gave the landlord his forwarding address on the inspection report but did not want to sign the report as the tenant did not agree with the landlords findings.

The landlord seeks to recover the unpaid rent for February to the sum of **\$1,300.00**. The landlord also seeks to recover unpaid utilities that had accumulated from November 01, 2011. This includes the outstanding amounts for Gas from December 12, 2011 to February 17, 2012 of \$220.93 and for Hydro from December 13, 2011 to January 12, 2012 of \$ 91.33.

The landlord seeks to recover late fees of \$50.00 for December, 2011 and February, 2012 and a fee of \$25.00 for bank charges as the tenant TB stopped the rent check for February, 2012. These charges are detailed in the tenancy agreement.

The landlord seeks to recover damages and cleaning in the unit. The landlord testifies that the tenants failed to clean the unit at the end of the tenancy and the landlord had the unit professional cleaned at a cost of **\$310.00**. The landlord seeks to recover the sum of **\$140.00** for carpet cleaning as the carpet was left stained; the sum of **\$50.20** for a broken

blind in one of the bedrooms; the sum of **\$70.40** for a missing smoke alarm which was in place at the start of the original tenancy; the sum of **\$35.00** for seven missing or burnt out light bulbs, five from the kitchen, one from the bathroom and one from the bedroom; the sum of **\$43.62** for key and lock replacement as only the tenant TB returned his keys to the landlord. The landlord also sought \$60.00 for snow clearance however has withdrawn this claim as the snow was removed by TB. The landlord has provided receipts for the amounts claimed, a copy of the original move in condition inspection report, the move out inspection report for this tenancy and some photographic evidence of the damage and cleaning claimed.

The tenant states that he should not be held responsible for unpaid rent for February, 2012. The tenant testifies that on January 04, 2012 he wrote an e-mail to the landlord detailing complaints about the other tenant DH who was threatening him. The tenant refers to the addendum to the tenancy agreement which states, in part, that this is crime free housing and the tenants must not engage in activities such as an unlawful use of a firearm and the gun must be kept in a locked cabinet and any criminal activity that threatens the health, safety or welfare of the landlord, other residents or persons on the residential property. The tenant states the addendum goes on to state that violation of the provisions shall be cause to end the tenancy. The tenant testifies that the other tenant had guns and ammunition that were not kept in a locked cabinet. The tenant also believes that one of these guns was a sawn off shotgun. The tenant testifies that he was threatened by this other tenant so he wrote to the landlord detailing his concerns. The tenant also testifies that the other tenant had a cat which was also contrary to their tenancy agreement.

The tenant testifies that the landlord failed to investigate his concerns and failed to notify the police of this criminal activity. The tenant testifies that he wanted the landlord to end the tenancy so the other tenant would not harm him because the tenant felt unsafe living in the unit. The tenant testifies he moved out after he had notified the landlord and stayed with friends. The tenant states he was not able to enjoy the unit for the month of January either and the landlord failed in their obligations to protect his quiet enjoyment of the rental unit. The tenant states the landlord is in violation of their own tenancy agreement.

The tenant testifies that the landlord made an arrangement to inspect the unit and the tenant states he asked for protection before he went to the unit. The tenant testifies that he waited down the street on January 10, 2012 for 90 minutes while the landlord did the inspection. He thought the landlord would then come and talk to him but the landlord did not appear.

The tenant testifies that he eventually called the police and the tenant has provided a police file number 2012-2592. The tenant testifies that it was the police who advised the tenant to move from the rental unit. The tenant disputes that he should be held responsible for utilities as he did not live in the rental unit for most of January, 2012 and moved out fully at the end of January.

The tenant disputes the landlords' claims for damage and cleaning. The tenant testifies that he did not agree not to do a move in inspection at the start of the tenancy. The tenant states the landlord wanted him to sign the move in inspection form filled at at the start of the original tenancy but he did not do so. The tenant states the carpets were already stained at the start of the tenancy, the unit was not clean and there was a broken blind in the living room. The tenant has no knowledge of a broken blind in one of the bedrooms as he was not allowed to access that bedroom. The tenant testifies that the smoke detector was not in place at the start of his tenancy. The tenant states there were also many missing or burnt out light bulbs. The tenant testifies that he did clean the unit and left it in a better condition then it was at the start of the tenancy and states he did return his key to the unit at the end of the tenancy and the inspection report shows this.

The landlord agrees that the tenant did notify them about his concerns with the other tenant DH keeping guns and having a cat. The landlord testifies that she posted a notice of entry to the unit but did not detail the true purpose of the entry so the other tenant would not be alerted to the reason for the inspection. The landlord testifies that she had arranged with the tenant TB to meet her at the unit to show the landlord where the guns were however the landlord testifies that the tenant TB did not meet the landlord at the unit. The landlord testifies that she carried out a thorough inspection of the unit but found no evidence to show there were guns, ammunition or a cat in the unit. The landlord testifies that she called the

tenant TB and was told the tenant was in class and could not come to the unit. The landlord testifies she spoke to the Police and was told they can only act at a time when the tenant TB is being threatened.

The landlord states as no evidence was found in the unit to support the tenants TB's allegations no further action could be taken at that time. The landlord states they were not negligent in their investigation but could not act without proper evidence of an infraction of the tenancy agreement or addendum.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for unpaid rent and utilities; I find this was a fixed term tenancy which was due to end on April 30, 2012. The tenant TB ended the tenancy without proper notice on January 31, 2012. The tenant argues he was forced to end the tenancy because the landlord failed to protect the tenants' rights and failed to uphold the terms of the tenancy agreement addendum. The landlord argues that this is not the case and when notified of allegations by this tenant TB the landlord acted diligently and inspected the rental unit. The landlord argues as no evidence was found of these alleged infractions the landlord could not end the tenancy.

I have considered both arguments and find that the tenant has insufficient evidence to support his claim that the other tenant DH kept firearms in an unlocked cabinet that DH threatened TB or acted unlawfully. The tenant has provided no evidence to show that DH kept a cat in violation of the tenancy agreement. Consequently, I find the tenants are responsible for rent for February, 2012 to the sum of **\$1,300.00** as the tenants are co-tenants of the rental unit the tenants are equally responsible for any debt incurred during their tenancy. The landlord will receive a monetary award pursuant to s. 67 of the *Act* for this amount.

I further find the tenants are responsible for the Hydro and Gas payments to the total sum of **\$340.81**. As their tenancy agreement shows the tenants' share of the utilities bills was 60

percent. The landlord will receive a monetary award pursuant to s. 67 of the *Act* for this amount.

I find the tenants were aware of the landlord's fees for late rent and bank charges as documented in the tenancy agreement. Consequently, I find the landlord is entitled to recover **\$50.00** in late fees and **\$25.00** in bank charges and will receive a monetary award pursuant to s. 67 of the *Act*.

When a landlord has failed to complete a Move in inspection at the start of a tenancy a landlord has extinguished their right to make a claim against the security deposit for damages to the rental unit. However a landlord is still entitled to file a claim to keep the security deposit when this claim is for unpaid rent and utilities. The Landlord is therefore entitled to keep the tenants security deposit to the sum of **\$650.00** to offset against the unpaid rent and utilities pursuant to s. 38(4)(b) of the *Act*.

With regard to the landlords claim for damages; sections 23 of the *Act* say that a landlord must complete a condition inspection report at the beginning of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if a tenant has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The tenant TB disputes that he should be held responsible for damage caused by the other tenant as the other tenant had a separate tenancy agreement prior to the new tenancy agreement in November 01, 2011. The tenant argues that all the claimed damage and cleaning was caused prior to the new tenancy starting. I find if the landlord had completed a

new move in condition inspection at the start of this tenancy then any damage caused during this tenancy could have been determined from the move out inspection report. Consequently, I am unable to find in favour of the landlords claim for cleaning, for carpet cleaning, for a broken blind, for a missing smoke detector or for missing light bulbs and these sections of the landlords claim are dismissed without leave to reapply.

However as the tenant only returned one key at the end of the tenancy find the landlord is entitled to recover the costs associated with new keys and locks as again both tenants would be equally responsible to ensure all the keys had been returned at the end of the tenancy. Consequently, the landlord has established a claim to the sum of **\$43.62** and will receive a monetary award for this amount pursuant to s. 67 of the *Act*.

As the landlord has been partially successful with their claim I find the landlord is entitled to recover half the filing fee to the sum of **\$25.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for February	\$1,300.00
Unpaid utilities	\$340.81
Late fees and bank fees	\$75.00
Keys and locks	\$43.62
Filing fee	\$25.00
Subtotal	\$1,784.43
Less security deposit	(-\$650.00)
Total amount due to the landlord	\$1,134.43

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 **\$1,134.43**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that 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: May 03, 2012.

Residential Tenancy Branch

