



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for a Monetary Order for unpaid rent or utilities; 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. The landlord submissions also claim a Monetary Order for damage to the unit, site or property.

One of the tenants and the landlords agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord's agent 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 rent and utilities?
- Is the landlord entitled to a Monetary Order for damage?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both parties agree that this tenancy started on March 25, 2011. This was a fixed term tenancy for one year with the option to go month to month at the end of the fixed term. Rent for this unit was \$1,500.00 per month which was due on the first day of each month. The tenant paid a security deposit of \$750.00 on March 16, 2011.

The landlord testifies that the tenants had failed to pay rent for March, 2012. On March 04 the landlord's agent contacted the tenants who informed him that they would be moving out. The landlord's agent states he notified the tenants that they must put this in writing and the landlord's agent received an e-mail from the tenants on March 11, 2012 giving notice to end the tenancy for March 15, 2012.

The landlord's agent seeks to recover unpaid rent for March, 2012 of \$1,500.00 plus a \$25.00 late fee as noted in clause 10 of the tenancy agreement. The landlord's agent also seeks to recover a loss of rent for April, 2012 of \$1,500.00 due to insufficient notice given by the tenants to end the tenancy. The landlord's agent testifies that the owner of the house has not re-rented the house as a foreclosure procedure has been started on the property.

The landlord's agent testifies that there is an outstanding water bill of \$66.47. The landlord seeks to recover this sum from the tenants and has provided a copy of the bill in evidence.

The landlord's agent testifies that the tenants attended the move out inspection of the property in which it was noted and discussed that additional cleaning would be required in the unit. The landlord has provided an itemized cleaning list from his cleaning contractors detailing the cleaning done in the unit and the time taken on each area cleaned. The landlord's agent seeks to recover the costs for this work of \$280.00 from the tenants.

The landlord's agent seeks to recover the sum of \$15.00 for replacement keys as the tenants had lost three keys during the tenancy.

The landlord's agent testifies that the tenants did not clean the carpet at the end of the tenancy. The tenants had put down a powder cleaner which was insufficient. The landlord hired a professional carpet cleaner to clean the carpets and seeks to recover the sum of \$134.40 from the tenants for this work.

The tenant attending agrees they owe rent for March of \$1,500.00 and does not dispute the landlords claim for a \$25.00 late fee. The tenant does not dispute the landlords claim for the water bill of \$66.47; for the charge of \$15.00 for replacement keys and for the landlords claim for carpet cleaning of \$134.40.

The tenant attending does dispute the landlords claim for rent for the whole of April, 2012 as the tenant states the Notice they gave the landlord on March 11, 2012 would be effective on April 11, 2012. The tenant therefore agrees to pay rent for the period from April 01 to April 11, 2012. The tenant testifies that the house was being foreclosed on so the tenants thought they had to move out.

The tenant does dispute the landlords claim for cleaning. The tenant agrees that some cleaning would have been required as the tenant states the stove and oven were not cleaned but the tenant testifies that they did clean the unit at the end of their tenancy.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the tenants to s. 45(1) and s. 45(2) of the *Residential Tenancy Act (Act)* which states

- (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Consequently I find that this was still a fixed term tenancy until March 31, 2012. So the tenants were not able to end the tenancy before the end of the fixed term. As this tenancy reverted to a month to month tenancy at the end of the fixed term, and did not automatically end at that time, the tenants would still have had to give one clear months notice to end the tenancy. Therefore, I find in favour of the landlords claim for unpaid rent for March, 2012 of **\$1,500.00** and the landlords claim for a loss of rent for April, 2012 of **\$1,500.00**. The landlord will receive a monetary award for these sums pursuant to s. 67 of the *Act*.

I also find the tenant does not dispute the landlords claim for late fees of **\$25.00** the water bill of **\$66.47**, the replacement keys of **\$15.00** and the carpet cleaning of **\$134.40**. Consequently the landlord will receive a monetary award for these sums pursuant to s. 67 of the *Act*.

With regard to the landlords claim for cleaning the unit; the landlord has provided a copy of the move in and move out condition inspection reports and an itemized invoice from the cleaning contractor. However, the tenant disputes the landlords claim and argues they did clean most areas of the unit and the landlord is only entitled to half the amount claimed.

When one party contradicts the evidence of the other party the burden of proof falls to the person making the claim to provide corroborating evidence to meet the burden of proof. I have reviewed the move out condition inspection report and find many of the areas the landlords cleaning contractor cleaned are not mentioned on the move out report. The landlord has provided no photographic evidence to show that the tenants did not clean these areas documented on the cleaning contractors report. Consequently, I find the landlord has not met the burden of proof for all of the associated cleaning costs. The landlords claim for cleaning is therefore limited to the sum of **\$140.00** and the landlord will receive a monetary award for this sum pursuant to s. 67 of the *Act*.

I Order the landlord to keep the tenants security deposit of **\$750.00** pursuant to s. 38(4)(b) of the *Act* and this sum will be offset against the amount owed by the tenants to the landlord.

As the landlord has been largely successful with their claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*. The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* as follows:

Unpaid rent and loss of rent	\$3,000.00
Late fee	\$25.00
Water bill	\$66.47

Replacement keys	\$15.00
Carpet cleaning	\$134.40
Cleaning costs	\$140.00
Subtotal	\$3,380.87
Filing fee	\$50.00
Less security deposit	(-\$750.00)
Total amount due to the landlord	\$2,680.87

Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,680.87**. 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: June 08, 2012.

Residential Tenancy Branch