



Dispute Resolution Services

Page: 1

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; 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.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on May 07, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- 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

The landlord testifies that this tenancy started on September 02, 2011. This was a fixed term tenancy which was due to expire on August 31, 2012. Rent for this unit was \$875.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$437.50 on August 27, 2011. The landlord and tenant attended the move in and move out condition inspections of the unit.

The landlord testifies that the tenant's mother also named on this application was a co-signer for the tenant on the tenancy agreement and therefore as a co-signer has equal responsibility for the tenancy. The landlord testifies that the tenant's mother had provided her address to the landlord at the start of the tenancy as the co-signer and the tenant and her mother informed the landlord that the tenant was returning to live at her mother's address at the end of the tenancy.

Unpaid rent

The landlord testifies that the tenant broke the lease agreement and gave the landlord written notice to end the tenancy on April 02, 2012. The tenant moved from the unit on April 28, 2012. The landlord and the tenant advertised the unit on internet sites and 11 viewings took place however the tenant failed to clean and tidy the rental unit for the viewings and due to this the prospective tenants were put off from renting the unit. The landlord has provided a copy of the tenant's letter in which the tenant gives the landlord notice to end the tenancy. Within this letter the tenant has also agreed that she is responsible for the rent for May if the unit is not rented. The landlord seeks to recover the sum of \$875.00 for the loss of rent for May as the unit was re-rented for June 01, 2012.

Damages

The landlord testifies that the tenant failed to leave the rental unit in a clean condition at the end of the tenancy. The condition inspection report details that many areas are dirty. The landlord obtained different quotes to clean the unit and has provided copies of these quotes, photographs of the condition of the unit and copies of the condition inspection reports in evidence.

The landlord testifies that she cleaned the unit herself and this work took over 18.5 hours. The landlord seeks to recover \$25.00 per hour to the sum of \$462.50. The landlord also seeks to recover the sum of \$72.92 for cleaning supplies and has provided the receipts for this in evidence.

The landlord testifies that there was a no smoking clause in the tenancy agreement addendum which was signed by the tenant. The tenant admitted to smoking in the unit and the unit was left with a bad smell of smoke and with nicotine and smoke stained walls and ceilings. The tenant had signed an agreement that her father would paint the rental unit before the end of the tenancy however the landlord testifies that on April 23, 2012 the tenant telephoned the landlord to say the painting would not be done by them.

The landlord obtained quotes to have the unit re-painted and eventually did the work herself. The landlord testifies that she had to clean the walls to remove the smoke smell and stains and then repaint the unit. The landlord testifies that this took 31.5 hours at \$25.00 per hour so the landlord seeks to recover the sum of \$787.50 from the tenant. The landlord also seeks to recover the sum of \$382.70 from the tenant for paint supplies. The landlord testifies that the unit had been freshly painted at the start of this tenancy. The landlord has provided receipts, photographs and the painting agreement signed by the tenant in evidence.

The landlord testifies that the tenant left couches, a mattress, tables and miscellaneous furniture outside the building by the dumpster in violation of the Strata rules. The landlord had to remove these items to the dump at seeks to recover the sum of \$37.50

for 1.5 hours work at \$25.00 per hour plus the dump fees of \$8.00. The landlord has provided photographic evidence of these items

Security deposit

The landlord seeks to retain the tenants security deposit in partial satisfaction of her monetary claim against the tenant. The landlord originally claimed \$4,000.00 on her application and has adjusted this claim to \$2,676.12.

Analysis

In the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me. With regard to the landlords claim for unpaid rent; I refer the parties to s. 45(2)(b) of the *Act* which states:

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

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

I therefore find the tenant did end the tenancy before the end of the fixed term and the unit could not be re-rented for May, 2012. Consequently, I uphold the landlords claim to recover unpaid rent for May, 2012 and award the landlord a monetary sum of **\$875.00**.

With regards to the landlords claim for damage to the unit, site or property; I refer the parties to s. 32 (2) and 32(3) of the *Act* which states:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I have reviewed the documentary evidence provided by the landlord and find this evidence is sufficient to meet the burden of proof that the tenant failed to comply with s. 32(2) and s. 32(3) of the *Act*. The tenant failed to clean the rental unit at the end of the tenancy to a reasonable standard which resulted in the landlord having to clean the unit before it could be re-rented and the tenant smoked in the unit despite having signed a no smoking agreement. This smoke caused damage to the rental unit which resulted in additional cleaning and painting by the landlord. Consequently I uphold the landlord's monetary claim for cleaning and painting including the necessary supplies to do this work and award the landlord the sum of **\$1,705.62**.

I further find that the landlord has shown sufficient evidence that the tenant left furniture outside the building by the dumpsters which the landlord had to remove to the dump. Consequently I uphold the landlords claim to recover the sum of **\$45.50** from the tenant.

The landlord is entitled to retain the tenants security deposit of **\$437.50** pursuant to s. 38(4)(b) of the *Act*. This sum has been offset against the landlord's monetary claim.

As the landlord has been successful with her claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Unpaid rent	\$875.00
Damages and cleaning	\$1,705.62
Removal of tenants abandoned belongings	\$45.50
Subtotal	\$2,626.12
Plus filing fee	\$50.00
Less security deposit	(-\$437.50)
Total amount due to the landlord	\$2,238.62

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,238.62**. The order must be served on the respondent 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 29, 2012.

Residential Tenancy Branch