



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord company and the tenant attended the conference call hearing and gave affirmed testimony. The landlord provided evidence in advance of the hearing to the Residential Tenancy Branch and to the tenant, and called one witness. The parties were given the opportunity to cross examine each other and the witness on the testimony given and evidence provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

This fixed-term tenancy began on December 1, 2011 and was to expire on April 30, 2012. The tenant moved from the rental unit on April 30, 2012. Rent in the amount of \$800.00 per month was payable in advance on the 1st day of each month. On

November 15, 2011 the landlord collected a security deposit from the tenant in the amount of \$400.00, which is still held in trust by the landlord.

The landlord's agent testified that a move-in condition inspection report had been completed by the parties at the outset of the tenancy. The tenant gave notice to vacate the rental unit on March 21, 2012 and a move-out condition inspection was scheduled for April 30, 2012 at 12:00 noon but the tenant did not attend.

The landlord's agent further testified that the tenant had paid rent and for parking fees by way of personal cheque for the month of April, 2012, but the cheque was returned by the financial institution for insufficient funds. A copy of the tenancy agreement was also provided in advance of the hearing and it contains a liquidated damages clause in the amount of \$500.00 as genuine pre-estimate of costs associated with re-renting the rental unit.

Further, the appliances had not been cleaned by the tenant prior to vacating, and the tenant gave the landlord's agent \$200.00 at the end of the tenancy for carpet and suite cleaning.

The landlord claims \$800.00 for unpaid rent for the month of April, 2012, \$15.00 for parking fees, \$25.00 for N.S.F. fees, \$25.00 for late fees, \$89.54 for carpet cleaning, \$30.00 for suite cleaning, \$500.00 for liquidated damages, less \$200.00 paid by the tenant and \$400.00 security deposit, for a total claim of \$884.54. The landlord has provided a copy of a receipt in the amount of \$89.54 for carpet cleaning, and one in the amount of \$30.00 for suite cleaning.

The landlord's witness testified that the tenant's phone number was out of service, but the witness called the tenant's mother's phone and left a message for the tenant to call while arranging the move-out condition inspection.

The witness also testified that the countertops in the rental unit required replacing at the outset of the tenancy, which were ordered but not installed until about a month after the tenant moved out; it took time to have them fabricated.

The witness also testified that three documents were left under the door of the rental unit by the witness: a document describing move-out times; a document scheduling the move-out condition inspection; a list of cleaning required by the tenant and cost of carpet cleaning. The tenant had told the witness that April 30, 2012 at 1:00 was agreeable for the move-out condition inspection. The tenant didn't show up on April 30, 2012 so the witness left a Notice of Final Opportunity to Schedule a Condition Inspection on the door of the rental unit. A copy of the notice was provided for this

hearing, and it proposes that the condition inspection be conducted on May 1, 2012 at 9:30 a.m.

A copy of the move-in/move-out condition inspection report was also provided for this hearing. It is dated May 1, 2012 and states that the tenant paid the landlord's agents \$200.00 on that date in cash. It also contains a forwarding address for the tenant, which the witness testified was provided by the tenant and the witness wrote it on the condition inspection report.

The tenant testified that a note was made on the move-in condition inspection report about deteriorated counters. The landlord gave the tenant a package which included a notice to enter the rental unit to make the repairs. The tenant agreed to the notice in writing and placed it in the mail slot of the landlord 3 or 4 weeks after the tenancy began. About 5 months later the taps were worse. They leaked and were actually falling into the sink. The tenant has asthma and has had since a child, and testified that he had to move because the leak caused a large ring of mould to gather under the counter. The tenant completed a Repair Request Form and gave it to the witness about 4 weeks prior to vacating the rental unit, but received no response from the landlord other than to say they would take care of it but didn't.

The tenant did not provide any evidentiary material to the Residential Tenancy Branch or to the landlord in advance of the hearing.

Analysis

Firstly, I have reviewed the tenancy agreement which contains a liquidated damages clause, stating that if the tenant ends the tenancy prior to the end of the fixed term the tenant will pay the landlord \$500.00 as a genuine pre-estimate of the landlord's costs for re-renting the unit.

I have also reviewed the move-in/out condition inspection report which shows the cabinets and countertops as being clean at the commencement of the tenancy and required cleaning at the end of the tenancy. It's clear in the evidence before me that the countertops needed replacing at the commencement of the tenancy, which is also noted in the comments section of the move-in condition inspection report.

I also find it clear in the testimony and evidence before me that it took 6 months for the landlord to replace the countertop in the rental unit. The tenant testified to having asthma since a child, however provided no evidence of health issues. I accept,

however, given the testimony of the landlord's witness and comments on the move-in condition inspection report that the counter around the taps was badly broken up at the beginning of the tenancy. The tenant received no indication from the landlord's agents when the replacement would be installed and waited 5 months for that repair. The taps were actually falling into the counter and the repair didn't happen until a month after the tenant moved out. The landlord's witness testified that the countertop had to be fabricated, which takes time, but I do not accept that it would take 6 months. The *Residential Tenancy Act* requires a landlord to provide and maintain a rental unit, and I find that the landlord has breached that section of the *Act*, and I find that the countertop neglect was the cause for the tenancy ending prior to the end of the fixed term. Therefore, I find that the landlord has caused the tenancy to end, not the tenant and the landlord's application for recovery of liquidated damages cannot succeed.

The tenant paid rent and parking fees by way of personal cheque in the amount of \$815.00 for the month of April, 2012 which was returned by the financial institution for insufficient funds. The tenancy agreement provides for a \$25.00 fee for each late payment, returned or non-sufficient funds (N.S.F.) cheques, plus the amount of any service fees charged by a financial institution to the landlord. I accept that the landlord is entitled to \$25.00 for the April payment, but the landlord has not provided any evidence of the fee charged to the landlord by the financial institution. Therefore, I find that the tenant is obligated to pay the landlord \$815.00 for rent and parking in addition to a \$25.00 fee for the late payment.

With respect to loss of revenue for the month of May, 2012, the landlord provided evidence of the tenant's notice to vacate the rental unit which was given to the landlord on March 21, 2012. Having found that the tenant was justified in breaking the agreement, I find that the landlord was given more than one month's written notice and the landlord is not entitled to recover another month of rent from the tenant or another month of parking fees.

The tenant gave the landlord \$200.00 for cleaning and carpet cleaning, which I find the landlord is entitled to keep. That \$200.00 covers carpet cleaning in the amount of \$89.54 and suite cleaning of \$30.00 with a surplus of \$80.46 in addition to the \$400.00 security deposit held in trust by the landlord.

I find that the landlord is owed \$840.00 and currently holds \$480.46, and I find that the landlord is entitled to a monetary order for the difference. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit in the amount of \$400.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$409.54.

This order is final and binding on the parties and may be enforced.

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: July 18, 2012.

Residential Tenancy Branch