



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing her to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled a monetary order as claimed?

Background and Evidence

The landlord's testimony is as follows. The tenancy began on February 21, 2010 and the tenant vacated on May 18, 2012. Monthly rent was set at \$2,350.00 and at the outset of the tenancy, the tenant paid a \$1,175.00 security deposit. The tenant was obligated to pay for natural gas and hydro.

On May 15, 2012, the tenant provided to the landlord written notice to end the tenancy on May 31, 2012. The tenant actually vacated on May 18, 2012. The landlord testified that he attempted to re-rent the unit for the month of June by advertising the unit on Craigslist and showed the unit on 28 occasions, but was unable to secure new tenants. The landlord re-rented the unit for July 1 but gave early possession to the tenants on June 23, 2012 and did not collect rent for that period. The landlord seeks to recover \$2,350.00 in lost income. The tenant testified that he did not understand the requirement to give one full calendar month's notice and understood that 30 days notice was required. The tenant noticed that someone was living in the premises during June and took the position that he could not owe the landlord rent past June 23 as the unit was occupied.

The landlord testified that the tenant was obligated to maintain the front and back yard of the rental unit and that while the tenant maintained the front yard, the back yard was severely overgrown at the end of the tenancy. The landlord seeks to recover \$200.00 as the cost of cutting the grass and maintaining the shrubbery. The tenant testified that

when he moved into the unit, the back yard was in a somewhat wild condition and he believed that this was the condition in which the back yard was to be maintained. The landlord testified that the tenant moved into the unit in February and that the yard may have been overgrown at that time simply because it wintertime when maintenance was not performed as regularly.

The landlord testified that he spent \$250.00 to clean the unit. The tenant did not dispute the claim.

The landlord testified that although the tenant had the carpet cleaned, there were stains remaining, which prompted the landlord to hire a cleaning service to clean the carpet for \$156.80. The landlord testified that in one bedroom, a large dark stain in the centre of the room was not completely removed with either carpet cleaning. The landlord speculated that the carpet may be 10 years old and that he obtained a quotation to replace the carpet in that room at a cost of \$672.00. The tenant testified that the stains show normal wear and tear.

The landlord testified that the tenant was responsible to pay for utilities and that he considered the tenant to be responsible for utilities for the month of June. The landlord took over the utility accounts as of May 29 and seeks to recover hydro costs from May 29 – June 22, the day before the new tenants moved into the unit, and natural gas costs from May 29 to June 30. The landlord acknowledged that the tenant should not have to be responsible for charges from June 23 – 30. The tenant argued that when he left the rental unit, he turned down the heat and turned off the lights and that consumption occurred while the landlord accessed the unit, therefore he should not be responsible for that consumption.

The landlord also seeks to recover the \$50.00 filing fee paid to bring his application.

Analysis

Section 45 of the Act clearly identifies the notice period for ending the tenancy as a calendar month rather than as 30 days. I find that the landlord acted reasonably to mitigate his losses in attempting to re-rent the unit. I find that the tenant must be held responsible for the landlord's lost income for the month of June, but as the landlord chose to allow the new tenants to take early possession of the unit, I find that the landlord could have also asked those tenants to pay a pro-rated amount for that period. I find that it would be unfair to force the tenant to bear the cost of the benefit of early possession and I therefore find that the landlord is entitled to recover lost income for the period from June 1-22. Rent in June was payable at \$78.33 per day. I find that the

landlord is entitled to recover \$1,723.26 which represents 22 days of lost income and I award him that sum.

I accept that the back yard had not been recently maintained when the tenant moved into the rental unit, but I find that the tenancy agreement does not merely require the tenant to maintain the back yard, but to “mow and water the lawn and to keep the lawn, flower beds and shrubbery in good order and condition”. I find that the tenancy agreement was sufficiently specific so as to clearly express the tenant’s obligations. I find that the tenant failed to comply with his obligation to care for the back yard and I find that the landlord is entitled to recover the cost to restore the lawn. I award the landlord \$200.00.

As the tenant acknowledged that he was responsible for the cost of cleaning, I award the landlord \$250.00.

The landlord’s photographs show that at the end of the tenancy, there were several stains, including what appear to be rust stains, in various places on the carpet. The landlord testified that the company he hired to clean the carpet was able to remove those stains and I find that this shows that further cleaning was required. I award the landlord \$156.80 for the cost of carpet cleaning.

I dismiss the landlord’s claim for the cost of replacing the carpet in the bedroom. Residential Tenancy Policy Guideline #40 lists the useful life of building elements and identifies the useful life of carpet as 10 years. As the carpet was likely at the end of its useful life and as the landlord has not replaced the carpet but has re-rented the unit with the carpet intact, I find that the landlord has not met the burden of proving that a loss was suffered as a result of the stain.

As I have found that the tenant was liable for rent for the period from June 1-22, I find that the tenant must also be held liable for the cost of utilities. I find it likely that hydro usage after the end of the tenancy would have been negligible and I find that the tenant should be held responsible for the entire hydro invoice. I award the landlord \$19.68. As the natural gas invoice includes an 8 day period in which the new tenants were using utilities and as I find it likely that there would have been little usage of natural gas during the 3 weeks that the unit was unoccupied and keeping in mind that part of the invoice represents a basic charge that is not based on usage, I find that the tenant should be responsible for one half of that bill. I award the landlord \$45.86.

As the landlord has been substantially successful in his claim, I find that he should recover the cost of the filing fee and I award him \$50.00.

Conclusion

In summary, the landlord has been successful as follows:

Loss of income for June	\$1,723.26
Yard maintenance	\$ 200.00
Cleaning	\$ 250.00
Carpet cleaning	\$ 156.80
Hydro	\$ 19.68
Natural gas	\$ 45.86
Filing fee	\$ 50.00
Total:	\$2,445.60

I order the landlord to retain the \$1,175.00 security deposit in partial satisfaction of the claim and I grant him a monetary order for the balance of \$1,270.60. This order may be filed in the Small Claims Division of the Provincial Court and enforced 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: October 17, 2012

Residential Tenancy Branch