



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD

Introduction

This hearing was convened by way of conference call in response to the landlords application for 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 and pet deposit; and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine 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.

At the outset of the hearing the landlord advised me there was an error in the spelling of the landlord's name. The parties did not raise any objections to the error being corrected and this has now been amended.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

- Are the landlords entitled to keep the security and pet deposits?

Background and Evidence

The parties agree that this tenancy started on July 01, 2012 for a fixed term which was due to end on June 30, 2013. Rent for this unit was \$1,350.00 per month plus utilities and was due on the first day of each month in advance. The tenant paid a security deposit of \$675.00 and a pet deposit of \$500.00 on July 01, 2012. The parties agree the landlords failed to complete a move in condition inspection of the property at the start of the tenancy.

The landlord testifies that the tenant and her daughter rented this unit however the tenant was rarely there and her teenage daughter remained in residence until moving out on August 10, 2012. The tenancy ended on August 31, 2012. The landlord testifies that the tenant gave the landlord Notice to end the tenancy by e-mail on July 28, 2012 citing reasons such as not expecting to have to be working two contracts in Calgary and when she was home she had to spend time packing up her own house in readiness for tenants. The tenant also stated that she was not home much and her daughter was home alone. The landlord testifies that now the tenant is saying the landlords were in breach of a material term of the tenancy agreement which is untrue.

The landlord testifies that as soon as they received the tenants notice to end the tenancy they started to advertise the unit that day on different internet sites and with friends. The landlord has provided some documentary evidence showing the advertisements. The landlord testifies that due to the time of year they could not re-rent the unit until November 01, 2012. The landlord testifies that although the rent is higher at \$1,450.00 this now includes the utilities where as the tenants rent did not. The landlords seek to recover a loss of rent for September and October, 2012 to the sum of \$2,700.00.

The landlord testifies that the tenant or the tenant's daughter caused some damage to the rental unit. The tenant sent the landlords a letter agreeing to forfeit her security deposit for damages. The landlord testifies the tenant or her daughter have damaged the laminate flooring. There are deep scratches in the flooring that are beyond normal wear and tear on the living room floor and the master bedroom floor. The landlord testifies that this work has not yet been carried out but when the landlords had contractors out to look at the damage they said because the laminate may not be able to be matched for colour the whole floor will require replacement at a cost of \$3,416.00. The landlord testifies that the flooring is only 18 months old and the landlords lived in the house prior to the tenant without causing any scratches on the floor. The landlord has not provided a quote for this work in evidence and has provided two photographs showing a white scratch and a set of finer scratches to the floor.

The landlord testifies that there was damage done to the living room wall. The tenant mentioned their responsibility for these marks on the wall in her e-mail to the landlords. The landlord testifies that the marks will need to be filled, sanded and repainted and the landlord estimates this work will cost \$200.00. No quote has been provided for this work but a photograph of marks on a wall has been provided in evidence.

The landlord testifies that the tenant's daughter removed the landlord's propane tank from the property when they moved out. The landlord seeks to recover the cost of this propane tank of \$60.00.

The landlord states that although their claim is for \$6,376.00 the landlord has limited their claim to \$5,000.00.

The landlord seeks an Order permitting them to keep the security and pet deposit of \$1,175.00 in partial satisfaction of their claim.

The tenant disputes the landlords claim for a loss of rental income. The tenant testifies that she was aware this was a fixed term tenancy but the landlords breached the

tenancy agreement first because the landlords did not provide appliances in good working order. The tenant testifies that the oven would not work properly, the dishwasher tipped over when it was filled and the washer and dryer smelt of mould which transferred into their clothes.

The tenant testifies that the landlords also breached the tenants right to quiet enjoyment of the rental unit by entering the rental unit without notice, by not protecting the tenants daughter against the downstairs tenant who scared and intimidated the tenants daughter, and when the landlord and another man were caught looking into the tenants daughter's bedroom window one morning while her daughter was sleeping.

The tenant testifies that she notified the landlord that the appliances were not working. The landlord did come and inspect the oven and said it would need a new handle. However a couple weeks went by with no new handle and the tenant spoke to the landlord again and was informed the landlord was looking for a replacement stove. The tenant testifies that the landlord told the tenant that when she inspected the unit she was aware the appliances were old.

The tenant testifies that she complained to a person who was the landlords agent about the tenant living downstairs and the tenant states she thinks the landlord did speak to that tenant.

The tenant testifies that while she was working out of town her daughter left their dog in its kennel and was gone for about eight hours. The downstairs tenant and the landlord entered the unit because the dog was whining and they let the dog out. When her daughter came home she found the dog out of its kennel and knew someone had been in the unit. The tenant testifies that she spoke to the male landlord either by e-mail or phone and was told he and the downstairs tenant had entered the unit.

The tenant testifies that they did not confront the landlord about looking in her daughter's bedroom window as her daughter decided to move out due to lack of privacy.

The landlord disputes the tenant's claims and testifies that the tenant sent the landlord an e-mail about the oven not functioning. The landlord testifies she gave the tenant her husband's e-mail but neither the tenant or the tenant's daughter replied to this and it took the male landlord many days to get into the unit to look at the oven as the tenant's daughter was not at home and the tenant was working away. The landlord testifies that her husband found a screw was missing from the oven and wanted to replace this.

The landlord testifies that it was the tenant downstairs who entered the rental unit after listening to the tenants dog howling and barking for many hours prevent her getting to sleep. That tenant entered the unit after contacting the SPCA. The male landlord did not enter the tenants unit but was waiting outside when the downstairs tenant came out and it was the landlord that wanted to call the police because the dog had been left unattended with no food or water.

The landlord testifies that the tenant did not inform the landlords about any problem with the dishwasher until the tenant gave notice to end the tenancy. The landlord testifies that the tenant has provided no evidence to show the washer and dryer made their clothes smell and the dryer was only eight months old.

The landlord testifies that while the tenant was away, the tenant's teenage daughter and her teenage friends lived in the unit. These teenagers had no respect for the tenant living beneath them and they did not look after the house or keep the shared laundry room clean. The landlord testifies the downstairs tenant is not as described by the tenant. The landlord testifies that the person the tenant describes as the landlords agent is not their agent but simply a friend of the landlords who was present to help the male landlord with translations as English is his second language. The tenant has never been

informed that this person is acting as an agent for the landlord and should not have consulted with this person about any aspects of her tenancy.

The landlord disputes that they breached a material term of the tenancy as the tenant did not give the landlords time to make any repairs before the tenant gave her notice to end the tenancy.

The tenant disputes the landlords claim concerning the scratches to the floor. The tenant states as no move in inspection was done the tenant does not know when these scratches occurred and may have been there at the start of the tenancy. The tenant suggests the landlords repair the scratches with a putty pen.

The tenant testifies that she did send an e-mail to the landlords telling them to keep the security deposit even though the tenant thought the landlords were not entitled to it just to have an end to the matter.

The tenant agrees her daughter did mark the wall when she was moving stuff out of the unit but it is not a hole and should easily be repaired for around \$75.00 as suggested as a figure by a painter the tenant uses.

The tenant agrees her daughter inadvertently removed the propane tank from the landlords' property. The tenant and landlord agree the tenant can return this tank to the home of the landlords' friend on the weekend of February 16, 2013.

The tenant testifies she was told the friend of the landlords was acting as an agent as the male landlord told the tenant to contact this person if there were any issues.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this in mind I have considered the landlords claim for a loss of rental income for two months. The tenant has argued that the landlord breached the tenancy agreement first and this therefore ended the agreement between the parties enabling the tenant to give the landlord Notice. I am not satisfied with the evidence before me that the landlords did breach the tenancy agreement. The tenant has provided no evidence to show that the tenant tried to mitigate by giving the landlords sufficient time to repair the oven and the tenant and the tenants daughter exasperated the situation by not being available for the landlord to gain entry into the unit to inspect the oven to determine the fault and then to replace the screw.

I have no other evidence to show that the tenant notified the landlords of any other issues. If the tenant felt the landlords were not dealing with the oven repair or other issues in a timely manner or that the landlords had entered the tenants unit without proper notice, the tenant's recourse would have been to file an application for dispute resolution and not to end the tenancy. Consequently, I find the landlord has established their claim for a loss of rental income for two months and are therefore entitled to a monetary award to the sum of **\$2,700.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for damage to the flooring; I am not satisfied with the evidence before me that the tenants are responsible or damage to the flooring which would warrant the replacement of the entire flooring. S. 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 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 she 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 has disputed the landlords claim and I find without any further evidence to show the tenants are responsible for this damage then the landlords have not met the burden of proof that this damage happened solely because of the actions or neglect of the tenant in violation of the *Act* or agreement. I further find the landlord has not met the burden of proof with regards to verification of the actual amount required to compensate for the claimed loss or to rectify the damage Consequently this section of the landlords claim is denied.

With regard to the landlords claim for damage to the wall; the tenant agrees that her daughter did some damage when she was moving from the rental unit. However as the landlord has not provided verification of the actual amount required to rectify the damage I will limit the landlords claim to the sum of **\$75.00**. The landlord will receive a monetary award for this sum pursuant to s. 67 of the *Act*.

With regards to the propane tank; as the parties have agreed that the tenant will return this tank on the weekend of February 16, 2013 to the landlords friends home I am not required to make a decision in this matter. If the tenant fails to return the tank as agreed the landlord is at liberty to file a new application to recover the cost of the tank.

With regard to the landlords claim to keep the security and pet deposits; a landlord who has not completed a move in condition inspection has only extinguished their right to file a claim to keep the security deposit against any damage caused by the tenant. As the landlord has also filed a claim for a loss of rental income then this does not preclude the landlord from filing the claim to keep the security and pet deposits. I therefore find the landlord may keep the security deposit and pet deposit to the sum of **\$1,175.00** pursuant to s. 38(4)(b) of the *Act* in partial satisfaction of the landlords claim.

A Monetary Order has been issued to the landlord for the following sum:

Loss of rental income	\$2,700.00
Damage to the wall	\$75.00
Subtotal	\$2,775.00
Less security and pet deposit	(-\$1,175.00)
Total amount due to the landlords	\$1,600.00

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,600.00**. 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: January 11, 2013

Residential Tenancy Branch

