



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord ant 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

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to keep the tenants security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties' agree that this tenancy started on May 01, 2012 for a fixed term tenancy ending on April 30, 2013. Rent for this unit was \$875.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$437.50 on April 26, 2012. The parties also agree that the landlords failed to do a move in condition inspection of the rental unit but did complete a move out condition inspection. The tenant vacated the rental unit on September 30, 2012. No forwarding address has been provided to the landlords in writing however the tenant agrees that she told the landlords verbally of her new address.

The landlord JM testifies that the tenant failed to give written notice to end the tenancy and moved from the rental unit before the end of the fixed term. The landlord testifies that the unit was re-rented for November 01, 2012 and the landlords seek a loss of rental income from the tenant for October, 2012 to the sum of \$875.00. The landlord testifies that as the unit was rented to the new tenant for another fixed term of a year at \$865.00 per month the landlord seek to recover the difference in the rents from this tenant up to the time the tenant could have legally ended her tenancy. The landlords have claimed the difference in rent of \$10.00 per month for seven months to the sum of \$70.00.

The tenant does not dispute the landlords claim for loss of rent for October as the tenant agrees she did not provide the landlord with written notice to move out. The tenant testifies that she had to move from the rental unit and break the lease because the tenant was concerned for her safety due to break-ins in the building. The tenant testifies that the landlord did not inform the tenant that there had been break-ins and the tenant found out from a neighbour. The tenant testifies that her car was also broken into in the underground parking. The tenant testifies that she felt unsafe as a single women living in the building and so choose to end her tenancy.

The tenant testifies that the landlord also failed to make timely repairs to her sliding door which left the door unsecure, there were bugs in her unit and the shower knob was broken. The tenant testifies that she spoke to the landlord DM about these repairs but the sliding door was not fixed for a month and the other repairs were not done.

The landlord JM testifies that they never received any information from the tenant about bugs in her rental unit. The landlord does recall fixing the tenants door and putting a shower knob back on in the tenants shower as he states both these repairs were simple repairs.

The landlord JM testifies that the building is a secure building. The landlord agrees that there have been two break-ins and an attempted break-in of which the police were notified. The landlord testifies they have met their obligations as landlords to ensure the safety and security of the tenants by putting up extra lighting, cutting bushes back, ensuring the building doors are locked and having double locks on all windows. Any break-ins are out of the landlords control and there have been no break-ins since that time. The landlord testifies that the police consider this to be a safe building in the area.

The landlord JM testifies that there is a clause in the tenancy agreement providing for liquidated damages to be charged to a tenant if a tenant breaks the fixed term lease and moves out before the end of the fixed term. The landlords seek to recover the sum of \$850.00 as a pre-estimate of the landlords cost incurred in re-renting the unit. The landlord testifies that this involved wear and tear on the unit for outgoing and incoming tenants and for the landlords time and effort involved for 16 hours at \$28.00 per hour to prepare and show the rental unit to prospective tenants.

The tenant disputes the landlords claim for liquidated damages.

The landlord DM testifies that the tenant failed to clean the rental unit at the end of the tenancy and the landlord had to do this work which took three hours at \$25.00 per hour. The landlord testifies that she had to clean the stove, fridge, floors, cupboards, windows

the patio and balcony and the bathroom in this time. The landlords seek to recover the sum of \$75.00 for this work.

The tenant does not dispute the landlords claim for cleaning and agrees that she did fail to clean the rental unit at the end of the tenancy.

The landlord DM testifies that in the tenancy agreement there is a clause which indicates that if the drapes are clean at the start of the tenancy then the tenant must have them professionally cleaned at the end of their tenancy. The landlord testifies that the previous tenant had the drapes professional cleaned when that tenant moved out prior to this tenancy. The landlords have provided a copy of the cleaning receipt showing the sum of \$245.00. The landlord testifies that this tenant did not have the drapes professional cleaned and they had cat hair on them. The landlords therefore seek to recover the sum of \$245.00 from the tenant for having the drapes cleaned. The landlord agrees they have not provided a receipt for the drape cleaning in evidence.

The tenant testifies that she must have misread the clause in the tenancy agreement concerning cleaning the drapes. The tenant testifies that she did not realize she was responsible to remove the drapes and have them professional cleaned. The tenant states she would like to see a receipt from the landlords showing the drapes have been cleaned and how much the landlords were charged for this work.

The landlord JM testifies that the tenants left numerous nail holes in the walls at the end of the tenancy. These holes were filled by the landlords' handy man who spent approximately half an hour doing this work. The landlords seek to recover the sum of \$25.00 from the tenant.

The tenant testifies that she did not hang anything on the walls that required a nail. The tenant agrees she did use some thumbtacks but not the amount for the holes the landlord is claiming for. The tenant testifies that as the landlords did not complete a move in condition inspection at the start of the tenancy there is nothing to show that the

tenant is responsible for these holes and that they were not already in place at the start of her tenancy.

The landlord JM testifies that the exit light in the common hallway was found broken the day after the tenant had moved her belongings from the building. The landlord testifies that the day before the exit light had been working and it was found knocked off its setting after the tenant had moved out. The landlords seek to recover the sum of \$45.00 for their handyman to repair this exit light.

The tenant disputes the landlords claim that the tenant damaged the exit light.

The landlord JM testifies that the tenant was notified when she moved in that tenants cannot use the front door to move their belongings in and out. If the tenant had given the landlord proper notice to vacate the rental unit the landlords would have provided the tenant with a move out sheet which would have informed the tenant that she must not move out through the front door. The landlord testifies that the tenant was using the front door to move her belongings out of the building and the landlord seek to impose a fine on the tenant of \$50.00 due to this. The landlord agrees this fine has not been documented in the tenancy agreement.

The tenant disputes the landlords claim for a \$50.00 fine for using the front door to move out. The tenant testifies that the landlord should have provided the tenant with this information at the start of the tenancy. The tenant testifies that while they were moving her belongings out the landlord JM saw them and held the front door open for them to move items out. The tenant testifies that at no time did the landlord mention a charge of \$50.00.

The landlord disputes the tenant's testimony. The landlord testifies that he was only holding the door open because the tenant was already using it to move things out and the landlord did not want the tenant to damage the door. The landlord testifies he then

asked the tenant to move the rest of her belongings out through the basement which the tenant did.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for loss of rental income for October, 2012; The tenant does not dispute this section of the landlords claim and although the tenant has cited reasons for ending her tenancy before the lease was due to expire, it is my decision that these reasons standing alone would not warrant the tenant being able to end the lease before the end of the fixed term. Therefore I find in favor of the landlords claim for unpaid rent for October, 2012 and award the landlords the sum of **\$8750.00.**

With regards to the landlords claim to recover the difference in rent for seven months; I direct the parties to the Residential Tenancy Policy Guidelines #3 which states, in part,:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

With this in mind I find the landlords have shown that the unit was re-rented for the monthly rent of \$865.00 which is \$10.00 a month less than the tenants rent. The landlords have claimed to recover \$70.00 for seven months difference in rent for the unexpired term of the tenancy however as this difference would be from November,

2012 to April, 2013 this is six months. Therefore I find the landlords are entitled to recover the sum of **\$60.00** from the tenant.

With regard to the landlords claim for liquidated damages; a landlord is entitled to charge tenant for liquidated damages when it is indicated in the tenancy agreement that a charge of this nature will be applied if the tenant ends the tenancy before the end of the fixed term. I have considered the landlords claim for the sum of \$850.00 and find this is a genuine pre-estimate of the landlords' costs to re-rent the unit. As such I uphold the landlords claim to recover the sum of **\$850.00** from the tenant for liquidated damages.

With regards to the landlords claim of \$75.00 for cleaning the unit; the tenant does not dispute this section of the landlords claim as the tenant agrees she failed to clean the rental unit at the end of the tenancy. Consequently I uphold the landlords claim for **\$75.00**.

With regards to the landlords claim for dry cleaning of the drapes; a landlord is required to provide an invoice showing the actual amount charged to have the drapes cleaned. In this instance the landlord has only provided a receipt from the previous tenant that the previous tenant paid to clean the drapes. As I have no evidence from the landlord to show that the drapes either required to be cleaned or were actually cleaned then I dismiss this section of the landlords claim.

With regards to the landlords claim for \$25.00 for filling nail holes in the suite. The tenant disputes this section of the landlords claim. When one party's testimony contradicts that of the other, then the burden of proof falls to the person making the claim, which in this case is the landlords, to show that the damage existed at the start of the tenancy. Without a move in condition inspection report I am unable to determine that these nail holes were not pre-existing holes at the start of the tenancy. Consequently I dismiss this section of the landlords claim.

With regard to the landlords claim for \$45.00 for a repair to the exit light; the tenant disputes that she caused damage to the light while moving out. As this is a common area hallway I find the burden of proof falls to the landlords to show that this damage was caused by the actions or neglect of the tenant or by a person allowed on the property by the tenant. As the landlord has not met this burden of proof I must dismiss this section of the landlords claim.

With regards to the landlords claim for \$50.00 for a fine imposed on the tenant for using the front door to move out. If a landlord is going to impose fines upon a tenant then a landlord must inform a tenant that a fine of this nature will be imposed for the breach of any rules or regulations. As the tenant was not notified in writing, prior to using the front door nor is it documented in the tenancy agreement that a fine will be imposed then I must dismiss this section of the landlords claim.

As the landlords have been partially successful with their claim I find the landlords are entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*.

The landlords are permitted to keep the tenants security deposit of **\$437.50** pursuant to s. 38(4)(b) of the *Act*. This sum will be offset against the landlords' monetary claim. A Monetary Order has been issued to the landlords pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Loss of rent for October, 2012	\$875.00
Difference in rent for six months	\$60.00
Liquidated damages	\$850.00
Cleaning	\$75.00
Filing fee	\$50.00
Subtotal	\$1,910.00
Less security deposit	(-\$437.50)
Total amount due to the landlords	\$1,472.50

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,472.50**. 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 22, 2013

Residential Tenancy Branch

