

A matter regarding Royal Lepage Wolstencroft Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, 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; 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 to recover the filing fee from the tenant for the cost of this application.

The tenant, the tenant's agent and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord 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

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep the tenants security and pet deposits?

Background and Evidence

The parties agree that this tenancy started on December 01, 2011 for a fix term that ended on May 31, 2012. The tenancy then reverted to a month to month tenancy and ended when the tenant moved from the rental unit on September 31, 2012. Rent for this unit was \$1,150.00 per month and was due on the 1st day of each month in advance. The tenant paid a security deposit of \$575.00 on November 10, 2011 and a pet deposit of \$575.00 on December 09, 2011. The parties agree that a move in inspection was conducted with both parties present.

The landlord testifies that the tenants rent cheque was returned as there were insufficient funds to honor it (NSF). The tenant was notified of this but failed to make another payment. The landlord has provided a copy of the returned cheque in evidence. The landlord seeks to recover the sum of \$1,150.00 from the tenant. The landlord testifies that the tenancy agreement addendum has a clause which notifies the tenant that a charge of \$25.00 will be incurred if rent cheques are returned by the bank. The landlord therefore seeks to recover \$25.00 from the tenant.

The landlord testifies that the tenant failed to give proper written notice to end the tenancy. The tenant verbally informed the landlord on September 22, 2012 that the tenant was going to vacate the rental unit at the end of September. The landlord testifies that they were unable to re-rent the unit for October as the tenants ex boyfriend had damaged the front door to the extent that a new front door had to be ordered and installed and this was not installed until October 30, 2012. The landlord therefore seeks to recover a loss of rental income from the tenant of \$1,150.00 for October, 2012.

The landlord testifies that due to the damage to the tenant's door the landlord secured the door initially with a padlock on September 22, 2012. The landlord seeks to recover the cost of the padlock of \$32.26 and has provided a receipt for this in evidence. The landlord testifies that due to the damage to the door, when the tenants ex boyfriend kicked the door in, the landlords had to replace the door and seek to recover the replacement costs of \$520.80 from the tenant. An invoice for the new door and installation has been provided in evidence.

The landlord testifies that at the end of the tenancy the landlord had not received a forwarding address for the tenant to contact about returning to the rental unit to do the final inspection. The landlord testifies that attempts were made to contact the tenant by telephone and opportunities were given for the tenant to attend the inspection. The landlord testifies that neither the tenant or a representative for the tenant appeared to do the inspection so the landlord completed this in the tenant's absence. The landlord testifies that on October 29, 2012 they received the tenants forwarding address by text message.

The landlord testifies that during the inspection it was noted that a kitchen drawer was damaged, there were five to six silver doves stuck on a wall and there were six spot light bulbs and one halogen bulb missing or burnt out. The landlord seeks to recover the sum of \$122.50 for the repair to the drawer and repairs to the wall after the doves were removed and the adhesive had damaged the wall. The landlord has provided an invoice from the landlord's handyman for this work but states there is no receipt for the replacement light bulbs.

The landlord testifies that the tenant had not removed all her belongings and a bedroom closet had items piled on the floor. There were also unclean areas in the entrance, the floors required cleaning and the patio had to be totally scrubbed as the tenant had kept a cat out there, without permission from the landlord. The landlord testifies that the cats litter box had overflowed onto the patio and the patio smelt of cat urine. The landlord seeks to recover the sum of \$148.96 from the tenant.

The landlord seeks an Order to keep the tenants security and pet deposit to offset against the unpaid rent.

The landlord has provided some other receipts in documentary evidence but did not mention these during the hearing and has not provided any monetary claim for this item.

The tenant agrees that her September rent cheque did not clear at the bank. The tenant testifies that she tried to meet up with the landlord to pay the rent again but could not make the arrangements to fit in with their schedules. The tenant testifies that the landlord served the tenant with a 10 Day Notice to End Tenancy and the tenant misunderstood about what to do so moved from the rental unit. The tenant agrees that no Notice was given to the landlord.

The tenant disputes the landlords claim for the replacement front door and padlock. The tenant testifies that on the day of the incident the tenant was not at home but had a friend in her rental unit. The tenant testifies that her ex boyfriend did not buzz the tenants unit to be let into the building but must have buzzed another tenant who he was friends with who lived in the building and must have gained entry that way. The tenant testifies that her ex boyfriend came to her unit with a female and pushed their way into the tenants unit and started drinking. The tenant arrived home and told her ex boyfriend that he was not allowed in her unit and must leave. When he went out the tenant locked the door and the ex boyfriend proceeded to kick the door in. The police were called and attended the unit. The tenant testifies that she did not invite her ex boyfriend to the unit and he was not a guest of the tenants.

The tenant testifies that she had sent someone to attend the move out condition inspection on her behalf and if this person did not attend then the tenant does not know way. The tenant testifies that there were problems with some of the fixtures in the unit and states the kitchen drawer was not deliberately damaged by the tenant's actions. The tenant testifies that the drawer just came loose from the wall due to normal wear and tear. The tenant agrees that she did forget to remove the silver doves on the wall. The tenant disputes that the light bulbs were missing or burnt out and states they were all fine when she was cleaning the unit.

The tenant disputes the landlords claim that the unit was dirty. The tenant testifies that they left the unit clean and restored it to the same condition it was in at the start of the tenancy.

The tenants agent cross examines the landlord however I find that most of the questions had no relevance to this claim as they were directed at the landlords protocol for arranging inspections and whether the landlord used the same cleaning and repair companies and whether or not the landlord knew the handyman personally.

The tenant's agent did cross examine the landlord about the landlord's testimony concerning the door and the padlock and I have included these questions here as they have some relevance. The tenants agent asks the landlord that at the time the landlord gave the tenant a key to the padlock did the landlord mention the cost of the padlock to the tenant. The landlord responds that no she did not quote the cost, or if the landlord had mentioned to the tenant that the tenant would be charged for this cost. The landlord states her concern at the time was to make the tenants unit secure to protect the tenants belongings and the landlords property.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. With regard to the landlords claim for unpaid rent for September, 2012 I direct the tenant to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Consequently, I find the tenant failed to pay rent for September, 2012 and the landlord is entitled to a Monetary Order to recover the sum of **\$1,150.00** pursuant to s. 67 of the *Act*.

With regards to the landlords claim for loss of rent for October, 2012; The tenant argues that she vacated the rental unit due to the 10 Day Notice served upon her in September

and misunderstood what to do. The Residential Tenancy Policy Guidelines #3 gives guidance to a landlord and tenant concerning this issue and states that in a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. Consequently, I find the landlord is entitled to a Monetary Order to recover the sum of **\$1,150.00** for a loss of rent for October, 2012 pursuant to s. 67 of the *Act*.

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With regard to the landlords claim to recover the sum of \$25.00 for the NSF rent cheque; I have reviewed the addendum to the tenancy agreement and find the landlord and tenant have agreed to this clause in the addendum. Consequently the tenant would have been aware that this charge would be applied if a rent cheque was returned NSF and I find the landlord is entitled to a Monetary Order for the sum of **\$25.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for damage to the front door and a padlock; I am not satisfied that the tenant is responsible for this damage. S. 32 (3) of the *Act* refers to a tenants obligation to repair damage to the landlords property that was caused by the tenant or person permitted on the property by the tenant. The tenant has testified that she did not invite her ex boyfriend into the building and once finding him in her unit she asked him to leave. The landlord has provided no evidence to show that the tenant's ex boyfriend was permitted on the property by the tenant and therefore it is my decision that the tenant cannot be held responsible for any damage caused by this person. The landlord should seek legal remedy for this loss in a different forum. This section of the landlords claim is therefore dismissed.

With regard to the landlords claim for damages to the drawer, the wall and for bulbs; I have considered the move in and move out condition inspection reports and find these contain sufficient evidence to support the landlords claim that these areas were damaged. The tenant argues that the drawer was not damaged through her actions

however has provided no evidence to support this claim. The landlord has provided no separate receipt for the light bulbs and therefore no separate claim for these has been considered. I therefore find the landlord is entitled to a Monetary Order to recover the sum of **\$122.50** from the tenant pursuant to s. 67 of the *Act*.

With regard to the landlord claim for cleaning the rental unit; I have again referred to the move in and move out inspection reports and find there is sufficient evidence to show that the tenant did not leave all of the rental unit in a condition that could be considered reasonably clean particular the patio area which is documented as smelling of cat urine. Therefore I find the landlord has established a claim for cleaning and is entitled to a Monetary Order to the sum of **\$148.96** pursuant to s. 67 of the *Act*.

As the landlord has been partially successful with their claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. The landlord is also entitled to Keep the tenants security and pet deposit to the sum of **\$1,150.00** pursuant to s. 38(4)(b) of the *Act*. A Monetary Order has been issued to the landlord for the following sum:

Unpaid rent for September and October, 2012	\$2,300.00
NSF fee	\$25.00
Suite repairs	\$122.50
Cleaning	\$148.96
Filing fee	\$50.00
Subtotal	\$2,646.46
Less security and pet deposits	(-\$1,150.00)
Total amount due to the landlord	\$1,496.46

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 **\$1,496.46**. 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: February 28, 2013

Residential Tenancy Branch

