



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

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; 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 tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on November 15, 2012. Mail receipt numbers were provided in the landlord's documentary evidence and show the hearing documents were signed for by the male tenant on November 17, 2012.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

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 money owed or compensation for damage or loss?
- Is the landlord permitted to keep all or part of the tenants' security and pet deposits?

Background and Evidence

The landlord testifies that this tenancy started originally on November 30, 2010 and a new tenancy agreement was entered into on May 01, 2012 for a fixed term that ended on August 31, 2012. The tenancy reverted, at that time, to a month to month tenancy. Rent for this unit was \$1,300.00 per month due on the 1st of the month. The tenants paid a security deposit of \$600.00 and a pet deposit of \$250.00. A move in and a move out condition inspection of the property was conducted at the start and end of the tenancy in accordance to the regulations and the tenants provided the landlord with their forwarding address on the move out report on October 31, 2012.

The landlord testifies that the tenants' caused damage to the rental unit. The landlord found the washer had rocks in the pump which had to be removed at a cost of \$95.20. The landlord has provided a copy of the invoice for this work in evidence.

The landlord testifies that there were some dog urine stains on the carpet. The tenants had had the carpets cleaned in July 2012 so the landlord contacted the same carpet cleaner to come back to remove the dog urine stains. The landlord seeks to recover the cost of carpet cleaning of \$95.20 and has provided the invoice in evidence.

The landlord testifies that the carpet in the dining area had heavy black staining. These stains could not be removed by the carpet cleaner and the landlord has provided an estimate to replace the carpet in this area to match the existing carpet. The landlord testifies that this has not yet been replaced. The landlord seeks to recover the sum of \$957.60 for this work and has provided a copy of the quote in evidence.

The landlord testifies that on the day of the move out inspection the tenants had done touch up painting on the walls. During the inspection the paint was still wet but when it dried the landlord realized that the tenants had used the wrong paint which had a different sheen to it. The landlord has had the walls repainted and were able to use the paint left by the tenants to save costs. The landlord seeks to recover the sum of \$165.00 for the painting and has provided the invoice in evidence.

The landlord testifies that the tenants had left the tiles in the kitchen area extremely dirty. The grout was very black and the landlord attempted to engage cleaners to do this work but the cleaners refused as they thought the job was too labour intensive. The landlord sought a quote to re-grout the tiles but found the sum of \$390.00 to be expensive. The landlord testifies that eventually they found a cleaner to do the work over two days. The landlord seeks to recover the sum of \$200.00 charged for this work and has provided the invoice in evidence.

The landlord testifies that every year a fire safety inspection is conducted on all the units. A Notice of entry was posted to the tenants' door and the tenants agreed the fire safety company could enter their unit; however on the day of the inspection the tenants did not answer the door and the fire safety inspection had to be postponed to another day. The owner of the unit was charged the sum of \$13.25 for the failed visit and the landlord seeks to recover this from the tenants. A copy of the invoice has been provided in evidence.

The landlord seeks to recover the costs of the registered mail packages sent to the tenants with the landlord application, notice of hearing and the landlord's evidence to the sum of \$21.10.

The landlord has provided photographic evidence showing the tiles, the carpets and the walls in evidence and a copy of the move in and move out inspection reports.

The landlord seeks an Order to keep the tenants security and pet deposits in partial satisfaction of this claim.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. Firstly, with respect to the landlord's claim for damages, the onus is on the landlord to prove a 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

I am satisfied with the evidence before me that the tenants had failed to comply with s. 32 of the *Act* and ensure the rental unit was left in a reasonable clean condition and any repairs were rectified before the tenants vacated the rental unit. I find the carpets required cleaning, some black stains could not be removed from the carpet and an area of carpet will require replacement, the kitchen tiles were left extremely dirty and the walls were painted with a different sheen of paint. I am further satisfied with the evidence and testimony before me that the tenant was responsible for rocks in the pump of the washer. Consequently, I find the landlord has met the test used for damages and the landlord is entitled to a Monetary Order for damage to the sum of \$1,513.00 pursuant to s. 67 of the *Act*.

With regard to the landlords claim for registered mail posting to the tenants of \$21.10; there is no provision under the *Act* for damages of this nature to be awarded to a party. Consequently this section of the landlords claim is dismissed.

With regard to the landlords claim for costs incurred because the tenants did not allow an inspection of the rental unit by the fire safety company. I find that when a Notice of entry is posted giving the tenants a time and date for entry then if the tenants agreed to the fire safety inspection but later were not available for entry then the tenants are responsible for the costs incurred to the owner of the rental unit. I therefore find in favour of the landlords claim to recover the sum of \$13.25 from the tenants pursuant to s. 67 of the *Act*.

The landlord has provided a Monetary Order work sheet for a total sum of \$1,417.40. However, I find an error in the landlord's calculations and the total amount claimed by the landlord should have been \$1,597.35. I have therefore adjusted the landlords claim accordingly. As the landlord has been largely successful with this adjusted claim I find the landlord is entitled to keep the security and pet deposits pursuant to s. 38(4)(b) of the *Act* in partial satisfaction of their claim. I further find the landlord is entitled to recover the filing fee of \$50.00 pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Damages, painting and cleaning	\$1,513.00
Fire safety inspection	\$13.25
Filing fee	\$50.00
Subtotal	\$1,576.25
Less security and pet deposit	\$850.00
Total amount due to the landlord	726.25

Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$726.25. 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 14, 2013

Residential Tenancy Branch

