



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 concerning an application made by the landlord for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on January 3, 2013, the tenant did not attend. The landlord gave affirmed testimony and provided evidence of having served the tenant on that date and in that manner, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord was also given the opportunity to provide copies of advertisements after the hearing concluded, but no further evidence. The landlord provided other evidence with the advertisements after the hearing had concluded, but that evidence is not considered in this Decision. All other evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on September 1, 2012 and was to expire on August 31, 2013, however the tenant moved out of the rental unit around December 1, 2012, or perhaps November 30, 2012. Rent in the amount of \$840.00 per month was payable in advance on the 1st day of each month. A 14 page written tenancy agreement has been provided for this hearing, which states that the tenant will pay rent of \$839.00 and \$1.00 for wifi internet each month on the first business day of each calendar month. The agreement also states that the tenant is required to pay a security deposit in the amount of \$420.00 although the landlord testified that \$400.00 was paid by the tenant on September 5, 2012 and the tenant had paid an extra \$10.00 toward September's rent on the same day.

The landlord further testified that the tenant moved out of the rental unit without having paid rent for the months of November or December, 2012, and had only paid \$800.00 for rent in October, 2012, leaving a balance outstanding of \$40.00 for October and \$1,680.00 for November and December, 2012. The landlord claims those amounts in addition to \$840.00 for the month of January, 2013; the landlord was not able to re-rent the rental unit for January, mostly due to the time of year.

The landlord also provided a copy of a ledger showing the amounts due and paid during the tenancy. The document is consistent with the landlord's testimony, in that it shows that the tenant paid 1,250.00 on September 5, 2012. The landlord applied \$840.00 for rent and the other \$410.00 for a portion of the security deposit, leaving a balance of \$10.00 outstanding. For the month of October, 2012, the tenant paid \$800.00, leaving a balance of \$50.00 outstanding. No rent was received after October 3, 2012. The landlord claims \$40.00 for the month of October, 2012.

The landlord further testified that the rental unit was re-rented for February 1, 2013, and the landlord claims additional unpaid rent for November, 2012 through January, 2013 in the amount of \$840.00 per month. The evidence provided by the landlord is an email from a local online classified advertisement site confirming the advertisement on December 5, 2012. A copy of the advertisement is attached to the email, which states the amount of rent, being the same amount paid by the tenant, and states that a 9 month lease is required, after which the tenancy reverts to a month-to-month tenancy with 2 months notice required to vacate.

The landlord also claims \$212.00 for carpet cleaning, as well as \$100.00 for general cleaning of the rental unit but has not provided any receipts to substantiate the amounts claimed. The landlord testified that the tenancy agreement provides for carpet cleaning and suite cleaning at the end of the tenancy by the tenant. The tenancy agreement specifically states:

“Upon vacating the premises, the tenant agrees to have carpets and drapes professionally cleaned. Cost to be taken from security deposit. As per Fee column (for a 1 bed apartment), increased by 25% per room.”

And,

“Tenant agrees to leave the residence in a clean state and ready for the next occupant at the time of lease expiration. A “clean state” means cleaning all floors and baseboards; vacuuming all carpets, along baseboards; wiping the inside and outside of cupboards; cleaning kitchen appliances and countertops; scrubbing bathroom toilets and bathtubs/showers, cleaning all sinks, dusting light fixtures and blinds, and removing all personal items and trash from the residence. If the residence is not clean after tenant vacates, management’s employees or an independent cleaning company will undertake the work, and the wage rate asses to tenant shall be as per this fee.”

A column of charges to a tenant appears on the far right of each page of the tenancy agreement, and the charge beside carpets is \$90.00 and \$30.00 beside the cleaning term. The entire 14 page tenancy agreement contains fees in this column for numerous charges that the landlord testified would be payable if they applied to the tenancy, however, the only fees claimed by the landlord are for general cleaning in the amount of \$100.00 and carpet cleaning in the amount of \$112.00.

The landlord also testified that the parties completed a move-in condition inspection report at the outset of the tenancy and provided a copy for this hearing, but the landlord completed the move-out condition inspection report without the tenant present. Copies of emails exchanged between the parties has been provided wherein the landlord attaches a letter to the tenant with information about the move-out process, but has not provided a copy of that letter attachment for this hearing. The email is dated December 2, 2012, and on the 4th of December the tenant replied that the children were home sick with the flu and it was necessary to re-schedule. The landlord testified that the email conversations were around scheduling the move-out condition inspection. Later on December 4, 2012 the landlord emailed the tenant stating that cleaning and vacuuming had not yet been done, and if not done by the Thursday meeting, it would be hired out at the tenant’s expense. Again, the same day, the tenant replied that the family has the

flu. One of the emails of the landlord schedules the inspection for the Thursday and states that it is the second opportunity as per BC law.

The move-in condition inspection report is in a pre-printed form with each room indicated thereon. The report is dated September 3, 2012 and is signed by the landlord and the tenant. The final page also has a comments section for: Repairs to be completed at start of tenancy (list repairs), beside which contains handwriting that states, "multiple severity issues and damage areas need to be addressed as reported in inspection." The report also shows that at the commencement of the tenancy, the floor of the kitchen was "dirty," there were water stains on the ceiling in the living room as well as stains on the carpet, a rust stain on the floor in the eating area, water stains by the fan in the bathroom as well as a blue stain on the cabinet, stain on the tub, and water damage stains in other rooms. The move-out condition inspection report is not on a pre-printed form, but entirely in someone's handwriting dated Dec 4, 2012 @ 9 AM, and is not signed. The report lists an entry, hall, kitchen, dining, living, south bedroom, north bedroom, storage and bathroom, and in each room is marked "dirty" except the south bedroom.

The landlord has also provided the first page of a 6 page move-in condition inspection report dated February 1, 2013 and testified that it is for the new tenant. That report shows that at the outset of that tenancy the floors in the entry and hallway were in good condition, but the floor/carpet in the kitchen contained "25 dings." The only rooms mentioned in the report are the entry, kitchen and hall between the utility room and the living room.

The landlord testified to receiving the tenant's forwarding address in writing on December 20, 2012.

Analysis

Firstly, with respect to the landlord's application for a monetary order for unpaid rent, I have reviewed the tenancy agreement and the ledger, and I accept the landlord's testimony that the tenancy was a fixed term to expire on August 31, 2013, and the tenant vacated the rental unit prior to the end of the fixed term, being on or about December 1, 2012. I also accept that the tenant failed to pay all of the rent owed for the month of October, 2012 and paid no rent for the month of November, 2012, and I find that the landlord has established a claim as against the tenant for unpaid rent in the amount of \$880.00.

With respect to the additional rent claimed by the landlord, I have reviewed the advertisement provided by the landlord and I find that the landlord has established that

the landlord advertised the rental unit at the same rate of rent at a reasonable time after the tenant vacated, and has thereby mitigated any loss. I further accept the testimony of the landlord that a contributing factor in the delay of re-renting was the time of year, being into the month of December, 2012. The move-in condition inspection report of the new tenants is dated February 1, 2013 and states that the tenancy begins on that date, and I am satisfied that the landlord has proven that the rental unit did not re-rent until that date. I further find that the parties entered into a fixed term tenancy to expire on August 31, 2013, and the tenant breached that term of the agreement and is therefore responsible for the loss suffered by the landlord, which I find to be 2 month's rent, or \$1,678.00. I do not accept that the landlord is entitled to recovery of the \$1.00 per month wifi internet.

With respect to the landlord's claim for a monetary order for general cleaning and carpet cleaning, I have reviewed the tenancy agreement, and I find that it is not consistent with the *Residential Tenancy Act*, nor is it consistent with the landlord's claims. The fee in the fee column for carpet cleaning in the tenancy agreement is stated to be \$90.00 with a 25% increase per room and that the cost is to be taken from the security deposit. The landlord claims \$112.00 but has not substantiated that amount by a receipt, or by providing testimony of the number of rooms that have carpet. Further, no evidence of the cost of general cleaning has been provided and the fee in the fee column of the tenancy agreement is \$30.00 and the landlord claims \$100.00. More importantly, a landlord may not charge such non-refundable fees according to the *Residential Tenancy Act*, but may make a claim for damages if a landlord can establish that the tenant failed to leave the rental unit reasonably clean except for normal wear and tear. Further, and equally as important, the regulations to the *Act* state that a landlord must provide the tenant with at least 2 opportunities to complete the inspection, must use the approved form, and that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. In this case, the landlord and tenant emailed each other back and forth and the landlord was told on more than one occasion that the tenant could not be available due to the family's current illness. The landlord completed the condition inspection report in the absence of the tenant, and I am not satisfied that the landlord has established that the landlord has suffered the loss claimed for carpet cleaning and general cleaning costs.

The landlord has been partially successful with the application, and as such is entitled to recovery of the \$50.00 filing fee for the cost.

I further find that the landlord has established that although the tenancy agreement provides for a security deposit in the amount of \$420.00, the landlord has only received \$410.00, and I find that amount should be set off against the landlord's claim.

In summary, I find that the landlord has established a claim for unpaid rent in the amount of \$880.00 for the months of October and November, 2012, additional unpaid rent for December, 2012 to the date of re-renting in the amount of \$1,678.00, and recovery of the \$50.00 filing fee. The landlord's application for recovery of carpet cleaning and general cleaning is hereby dismissed. I order the landlord to keep the security deposit of \$410.00, and I grant the landlord a monetary order for the difference in the amount of \$2,198.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,198.00.

This order is final and binding on the parties and may be enforced.

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: April 02, 2013

Residential Tenancy Branch

