



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on January 31, 2013. The landlord confirmed that she received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on April 25, 2013. I am satisfied that both parties served one another with their respective hearing packages and their written evidence for this hearing in accordance with the *Act*.

Issues(s) to be Decided

Are either of the parties entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Which of the parties is entitled to obtain the tenant's security deposit? Is the landlord entitled to recover the filing fee for her application from the tenant?

Background and Evidence

This fixed term tenancy commenced on September 9, 2012 and was scheduled to end on March 31, 2013. Monthly rent was set at \$600.00, payable in advance on the first of each month, plus 25% of the utilities. The landlord continues to hold the tenant's \$300.00 security deposit paid on September 9, 2012.

The parties agreed that this fixed term tenancy ended on January 3, 2013, when the tenant vacated the rental unit. The tenant confirmed that she did not issue any type of written notice to end this tenancy until January 20, 2013, when she participated in a joint move-out condition inspection with the landlord and provided the landlord with her forwarding address in writing.

The tenant ended her tenancy within a few hours of the water hose connecting her toilet to the water supply in her bathroom bursting at 3:40 a.m. She testified that an immediate flood occurred and neither she nor her male friend were able to locate the water shut off valve. She provided sworn oral testimony and written evidence that she tried to call the landlord within a few minutes of her realizing that the connection between the water supply and the toilet was broken. When she could not reach the landlord immediately, she called 911 and was referred to a plumbing company. She testified that a private plumbing company attended the premises shortly thereafter at no charge to the tenant. Before the plumber arrived, her guest was able to locate the water shut off valve and turned off the water supply. She maintained that the plumber who attended told her that the toilet was not installed to comply with the building code.

The tenant testified that she cleaned up from the flood as best she could with towels, but decided to leave the rental unit as soon as possible due to her concerns about this situation, and vacated the rental unit by 6:00 a.m. In her written evidence, she provided the following explanation as to why she decided to end her tenancy so suddenly.

...We gathered up my stuff and moved out and made arrangements to stay elsewhere. This flood and no heat was the last straw, as I had to deal with in December 2012, an ongoing vermin in the suite. I informed (the landlord) that I spotted a mouse and its droppings were everywhere...

The tenant testified that it was "probably not appropriate to move out in three hours" without giving any form of notice to the landlord. Although the tenant had made arrangements with her male friend who was in attendance in her rental unit on the night of January 2-3, 2013 to provide sworn testimony with respect to what happened that night, the landlord did not dispute that the tenant's male friend would likely give a similar account as that provided in sworn testimony by the tenant. Since there is no dispute

that the tenancy ended within a few hours of the flooding incident of January 3, 2013, there was no need to hear sworn testimony from the tenant's witness.

The tenant's application for a monetary award of \$900.00 was for a return of her last month's rent of \$600.00 for January 2013 and a return of her \$300.00 security deposit.

The landlord provided a very different account of the circumstances leading to the tenant's hasty exit from the rental property. The landlord testified that the tenant told her in December 2012 that she wanted to end her fixed term tenancy early due to a mouse that the tenant saw in the rental unit. The landlord supplied written evidence to support her assertion that she had tried to address the rodent issue raised by the tenant. The landlord asserted that the tenant and her male friend had planned to orchestrate the flooding problem on the night of January 2, 2013, and that the tenant and her friend purposefully broke the water connection to the toilet, causing the flood that the tenant cited as her reason for ending her tenancy early. The landlord testified that her husband rushed to the premises as soon as the landlord and her husband received the tenant's claim that the pipe had burst. The landlord said that her husband was in the rental unit by 5:30 a.m. on January 3, 2013. By that time, the tenant had already vacated the rental unit, leaving a considerable mess behind for the landlord to clean. The landlord maintained that the tenant vacated the rental unit by 4:30 a.m., within an hour of placing her first call to the landlord. The landlord also testified that she had called the plumbing company that allegedly attended the rental unit before her husband got to the site. She alleged that the plumbing company had no record of sending anyone to the rental unit that night. The landlord noted that the tenant had not produced an invoice for any service call made by the plumbing company that night and the plumbing company assured her that they do not provide free plumbing services on emergency late night service calls. The landlord also claimed that the shut off valve is readily available and questioned the tenant's account of the events of January 3, 2013.

The landlord's application for a monetary award of \$826.41 included the following items listed in the landlord's written evidence:

Item	Amount
NSF Cheque Fee for January 2013	\$45.00
Cleaning	100.00
Liquidated Damages Fee	400.00
Unpaid Hydro (Pro-Rated from November 21, 2012 until January 3, 2013)	99.85
Unpaid Water Bill (Pro-Rated from October 24, 2012 until January 3, 2013)	35.28

Carpet Cleaning	144.48
Light Bulb	2.00
Total of Above Items	\$826.61

Analysis

I find no merit whatsoever to the tenant's application for a monetary award for losses arising out of this tenancy. The tenant ended her fixed term tenancy within a few hours and did not give the landlord any meaningful chance to correct or repair the problems caused by the flooding incident of January 3, 2013. In dismissing the tenant's application for a monetary award for her last month's rent without leave to reapply, I find the tenant's application significantly lacking in all respects. Based on the evidence before me and on a balance of probabilities, it seems very unlikely to me that a private plumbing company would agree to provide a free service call to a tenant on an emergency basis during the middle of the night as the tenant has claimed. I also find it more likely than not that the tenant was planning to end this tenancy early, as the landlord has claimed.

Turning to the landlord's claim, I find that the Residential Tenancy Agreement (the Agreement) called for the application of a \$45.00 NSF cheque fee if there were insufficient funds in an account to honour one of the tenant's monthly rent cheques. The landlord provided undisputed evidence that her bank charged her account for the tenant's NSF cheque. As such, I find that as per the terms of the Agreement, the landlord is entitled to a monetary award of \$45.00 for the tenant's NSF cheque.

I am satisfied that the landlord was not paid for the tenant's share of the water and hydro bills pro-rated for the period when she occupied the rental unit. I allow the landlord a monetary award of \$35.28 for an unpaid water bill and \$99.85 for an unpaid hydro bill for the last portion of this tenancy.

Section 5 of the signed Agreement established a \$400.00 liquidated damages charge if the tenant were to vacate the rental unit prior to the scheduled end date for this fixed term tenancy. As I find that the tenant has not demonstrated that she had any valid reason to end this fixed term tenancy early, I find that the landlord is entitled to the \$400.00 liquidated damages charge contained in the Agreement. The landlord has established that she did try to mitigate the tenant's losses for the remaining period of the fixed term tenancy agreement by placing advertisements on two popular rental websites and conducting a number of showings to prospective renters during the month of January 2013. The landlord's efforts led to her January 20, 2013 re-rental of the premises to another tenant who took occupancy as of February 1, 2013, for the same rent as that paid by the original tenant. Had the landlord been unable to mitigate the

tenant's losses by re-renting the premises to another tenant for February 1, 2013, the tenant would also have been responsible for the landlord's loss of rent for February 2013 and possibly March 2013.

Based on the undisputed photographic evidence and sworn testimony of both parties, I accept the landlord's claim that she incurred at least \$100.00 in cleaning costs to prepare these rental premises for a new tenant. In considering this claim, I have also given regard to the signed joint move-in condition inspection report and the move-out condition inspection report entered into written evidence by the landlord.

I have reviewed the landlord's \$144.48 receipt for professional carpet cleaning that the landlord obtained at the end of this tenancy. Although the tenant did not deny that the carpets needed cleaning by the end of this tenancy, the tenant testified that the carpets were not clean when she moved in. She noted that this was reflected in a \$50.00 cleaning allowance that she was provided at the commencement of this tenancy. While the landlord did not dispute the tenant's testimony that the landlord did provide a \$50.00 cleaning allowance at the start of this tenancy, she provided oral and written evidence that the carpets were installed on May 30, 2012, shortly before this tenancy began. She testified that one tenant lived in the rental unit for one month in August 2012, before the tenant took occupancy of the rental unit on September 9, 2012.

As there is conflicting evidence with respect to the condition of the carpet at the commencement of the tenancy, I find that the best evidence available is the written evidence with respect to the carpets. Section 23 of the Agreement specifies that if the carpets are new, as was basically the case in this instance, "the tenant will pay for professional clearing at the end of the tenancy." I have also given regard to the signed joint move-in condition inspection report of September 9, 2012. At that time, the tenant signed the condition inspection report signifying that the carpets were in satisfactory condition at the beginning of her tenancy. Under these circumstances, I find that the landlord is entitled to recover her \$144.48 cost of having the carpets professionally cleaned at the end of this tenancy.

I also allow the landlord's undisputed claim for recovery of the \$2.00 cost of replacing a light bulb in this rental unit.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

As the landlord has been successful in her application, I allow her to recover her filing fee for her application from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover losses and damage arising out of this tenancy, and her filing fee and to retain the tenant's security deposit:

Item	Amount
NSF Cheque Fee for January 2013	\$45.00
Cleaning	100.00
Liquidated Damages Fee	400.00
Unpaid Hydro (Pro-Rated from November 21, 2012 until January 3, 2013)	99.85
Unpaid Water Bill (Pro-Rated from October 24, 2012 until January 3, 2013)	35.28
Carpet Cleaning	144.48
Light Bulb	2.00
Less Security Deposit	-300.00
Filing Fee	50.00
Total Monetary Order	\$576.61

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the tenant's application without leave to reapply.

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: May 07, 2013

Residential Tenancy Branch

