



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wertman Hill Investments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for unpaid rent or utilities – Section 67;
3. A Monetary Order for compensation for loss – Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on March 1, 2012 on a fixed term to February 28, 2013. The tenancy ended on February 27, 2013. Rent of \$1,125.00 was payable monthly and at the outset of the tenancy the Landlord collected \$562.50 as a security deposit and \$562.50 as a pet deposit. The Parties mutually conducted a move-in inspection and report.

The Landlord states that the Tenant failed to attend a move-out inspection. The Landlord states that he is not sure when or how the inspections were offered to the Tenant as this was taken care of by the Landlord's managers (the "Managers"). The Landlord provided a copy of an email dated March 9, 2013 from the Managers in relation to the claims being made. The Landlord states that as the building was sold the Managers were no longer the Landlord's employees and for that reason did not call these persons as witnesses. The Landlord filed a copy of a move-in and move-out report. The move-out report indicates that an inspection was done on February 27, 2013 however no items are marked as damaged or unclean and the report is not signed by either Party. The Managers' email does not make any mention of inspections. The Tenant states that the unit was cleaned at move-out and that the Managers attended the unit on February 27, 2013 and told the Tenant that they were happy with the condition of the unit. The Tenant states that the Managers did not mention anything about a move-out inspection report.

The Landlord states that the Tenant's forwarding address in writing was received sometime around the middle of March 2013 and that as soon as it was received the Landlord made the application. The Tenant states that the forwarding address was provided by email at the beginning of March 2013 and was also dropped off at the Landlord's office on March 6, 2013.

The Landlord states that the Tenant failed to clean the carpets and claims \$95.00 for the cost of cleaning the carpet. The Landlord did not provide a receipt for this cost and the Managers' email notes that the cost of cleaning the carpet was discussed with the Tenant. The Tenant states that at move-in the Managers had wanted to change the carpets but that since the Tenant had pets the Managers told the Tenant that the carpet would be changed instead at the end of the tenancy. The Tenant stated that she therefore did not have to clean the carpets. The Tenant states further that the Managers cleaned the carpets themselves on February 5, 2013 as the Tenant's large furniture had been moved out by this time and because the Managers were showing the

unit to prospective tenants. The Tenant states that the Managers did not inform the Tenant of any cost for this cleaning.

The Landlord states that the Tenant failed to give 30 day's written notice and claims lost rental income of \$1,125.00. The Landlord states that the unit was advertised as soon as notice was received for immediate occupancy, that the unit was shown in February 2013 and that a new tenant was not found until April 1, 2013. The Parties agree that the Tenant gave her verbal notice on February 2, 2013. The Tenant states that the Managers started showing the unit by February 3, 2013 to prospective tenants and that the Tenant was moved out of the unit on February 10, 2013. The Tenant states that she returned to clean the unit on February 27, 2013.

The Landlord states that in February 2013 the Tenant's electricity was disconnected and that the Tenant used the buildings electrical supply with cords into the unit. The Landlord claims \$50.00 to reconnect the electricity and \$15.00 as the estimated cost of the buildings supply of electricity to the unit over the month of February 2013. The Landlord did not provide a bill or invoice for the reconnection cost and states that the amount claims for the cost of supplying electricity to the unit is an estimated cost. The Landlord also claims \$4.04 for unpaid electricity costs on the Tenant's unit for February 2013 and provided the bill for this amount. The Tenant states that the electricity was disconnected as they had moved out of the unit and that it was the Landlord's idea to use the buildings power supply in order to show the unit to prospective tenants. The Tenant states that the amount claimed is not within range of what the unit would have used for electrical costs as the Tenant's bill was only \$40.00 for two months.

The Landlord states that the Tenant failed to return a building key and claims \$40.00. The Manager's email indicates that the Tenant obtained an extra building key during the tenancy for which \$40.00 was paid. The Tenant states that all keys to the unit were returned.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Whether the carpets were cleaned by the Landlord themselves in early February 2013 or not, the Tenant is responsible to ensure that carpets are regularly maintained and to be in reasonably clean condition at the end of the tenancy. Given the Manager's email and considering the reasonably expected cost claimed for cleaning the carpets I find on a balance of probabilities that the Landlord has substantiated an entitlement to **\$95.00**.

Based on the evidence of the Tenant and not disputed by the Landlord, I find that the unit was advertised and shown to prospective tenants by February 3, 2013. As the Landlord immediately acted on the verbal notice of the Tenant to end the tenancy by advertising and showing the unit, I find that the Landlord accepted the verbal notice of the Tenant. Further based on the evidence of the showing of the unit, I do not find that the lack of two days notice caused the unit to not be rented. As a result, I find that the Landlord has not substantiated on a balance of probabilities that the Tenant caused any lost rental income and I dismiss this claim.

Based on the undisputed evidence that the Tenant cleaned the unit and returned the keys on February 27, 2013, I find that the Tenant effectively had use and occupation of the unit until that date and is responsible for the use of electricity to that unit, particularly to show the unit to prospective tenants. Accepting the Landlord's estimate of cost of electricity as a reasonably expected cost, I find that the Landlord has substantiated an entitlement to **\$15.00**. Based on the undisputed evidence of the Landlord and given the receipt for the unpaid hydro to the unit, I find that the Landlord has substantiated an

entitlement to **\$4.04**. As the Landlord did not provide a bill for the \$50.00 reconnection fee, I dismiss this claim.

Based on the Landlord's evidence that an extra building key was paid for by the Tenant and one building key was not returned, I find that, even if the Tenant did not return one building key, the Tenant has not caused the Landlord any loss as the cost was already covered when the extra key was paid for. I therefore dismiss this claim.

As the Landlord's application has been somewhat successful, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$164.04**. I order the Landlord to deduct this amount from the combined security and pet deposit of **\$1,125.00** plus zero interest and to return the remaining **\$960.96** to the Tenant forthwith.

Conclusion

I Order the Landlord to retain the amount of \$164.04 from the security deposit plus interest in the amount of \$1,125.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$960.96**. If necessary, this order may be filed in the Small Claims Court and enforced 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: June 12, 2013

Residential Tenancy Branch