



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 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 a Monetary Order for unpaid rent or utilities; 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 tenant for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for;
 1. Damage to the unit site or property
 2. For unpaid rent or utilities
 3. For money owed or compensation for damage or loss?
- Are the landlords entitled to keep the tenants security and pet deposits?

Background and Evidence

The parties agree that this tenancy started on July 01, 2011 for a fixed term of one year. The tenancy reverted to a month to month tenancy at the end of the fixed term. Rent for this unit is \$1,050.00 per month due on the 1st day of each month. The tenant paid a security deposit of \$525.00 and a pet deposit of \$525.00 at the start of the tenancy. The tenancy ended on March 31, 2013. The parties attended a move in and move out inspection of the unit and the landlord received forwarding address on March 31, 2013.

The landlord testifies that the other tenant named on the tenancy agreement vacated the rental unit and the tenant was permitted to get a roommate. This roommate paid rent of \$525.00 to the landlord on March 01, 2013; however, the balance of the rent was not paid. The tenant indicated that he would vacate the rental unit. The landlord testifies that the tenant's roommate also vacated the rental unit. The landlord seeks to recover the unpaid rent of \$525.00 as this amount was never paid by the tenant.

The landlord testifies that the tenancy agreement notifies the tenant that a late fee will be applied to the tenants account if rent is late in any given month. The landlord therefore seeks to recover \$25.00 as a late fee from the tenant for March. The landlord testifies that the tenancy agreement indicates that the late fee is \$5.00 per day and the landlord has amended this claim to five days for the allowable \$25.00.

The landlord testifies that the tenant has signed to agree that rent is outstanding and concerning damages in the unit. The landlord testifies that these damages and cleaning were not completed in order to get the unit re-rented for April 01, 2013. The landlord testifies that the tenant also left many personal belongings in the unit. The tenant had agreed to return and collect these by April 08, 2013 which further delayed the landlord being able to re-rent the unit for April 01, 2013. The tenant did not collect his belongings and the landlord had to store these in three storage lockers on the site which were lockers for other tenants. The landlord therefore seeks to recover a loss of rent for the first 15 days of April, 2013 to an amount of \$525.00. The landlord testifies that the unit

was advertised for rent from April 01, 2013 however it was not re-rented until May 11, 2013.

The landlord testifies that the tenant left two televisions in the unit and a dryer along with an assortment of other items. The tenant was asked to remove these items but told the landlord they were too heavy to move and the tenant would return by April 08, 2013 to remove them. The tenant failed to return and the items were removed by the landlord with the assistance of two other men. The landlord has provided an inventory of all the tenants belongings left in the unit. The landlord testifies that as he had no way of knowing what the tenant wanted to do with these items and calculated the items as having a value above \$500.00 the landlord states he was obliged to store these abandoned belongings. The landlord testifies that the original claim for storage costs was \$1,040.00 however the landlord has revised this claim after receiving some evidence from the tenant from a storage company showing the size of a storage locker. The landlord therefore seeks to recover a reduced amount of \$790.00 as each of the three storage sheds were equal in size to the storage locker the tenant could have rented. The landlord seeks guidance as to what the tenant wants the landlord to now do with his belongings as they have now been stored for over 60 days.

The landlord seeks an amount of \$60.00 for his time and the time for a friend to help the landlord remove the tenant's televisions and other items from the unit. The landlord testifies that his wife had to clean the unit and the landlord seeks to recover the amount of \$96.00 for this work. The landlord testifies that the tenant had two cats and an unauthorised dog in the unit and failed to have the carpets professional cleaned. The landlord seeks to recover the amount of \$89.00 for carpet cleaning. The landlord also seeks to recover \$120.00 for paintings areas of the unit after repairs were made to the walls and damage to some other doors that required filling, sanding and painting. The tenant had screwed in a chin up bar in a door frame and 18 screws had been put in a bedroom wall to hang baseball caps The landlord seeks a further \$87.00 for damage caused to doors and a door casing from an unauthorised dog which caused damage to these areas. The landlord testifies that the tenant caused damage to some blinds and

seeks to recover the amount of \$105.00 to replace the blinds which were only a year old. The landlord testifies that the unit had been painted just prior to this tenancy commencing. The landlord seeks to recover the sum of \$140.00 paid to a junk removal company to remove garbage to the dump. The landlord testifies that the tenant signed a sheet agreeing to pay the estimated costs of repairs; however many of these actual costs came in higher.

The landlord seeks to keep the tenants security deposit of \$525.00 and pet deposit of \$525.00 in partial satisfaction of the landlords claim. The landlord testifies that the tenant gave a partial forwarding address on March 03, 2013 and the landlord obtained the rest of the address from the tenant's new landlord.

The tenant agrees that he owes rent for March of \$525.00. The tenant disputes the landlords claim for a loss of rental income for the first 15 days in April of \$525.00. The tenant testifies that the landlord could have re-rented the unit for April 01, 2013 because the landlord had completed the painting by then as shown by the landlords receipts provided in evidence from the painter dated March 31 and April 01, 2013. The tenant testifies that the landlord did an initial walkthrough of the unit on March 03, 2013 after the tenant gave the landlord written notice to end the tenancy at the beginning of February, 2013. The tenant testifies that the unit was 'move in ready' and the landlords' advertisement is dated April 05, 2013. The tenant agrees that he did leave some belongings in the unit but these should not have prevented the landlord re-renting the unit. The tenant testifies that he took photographs of the unit on March 31, 2013 showing that the rooms were all clear with the exception of one television. The tenant argues that the landlords' photographs were taken on March 03 before the tenant had cleaned the unit.

The tenant disputes the landlords claim for the cost of damages and cleaning. The tenant testifies that he only signed to agree to the landlords estimated costs so it would give the tenant an idea of what work was required. The tenant testifies that the landlord did not give the tenant the opportunity to clean the carpets and wanted them

professional cleaned by a company of the landlords choosing. The tenant testifies that his photographic evidence shows the unit was clean and the landlord has no evidence to show it was left dirty. The tenant testifies that the landlord would not let the tenant make the repairs to the drywall even though the tenant drives a truck for a drywall company. The tenant does not dispute the landlords claim for the replacement blinds.

The tenant disputes the landlords claim for \$60.00 to remove the televisions and other items from the unit. The tenant agrees that the landlord had asked the tenant to remove these items however the tenant testifies that he could not get a truck at the time to do this and the items were too heavy to move on his own. The tenant testifies that he did not expect the landlord to store his belongings and states the stored items properly have a value of under \$500.00. The tenant agrees at the hearing that the landlord may dispose of all stored items belonging to the tenant. The tenant disputes the landlords claim for storage but agrees to pay two months worth of storage costs.

The landlord argues that the advertisement went in the paper prior to April 05, 2013 as that was the date the landlord had a response to the advertisement and the unit was shown to prospective tenants. The landlord argues that the tenant did not give notice to end the tenancy until February 28, 2013 and had stated that both the tenant and his roommate were moving out. The landlord argues that the dates shown on the painter's receipt were backdated as the painter is another tenant of the landlords and his fees were being offset against his rent. The landlord testifies that the bathroom walls and ceiling were fixed prior to the tenant moving out and the remainder of the work was completed in the first week of April with the clean up and carpet cleaning completed by April 06, 2013.

The landlord's wife testifies that the tenants pictures have been carefully taken and do not show the damage caused by the chin up bar, the dirty oven or the walls in the living room. The pictures of the bedroom do not show the holes in the wall or pictures of the holes in the doors. The landlord's wife testifies that some of their pictures were taken on March 03, 2013 however some were also taken after the tenant moved out on March

31, 2013 as shown due to evidence in the picture of the laundry room showing the tenants dryer in that location..

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the Act 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.

The tenant agrees that he owes rent for March of **\$525.00** therefore I find in favour of the landlords claim, to recover this amount from the tenant.

With regards to the landlords claim for a loss of rental income for 15 days in April; I refer the parties to the Residential Tenancy Policy Guidelines #3 which states, in part, that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

The tenant gave notice to end the tenancy sometime in February, 2013 and the landlord did a preliminary inspection of the unit on March 03, 2013 to determine what damages would require repair. The landlord did some work prior to the end of the tenancy and most work was completed by April 06, 2013. The tenant did however leave a substantial amount of belongings in the unit after vacating which the landlord also had to deal with and waited upon the tenant to return to collect these items by April 08, 2013. The tenant argues that this would not have prevented the landlord re-renting the unit and from the photographs provided by the tenant showing areas of the unit as 'move in ready' I would have to agree. However, as some of the work, for example the repairs, cleaning and the

carpet cleaning could not be completed until April 06, 2013 this would prevent the landlords renting the unit for April 01, 2013 and as such I must find in favour of the landlords claim for a loss of rental income for the first 15 days in April, 2013 to the sum of **\$525.00** as it is often difficult to rent a unit in the middle of the month.

With regard to the landlords claim for a late fee of \$25.00; the *Act* provides for a fee of this amount to be charged to a tenant if the tenant has been notified of this charge in the tenancy agreement. The tenancy agreement actually mentions a charge of \$5.00 per day for late fees however as the landlord has testified he now realizes that he could only charge \$25.00 per month the landlord limited the charge to five days. I therefore find in favour of the landlords claim for **\$25.00** for a late fee.

With regards to the landlords claim for cleaning; the tenant argues that the unit was left clean as shown in the tenant's pictures and argues that the landlords' pictures were taken on March 03, 2013 prior to the tenant cleaning the unit. However, I have also taken into consideration the move out condition inspection report completed in the presence of the tenant on March 31, 2013 which does indicate many areas of the unit as dirty. I therefore uphold the landlords claim for cleaning of **\$96.00**.

With regard to the landlords claim for painting, door and door casing damage, garbage removal, damaged blinds and carpet cleaning. I find the tenant did agree to pay the estimated costs for this work, I further find the move out inspection reports and detailed damages sheet provided by the landlord in evidence provides corroborating evidence that this work was required. A landlord must meet a test for damage or loss claims to determine if the tenant is responsible for this damage. As the tenant agreed to the estimated costs I find the tenant agrees that he is responsible for this damage. The landlord has provided the invoices for the actual costs to rectify the damage and although the tenant argues that the landlord did not give the tenant the opportunity to make the repairs or clean the carpets himself the tenant could have still remedied this prior to the inspection but failed to do so. I therefore find in favour of the landlords claim for a total amount of **\$601.00**

With regards to the landlords claim for storage costs; The landlord has reduced his claim from \$1,040.00 to \$790.00 to reflect what a storage company would have charged the tenant in the event the tenant had stored his belongings himself. When a tenant abandons personal belongs in a rental unit a landlord is required to store those belongings for a period of 60 days if the landlord feels the belongings have a value that exceeds \$500.00. The landlord testifies that as he was uncertain as to the value of the tenant's belongings he did not want to run the risk of disposing of them when the tenant failed to collect them by April 08, 2013. I find from the inventory provided and the photographic evidence that the landlord was correct in storing these items for the tenant. The Residential Tenancy Regulations part 5 states that a landlord may claim for the reasonable costs of removing and storing the tenants belongings and may dispose of them in accordance to s. 29 of the Regulations. As the tenant has stated that he no longer wants the belongings and the landlord may dispose of them I find the landlord is entitled to his costs to remove and store the belongings and may now dispose of them in accordance with s. 29 of the regulations. I find the amount charged by the landlord to be reasonable and therefore find in favour of the landlords claim for **\$790.00** plus a further **\$60.00** for the removal of these items from the rental unit.

I Order the landlord to retain the tenants security and pet deposit to an amount of **\$1,050.00** in partial satisfaction of the landlords claim pursuant to s. 38(4)(b) of the *Act*.

I further find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary order has been issued to the landlord for the following amount, pursuant to s. 67 of the *Act*:

Unpaid rent for March	\$525.00
Loss of rent for April	\$525.00
Late fee	\$25.00
Damages and cleaning	\$697.00
Storage and removal costs	\$850.00
Subtotal	\$2,622.00

Less security and pet deposits	(-\$1,050.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$1,622.00

Conclusion

I HEREBY FIND in favor of the landlord's revised monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$1,622.00. 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: July 10, 2013

Residential Tenancy Branch

