



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of a conference call in response to an application made by the landlord for a Monetary Order for: unpaid rent or utilities; damage to the unit, site or property; to keep all or part of the pet damage or security deposit and to recover the filing fee for the cost of this application from the tenant.

The landlord served the tenant with a copy of the application and the Notice of Hearing documents by registered mail. The landlord provided the Canada Post tracking number and the tenant confirmed receipt of the documents. Based on this, I am satisfied that the tenant was served the paperwork in accordance with the Residential Tenancy Act (referred to as the 'Act').

The landlord and the tenant appeared for the hearing. The landlord provided documentary evidence in advance of the hearing which was served to the tenant and both parties gave affirmed testimony during the hearing. All of this was carefully considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent for June, 2013?
- Is the landlord entitled to a monetary order for damages to the rental suite?
- Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

Both parties agreed that the tenancy started in July, 2009 on a month to month basis. Rent was payable by the tenant on the first day of each month in the amount of \$950.00. The tenant paid a \$475.00 security deposit before this date, which the landlord still retains. The tenant testified that the landlord holds a pet damage deposit but could

not provide any evidence of this. No move-in or move-out inspection report was completed or provided by the landlord as evidence for this hearing. A tenancy agreement was completed but again this was not provided as evidence.

The landlord testified that the tenant verbally told the landlord that she would be moving-out by June 2, 2013. However, no written notice was provided by the tenant. The landlord stated that he was unsure as to the exact date the tenant left but was able to re-rent the unit for the following month of July, 2013. As a result, the landlord claims only \$728.00 for unpaid rent relating to the month of June, 2013 because the landlord wanted to give the tenant some compensation because the rental unit had not been fully decorated at the start of the tenancy.

The landlord also claims \$160.00 for unpaid utilities. The landlord testified that the tenant was responsible for utilities in the amount of \$160.00. In support of this claim the landlord presented a document titled '2013 Property Tax Notice.' The landlord referred to a highlighted portion which the landlord claims to show that the tenant is in utilities arrears. However, the document does not specifically state that the amount owing is due to utility arrears but due to unpaid tax arrears under a utilities subheading on the document.

In relation to the landlord's claims for damages from the tenant, the landlord testified and presented the following evidence.

- \$200.00 labour costs associated with removing garbage and mattresses left by the tenant from the yard, mowing the lawn and cleaning the blinds. The landlord provided photographs showing a male from a professional company mowing the lawn which was about one foot high, photographs of garbage strewn around the yard and deposited by the back door and photographs of the damage to the blinds. The landlord also provided a document from the City Bylaw Enforcement Division which warned the landlord to remove unsightly garbage and debris from the rear yard. This letter was dated December 20, 2011 and the landlord notes on this letter that the tenant removed the debris on January 3, 2012.
- \$70.00 for the replacement of a blind which the landlord claimed the tenant damaged. The landlord provided photographs of the damage caused to the blind; however, no receipt was provided for the cost of the blinds.
- \$35.00 for the cost of replacing a door which the landlord claimed the tenant had broken. The landlord provided photographs showing damage to the door and wall caused by the tenant continually banging the door into the wall. However, no receipt was provided for the cost of the door. The landlord also referred to a letter

dated October 17, 2013 which he sent to the tenant asking for the master bedroom door and bathroom door to be replaced as well as the hole created by the door banging into the wall to be repaired.

- \$30.00 cost for dump fees which the landlord claims he incurred as a result of having to dispose of two discarded mattresses left by the tenant on the property at the end of the tenancy. The landlord provided photographs of these mattresses but did not submit a receipt for the cost incurred for disposal.

The tenant testified that she gave the landlord verbal notice on May 14, 2013 and left the tenancy on June 15, 2013, giving one month's notice. However, this was not provided to the landlord in writing.

The tenant testified that when she left the tenancy she had paid all the utilities up until June 15, 2013 and that the landlord was trying to get her to pay his taxes.

In relation to the damages claimed by the landlord the tenant stated that the rental suite was uninhabitable from the start of the tenancy; the driveway was collapsing and the yard had been left at the end of the tenancy in the state that it was received. The tenant stated that the conditions of the blinds were in a bad state from the start of the tenancy and that if the landlord wanted to replace these blinds it certainly would not have cost \$70.00. The tenant denied causing damage to the blinds. The tenant testified that she got a new door for the landlord to install.

In relation to the dump fees claimed by the landlord the tenant testified that she hired three giant green bins which she used to remove garbage from the property. The tenant denied leaving any mattresses on the property stating that they did not belong to her and denied leaving garbage outside the property shown in the photographs.

Analysis

Section 45 (1) of the *Act* states that if a tenant ends a periodic tenancy, which this tenancy was, the tenant is required to give one full rental months written notice to the landlord.

The tenant testified that she gave the landlord one month's notice on May 14, 2013. Therefore the earliest that the tenant could have left was on the last day of June, 2013 after paying June, 2013 rent and not on June 15, 2013. The tenant also failed to give the landlord written notice to enable the landlord to mitigate any loses as required by the *Act*. As a result, I find that the tenant was liable for June, 2013 rent. As a result, I award the landlord claim of \$728.00 for unpaid rent.

In relation to the landlord's monetary claim for the unpaid utilities, I dismiss this portion of the claim as the evidence provided by the landlord in the landlord's property tax invoice does not show the \$160.00 amount specifically relating to unpaid utilities. I am also not satisfied for which utilities the amount relates to. There is also insufficient evidence to show which period the amount claimed relates to and whether the tenant is responsible for these periods, as the tenant testified that she had paid all her utility bills.

In relation to the remaining portion of the landlord's claim for damages to the rental unit, in this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlord failed to complete a move-in and move-out condition inspection report which would have been vital in proving the damages claimed by the landlord and that they did not exist at the start of the tenancy, as claimed by the tenant. The landlord testified that the rental unit was still in the process of decoration at the time the tenant moved in, so I cannot be satisfied as to whether the damages claimed by the landlord were already in existence at the start of the tenancy or what damages existed at the end of the tenancy. As a result, I dismiss the portion of the cleaning costs associated with the landlord's claim of \$200.00, as there is insufficient evidence of this.

Furthermore, the landlord failed to provide sufficient evidence to verify the actual monetary amount of the losses he claims, namely receipts for the doors, blinds and dump fees as well as evidence of the professional cost of mowing the lawn. I have also not taken into consideration the letter from the city bylaw department as evidence of garbage left behind by the tenants at the end of the tenancy, as this document only shows that there was garbage and debris at the rear of the garden on December 20, 2011, which the landlord notes was cleared the following month; this is not sufficient evidence to show that the debris in the photographs provided by the landlord was a result of the tenant's action at the end of the tenancy, as the tenant denied this in her testimony. Based on this, I dismiss the landlord's remaining application for damages to the rental unit as the landlord has failed to meet the burden of proof as documented above.

As the landlord has been successful in proving his claim for unpaid rent, the landlord is entitled to recover from the tenant the \$50.00 filing fee for the cost of this application

pursuant to Section 72 of the *Act*. Therefore, the total amount payable by the tenant to the landlord is \$778.00. As the landlord already holds a \$475.00 security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the *Act*. As a result, the landlord is awarded \$303.00.

Conclusion

For the reasons set out above, I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$303.00**. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) 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: October 24, 2013

Residential Tenancy Branch

