



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF SS

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for a monetary order for damage to the unit, site or property, authority to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for unpaid rent or utilities, to serve documents or evidence in a different way than required by the *Act*, and to recover the filing fee.

The landlord and an agent for the landlord, SM (the "agent") appeared at the teleconference hearing and gave affirmed testimony. The hearing process was explained to the landlord at the start of the hearing and the landlord was provided the opportunity to ask questions about the hearing process.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The agent testified under oath that the Notice of Hearing was served on the tenant personally on July 24, 2013 at 6:33 p.m. at the tenant's place of business, CS. The agent stated that he identified himself, and the tenant then identified himself as the tenant, DT. The agent stated that the tenant was polite and accepted the Notice of Hearing package which included evidence. Based on the above, I find the tenant was personally served in accordance with the *Act* on July 24, 2013 at the tenant's place of business, CS.

Preliminary and Procedural Matters

The landlord applied to serve documents or evidence in a different way than required by the *Act*. I find that the landlord's agent personally served the tenant and as such, an order for substituted service is not required. Therefore, I dismiss this portion of the landlord's claim as it is moot given that I have made a finding that the tenant was

personally served with the Notice of Hearing and evidence on July 24, 2013 by the landlord's agent.

During the hearing, the landlord verbally requested permission to have the tenant's business, CS, added as a respondent to the landlord's application. The landlord's request was denied as this tenancy relates to a residential tenancy and not a commercial tenancy.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A copy of the fixed term tenancy agreement was submitted in evidence. A one year fixed term tenancy agreement began on April 1, 2012 and was scheduled to end on March 31, 2013. Monthly rent in the amount of \$1,800.00 was due on the first day of each month. A security deposit of \$900.00 was paid at the start of the tenancy which the landlord continues to hold.

The landlord stated that the tenant had vacated the rental unit by January 31, 2013. The landlord stated that an order of possession had been granted to the landlord effective January 31, 2013 from a previous hearing held on December 10, 2012, the file number of which has been referenced on the cover page of this Decision for ease of reference.

The landlord original applied for a monetary claim in the amount of \$5,994.09 which was reduced to \$5,984.77 by the landlord during the hearing. As a reduction in the monetary claim does not prejudice the tenant, the landlord was permitted to reduce their monetary claim to the following during the hearing:

Item 1. January 2013 unpaid rent due to a stop payment placed on the tenant's rent cheque by the tenant	\$1,800.00
Item 2. Bank fees related to the returned cheque listed in #1 above.	\$8.50
Item 3. Loss of February 2013 rent due to condition of rental unit	\$1,800.00
Item 4. Unpaid gas utilities	\$993.00

Item 5. Damages to rental unit	\$271.59
Item 6. Cleaning of rental unit	\$750.00
Item 7. Carpet cleaning	\$127.68
Item 8. New exterior door locks	\$224.00
Item 9. Waste disposal fee	\$10.00
TOTAL	\$5,984.77

Regarding items #1 and #2 above, the landlord stated that the tenant placed a stop payment on the rent cheque issued by the tenant for the month of January 2013. The landlord testified that he was charged bank fees in the amount of \$8.50 due to the returned cheque and that \$1,800.00 remains outstanding for unpaid rent for January 2013 as a result. The landlord referred to Exhibit "I" and "J" in the landlord's evidence as support of this portion of his claim. Exhibit "I" is a statement of bank fees which total \$8.50. Exhibit "J" is a copy of the tenant's cheque dated January 1, 2013, stamped "Item Dishonored" on the colour copy of the cheque.

Regarding item #3 above, the landlord testified that the tenant vacated by January 31, 2013; however, failed to return the rental unit keys, and left personal items and garbage behind in the rental unit, and left the rental unit in a dirty condition. The landlord stated that due to the condition of the rental unit, the landlord was not able to rent the rental unit for the month of February 2013 and therefore, suffered a loss of February 2013 rent in the amount of \$1,800.00. The landlord was able to re-rent the rental unit effective March 1, 2013 to new tenants.

The landlord submitted 31 colour photographs in support of this portion of his claim, which the landlord stated showed the rental unit condition at the end of the tenancy. The landlord also submitted a list on page 16 of the evidence, related to the cleaning cost described later in this decision, as support that the rental unit was not left in a "reasonably clean" condition as required by the *Act*.

Regarding item #4 above, the landlord referred to the tenancy agreement which did not include heat as part of the tenancy agreement. The landlord has claimed a total of \$993.00 in gas utilities over a period of nine months and submitted invoices for gas utilities in evidence. The landlord testified that the size of the rental unit, a basement suite, is approximately 1,800 square feet of a home that is 4,400 square feet in size. The landlord confirmed that he does not use an agreed upon percentage amount of utilities or an agreed upon dollar amount, instead, the landlord charges the tenant based on his "observations" of the tenant's behaviour and that he "apportions accordingly"

based on his observations of the tenant while taking into account the outside temperature such as a “cold spring” as stated by the landlord. The landlord submitted other documentary evidence related to this portion of this claim; however, confirmed that he did not have the tenant agree in writing to what the tenant’s portion of the gas utility bills would be at the start of the tenancy.

Regarding item #5 above, the landlord has applied for \$271.59 for damages to the rental unit caused by the tenant, comprised of two sub-items, a kitchen faucet in the amount of \$100.79, and four window blinds in the amount of \$170.80. The landlord submitted two receipts and photos in evidence to support this portion of his claim. The landlord submitted in evidence a photocopy of a response from a blind installer dated May 12, 2012 where the blind installer, RR, writes that he installed new blinds after the suite was freshly painted in late March 2012. The landlord also submitted in evidence 31 photos of the rental unit which the landlord states shows the condition of the rental unit at the end of the tenancy including the kitchen faucet removed. In addition, the landlord referred to Exhibit “O”, a receipt for \$100.98 plus taxes for a total of \$113.10 for the kitchen faucet, and a receipt for the missing blinds dated February 20, 2013 in the amount of \$170.80 including taxes.

Regarding item #6, the landlord has claimed \$750.00 to clean the rental unit, comprised of 50 hours at \$15.00 per hour. The landlord submitted on page 16 of his evidence, a list of items that required cleaning including the following:

- “Clean scuff, dirt, drink and food marks and stains off walls and perform touchup painting
- Vacuum and wash floors
- Clean, disinfect and perform touchup painting in the bathroom
- Retighten bathroom faucets
- Clean oven and stove top
- Remove and dispose of food and then clean and disinfect refrigerator
- Attempt to repair broken kitchen faucet and then to purchase and install new faucet
- Clean all light diffusers and replace broken diffuser in the bedroom
- Clean clothes washer, which was stained with grease and grime
- Reinstall closet doors in bedroom that were removed and left by Tenant in living room
- Remove all garbage and Tenant’s unwanted personal items left behind in the suite
- Separate garbage, recyclables, and other debris for appropriate disposal

- Remove, transport, and dispose of numerous pieces of furniture, debris and unwanted items, recyclables, and garbage at [transfer station] and recycling stations
- Clean and vacuum cupboards and shelving throughout suite
- Wash windows inside and out
- Wash-down and remove debris from front and back door landings
- Time spent on various trips to purchase items..." [in need of repair or replacement]

[reproduced as written]

Regarding item #7, the landlord has claimed \$127.68 for carpet cleaning. The landlord stated that the carpets were dirty at the end of the tenancy and referred to Exhibit "R" in his evidence, a receipt which supports that \$127.68 was paid for carpet cleaning including taxes for a service call booked for February 12, 2013 at the rental unit.

Regarding item #8, the landlord has claimed \$224.00 for new exterior door locks due to the tenant failing to return the rental unit keys. The landlord referred to Exhibit "R" in his evidence which is a receipt from a lock company for an "after hours call out" and "rekey 4 locks" for a total of \$200.00 plus taxes for a total of \$224.00.

Regarding item #9, the landlord has claimed \$10.00 for a waste disposal fee related to the disposal of garbage left behind in the rental unit. The landlord referred to Exhibit "R" in his evidence, a receipt for \$10.00 from a waste disposal service dated February 17, 2013.

The landlord submitted a condition inspection report completed at the start of the tenancy dated April 1, 2012; however, the condition inspection report is not signed by the landlord or the tenant. The landlord testified that he did not complete a move-out condition inspection report with the tenant at the end of the tenancy.

Analysis

Based on the documentary evidence, oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Items #1 and #2 – The landlord testified that the tenant placed a stop payment on the rent cheque issued by the tenant for the month of January 2013. The landlord testified that he was charged bank fees in the amount of \$8.50 due to the returned cheque and that \$1,800.00 remains outstanding for unpaid rent for January 2013 as a result. Exhibit “I” is a statement of bank fees which total \$8.50. Exhibit “J” is a copy of the tenant’s cheque dated January 1, 2013, stamped “Item Dishonored” on the colour copy of the cheque.

Section 26 of the *Act* states that a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, **I find** that the tenant breached section 26 of the *Act*, by placing a stop payment on the rent cheque for the month of January 2013 in the amount of \$1,800.00. **I find** that the landlord has met the burden of proof and has established a claim of **\$1,808.50** for this portion of his claim, comprised of \$1,800.00 in unpaid rent for the month of January 2013, plus \$8.50 in banking fees due to the tenant’s dishonored rent cheque. The evidence provided supports that the banking fees are related to the bank returning the cheque to the landlord after the tenant placed a stop payment on the rent cheque for January 2013 which could not be cashed by the landlord.

Item #3 - The landlord testified that the tenant vacated by January 31, 2013; however, failed to return the rental unit keys, and left personal items and garbage behind in the rental unit, and left the rental unit in a dirty condition which resulted in the landlord not being able to rent the rental unit for the month of February 2013, resulting in a financial loss of \$1,800.00 for the loss of February 2013 rent. The landlord submitted 31 colour photographs in support of this portion of his claim, which the landlord stated showed the rental unit condition at the end of the tenancy. The landlord also submitted a list on page 16 of the evidence related to the cleaning costs described above as support that the rental unit was not left in a “reasonably clean” condition as required by the *Act*. The landlord also stated that the tenant failed to return the rental unit keys at the end of the tenancy, which will also be described later in this decision. Section 37 of the *Act* states Section 37 of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) **give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

[emphasis added]

Based on the above, **I find** the tenant breached section 37 of the *Act*, by failing to leave the rental unit in reasonable clean condition except for reasonable wear and tear, and that the tenant failed to return the rental unit keys to the landlord. I accept the landlord's undisputed testimony that the earliest that the landlord could re-rent the rental unit was for March 1, 2013, which the landlord did by finding new tenants who moved into the rental unit effective March 1, 2013. Therefore, **I find** the landlord has met the burden of proof for this portion of his claim and is entitled to compensation for loss of February 2013 rent in the amount of **\$1,800.00**.

Item #4 – The landlord referred the tenancy agreement which did not include heat as part of the tenancy agreement. The landlord has claimed a total of \$993.00 in gas utilities over a period of nine months and submitted invoices for gas utilities in evidence.

The landlord testified that the size of the rental unit, a basement suite, is approximately 1,800 square feet of a home that is a total of 4,400 square feet in size.

The landlord confirmed that he does not use an agreed upon percentage amount of utilities or an agreed upon dollar amount, instead, the landlord charges the tenant based on his “observations” of the tenant’s behaviour and that he “apportions accordingly” based on his observations of the tenant while taking into account the outside temperature such as a “cold spring” as stated by the landlord. The landlord submitted other documentary evidence related to this portion of this claim; however, confirmed that he did not have the tenant agree in writing to what the tenant’s portion of the gas utility bills would be at the start of the tenancy.

Section 6(3)(c) of the *Act* states:

6 (3) A term of a tenancy agreement is **not enforceable** if

(a) the term is inconsistent with this Act or the regulations,

(b) the term is unconscionable, or

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

[emphasis added]

Based on the above, **I find** the landlord failed to make a clear agreement with the tenant at the start of the tenancy regarding a gas utilities term, and as a result, I am unable to enforce a term described by the landlord as his “observations” of the tenant and the outside weather, and the landlord “apportions accordingly” the gas utilities to be paid by the tenant. As a result, **I dismiss** this portion of the landlord’s claim without leave to reapply, as **I find** the term related to the gas utilities was not expressed in a clear manner. At the very least, the landlord should have indicated in writing on the tenancy agreement or in a tenancy agreement addendum, a percentage of gas utilities to be paid each month by the tenant, or a specific dollar amount so that the obligations were clear to both parties at the start of the tenancy and enforceable under the *Act*.

Item #5 - The landlord has applied for \$271.59 for damages to the rental unit caused by the tenant, comprised of two sub-items, a kitchen faucet in the amount of \$100.79, and four window blinds in the amount of \$170.80.

The landlord submitted in evidence a photocopy of a response from a blind installer dated May 12, 2012 where the blind installer, RR, writes that he installed new blinds after the suite was freshly painted in late March 2012. The landlord also submitted in

evidence 31 photos of the rental unit which the landlord states shows the condition of the rental unit at the end of the tenancy including the kitchen faucet removed. In addition, the landlord submitted two receipts, photos and referred to Exhibit "O" in his evidence, a receipt for \$100.98 plus tax for a total of \$113.10 for the kitchen faucet, and a receipt for the missing blinds dated February 20, 2013 in the amount of \$170.80 including taxes.

Based on the undisputed testimony of the landlord and the photographic evidence and receipts provided, **I find** the landlord has met the burden of proof for this portion of this claim and is entitled to compensation in the amount of **\$271.59** for damages related to the kitchen faucet and rental unit blinds. I have not included the cost of the kitchen faucet taxes as the landlord did not originally include that amount within the monetary claim in his application and I find that increasing the amount of that portion of the landlord's claim during the hearing would prejudice the tenant.

Item #6 - The landlord has claimed \$750.00 to clean the rental unit, comprised of 50 hours at \$15.00 per hour. The landlord submitted on page 16 of this evidence, a list of items that required cleaning which was described in details above. Based on the above, and consistent with my finding under Item #3 above, where I made a finding that the rental unit was not left in reasonably clean condition by the tenant, I accept the undisputed testimony of the landlord that he spent 50 hours at \$15.00 per hour to clean the rental unit so that the rental unit was in a reasonably clean condition so that new tenants could move in effective March 1, 2013. Therefore, **I find** the landlord has met the burden of proof and is entitled to compensation in the amount of **\$750.00**, comprised of 50 hours at \$15.00 per hour to clean the rental unit and dispose of the items left behind by the tenant in the rental unit.

Item #7 - The landlord has claimed \$127.68 for carpet cleaning. The landlord stated that the carpets were dirty at the end of the tenancy and referred to Exhibit "R" in his evidence, a receipt which supports that \$127.68 for carpet cleaning including taxes for a service call booked for February 12, 2013. I accept the undisputed testimony of the landlord that the carpets were left dirty by the tenant at the end of the tenancy, which is consistent with the photographic evidence of the rental unit, and the receipt for carpet cleaning in the amount of \$127.68. Based on the above, **I find** the landlord has met the burden of proof and is entitled to compensation in the amount of **\$127.68** for carpet cleaning.

Item #8 - The landlord has claimed \$224.00 for new exterior door locks due to the tenant failing to return the rental unit keys. The landlord referred to Exhibit "R" in his evidence which is a receipt from a lock company for an "after hours call out" and "rekey

4 locks” for a total of \$200.00 plus taxes for a total of \$224.00. As described under item #3 above, section 37 of the *Act* requires that a tenant give the landlord all the keys to the rental unit at the end of the tenancy. **I find** that the tenant breached section 37 of the *Act* by failing to return the rental unit keys based on the undisputed testimony of the landlord. Based on the above, **I find** the landlord has met the burden of proof and is entitled to compensation in the amount of **\$224.00** for rekeying of the rental unit locks due to the tenant failing to return the rental unit keys.

Item #9 - The landlord has claimed \$10.00 for a waste disposal fee related to the disposal of garbage left behind in the rental unit. The landlord referred to Exhibit “R” in his evidence, a receipt for \$10.00 from a waste disposal service dated February 17, 2013. Based on the undisputed testimony of the landlord, and the receipt submitted in evidence, **I find** the landlord has met the burden of proof and is entitled to compensation in the amount of **\$10.00** for the waste disposal fee related to the disposal of items left behind in the rental unit by the tenant.

As the landlord’s application had merit, **I grant** the landlord the recovery the filing fee in the amount of **\$100.00**.

The landlord continues to hold the tenant’s security deposit of \$900.00, which has accrued no interest since the start of the tenancy. The landlord is reminded to comply with sections 23 and 35 under the *Act* in terms of completing a move-in condition inspection report, and signing it, and completing a move-out condition inspection report. The landlord applied for unpaid rent as part of his application, which I may offset from the security deposit under the *Act*.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$5,091.77** and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant’s security deposit as follows:

Description	Amount
Item 1. January 2013 unpaid rent due to a stop payment placed on the tenant’s rent cheque by the tenant	\$1,800.00
Item 2. Bank fees related to the returned cheque listed in #1 above.	\$8.50
Item 3. Loss of February 2013 rent due to condition of rental unit	\$1,800.00
Item 5. Damages to rental unit	\$271.59
Item 6. Cleaning of rental unit	\$750.00
Item 7. Carpet cleaning	\$127.68

Item 8. New exterior door locks	\$224.00
Item 9. Waste disposal fee	\$10.00
Filing fee	\$100.00
SUB-TOTAL	\$5,091.77
<i>(Less Tenant's security deposit of \$900.00)</i>	<i>-\$900.00</i>
TOTAL OWING BY TENANT TO THE LANDLORD	\$4,191.77

I authorize the landlord to retain the tenant's full security deposit of \$900.00 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of **\$4,191.77**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord has established a total monetary claim of \$5,091.77. The landlord has been authorized to retain the tenant's full security deposit of \$900.00 in partial satisfaction of the claim.

The landlord has been granted a monetary order for the balance owing by the tenant to the landlord in the amount of \$4,191.77. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 05, 2013

Residential Tenancy Branch

