



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; her agent; the three tenants; and a sub tenant.

At the outset of the hearing I noted that upon review of the tenancy agreement and subsequent amendment that named the a fourth party to the tenancy agreement I found that the fourth party did not have a tenant relationship with the landlord. As the landlord had named the fourth party in her claim I amended the landlord's Application to exclude this fourth party.

After the hearing ended the landlord submitted additional documentation confirming the utility costs outstanding and payments made by each tenant. The landlord submits that she provided copies of this evidence to the tenants. As a result of this submission the landlord reduced her claim for utility costs as noted below.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; unpaid utilities; for damage; cleaning and additional losses for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on July 21, 2012 for a 1 year fixed term tenancy beginning on September 1, 2013 for a monthly rent of \$1,950.00 due on the 1st of each month with a security deposit of \$1,225.00 paid. The agreement also stipulated the tenants were responsible for 3/7 of the utility costs for the residential property.

While the tenancy included all three tenants the practice was that each individual paid their portions of rent and utilities to the landlord separately. The landlord submits that after much discussion with one of the tenants who wanted to end his portion of the tenancy earlier than the end of the fixed term she agreed to allow the tenant to sublet his portion of the unit to the fourth party referred to in the introduction of this decision.

The landlord has provided a copy of an amendment to the original tenancy agreement that stipulates that effective April 30, 2013 the sub tenant would take over the tenant's portion of the unit with the same terms as the original tenancy agreement.

The landlord seeks compensation in the amount of \$400.00 for unpaid rent. Both parties provided substantial documentation regarding rental and utility payments including bank statements and records of e-transfers. The landlord also submitted into evidence a rental payment ledger. In this ledger the landlord had several columns indicating that as of April 2013 there was a zero balance owing.

The ledger shows that by the end of May 2013 the tenant's had a credit balance of \$1,550.00 due to overpayments by the fourth party noted above and the tenant who was vacating the rental unit for the fourth party to move in. The ledger goes on to show payments of \$1,300.00 for June 2013 leaving a debit balance of \$650.00; payments of \$1,300.00 for July 2013 with a debit balance of \$650.00; and a payment of \$650.00 for August 2013 with a debit balance of \$1300.00.

The landlord acknowledges receipt of another payment of \$650.00 after the ledger was submitted into evidence, leaving a balance owing of \$400.00 in rent. This ledger also records the landlord accepted a security deposit of \$975.00 on July 19, 2012 from the original 3 tenants and an additional security deposit of \$250.00 from the fourth party on April 20, 2013.

While the landlord originally sought compensation in the amount of \$726.12 for utilities she reduced her claim to \$647.21. The landlord has provided evidence of utilities claimed and e-transfers received from the tenants. The tenants did not disagree that they owed the landlord for utilities but were uncertain as to the amounts.

The tenants do dispute the fact that the utility charges are so high, they submit that the reason they were so high was that there was leak in a pipe. The landlord submits the leaks were in drain pipes not from hot water pipes. The tenants provided no documentary evidence in support of their position that confirms any leaks caused an additional cost for utilities.

The landlord seeks compensation in the amount of \$60.88 for repairs to damages to a wall. The tenants do not dispute this claim.

The landlord submitted into evidence a Condition Inspection Report documenting the condition of the rental unit at the start of the tenancy and the end of the tenancy. The tenants do not dispute the landlord's claim of \$180.00 for cleaning the rental unit.

However the landlord has claimed a total of \$511.40 for cleaning and garbage removal and \$205.00 for compensation the landlord provided to her new tenants who moved into the rental property after these tenants.

The landlord submits that they had hired a cleaner to complete the cleaning over a period of 9 hours at \$20.00 per hour. The receipt shows the cleaner scrubbed bathroom floors; vanities; tub; shower; scrubbed kitchen floor; stove; oven; washed hardwood floors throughout the house; cleaned bedroom closets, removed marks from walls; and carried out other cleaning where needed.

The landlord submits that the tenants had also left a substantial amount of garbage on the decks and the landlord had to remove this. The landlord provided no receipts for any of the costs involved in removal of garbage.

The landlord seeks the additional cleaning costs and compensation because the new tenant who moved in to the rental unit indicated to the landlord that the rental unit was not sufficiently cleaned for her. The new tenants submitted a receipt to the landlord in the amount of \$360.00 for 18 hours worth of "cleaning entire upper suite of house to make it suitable for move in." The work completed included bathrooms; vacuuming, washing floors, wiping all cupboards; cleaning baseboards and doors, washing walls, dusting, washing vents, and cleaning entire kitchen and cupboards including dishes.

As a result of the new tenant's complaints about the condition of the rental unit the landlord also reduced the new tenant's rent and utility costs for the month of September 2013 by a total of \$205.00.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

From the documentary evidence and testimony of both parties I find the landlord has established the tenants failed to pay the full amount of rent owed for the duration of the tenancy in the amount of \$400.00. However, I note that the landlord collected a security deposit of \$250.00 part way through the tenancy, when one of the original tenants sublet his portion of the tenancy to another party.

Section 20 of the *Act* states a landlord must not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement or require more than one security deposit in respect of a tenancy agreement. As noted above the

fourth respondent named in the landlord's Application had no tenancy relationship with the landlord and therefore the landlord was not allowed to collect an additional tenancy agreement.

As a result of the collect of this additional security deposit the landlord holds a total security deposit of \$1,225.00. However, Section 19(1) states a landlord must not accept a deposit that is greater than the equivalent of ½ month's rent. As the rent was \$1950.00 the most the landlord could hold as a deposit was \$975.00. Section 19(2) states that if the landlord accepts a deposit that is over the limit in Section 19(1) the tenant may deduct the overpayment from the rent.

As such, I find that while the landlord has established rent owing in the amount of \$400.00 this amount is reduced by the additional \$250.00 deposit held by the landlord, for a total rent owing of \$150.00.

While the tenants do not agree that they should be held responsible for the high utility costs I find they have provided no evidence to support their claim that the utilities costs were more than would be expected as a result of any negligence on the part of the landlord.

As the tenants do not dispute they owe the landlord for utilities I find the landlord has provided sufficient evidence to establish the amount owe to be \$647.21.

As the tenants do not dispute that they owe the landlord for the cost of damage repairs in the amount of \$60.88 or for the initial cleaning of the rental unit in the amount of \$180.00 I grant these amounts to the landlord.

As to the garbage removal, I find the landlord has failed to provide any evidence of any costs associated with its removal and I therefore dismiss this portion of the landlord's claim.

And finally to the issue of costs associated with the landlord paying her new tenants to do additionally cleaning of the rental unit and for compensation due to the condition of the unit when they took possession of it I make the following findings.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

There is no requirement under Section 37 that the rental unit must be cleaned to a new tenant's expectations only that the unit be reasonably cleaned. If the rental unit was not cleaned to a new tenant's expectations that is matter between the landlord and the new tenant only.

In addition, some of the work the new tenant is claiming for was already completed by the person the landlord had hired to clean the unit. Further, because the landlord had already had the rental unit cleaned after the landlord regained possession of the rental unit and did not have a subsequent move out condition inspection to allow these tenants to confirm the condition of the unit after the cleaning I find these tenants can no longer be held responsible for the condition of the unit when it was provided to the new tenants. I dismiss this portion of the landlord's claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,088.09** comprised of \$150.00 rent owed; \$647.21 utilities owed; \$60.88 repairs; \$180.00 cleaning; and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$975.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$113.09**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 20, 2013

Residential Tenancy Branch

