



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MR, MNSD, MNDC

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security 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.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served in person on August 16, 2013 and by registered mail on August 19, 2013. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the day they were served in person.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Preliminary Issues

The day before the hearing commenced the landlord faxed in a request to have the hearing adjourned as the landlord is unwell. The hearing commenced at the scheduled time and the landlord appeared. The tenant did not appear and the landlord was given the opportunity to withdraw her application with leave to reapply or to proceed with the hearing in the tenant's absence. The landlord elected to proceed with the hearing as sufficient notice was not given to adjourn the hearing and no request was made to the tenant to do so prior to the hearing.

Background and Evidence

The landlord testifies that there were two tenants named on the tenancy agreement. However, one tenant refused to provide a forwarding address so the landlord was only able to serve the male tenant with this application and Notice of hearing. The landlord testifies that this tenancy started on September 01, 2012. Rent for this unit was \$1,650.00 per month and was due on the 1st of each month. The tenants paid a security deposit of \$825.00 at the start of the tenancy. The tenants attended a move in condition inspection at the start of the tenancy but despite being given at least two opportunities to attend a move out inspection neither tenant appeared and the inspection was done in the tenants' absence.

The landlord testifies that she asked an ex-roommate of the tenants to attend the inspection along with two other people to witness the condition of the unit. The landlord testifies that the tenants had caused the following damage:

Damage to a screen door; the landlord seeks \$40.00

Damage to a vent cover; the landlord seeks \$35.00.

Damage to a bar stool; the landlord seeks \$35.00

A broken towel rack; the landlord seeks \$40.00.

The landlord has not provided any receipts or invoices in evidence for these items.

The landlord testifies that the tenants had failed to leave the unit in a reasonable clean condition. The ex-roommate was asked if she would clean the unit for the landlord. The ex-roommate has provided a detailed worksheet showing the areas cleaned and the hours spent cleaning. The landlord seeks to recover the amount of \$345.00 for this work.

The landlord testifies that there was a blockage in a sink during the tenancy. The tenants did not inform the landlord that the sink would not drain properly even when asked by an agent for the landlord if everything was alright in the unit, the tenants waited until it became impossible for the sink to drain before they did notify the landlord. Because of this delay the landlord incurred additional costs for the plumbers. The landlord testifies that she called the first plumber out who attempted to unblock the drain but despite his efforts he could not unblock it. This plumber charged the landlord \$169.41. This price also included checking out the hot water tank. The landlord asked another plumber to come in to look at the drain and this plumber managed to unblock the pipes. The landlord was charged \$231.64 for this work. The landlord has provided two invoices from the plumbers in evidence. One of these involves details that had the matter been dealt when it was first noticed it might have been easier to unclog.

The landlord testifies that the tenants caused damage to the wood flooring. There were deep scrapes on the flooring right through the finish. The landlord hoped to remedy just

the damaged area but was told the whole floor would need to be refinished. The landlord testifies that this work cost \$2,132.00 but the landlord seeks to recover \$852.00 from the tenants. The landlord has not provided an invoice for this work or any photographic evidence.

The landlord testifies that the tenants did not return the keys to the unit until August 19. By then the landlord had already had the locks rekeyed. The landlord seeks to recover the amount of \$210.07 for this work but has not provided an invoice in evidence.

The landlord testifies that the tenants owed rent from June, 2013 of \$130.00. The tenants paid rent for July however the rent cheque was returned due to insufficient funds (NSF). The landlord therefore seeks to recover the amount of \$1,780.00 in unpaid rent. The tenants had the utilities in their own name however after the tenants moved out on July 31, 2013 the landlord received notification from the City that there were unpaid utilities of \$169.65. A copy of this letter has been provided in evidence. The landlord testifies that the tenants have since paid an amount towards the utilities and in October there was an unpaid balance of \$130.31. The landlord has received notification that this amount will be added to the landlord's taxes next year so the landlord seeks to recover this from the tenants.

The landlord testifies that the addendum to the tenancy agreement states that the landlord will charge the tenants \$100.00 for late fees and NSF fees. The landlord testifies that the tenants were late with their rent in October and November, 2012 and June and July, 2013. The landlord therefore seeks to recover \$100.00 in late fees. The tenants also had four rent cheques that were NSF and the landlord seeks to recover \$100.00 for the bank fees for these.

The landlord seeks an Order to keep the security deposit of \$825.00 to offset against the unpaid rent and damages.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me.

With regard to the landlord's claim for unpaid rent and utilities; I refer the parties to s. 26 of the *Act* which 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.

Having reviewed the evidence before me I am satisfied that the tenants failed to pay the rent due for June and July, 2013 to an amount of \$1,780.00. Consequently, I find the landlord has established a claim for unpaid and will receive a monetary award for the sum of **\$1,780.00** pursuant to s. 67 of the *Act*.

I further find the landlord is entitled to a monetary award to recover the utilities. When a tenant has utilities in their name they must ensure these utilities are paid at the end of the tenancy to prevent any consequence to the landlord when the City informs the landlord that they will put any unpaid utilities onto the landlord's taxes. Consequently I am satisfied that the landlord has established a claim to the amount of **\$130.31** for unpaid utilities and will receive a monetary award for this amount pursuant to s. 67 of the *Act*.

With regards to the landlord's claim for late fees and NSF fees; where a landlord has indicated in the tenancy agreement or addendum to that agreement that late fees and NSF fees will be charged in any month that rent is either late or the rent cheque has been returned by the bank then the landlord is entitled to charge a tenant these fees.

Upon consideration of the addendum I find the landlord has indicated that fees of \$100.00 a month will be charged. However, as the maximum amount that can be charged under the *Act* is \$25.00 per month then the landlord has only charged that for each month the tenant's rent was late and for four NSF cheques. Consequently I find the landlord has established a claim for **\$200.00** pursuant to s. 67 of the *Act*.

With regard to the landlord's claim for damages; 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 has provided a copy of the move in and move out condition inspection reports. The move out report was done in the tenants' absence but was duly witnessed by three other persons. This report clearly indicates that there was damage caused to a screen door, a vent cover, a bar stool and a towel rail. The report also indicates that the tenants did not return the keys to the unit and many areas of the unit were left dirty by the tenants. The move out report also indicates some damage on the floor in the living room. However, the landlord has failed to provide invoices showing the actual cost to rectify this damage with the exception of the cleaning bill. Consequently, I must limit the landlord's claim for to the following amounts

Screen door - **\$20.00**

Vent cover - **\$18.00**

Bar stool - **\$18.00**

Towel rail - **\$20.00**

Cleaning (evidence provided) - **\$345.00**

Rekeying locks – **\$105.00.**

With regards to the damage to the floor, the landlord has shown that the living room floor was dirty, damaged and scratched. However, the landlord has not provided sufficient evidence to show that the whole of the oak flooring was damaged by the tenants to the extent that the tenants would be responsible for refinishing the entire floor. The report only indicates scrapes on the living room floor but does not detail the extent of these scrapes and no other corroborating evidence has been provided such as photographs of the damage, to enable me to determine justify a charge to the tenants of \$852.00. Consequently, I must limit the landlord's claim for damage to the flooring to an amount of **\$200.00**.

With regard to the landlord's claim for plumbing costs, the landlord has not shown that the tenants were responsible for the blockage to the pipes. This may have been a pre-existing condition that became worse the more the tenants used the sink. While I agree that if the tenants had notified the landlord sooner then it may not have cost the landlord so much for the plumber; It is my decision that the landlord cannot charge the tenant for an issue which may have been in place at the start of the tenancy. Consequently, this section of the landlords claim is dismissed.

I Order the landlord to keep the security deposit of **\$825.00** pursuant to s. 38(4)(b) of the *Act*. This amount has been offset against the landlord's monetary claim. A Monetary Order has been issued to the landlord for the following amount:

| | |
|----------------------------------|-------------|
| Unpaid rent | \$1,780.00 |
| Unpaid utilities | \$130.31 |
| Late fees and NSF fees | \$200.00 |
| Damages and cleaning | \$726.00 |
| Subtotal | \$2,836.31 |
| Less security deposit | (-\$825.00) |
| Total amount due to the landlord | \$2,011.31 |

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,011.31**. This Order must be served on the respondent and should the respondent fail to comply with the order, it 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: November 18, 2013

Residential Tenancy Branch

