



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF, O

Introduction

This hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; other issues; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant states he did not receive the landlords' evidence package. The landlord has provided proof of service of this evidence by registered mail. The evidence is therefore deemed served five days after posting pursuant to s. 90 of the *Residential Tenancy Act (Act)*. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The tenant requested an adjournment of the hearing today seeking time to provide documentary evidence. I explained the rules of procedure to the tenant concerning evidence and that it must be provided five days before a hearing. As the tenant was served with Notice of this hearing in August, 2013, the tenant had sufficient time to provide any documentary evidence he hoped to relay on prior to the hearing. I find the

tenants request for an adjournment on this ground would be prejudicial to the landlord pursuant to s. 6.4(e) of the Rules of Procedure and therefore I did not allow an adjournment and the hearing continued.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent or utilities?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

The parties agree that this month to month tenancy started on March 01, 2013. Rent was agreed at \$600.00 per month due on the first day of each month.

The landlord attending (HH) testifies that the rental unit was in a good clean condition at the start of the tenancy as shown in the landlords' photographic evidence. The tenant gave notice to end the tenancy by e-mail on July 06, 2013. This e-mail did not indicate which day the tenant was vacating the unit just that the tenant would not be there in August, 2013.

The landlord testifies that the tenant failed to pay all the rent for May, 2013 leaving an unpaid balance of \$150.00 and no rent was paid for June, 2013. The landlord testifies that she had filed a previous application after serving the tenant with a 10 Day Notice for unpaid rent on May 12, 2013. However the application was withdrawn as the tenant promised to pay the outstanding rent. The landlord testifies that the tenant did not pay that outstanding rent from May and June and also failed to pay rent for July, 2013. The landlord was not sure if she could still claim the rent for May and June of \$750.00 but seeks to amend her application to include this amount along with the unpaid rent for July of \$600.00.

The landlord testifies that due to the terrible condition the tenant left the unit in the landlords were unable to re-rent the unit for August and September, 2013. Therefore the landlords also seek to recover a loss of rental income of \$1,200.00 for these months.

The landlord seeks to recover the cost from the tenant to remedy the damage and cleaning of the unit. The landlord refers to the photographic evidence provided to show the appalling condition the tenant left the unit and yard in along with graffiti painted on the exterior of the unit and a barricade erected on the property. The tenant left so much debris, garbage and personal belongings in and around the unit that the landlords had to clear all of this. The exterior had to be repainted and the barricade placed on the driveway by the tenant to prevent access to the site had to be removed.

The landlord testifies that the graffiti had to be cleaned off and the exterior of the unit sealed and then the unit will require repainting. However, due to the weather the contractor has only been able to complete some of this work. The landlord has however provided a quote from the contractor for this work of \$3,482.00 which includes tax.

The landlord testifies that the tenant had removed the kitchen cupboard doors and stored these in a pile. These had to be put back on, the damage repaired and then the doors were repainted. This work took two hours at \$20.00 per hour, paint supplies came to \$55.00 and it took a further three hours to paint the doors at \$20.00 per hour. The landlords completed this work along with help from a family member and seek to recover \$155.00 from the tenant.

The landlord testifies that the whole unit had to be cleaned after the garbage and personal items were removed and the landlord seeks to recover \$100.00 for this work.

The landlord testifies that the tenant's belongings were stored in a covered area under the deck of the trailer for 60 days. Up to filing the application the landlord had claimed for 21 days of storage at \$25.00 per day however after seeking advice from the

Residential Tenancy Information Officer the landlord was advised that she must store the items for 60 days and put an advertisement in the local paper advising the tenant that his belongings will be stored until September 29, 2013 and will then be removed if the tenant has not collected his belongings. The landlord therefore seeks to amend the application to include the additional days they stored the tenants belongs to \$1,500.00. The landlord testifies that the tenant did not collect his belongs by September 29, 2013.

The landlord testifies that they had to hire a man with a truck to load all the junk and debris from the site to take this to the dump. The books that were left on site were donated to the local library for their book sale. The landlord testifies that they paid \$160 plus \$85.00 for gas and dump fees to dispose of the tenant's garbage and abandoned belongings. The landlord testifies that it is a round trip of 50K to the dump.

The landlord seeks to recover \$200.00 to remove the barricade erected by the tenant across the driveway to prevent access to the site. This wood had to be cut up with a chainsaw and then hauled away to be burnt.

The tenant disputes the landlords claim. The tenant testifies that he paid the rent for May and June, 2013. The tenant agrees that he did not pay rent for July, 2013 because the tenant refused to pay rent for an unhealthy living environment that made the tenant sick. The tenant testifies that there was mould in the unit and the mould spores made the tenant ill and infected his belongings. The tenant testifies that there was also parasites in the water supply that made the tenant ill. The tenant testifies that he did take pictures of how the unit was left and the tenant agrees he did paint graffiti on the exterior of the trailer to warn others that this was a toxic environment.

The tenant testifies that the landlord ignored the tenant's e-mails about the mould and the contaminated water. The landlord then blocked the tenants emails and would not communicate with the tenant.

The tenant testifies that the landlord is lying about the storage of the tenants belongings. The tenant testifies that he went to the property and the landlord told the tenant he would be trespassing if he went back to the property. The tenant testifies that he had to sacrifice his belongings due to their contamination with mould.

The tenant disputes erecting a barricade on the property and testifies that he knows nothing about this. The tenant testifies that he went to the doctors and the doctor confirmed there were parasites in the water. The tenant testifies that he also got a Hazmat man out concerning the mould but the tenant could not afford to have any treatment down to the mould. The tenant testifies that around April 03, 2013 the tenant emailed the landlords about these issues asking the landlord to see what was causing the tenant to be sick.

The tenant testifies that this trailer was previously used as a 'grow up', it has no ventilation and is approximately 40 to 50 years old. The tenant testifies that when the landlord would not respond to the e-mails the tenant lived in a tent outside as he had lost his job due to being sick.

The landlord disputes the tenant's claims. The landlord testifies that a new fan had been installed in the kitchen; the trailer has been renovated and had new flooring in the kitchen and living room, new area rugs and new bathroom fixtures prior to the tenant moving in. The landlord testifies that there was not mould in the unit. The landlord testifies that there is a water licence in place for water to be taken from the creek. This same water supply is used by many other residences. The tenant was advised by the landlord to contact Interior Health if he had concerns about the water so they could run a test and if necessary they would issue a 'boil water advisory' to the homes that use this creek. However the tenant did not do this and no other residences have complained about the water.

The landlord testifies that she had to call the police concerning the damage to the trailer. The police notified the landlord that this tenant is known to them and this is not

the first property he has done this too. The landlord testifies that the reason the tenant had to live in a tent was because of the filthy condition he left the rental unit in.

The landlord cross examines the tenant and asks the tenant if the tenant had disclosed to the landlord that the tenant had prior health issues with cancer. The tenant responds that he did have cancer but has been clear for over four years. The tenant testifies that this is why he had to have a clean living environment. The landlord asks the tenant if he had stayed overnight in the unit prior to becoming a tenant to ascertain if the unit was suitable and did the landlord mention the upgrades to the unit. The tenant responds that he did stay overnight and at that time everything seemed alright so he agreed to move in. The tenant agrees the landlords had replaced the flooring. The landlord asks the tenant if the tenant defaced the exterior of the unit. The tenant responds that he did this for awareness; he painted words showing the unit was toxic and a skull on it to make other tenants aware it was not fit to live in. The landlord asks the tenant if he has any verification from the health authority or another professional company about toxic mould or parasites in the water. The tenant responds that he did bring someone out from Hazmat but did not have the money to pay for tests. The tenant testifies that his doctor advised the tenant not to live in that environment.

The tenant cross examines the landlord and asks the landlord if the unit had been a 'grow up'. The landlord responds that it had never been a 'grow up'. The tenant asks the landlord if the landlord had told the tenant that there was marijuana growing there as the unit was sealed up and there was wiring for a 'grow up'. The landlord responds that there has never been a 'grow up', the property has regular inspections for insurance purposes and if there every had been then the landlord would have reported it to the police.

The tenant testifies that he had to stay in a hostel for a few days and while he was there his symptoms cleared up. When the tenant returned to the unit his symptoms returned.

The landlord testifies that the tenant claims he went to the doctors but has no evidence of this. The tenant also had pre existing health issues. If the tenant was unhappy with the unit the tenant could have given notice and moved out sooner instead of causing so much damage. The landlord testifies that there was an incident where the tenant was at the unit and had blocked the landlord's vehicle with his own. The landlord was afraid of the tenant so ran across the field to a neighbour's property. At that time the landlord did tell the tenant that he was trespassing. Another time the tenant came to the landlord's door and wanted the landlord to file in some forms for the tenants disability payment. At that time the landlord agrees she did close the door as she did not want to fill in any forms. The landlord has provided the name of the Constable and his detachment who attended the property for the landlord.

The tenant disputes the landlord's claims about being known to the police.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I have considered this request to amend the landlords' application for unpaid rent for May and June and find that this request is not unreasonable if the tenant has failed to pay the rent for May and June after promising the landlord to do so. However neither party has provided any evidence to show that this rent was owed or unpaid and consequently I find I must dismiss this section of the landlords claim as the landlord has failed to meet the burden of proof in this matter. With regard to the landlords claim for unpaid rent for July, 2013; the tenant agrees that he withheld this rent as he claims the unit was not a fit environment to live in. However, I refer the parties to Section 26 of the *Act* which states that 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.

Consequently, it is my decision that the tenant has not shown that he has either a right or an Order under the *Act* to deduct any rent and therefore I find in favour of the landlords claim to recover **\$600.00** in unpaid rent for July, 2013.

With regard to the landlords claim for a loss of rent for August and September, 2013; I have viewed the evidence provided by the landlord and am satisfied that the tenant did leave the rental unit in a condition that required extensive work in able to allow the landlord to be able to re-rent the unit. I further find that the tenant has provided no corroborating evidence to meet the burden of proof that he was forced to leave the rental unit due to black toxic mould or contaminated water. Consequently, I find in favour of the landlords claim for a loss of rent for August and September, 2013 to **\$1,200.00**.

With regard to the landlords' claim for damages to the unit, site or property; 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.

Both parties have provided sworn testimony as to the condition of the rental unit. The parties testimony partially contradicts each other. However, the landlords' photos show extensive garbage, abandoned belongings, damage to the kitchen cupboard doors and graffiti painted on the outside of the property. Even if the tenant had provided evidence that the unit had toxic mould or parasites in the water that made him ill; the tenant cannot leave a rental unit in this appalling condition and will be held responsible for any repairs, cleaning, garbage removal and painting.

Consequently, I find the landlord has meet the burden of proof concerning the damage to the exterior of the unit, the replacement of the cupboard doors, the cleaning of the

unit and the removal of garbage to the dump. I am satisfied that the landlord has or will incur costs to rectify this damage and cleaning to a total sum of **\$3,982.00**.

With regard to the landlords request to amend the claim for storage costs; I have considered the landlord's oral request to amend this claim and find as the landlord is required under the Residential Tenancy Regulations, part five, to store any abandoned belongings for a period of 60 days that the landlord is entitled to charge a tenant for any costs incurred. The landlords seek to recover \$25.00 per day for 60 days to an amount of \$1,500.00. However, I find this amount to be excessive considering that the items stored were still stored on the property, under a cover, and the unit was not re-rented at that time so there was no further loss to the landlord. Consequently I limit the landlords' claim to \$15.00 per day for 60 days to a total amount of **\$900.00**.

With regard to the landlords' claim for \$200.00 to remove a barricade;. the landlord testifies that the tenant erected this barricade to prevent the landlord or others gaining access to the site. The tenant disputes this claim and denies all knowledge of the barricade. However, after due consideration of the evidence before me I find it is likely that the tenant did erect this barricade as he wanted to prevent access to the site as the tenant claims the site was toxic as depicted on the graffiti painted on the exterior of the unit. I therefore find in favour of the landlords' claim to remove and cut up this barricade to the sum of **\$200.00**.

As the landlords have been largely successful with this claim I find the landlords are entitled to recover the **\$100.00** filing fee from the tenant. A Monetary Order has been issued to the landlords pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Unpaid rent for July	\$600.00
Loss of rental income for August and September	\$1,200.00
Damage to the unit, site and property	\$3982.00
Storage costs	\$900.00

Removal and disposal of barricade	\$200.00
Filing fee	\$100.00
Total amount due to the landlord	\$6,982.00

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Conclusion

I HEREBY FIND largely in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$6,982.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced 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 29, 2013

Residential Tenancy Branch

