



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for a Monetary Order relating to: unpaid rent and utilities; damage to the unit, site or property; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the Act), regulation or tenancy agreement; to keep all or part of the pet damage or security deposit; to recover the filing fee from the tenant for the cost of the application and for 'other' non identified issues.

The landlords served the tenant with a copy of the application, the Notice of Hearing documents, and the documentary evidence used for this hearing by registered mail. The Canada Post tracking number was provided as documentary evidence for this method of service. Section 90 of the Act states that documents served by mail are deemed to have been received 5 days after such mailing. Based on this, and in the absence of any evidence from the tenant to dispute this, I find the tenant was served the hearing and evidence documents as required by the Act.

One of the landlords appeared for the hearing, and provided affirmed testimony and documentary evidence in advance of the hearing, all of which was considered in this decision. There was no appearance for the tenant or any submission of documentary evidence prior to the hearing, despite being served notice of the hearing

Issue(s) to be Decided

- Are the landlords entitled to monetary compensation for damages to the rental suite and monetary compensation for loss under the Act?
- Are the landlords entitled to monetary losses incurred because the tenant broke a fixed term tenancy?
- Are the landlords entitled to keep the security and pet damage deposit in partial satisfaction of the landlords' claim?

Background and Evidence

The landlord testified that the tenancy started on October 1, 2012 for a fixed term of one year to end on September 30, 2013. A written tenancy agreement, provided as evidence, was completed and the tenant paid \$325.00 as a security deposit on October 1, 2012 which the landlords still retain. Rent was payable by the tenant in the amount of \$650.00 on the first day of each month. The tenant was also responsible for 60% of the utilities with the other 40% being paid for by another renter of a separate unit. The landlord and tenant completed a condition inspection of the rental suite on September 10, 2012. The landlord and tenant signed the document relating to this inspection and the report was provided as evidence by the landlords for this hearing.

The landlord testified that she received an e-mail from the tenant on July 6, 2013 informing her that she would be leaving the rental suite as soon as possible because she was receiving too many fines from the building strata. The landlord testified that by August 1, 2013, the tenant had moved the majority of her belongings out of the rental suite but that there were still items left inside. The landlord and tenant agreed to complete a move-out condition inspection on August 3, 2013 which the tenant failed to attend. The condition inspection was re-arranged for August 5, 2013 at which point the tenant was in attendance and had moved out all of her belongings.

The move-out inspection was completed by the landlord and tenant during which the landlord pointed out damages to the rental suite and cleaning that needed to be done. The tenant refused to sign the report as she disagreed with the contents of it. The landlord testified that the tenant provided her with a correct forwarding address on August 21, 2013 by e-mail which is the address the landlord used to serve the hearing papers for this hearing. As a result, the landlords make the following monetary claim with the following supporting evidence:

- \$1,300.00 for unpaid rent relating to the months of August and September, 2013 which were the remaining months left in the fixed term tenancy. The landlord testified that the tenant broke the fixed term tenancy and that it took them two months to slowly repair the damages to the rental suite caused by the tenant; however no supporting evidence of this claim was provided.
- \$86.67 for outstanding hydro utilities. The landlord provided a detailed monthly breakdown of the costs paid by the tenant and the other renter throughout the tenancy. The document shows the total amount for hydro since September, 2012 was \$528.00 of which the other renter paid \$240.00 (as monthly overpayments of \$20.00) leaving an outstanding balance of \$288.00 payable by the tenant. The landlord testified that the tenant paid only \$201.33 through her monthly payments

and at the end of the tenancy this left a balance of \$86.67 payable by the tenant. The landlord provided an invoice showing this amount that was paid by her.

- \$428.97 for outstanding cable utilities. The landlord provided a detailed monthly breakdown of the costs paid by the tenant and the other renter throughout the tenancy for Shaw cable. The documents show the total amount for services used since September, 2012 was \$1,289.94 of which the other renter paid \$492.00 (as monthly overpayments of \$41.00) leaving an outstanding balance of \$797.94 payable by the tenant. The landlord testified that the tenant paid only \$368.97 through her monthly payments and at the end of the tenancy this left a balance of \$428.97 payable by the tenant.
- \$100.00 for carpet cleaning and \$250.00 for carpet replacement. The landlord provided a series of photographs that showed considerable damage to the carpets in the bedroom and utility. This included stains and loops of the Berber carpet pile which had been cut with scissors. This was also reflected in the condition inspection report which shows that the bedroom carpet was damaged and the utility carpet was filthy. The landlord testified that they completed the cleaning of the carpet themselves and claim the cost of replacing the carpet based on the cost of the carpet they purchased at the start of the tenancy.
- \$150.00 for damage to the bedroom dry wall and door framing. The landlord provided multiple photographs showing dents and scratches to the bedroom wall which she testified were caused by the tenant. The repairs were completed by the landlords at an estimated cost of \$150.00 for materials and labour.
- \$50.00 for the replacement of the bedroom closet door tracking system. The landlord provided photographs showing the bedroom closet door pulled out of the tracking system which was also bent out of shape. The landlords estimated the cost of replacing this at \$50.00.
- \$100.00 for the garage parking remote key fob. The landlord testified that the tenant failed to return the parking garage fob key. The landlord provided text message evidence from the tenant showing that the tenant was keeping the parking fob until the landlord returned the security deposit. This was also reflected in the move-out condition inspection report. The landlord testified that the tenant claimed that it was left at the rental unit and then later that it was left with the other renter; however no evidence of this was provided by the tenant for this hearing. The landlord provided documentation showing that the strata have increased the cost of replacing the key fob to \$100.00; however, for the time being she has given her current renters her own fob as an interim solution.
- \$250.00 in strata fines. The landlord provided a letter which documents the violations that were caused by the tenant and her children from April 27, 2013 to May 20, 2013. The infractions were documented on a report which shows that

the tenant allowed her guests to park in the fire lanes of the building parking lot and that the tenant allowed her children to play with their bikes and scooters in the parking garage and cause damage to common property in the common areas.

Analysis

The tenant failed to appear for the hearing and did not provide any evidence in advance of this hearing. As a result, I have completed the following analysis of the landlords' claim in the absence of any evidence from the tenant to dispute the evidence and base my reasons on the landlord's affirmed testimony and documentary evidence provided.

The landlord confirmed receipt of the tenant's forwarding address in writing and I find that the landlords made the application to keep the tenant's security deposit within the allowable time limits provided by the Act.

In relation to the landlords' claim of unpaid rent in the amount of \$1,300.00 I make the following findings. Section 45(2) (b) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of tenancy. As a result, I find that the tenant failed to abide with the requirements of the Act in relation to the fixed term tenancy and ended the tenancy two months earlier than is allowed under the Act in relation to the signed fixed term tenancy agreement.

Section 7(2) of the Act states that a party claiming compensation for non compliance with the Act must do what is reasonable to minimize the loss. The landlord testified that the repairs were done slowly over the course of two months before the property was rented out again, which was after the fixed term tenancy ended. Based on the evidence provided by the landlord in relation to the damages to the rental suite, I find that there is not sufficient evidence to show that such damage would have taken almost two months to repair and therefore the landlord failed to reasonably mitigate their loss for the breakage of the fixed term tenancy by the tenant. As a result, I am only prepared to award the landlord one month's rent in the amount of \$650.00 for August, 2013.

Section 37 (2) (a) of the Act states that when a tenant vacates a rental unit, the tenant must leave it reasonably clean and undamaged except for reasonable wear and tear. Section 21 of the Residential Tenancy Regulation allows a condition inspection report to be used as evidence of the state of repair and condition of the rental suite.

As a result, I accept all of the landlords' evidence on the balance of probabilities, along with the condition inspection report, that the tenant failed to leave the condition of the rental suite reasonably clean and undamaged. I find that there is sufficient evidence before me, as documented above, which allows for monetary compensation to the landlords for cleaning and repair costs, as well as the carpet replacement based on the supporting photographic evidence provided.

I also find that the landlords have proved, on the balance of probabilities, their claim for replacement of the garage key fob, unpaid utility costs by the tenant and the strata fines levied against the landlord for infractions created by the tenant's children and guests. This is mainly based on the landlords' supporting documentary evidence.

Therefore, the total amount I award to the landlords is \$2,065.64. As the landlords have been successful with the majority of their claim, they are entitled to recover from the tenant the \$50.00 filing fee for the cost of this application pursuant to Section 72 (1) of the Act. Therefore, the total amount payable by the tenant is \$2,115.64. As the landlord already holds \$325.00 in a 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 \$1,790.64.

Conclusion

For the reasons set out above, I grant the landlords a Monetary Order pursuant to Section 67 of the Act in the amount of **\$1,790.64**. This order must be served on the tenant and may then be filed and enforced in the Provincial Court (Small Claims).

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: December 16, 2013

Residential Tenancy Branch

