



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 as compensation for rent arrears and damages to the unit;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover filing fees pursuant to Section 72.

SERVICE:

Both parties attended and the tenants agreed they received personally the Application for Dispute Resolution by registered mail. I find that the tenants were properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

Is the landlord entitled to compensation for rent arrears and damages and to recover the filing fees?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the month to month tenancy commenced on June 1, 2013, a security deposit of \$725 was paid and rent was \$1450 a month. The landlord claims as follows:

\$2900: for unpaid rent in August and September 2013. The tenant agreed he did not pay rent for these months.

\$75: in late fees for July, August and September. The tenant agreed he was late in July as it was Canada Day.

\$47.95: total in registered mail costs to serve the tenants.

\$210.38: for garbage removal and bags as the tenant left garbage and damaged furniture behind. The tenant said they had to move because of the landlord's threatening behaviour so left stuff behind.

\$294.75: for apartment cleaning service and carpet cleaning. The tenant said he had to leave at midnight on September 3 or 4th because he felt threatened by the landlord. He said the carpet was dirty when the tenancy commenced and he discovered this when he was playing on the floor with his two small dogs.

\$220: to replace keys, fobs and passes issued by the strata that were not returned by the tenant. The tenant said he still had these and could take them to our office.

\$44.79: to replace a lock as the tenant did not return the keys.

\$787.50: to paint walls that were dented, marked and chipped. The paint was four years old. The tenant said the walls were like that when the tenancy commenced.

\$150: to repair damaged carpeting. The tenant said the carpet was damaged and the landlord just replaced a bit when the tenancy commenced.

\$250: compensation for mortgage penalty as he could not pay it due to unpaid rent.

\$26.64: photo processing for evidence.

\$14.76: to replace light bulbs. The tenant said they were burned out when the tenancy commenced and he had to replace them.

\$200: Strata fine for tenants breaking the noise bylaw on September 2, 2013. The tenant said they were already gone by then.

\$50 filing fee for the Application resulting in the Order of Possession and \$50 for today.

The male tenant was very angry in the conference, constantly accusing the landlord of lying and challenging him to take a lie detector test. Among other things, he threatened to take the matter to Supreme Court, to leave the conference to get a lawyer and to sue the landlord. He said the problems with the rent and other issues were caused by the landlord's threatening attitude. He said the landlord entered his unit and his mother's home threatening to evict him and demanding the unpaid rent. The landlord said that he followed the requirements of the Act and served notice five days in advance for monthly inspections. He said he knocked at the unit, then entered and found the tenant passed out. He woke him and explained that he had not been paying rent so he (the landlord) would be seeking an Order of Possession; he denies threats. The landlord did obtain an Order of Possession dated August 22, 2013. The landlord said that he did not threaten but demanded the tenant pay the outstanding rent as it was causing him extreme financial hardship. The female tenant said she left the unit at the end of June 2013, she had not dealt with the landlord in person but heard the threatening telephone calls, she felt under stress and was between jobs. This was the first time she and the male tenant had shared accommodation.

In evidence are copies of the Residential Tenancy Agreement with the mother as guarantor, the Condition Inspection Report at move-in, registered mail receipts, the Order of Possession dated August 22, 2013, the Bylaw Infraction notice from the strata, photographs and invoices to support all the amounts claimed by the landlord.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order

The onus is on the landlord to prove on a balance of probabilities his claim. I find that there are rental arrears of \$2900 for August and September 2013. I find the tenant agreed he did not pay rent for August. Although the tenant said he was gone in September, I find the preponderance of the evidence is that he was still there on September 3, 2013 as he said earlier in the conference that he left on September 3rd or 4th. Rent is due on the first of the month so I find the landlord entitled to compensation for September's rent also. I find the landlord entitled to \$75 fees for late rental payments on July, August and September as this is supported by the lease and the sworn evidence in the hearing. Although the tenant contended that July 1 was Canada Day and people were entitled to party and drink, I find this does not excuse his obligation to pay rent when due.

In respect to the claim for damages, I find the landlord's evidence credible as it is supported by invoices and the tenant's evidence that he left at midnight, left items behind and the unit not cleaned. I find the landlord entitled to compensation of \$210.38 for garbage removal.

The tenant disputed the amount of \$78.75 for carpet cleaning as he said the carpet was dirty when the tenancy commenced. I find the Condition Inspection Report notes there were some spots on the carpet at move-in; however the tenant had dogs and the Residential Tenancy Policy Guideline #1 states that a tenant may be expected to clean the carpets even after a short term tenancy if there were uncaged pets. Given the condition at move-in and that pets played on the carpets, I find it reasonable that the tenant be responsible for half of the cost of cleaning the carpets or \$39.38.

The landlord claims \$216 for the remainder of the cleaning costs. Although the Condition Inspection Report notes that drapes were dirty and there was some dust on a fixture, I find the preponderance of the evidence is that there was extensive cleaning required at move-out. The tenant agreed that he left hastily and the photographs supplied by the landlord illustrate the unit needed a lot of cleaning. Section 37 of the Act notes it is the duty of the tenant to leave the unit reasonably clean and I find the weight of the evidence is that the tenant did not do this. Therefore I find the landlord entitled to compensation of \$216 for cleaning (including tax) as invoiced.

I find the landlord also entitled to compensation of \$220 to replace keys, fobs and passes issued by the strata and \$44.79 to replace a lock. I find his evidence well supported by the tenant stating that he still had all of the keys and passes now at 4 months after the end of the tenancy. Although he said he could return them now, I find section 37 of the Act states that the tenant must give all the keys and other means of access to the landlord at the end of the tenancy.

In respect to the landlord's claim for \$787.50 to repaint the unit, I find that the Policy Guidelines provide for a useful life for items in rented premises which is designed to account for reasonable wear and tear. Paint is assigned a useful life of 4 years. As the landlord honestly testified that this paint was about 4 years old, I find he is not entitled to recover his costs of repainting as the paint was at the end of its useful life.

Regarding the claim for repairing the carpet, I find the weight of the evidence is that the tenant caused some fraying of the carpet beside a wall. I find the landlord's evidence credible as it is supported by a photograph and the fact that the tenant did not deny this damage but stated a section of the carpet had only been replaced when the tenancy commenced and it was not a new carpet. Also, the Condition Inspection Report notes no carpet damage at move-in. Therefore, I find the landlord entitled to recover costs of \$150 for repair of the carpet.

I find the preponderance of the evidence is that the landlord is also entitled to recover the strata fine for excessive noise caused by the tenant on September 2, 2013. Although the tenant said he had already vacated by then, I find this is inconsistent with his earlier statement that he moved on September 3 and 4th and with the complaint made by another strata occupant.

In respect to the landlord's claim for a missing light bulb, I find that the move-in report states that one was missing and the tenant's evidence is that it was missing and many bulbs were out. I do not find the landlord's photographic evidence of a missing bulb persuasive that this was caused by the tenant. Therefore I find him not entitled to recover \$14.76 for the bulb.

I find the tenant not responsible to compensate the landlord for \$250 mortgage penalty. According to the lease agreement and the Act, the tenant is obliged to compensate the landlord for unpaid rent and late fees but there is no agreement for further financial obligations of the tenant; the mortgage payments and his bank arrangements are the responsibility of the landlord. I find also the landlord not entitled to recover costs for production of evidence or registered mail as the Act in section 72 authorizes only the recovery of the filing fee for the Application process. I find the landlord entitled to

recover \$50 for this filing fee and \$50 for the filing fee to obtain the Order of Possession on August 22, 2013 as this filing fee was not recovered on the Direct Request.

In respect to the security deposit of \$725, I find the doubling provision of section 38 does not apply as the tenant testified that he has still not provided a forwarding address in writing to the landlord and, in any case, I find the tenancy ended on September 30, 2013 and the landlord filed this Application on October 7, 2013 which is within the 15 days provided in the Act to claim against the deposit.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application and the one to obtain the Order of Possession.

Calculation of Monetary Award:

Unpaid rent August and September 2013	2900.00
Late fees	75.00
Garbage Removal and bags	210.38
Carpet cleaning	39.38
Unit cleaning	216.00
Lock replacement	44.79
Replace strata keys. Fobs and passes	220.00
Repair a piece of carpet	150.00
Strata fine for excessive noise	200.00
Two filing fees	100.00
Less security deposit (no interest 2013)	-725.00
Total Monetary Order to Landlord	3430.55

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: January 14, 2014

Residential Tenancy Branch



M. Bruce, Arbitrator
Residential Tenancy Branch

