



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a Monetary Order for: damage to the unit; unpaid rent or utilities; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the “Act”); to keep all the tenant’s security deposit and to recover the filing fee for the cost of making the application.

The landlord, the co-landlord and the tenant all appeared for the first hearing on December 12, 2013. At the start of the hearing, the landlord had served the tenant with a large amount of evidence on the last day of the time limit stipulated by the Residential Tenancy Branch Rules of Procedure. As the tenant had not had sufficient time to consider such a large amount of evidence before the initial hearing took place, both parties consented to the initial hearing being adjourned.

All of the above parties appeared for the reconvened hearing, during which both parties confirmed the receipt of all the documentary evidence provided by both parties including the Notice of Hearing documents. No further issues were raised by any of the parties in relation to the service of evidence and the Notice of Hearing documents.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony, although the female landlord led all of the landlords’ testimony. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for: damage to the unit: unpaid utilities; and loss of rent relating to August, 2013?
- Is the landlord entitled to keep the tenant's security deposit in partial satisfaction of the landlord's claim?

Background and Evidence

The landlord and tenant agreed that this month to month tenancy started on August 8, 2012. A written tenancy agreement was completed and the tenant paid the landlord a security deposit in the amount of \$475.00 on August 8, 2012. Rent was established in the amount of \$950.00, payable by the tenant to the landlord on the first day of each month.

The landlord did not complete a move in condition inspection report at the start of the tenancy, but did complete a move out condition inspection report in the absence of the tenant, who failed to participate. The move out condition inspection report was provided as evidence for the hearing. The tenancy was ended by the landlords who issued the tenant a notice to end tenancy for cause, which the tenant disputed. However, the tenant left the tenancy on August 1, 2013 before the hearing to cancel the notice to end tenancy was to take place on August 19, 2013; during this hearing the arbitrator determined that the tenant had not provided the landlord with a forwarding address in writing for the return of her security deposit. The landlord testified that, as a result, the tenant provided her with a forwarding address, via a neighbour, on August 24, 2013.

The landlord testified and pointed to documentary evidence in relation to her monetary claim and the tenant provided evidence in response. This is summarised as follows:

- The landlord claims \$188.78 for the cost of replacing two door locks to the rental suite, one being the exterior front door which was a keypad lock, and the other being an interior door. The landlord testified that the tenant had not returned these keys despite assuring the landlord that they would be returned by midnight on the last day of the tenancy. The landlord testified that both keys were provided to the tenant at the start of the tenancy and one of the keys was for the key pad lock so that the tenant could always use the key in a case of battery failure in the electronic key pad. The landlord provided a receipt for the cost of a regular lock

and a key pad lock and claims an additional \$60.00 for two hours installation of the locks which the co-landlord testified to during the hearing.

The tenant testified that she was only given one key by the landlord to the interior door, which she left in the tenant's mail box at the end of the tenancy.

- The landlord claims \$300.00 in cleaning costs as the tenant failed to leave the suite reasonably clean at the end of the tenancy. This included: dirty carpets which had to be completely removed and replaced with flooring (the costs of which are not being claimed by the landlord), garbage removal to the dump site, washing of the drapes and curtains, washing of the walls as the tenant was a smoker, cleaning of the kitchen cupboards and appliances, cleaning of the bathrooms, cleaning of the floors and removal of tape marks on the countertops. The landlord provided a number of close-up photographs which indicate the majority of the damages testified to. The landlord testified that they charged \$30.00 per hour for a total of 9 hours and additional time to go to the dump site for garbage removal. The landlord also provided a signed statement from the previous renter who states that the rental suite was left in a clean condition when this renter's tenancy ended on July 15, 2013 and that the landlord had returned the full amount of the renter's security deposit back to the previous renter.

The tenant testified that she left the rental suite reasonably clean and the damages testified to by the landlord are normal wear and tear as evidenced by photographs which she submitted. The tenant testified that the landlords had a higher expectation of cleanliness than that which is reasonable and that she did her best to clean the suite before she left, whilst suffering from a back injury. The tenant claims that there was only one set of curtains and blinds in the rental suite and that she never smokes inside the rental suite but only outside. The tenant stated that the landlord had intentions to replace the carpet through renovations they had prior to the tenancy ending.

The landlord testified that the photographs provided by the tenant only shows some areas of the rental suite which indicate that the suite was cleaned; however, some of the tenant's photographs do indicate a dirty floor and toilet, and the landlord testified that the tenant failed to take close up pictures which would have been a better comparison to the landlord's photographs submitted for this hearing.

- The landlord claims lost rent for August, 2013 in the amount of \$950.00 because the tenant failed to leave on the last day of the tenancy which was July 31, 2013. The landlord testified that they had placed advertisements to re-rent out the suite

but could not do any viewings because the tenant was intentionally impeding access to the suite and had to take time in August to repair the damage.

The tenant testified that her movers cancelled on her for the last day of the tenancy and were only available for the next day on August 1, 2013. As a result, the tenant paid the landlord a prorated amount of \$30.65 for the day that she over held the suite. The tenant testified that the landlord was unable to re-rent the suite because it did not comply with the city by laws and that the landlords did not have any intention to re-rent out the suite because they intended to do renovations after she was leaving.

- The landlord claims \$95.65 for a broken blind which she purchased for \$15.65 and claims \$40.00 for each of the 2 hours that it took the co-landlord to shorten and install. The landlord testified that the tenant's son had broken the blind, which she witnessed, by yanking on the pull cord when she came to the door sometime in March, 2013. The landlord provided a photograph of the damage to the blind.

The tenant was not present when this incident occurred but she testified that her son and the landlord's son played together in the rental suite and the shared garden, and claims that they both broke the blind. The tenant testified that the landlord asked her to tape up the blind and that it was a cheap repair to make. The landlord confirmed that the tenant had been asked to tape it up but the tenant was still responsible for the repair or replacement of it.

- The landlord claims \$300.00 for patching and painting costs as a result of repairing the damages caused by the tenant to two bedrooms in the rental suite. The landlord provided photographs of holes in the bedroom walls that had to be filled, sanded and painted twice; the landlord provided a contact card for the company who completed this work.

The tenant submitted that the landlord had not provided an invoice or receipt for these costs and stated that the damage to the walls being claimed by the landlord is normal wear and tear.

- The landlord claims \$20.00 for the repair of the broken wall heater in one of the bedrooms and provided a photograph which indicates that the baseboard heater has been pulled away from the wall. The landlord suggested that this was done by the tenant's son as this was the room he played in.

The tenant denied any knowledge of the heater being broken by her or her son and states that she never used this because her heat source did not come from baseboard heaters. The landlord rebutted the tenant's submission referring to the photographs which show cereal underneath the baseboard heater and submitted that the tenant would have been aware of this during the tenancy.

- The landlord claims \$100.00 for a broken screen door. The landlord testified that the sliding screen door had been broken by the tenant and provided a quote for the costs of a similar sliding door.

The tenant testified that the door was not sliding and was sticking and grinding to the floor which caused it to bend. As a result, the landlord removed the door and left it under the deck. The co-landlord confirmed that it had been removed because it had been damaged and testified that it is very costly to replace as it is a custom sliding door.

- The landlord claims \$100.00 for the cost of replacing her wheelbarrow. The landlord testified that the wheelbarrow was made available to the tenant for snow clearing and yard maintenance. However, the landlord claims that the tenant's son used it and broke it, leaving it back in the shed for the landlord to discover the damage. The landlord provided an estimate for the cost of replacing a like wheelbarrow to the one that was damaged.

The tenant testified that her son and the landlord's son often played together with the wheelbarrow and that it was broken by both of the children. The tenant offered the landlord to pay for half of the cost but the landlord did not agree to this.

- The landlord claims \$15.00 for internet, cable and the cost of replacing a coaxial wire cable. The landlord testified that cable and internet was not included in their tenancy agreement as part of the rent. However, it came to their attention that the tenant was using their internet access which was freely available throughout the house and that the tenant had a cable connection in her unit for which the landlord was paying for. The landlord testified that the tenant demanded that she be provided with cable and internet during the last month of her tenancy. The landlord testified that they were told by the Residential Tenancy Branch that as the tenant had 'access' to these services they were required to continue to be provide these to her. As a result, the landlord testified that they provided the tenant with a cable box, a coaxial cable to connect the cable box with a verbal agreement that the tenant would pay \$4.00 per month for this service. When the tenancy ended, the tenant had not paid the monthly bill for the internet or cable

and, although the cable box was returned, the coaxial cable was not, for which the landlord now seeks the return of in the amount of \$10.00 plus tax.

The tenant denied having this agreement with the landlords and testified that this was included as part of her rent, although she acknowledged that the written tenancy agreement did not allow for this.

- The landlord claims \$75.00 for broken toys caused by the tenant's son during the tenancy.

Analysis

The landlord testified that she received the tenant's forwarding address in writing on August 24, 2013. Based on the evidence provided by both parties in relation to the forwarding address, I find that the landlord made the application to keep the tenant's security deposit within the 15 days stipulated by section 38(1) (d) of the Act.

When a party makes a claim for damage to a rental suite, 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 Act states that the tenant and landlord together must complete a condition inspection report at the start and end of the tenancy. In this case, the landlord failed to complete a move in inspection report and therefore, even though the landlord completed a move out condition inspection report, I have not considered the condition inspection report as reliable evidence in making a decision in this case.

As a result, the landlord must prove, using other evidence on the balance of probabilities, that the tenant caused the damages to the rental suite, which would have otherwise have been proved by the condition inspection reports.

In relation to the landlord's claim for the damage caused to her son's toys by the tenant's son, I find that this matter is not related to the tenancy and therefore I am unable to make a determination on this issue. The toys were not provided as part of the tenancy and therefore, I dismiss this portion of the landlord's claim.

In relation to the landlord's claim of unpaid cable and internet and the coaxial cable, I find that both the landlord and tenant failed to complete a written agreement on what equipment was being provided to the tenant and what amount the tenant was to pay for this service. As both parties disputed the terms of the agreement and what was provided by the landlord, I find that the landlord has not met the burden of proof in relation to the costs claimed. The landlord also provided insufficient evidence to verify the amount being claimed and I dismiss this portion of the claim.

In relation to the cleaning and painting costs, I accept the landlord's evidence over the tenant's evidence and I award the landlord the \$600.00 claimed. This is based on the evidence provided by the previous renter showing the rental suite was left in a clean and undamaged condition at the end of the renter's tenancy and therefore, I find that it was provided to the tenant in a clean and undamaged condition. The landlord provided a number of photographs which supports the landlord's testimony that the tenant failed to leave the rental suite reasonably clean and undamaged as required by section 37(2) (a) of the Act. I also find that the costs claimed by the landlord are reasonable and verify the landlord's claim in relation to the evidence provided. I also find that, as the landlord had to fill in holes in the walls, this is damage beyond reasonable wear and tear.

Policy Guideline 3 to the Act, states that a tenant is responsible for the per diem cost when they remain in possession of a rental suite until the landlord receives full possession of the premises. The Policy Guideline goes on to say that in certain circumstances, a tenant may be liable to compensate a landlord for loss of rent but the landlord still has a duty to mitigate loss by re-renting the premises at a reasonable rent.

In this case, I find that the landlord has provided insufficient evidence to show that she had mitigated losses; the landlord did not provide copies of advertisements which would have shown the date the landlord attempted to mitigate loss and provided insufficient evidence to show what losses were incurred as a result of the tenant over holding the rental suite for one day. However, I also find that by over holding the rental suite, the tenant went into the next month, thus precluding the landlord any chance of being able to rent the suite for the start of the month and allowing enough time for the landlords to rectify the cleaning and damages to the rental suite. As a result, I am only prepared to award the landlord half a month's rent relating to August, 2013 in the amount of \$475.00.

In relation to the landlord's claim for the replacement of the locks, I accept the landlord's evidence over the tenant's evidence that the tenant was provided with two keys which she failed to return to the landlord. I find that it was not appropriate for the tenant to

leave the key in the landlord's mail box at the end of the tenancy. As the tenant was not able to provide supporting evidence that the key was returned to the landlord, I find that she is responsible for this cost. In addition, I accept the landlord's evidence that it was likely that the tenant would have been given a key in the event of a malfunction to the electric key pad entry system and this was the reason why the landlord purchased a new key pad, for which an invoice was provided as evidence. Therefore, I award the landlord's claim of \$188.78 for lock replacement.

I also award the landlord's claim for the broken heater repair testified to by the co-landlord in the amount of \$20.00 based on the landlord's photographic evidence and testimony that this was not pulled away from the wall at the start of the tenancy and was left by the tenant in this state. The tenant stated that this was not her heat source, but I find that this has little bearing on whether damage was caused to it. I find that had this heater been present like this during the tenancy, the tenant would have likely addressed this issue with the landlord, which she did not.

In relation to the damage to the wheelbarrow and broken blind, the parties agreed that during this tenancy, the landlord's son and tenant's son played together. The landlord has failed to provide sufficient evidence to show that the tenant's son caused this damage. However, the tenant acknowledged that her son 'may' have been partly responsible for these damages. As a result, I am only prepared to award the landlord approximately half of the costs claimed for these items in an amount of \$100.00.

I dismiss the landlord's application for the cost of the sliding screen door because the landlord and tenant disagreed on the damage to the screen door. The landlord testified that it was dented by the tenant and that was the reason why it was removed. The tenant testified that it was removed by the landlord because it was malfunctioning. The landlord did not provide any photographic evidence in relation to the damage or supporting evidence to show that the tenant was responsible for this. As the landlord removed the sliding screen door, it would have been prudent for the landlord to address the damage to the door being claimed with the tenant at that moment in time, either in writing or through remedies under the Act.

As a result, the landlord is awarded a total amount of \$1,383.78. As the landlord has been successful in the majority of her application, I also award the landlord the \$50.00 filing fee for the cost of making this application pursuant to section 72(1) of the Act. Therefore the total amount awarded to the landlord is \$1,433.78. As the landlord already holds a \$475.00 security deposit, I allow the landlord to use this amount in satisfaction of the landlord's claim for lost rent and order the landlord to retain this

amount pursuant to Section 38(4) (b) of the Act. As a result, the landlord is awarded \$958.78.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$958.78**. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the tenant fails to make the payment in accordance with the landlord's instructions.

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: February 21, 2014

Residential Tenancy Branch

