



Dispute Resolution Services

Page: 1

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 under the *Residential Tenancy Act* (referred to as the “Act”); to keep all or part of the tenant’s security deposit and to recover the filing fee.

The landlord appeared for the hearing and provided affirmed testimony during the hearing and also submitted evidence prior to the hearing. The landlord was also permitted, under Section 11.5 of the Rules of Procedure, to provide a copy of the condition inspection report and e-mails relating to the tenant’s forwarding address.

The landlord testified that she has served the tenant with a copy of the application, the Notice of Hearings documents and a copy of the evidence used in this hearing by registered mail. The landlord provided a copy of the registered mail receipt and Canada Post tracking number as evidence for this method of service. Section 90 of the Act states that a document served by mail is deemed to have been received five days after it is mailed. Based on this, I find that the landlord served the tenant with the hearing documents and evidence used in this hearing in accordance with the Act.

The tenant failed to appear for the hearing and did not provide any evidence prior to the hearing, despite being served notice of this hearing in accordance with the Act. As a result, the hearing continued in the absence of the tenant and the undisputed evidence of the landlord has been carefully considered in this decision.

Issue(s) to be Decided

- Did the landlord deal with the tenant’s security deposit in accordance with the Act?
- Is the landlord entitled to a Monetary Order for damage to the unit and for loss of rent as a result of these damages?

Background and Evidence

The landlord testified that this month to month tenancy started on January 1, 2013. A written tenancy agreement was completed and the tenant paid the landlord a security deposit in the amount of \$775.00 on December 9, 2012. Rent was established in the amount of \$1,550.00, payable by the tenant to the landlord on the first day of each month.

The landlord completed a condition inspection report with the tenant on January 6, 2013. The landlord testified that on June 1, 2013 the landlord received a written letter and an e-mail from the tenant stating that the tenant was going to vacate the rental suite at the end of July, 2013. The e-mail contained the tenant's forwarding address which the landlord confirmed she received. However, the tenant sent the landlord an e-mail at the end of July, 2013 stating that she was not going to move out until the end of August, 2013.

The landlord immediately placed the rental suite on the market for re-rental for September, 2013 and when she went to view the rental suite with some prospective tenants on August 16, 2013, the landlord discovered that there was a considerable amount of damage inside the unit as well as a strong smell of pet urine and feces. The landlord testified that the rental suite could not be re-rented until the tenant had vacated the suite and the landlord had completed the repairs. As a result, the landlord withdrew the rental advertisements and focused her efforts on getting the suite back into a state where it could be occupied by a new renter.

The landlord testified that the tenant left in the middle of the night on August 30, 2013. The landlord sent the tenant an e-mail providing some dates as to when a move-out condition inspection was to be completed. The landlord testified that the tenant did not respond to the e-mail. As a result, the landlord made the application for this hearing on October 26, 2014 after completing all of the repairs to the rental suite.

The landlord testified and provided 137 photographs relating to the damage that the tenant had caused to the rental suite. In addition the landlord provided a receipt/invoice for each item claimed below and the move-in condition inspection report. The landlord's monetary breakdown of her damages claim is summarised below:

- \$187.50 for treating the subfloor. The landlord testified that the urine and feces from the tenant's pets had soaking in through the carpet and underlay and permeated into the sub floor of the rental suite. The landlord consulted a

professional company who advised that instead of pulling up the subfloor she could mitigate her loss by using a special product to seal the floor and treat the smell. As a result, the landlord purchased this product and applied it to the floor.

- \$49.81 for the cleaning of the fridge and purchase of a vacuum. The landlord testified that the tenant had left behind a large amount of rotting food in the fridge which had been turned off for some time by the tenant. The landlord had to remove the rotting food using several garbage bags. The landlord's own home has a built in vacuum so the landlord was unable to use her personal vacuum to clean the suite. As a result, the landlord purchased a vacuum, which was on clearance, to vacuum the carpets inside the rental suite.
- \$718.43 for skip and dumping fees. The landlord testified that the tenant had left behind so much junk that she had to hire a skip to dispose of it. This included the disposal of dirty and soiled carpets, damaged doors, empty boxes and trim which had been pulled off by the tenant.
- \$162.73 for paint, painting supplies and key replacement. The landlord testified that the tenant had left over 100 screws in the walls as well as additional dents and holes in the walls throughout the rental suite. These had to be filled in, sanded down and the walls had to be repainted. The tenant had only returned one of the three keys that had been given to her so the landlord had to purchase two new keys.
- \$37.45 for replacing the cover of a light fixture in the bedroom which had been broken by the tenant and left in the bathroom sink.
- \$1,337.11 for carpet cleaning and replacement of soiled carpets with laminate flooring. The landlord testified that the rental suite contained carpet which had been damaged by the tenant's pet. The landlord showed several photographs which show fecal matter and urine stains on the carpet. The landlord testified that the carpet in one of the bedrooms and the upstairs living room, where it appears that the pets mostly resided in, could not be cleaned and had to be replaced. The landlord provided a receipt for the cost of replacing these rooms with carpet for \$1,758.63. However, the landlord decided to purchase laminate flooring for \$655.66 as this was half the cost and helped to mitigate the loss. The remainder of the carpet in the rental suite was then cleaned by a professional company who utilised a special product to neutralise the urine stains at a cost of \$681.45.

- \$124.99 for light bulbs. The landlord testified that the tenant had left behind a number of broken regular and halogen light bulbs which she had to replace.
- \$131.45 for missing items. The landlord testified that the tenant had taken a smoke detector and hooks from the back of the doors which had to be replaced.
- \$250.00 for cleaning of the house. The landlord testified that the tenant had not cleaned the rental suite including the kitchen, kitchen appliances and bathrooms; the landlord hired a professional cleaning company to complete this work.
- \$5,118.78 for subcontractor work. The landlord had to hire a professional company to help her install the laminate flooring, repair the extensive damage to the trim, haul out the garbage and carpets from the rental suite, replace the bedroom door, repair molding and patch and paint the entire rental suite.
- \$26.66 for the cost of taking and preparing the 137 photographs to be used as evidence for this hearing.
- \$577.65 for a new dishwasher. The landlord testified that when the new renters moved in, they noticed that the dishwasher had holes in the sprayer arm. The renters tried to repair this by using water proof silicon but this did not rectify the problem. As a result, the landlord decided to purchase a new dishwasher instead of doing the repair, which she got on sale. The landlord provided the e-mail exchange regarding the problem with the dishwasher between her and the new renters at the start of December, 2013 and testified that the dishwasher was three years old.
- \$4,650 for lost revenue. The landlord testified that it took her until October 22, 2013 to complete the repairs to the rental suite after which point she placed the rental suite on the market for re-rental for November 1, 2013. However, the landlord was unable to re-rent out the property until December 1, 2013.

Analysis

The total monetary claim of the landlord as testified above exceeds the amount detailed in the application of \$12,736.17. As the landlord did not amend her application to increase the monetary amount sought from the tenant for the dishwasher, I am unable to consider the landlord's monetary claim for the dishwasher and I dismiss this portion of the claim with leave to re-apply.

The landlord testified that she received the tenant's forwarding address by e-mail in July, 2013 before the tenancy ended and this was the same address that she used on her application. The landlord testified that the tenancy ended on August 31, 2013.

Section 38(1) of the Act states that a landlord must return a security deposit or make an application to claim against it within 15 days after receiving a tenant's forwarding address in writing. If the forwarding address is received by the landlord before the tenancy ends then the landlord must act within 15 days after the tenancy ends.

As a result, I find that the landlord had until September 15, 2013, being 15 days after the tenancy ended, to make an application to keep the security deposit or return it to the address provided by the tenant. However, the landlord did not make the application until October 23, 2013. The landlord testified that she had offered the tenant an opportunity to attend a move-out inspection report but the tenant failed to appear. Section 36(1) of the Act states that a tenant extinguishes their right to the return of a security deposit if the landlord has given the tenant two opportunities to attend the move-out inspection in the approved form, and the tenant fails to attend on either occasion. In this case, I find that the landlord did not comply with the Act in giving the tenant two opportunities to attend the move-out inspection, and by using the approved form. Therefore, the tenant has not extinguished her right to the return of the security deposit.

Section 38(6) (b) of the Act states that if the landlord fails to make an application to keep the tenant's security deposit or return the deposit within 15 days, then the landlord must pay double the amount of the deposit to the tenant. Policy Guideline 17 to the Act states that an arbitrator **will** order the return balance of the deposit whether or not the tenant has applied for arbitration for its return. Therefore, the landlord must pay the tenant double the security deposit in the amount of \$1,550.00.

Section 37(2) of the Act states that at the end of a tenancy, a tenant must leave the rental suite reasonably clean and undamaged, apart from reasonable wear and tear. In addition, Section 21 of the Residential Tenancy Regulation states that a condition inspection report can be considered as evidence for the purpose of this proceeding.

In assessing the landlord's claim for damages to the rental suite, I have compared the 137 photographs taken by the landlord at the end of the tenancy with the move-in inspection report which shows no damages to the rental suite at the start of the tenancy. Coupled with the undisputed testimony of the landlord and the complete invoices and receipts provided, I am persuaded that these damages were caused by the tenant who was responsible for rectifying them at the end of the tenancy in accordance with the Act. As a result, I allow the landlord's claim for damages to the rental suite in full for the amount of \$8,118.25. This does not include the cost for replacing the dishwasher; it also

does not include the costs associated with the photographs as these are costs that any party must bear as part of preparing for the dispute resolution process.

In relation to the landlord's claim for lost revenue, I am satisfied that the landlord has presented sufficient evidence to support the fact that it took under two months for the landlord to complete the repairs. I also accept that by the time these repairs were completed and the rental suite was made fit for re-rental at the end of October, 2013, it was too late for it to be rented for November, 2013. The landlord provided e-mail evidence to show that the new renters had taken up occupancy in December, 2014 and based on this and on the balance of probabilities, I award the landlord three months worth of lost rent in the amount of \$4,650.00.

As the total amount that would be awarded to the landlord above exceeds the landlord's monetary claim on her application, I am only able to award the landlord \$12,736.17 in full satisfaction of the landlord's claim.

As the landlord has been successful in claiming for the damages for the rental suite caused by the tenant, I also award the landlord the \$100.00 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 \$12,836.17. The Act allows me to set off amounts that I find are payable to the parties. The tenant is entitled to \$1,550.00 for double the amount of the security deposit, and the landlord is entitled to \$12,836.17 for damages to the rental suite. The difference is \$11,286.17.

Conclusion

For the reasons set out above, I hereby grant a Monetary Order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$11,286.17. This order is final and binding on the parties and may be enforced if the tenant fails to make payment in accordance with the order.

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 05, 2014

Residential Tenancy Branch

