



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 concerning an application made by the landlord for a monetary order for unpaid utilities, damage to the unit, for compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order permitting the landlord to keep the security deposit and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the conference call hearing, but no one appeared on behalf of the tenants. The landlord testified that the tenants were individually served by registered mail on November 13, 2013 and provided tracking numbers assigned by Canada Post. I am satisfied that each of the tenants has been served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 12 minutes prior to any testimony, however the only participant who joined the call was the landlord.

The landlord gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. The landlord was also permitted to provide by facsimile 2 receipts obtained for damages claimed. All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid utilities?
- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

- Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on May 1, 2013 and expired on October 31, 2013 at which time the tenants moved out of the rental unit. Rent in the amount of \$890.00 per month was payable in advance on the 1st day of each month, and there are no rental arrears. The tenancy agreement also provided that the tenants would pay 25% of the gas and electric bills. A copy of one page only of the 6 page tenancy agreement has been provided. It appears to be page 2 of 6, corroborates the landlord's testimony, but does not contain any names or signatures.

On April 13, 2013 the landlord collected a security deposit from the tenants in the amount of \$445.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that the parties completed a move-in condition inspection report on May 1, 2013 and a copy has been provided. However, at the end of the tenancy, no move-out condition inspection report was completed. The parties corresponded by email, and copies of emails have been provided. The landlord testified that October 31, 2013 at 2:00 p.m. was arranged by the parties to do the move-out condition inspection, but one of the tenants called the landlord indicating that she was not ready. The landlord asked the tenant to call when she was ready to prevent an unnecessary trip to the rental unit by the landlord. The tenant did not call, so the landlord called and left a message, but the tenants did not return the landlord's call.

The landlord had arranged for new tenants to move into the rental unit the afternoon of October 31, 2013, so the landlord had little time and went to the rental unit in the morning. When he arrived there was a note on the door with the tenants' forwarding address. The rental unit was not clean, and damages were apparent.

The landlord testified that a kitchen cabinet door was broken. The landlord called 3 places for quotes after filing this application and testified that the cost was \$50.40, the landlord had to make 3 trips, and a copy of the receipt has been provided. The landlord claims \$78.40 for that repair. Also, 3 energy saving light bulbs were burned out, for which the landlord claims \$15.00. He replaced them with bulbs he had on hand, but has provided a receipt to establish the cost at \$14.45. Also, the bedroom door required a part to repair, which the landlord repaired himself with a part that he had on hand, and claims \$3.00.

The landlord further testified that the tenants owe \$148.85 for outstanding utilities, and has provided a copy of an electric bill covering the period of September 17, 2013 to October 16, 2013 and a gas bill covering the period of September 13, 2013 to October 15, 2013, showing a calculation of 25% of the bills, or \$148.86 as being the tenants' portion.

The landlord also claims \$205.00 for cleaning the rental unit, and has provided photographs to illustrate that the tenants did not leave the rental unit reasonably clean. He testified that cleaners would charge a minimum of \$180.00 and the landlord used carpet cleaner that he had on hand. The \$205.00 is broken down to:

- 3 hours at \$30.00 per hour for cleaning the carpet, plus \$10.00 for cleaner = \$100.00;
- 2.5 hours at \$30.00 per hour for cleaning the oven = \$75.00;
- 1 hour to clean the fridge, kitchen cabinets, floor and bathroom = \$30.00.

The landlord has provided a copy of the move-in condition inspection report which shows that at the beginning of the tenancy, the following applied:

- Chips in paint in entry;
- Bad odor in freezer;
- Poo stains on living room floor/carpet;

and it is signed by a landlord and a tenant. The move-out condition inspection report portion of the form has not been completed or signed.

The landlord has also provided copies of emails exchanged between the parties, which include an email from the landlord to the tenant requesting payment of the costs of cleaning, repairs and outstanding utilities, and referred to an email from the tenant that authorizes the landlord to keep the security deposit.

Analysis

Firstly, with respect to the landlord's claim for a monetary order for outstanding utilities, I have reviewed the tenancy agreement, and I find that the tenants are liable for the payment of 25%. I have also examined bills and the landlord's calculation, and I find that the landlord has established a monetary claim for \$148.86.

Where a party makes a claim against another party for damages (including cleaning claims), the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

The *Residential Tenancy Act* also states that the condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. In this case, the landlord did not complete the move-out portion of the reports, and therefore that evidence is absent. I have reviewed the photographs, and find that they are consistent with the landlord's testimony. I accept that the landlord is entitled to do the work himself, and I find that \$205.00 for cleaning is reasonable.

With respect to damages, a tenant's responsibility is to leave a rental unit reasonably clean and undamaged except for normal wear and tear. I have reviewed the move-in condition inspection report and no mention of missing or burned out bulbs or of damage to the cabinet was evident at that time. The landlord has provided receipts for those items and therefore I find that the landlord has established a claim for \$14.45 and \$50.40 respectively. With respect to the landlord's claim for 3 trips to purchase repairs to the cabinet, I am not satisfied that the landlord has satisfied element 3 in the test for damages for the additional \$28.00 or the \$3.00 part for the bedroom door, and those claims are hereby dismissed.

Further, the *Residential Tenancy Act* requires a landlord to return the security deposit in full to the tenant, unless the tenant has authorized keeping it in writing, which I find has occurred. I accept the testimony of the landlord, which I find is corroborated by a copy of an email from the tenant, that the tenant authorized the landlord to keep the security deposit after the landlord sent the tenant the first email requesting payment for cleaning, utilities and damages.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

In summary, I find that the landlord has established a monetary claim as against the tenants in the amount of \$148.86 for utilities, \$205.00 for cleaning, \$64.85 for damages, and \$50.00 for recovery of the filing fee, for a total of \$468.71. I hereby order the landlord to keep the security deposit of \$445.00 in partial satisfaction of the claim, and I grant the landlord a monetary order for the difference of \$23.71.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit of \$445.00 and I grant the landlord a monetary order as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$23.71.

This order is final and binding on the parties and may be enforced.

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: March 4, 2014

Residential Tenancy Branch

