



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and utilities pursuant to section 67;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that she received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on February 19, 2014. Both parties also confirmed that they received one another's written and photographic evidence packages. I am satisfied that the parties served one another with the above packages in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and utilities? Are the landlords entitled to a monetary award for damage arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy for a house in a manufactured home park commenced on August 1, 2013, by way of a written Residential Tenancy Agreement (the Agreement) signed by the parties on June 14, 2013. Monthly rent was set at \$750.00, payable in advance on

the first of each month. The landlords continue to hold the tenant's \$375.00 security deposit paid on June 13, 2013.

On January 8, 2014, the tenant handed a representative of the landlords a written notice to end her tenancy by February 1, 2014. She said that she moved out of the rental home on January 19, 2014, and returned her keys to the landlords on January 31, 2014.

The parties agreed that they undertook a joint move-in condition inspection on August 1, 2013, after which the landlords prepared an August 4, 2013 joint move-in condition inspection report. The tenant confirmed that she signed that report. Although the parties commenced a joint inspection of the rental unit on January 31, 2014, this inspection was not completed as the parties disagreed as to the condition of the rental unit at the end of this tenancy. The landlords completed this inspection themselves and entered into written evidence a copy of the first page of the move-out report they produced from their inspection. The landlords only entered into written evidence the first page of a three-page joint move-in and the first page of their move-out condition inspection report, both prepared by the landlords. At the hearing, the tenant testified that the landlords had sent her all three pages of this document and that she had signed the joint move-in condition inspection report of August 4, 2013.

The landlords' application for a monetary award of \$1,411.11 included the following items as outlined in a February 13, 2014 document entered into written evidence by the landlords:

Item	Amount
Unpaid February 2014 Rent	\$750.00
Unpaid Utilities	150.00
Paint	150.87
Blind Replacement	60.24
Labour for Painting (10 hours @ \$25.00 per hour - \$250.00)	250.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Requested	\$1,411.11

The male landlord (the landlord) testified that he and his wife commenced advertisements on a popular rental website and in a local newspaper within a week of receiving the tenant's notice that she was intending to end her tenancy by February 1, 2014. The landlord gave undisputed sworn testimony that the landlords entered into a new tenancy agreement for this rental unit as of April 1, 2014, for the same \$750.00 in

monthly rent as was being paid by the tenant/respondent in their application for dispute resolution.

The landlords entered sworn testimony and written evidence that the painting costs resulted from a sub-standard and unauthorized paint job undertaken by the tenant during her tenancy. The landlords provided undisputed written evidence that they painted the rental unit in July 2013, shortly before this tenancy began. They submitted receipts for the new paint that they purchased to repaint those areas of the rental unit that required repainting after this tenancy ended.

The tenant did not dispute the landlords' claim for damage to the blinds caused by her cats. The tenant said that the utilities for this tenancy were under her name and she provided written evidence to demonstrate that she had paid her utility bills for this tenancy. In her written evidence and sworn testimony, the tenant maintained that she and her child experienced health problems arising out of black mould present in this rental unit. Although she produced no health records, she did enter into written evidence a listing of her work records showing that she missed time from work. She asserted that this missed work resulted from sickness caused by the mouldy conditions within this rental home. She gave evidence that she had to move without giving proper notice because of the health issues caused by the rental unit.

The landlords provided undisputed evidence that the first complaint they heard from the tenant about the condition of the rental unit was on December 28, 2013. The landlord testified that there was no evidence of mould in the rental unit and that the tenant's placement of plastic sheeting next to the window was the only source of potential problems.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for February 2014, the tenant would have needed to provide her notice to end this tenancy before January 1, 2014.

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent." Under these circumstances, I find that the tenant has

failed to demonstrate that she was entitled to deduct any portion of her rent that became owing for February 2014 due to her late provision of her notice to end this tenancy to the landlords.

As I find that the tenant was in breach of her periodic tenancy Agreement and the *Act*, I find that the landlords are entitled to compensation for losses of rent they incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for February 2014. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the evidence presented, I accept that the landlords took prompt action to attempt to the extent that was reasonable to re-rent the premises for February 2014. As such, I am satisfied that the landlords have discharged their duty under section 7(2) of the *Act* to minimize the tenant's exposure to the landlords' loss of rent for February 2014. For these reasons, I issue a monetary award in the landlords' favour in the amount of \$750.00 to recover their loss of rent for February 2014.

The landlords' only evidence that they incurred losses arising out of unpaid utilities was the landlord's sworn testimony that this was the case. The tenant supplied convincing written evidence that the utility bills for this tenancy were under her name. Although the landlord claimed that he had written evidence that the landlords suffered losses resulting from the tenant's unpaid utility bills, the landlords did not enter these documents into written evidence. For these reasons, I find that the landlords have not demonstrated their entitlement to a monetary award for unpaid utilities arising from this tenancy. I dismiss the landlords' application to recover unpaid utilities without leave to reapply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Based on the undisputed evidence presented by both parties, I allow the landlords a monetary award of \$60.24 to replace blinds in this rental unit damaged by the tenant's cats.

I have also considered the landlords' claim for a monetary award for damages that required the landlords to repaint much of this rental unit. I accept the landlords' undisputed written evidence and sworn testimony that this rental unit was freshly repainted in July 2013, shortly before this tenancy began. I also find on a balance of probabilities that the tenant repainted a number of areas of this rental unit without obtaining the landlords' prior authorization to do so and in a manner that caused the landlords to repaint the rental unit again shortly after this tenancy ended.

In reviewing this portion of the landlords' claim, I have taken into account the Residential Tenancy Branch's (the RTB's) Policy Guideline #40, which establishes the useful life of various features of a residential tenancy. In this Guideline, the useful life of an interior paint job is set at four years (i.e. 48 months). I find that the tenant's actions resulted in the landlords having to repaint this rental unit roughly six months after the premises were last repainted. I find that the landlords are entitled to recover 87.5% $\{(48 - 6)/48\} = 87.5\%$ of the costs of repainting this rental unit. Using this formula, I find that the landlords are entitled to recover \$132.01 $(87.5\% \times \$150.87 = \$132.01)$ for the cost of paint they incurred as a result of the tenant's actions. I reduce the hourly rate of pay the landlords claimed to recover their labour costs in repainting these premises from \$25.00 per hour to a more reasonable \$20.00 per hour. This results in a monetary award in the amount of \$175.00 $\{87.5\% \times (10 \text{ hours} @ \$20.00 \text{ per hour}) = \$175.00\}$ for the landlords' labour costs to repaint this rental unit.

I allow the landlords to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlords have been successful in this application, I also allow the landlords to recover their filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlords' favour under the following terms, which entitle the landlords to recover unpaid rent, damage arising out of this tenancy and the filing fee for this application, and to retain the tenant's security deposit:

Item	Amount
Unpaid February 2014 Rent	\$750.00
Eligible Portion of Claim for Paint	132.01
Blind Replacement	60.24
Eligible Portion of Claim for Labour for Painting	175.00
Less Security Deposit	-375.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$792.25

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: June 04, 2014

Residential Tenancy Branch

