



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 dealt with a landlord's application for a Monetary Order for damage to the unit; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation for the amounts claimed?
2. Are the landlords authorized to retain the security deposit?

Background and Evidence

The fixed term tenancy commenced September 12, 2013 and was set to expire March 24, 2014. The landlords collected a security deposit of \$700.00. The monthly rent of \$1,400.00 was due on the 25th day of every month. The rental unit was vacated on January 23, 2014.

Below, I have summarized the landlord's claims against the tenant and the tenant's responses, as submitted by the tenant's agent.

Rent

The landlords submitted that they did not receive notice to end tenancy other than a phone call from the tenant's sister on January 10, 2014 indicated she wanted to move out at the end of January 2014. The landlords began advertising for a replacement tenant right away and were able to re-rent the unit as of March 1, 2014. The landlords

are seeking compensation of \$2,800.00 for rent that was due January 25, 2014 and February 25, 2014 pursuant to the tenancy agreement.

The tenant's agent acknowledged that the tenancy did not end in a manner that complies with the Act and was agreeable to compensating the landlords for loss of rent up until February 28, 2014.

Hydro

The landlords submitted that the hydro bills are in the landlord's name and the tenant was required to pay the landlords for hydro. The landlords submitted that there were two unpaid hydro bills: \$93.77 for October 25 – December 24, 2013 and \$57.46 for October 25, 2013 – January 26, 2014 for which they are seeking compensation.

The tenant's agent submitted that hydro had always been paid by the landlords pursuant to a verbal agreement made between the parties.

The landlords denied that they agreed to pay for hydro costs. The landlords explained that monthly rent cheques also included charges for hydro and the laundry card and the landlord could obtain copies of the rent cheques to corroborate this position. In response, the tenant's agent conceded that the landlord's version of events may be accurate.

Laundry card

The landlords submitted that the landlords loaded credits on to the laundry card given to the tenant and in exchange the rent cheques included reimbursement for the credit placed on the card by the landlords. The landlords submitted that they were not reimbursed for the last \$20.00 they put on the laundry card because there was a dispute concerning the security deposit refund.

Initially, the tenant's agent submitted that the landlords had not previously sought reimbursement for the laundry card credits but then conceded that the reimbursement may have been added to the rent cheques as explained by the landlords.

Damage

The landlords submitted that the rental unit walls and ceiling were mouldy and dirty at the end of the tenancy. The landlords hired a contractor to remove the mould and repaint the affected walls. The landlords provided a copy of the contractor's invoice; photographs of the walls and ceiling showing a significant amount of mould in the corners of the walls and ceiling; and, a statement from the caretaker at the building that such mould had not been an issue in the unit before.

The tenant's agent submitted that the rental unit was not in good condition and there was pre-existing damage when the tenancy began but that the tenant accepted the unit as she was desperate for living accommodation at the time.

The landlords submitted that the rental unit was renovated two years prior and the unit was in good condition at the start of the tenancy.

Both parties pointed to a statement included on the 1st page of the tenancy agreement that reads: "This unit is in good living condition". It is initialled by the landlord but not the tenant. The landlord argued that at the time of signing the tenancy agreement the tenant made up an excuse that she had to leave and that she would initial the statement at a later time. The tenant's agent argued the statement was not initialled by the tenant because the unit was not in good condition.

The landlords also submitted that during the tenancy they were not permitted in the rental unit. The rent cheques were always left in the mailbox for them which is the reason why the damage was not noted until after the rental unit was vacated.

Search for tenant's new address

The landlords are seeking compensation for their time to locate the tenant in order to serve her with their Application for Dispute Resolution. As explained to the parties, other than the filing fee, costs to file and participate in a dispute resolution hearing are not recoverable under the Act. Therefore, I dismissed this portion of the landlords' claim summarily.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to the landlords' claims against the tenant.

Rent

Where a tenant ends a fixed term tenancy before the end of the fixed term, the tenant may be held liable for paying the rent for the remainder of the fixed term, provided the landlord takes reasonable steps to mitigate losses. Having heard the landlord received verbal notification of the tenant's intention to end the tenancy at the end of January 2014 on January 10, 2014 and vacated the rental unit on January 23, 2014 I find the tenant breached her obligations to fulfill the fixed term of the tenancy agreement. Since the landlords re-rented the unit starting March 1, 2014 I am further satisfied the landlords took reasonable measures to mitigate losses. I make no award for loss of rent

after February 28, 2014 as the landlords did not suffer loss of rent after that date. Therefore, I award the landlords loss of rent for the period of January 25, 2014 through to February 28, 2014 which I calculate to be \$1,549.99 [\$1,400.00 that was due on January 25, 2015 and \$149.99 for the period of February 26 – 28, 2014].

Hydro

The tenancy agreement provides that rent does not include electricity or heat and I am satisfied the tenant was required to pay hydro costs in addition to rent pursuant to the written agreement. Therefore, I grant the landlord's request to recover unpaid hydro bills in the amounts of \$93.77 and \$57.46 for a total award of \$151.23 for hydro.

Laundry card

The tenancy agreement provides that rent does not include free laundry. As such, I accept that the tenant was required to reimburse the landlord for credits placed on the tenant's laundry card by the landlord. Therefore, I grant the landlords' request to recover \$20.00 for the laundry credits for which the tenant did not repay to the landlord.

Damage

Upon review of the landlord's photographs, it is clear that there was a significant mould issue in this unit. The difficulty in this case is determining whether the actions or neglect of the tenant or persons permitted on the property caused the mould to form or worsen.

While condition inspection reports are required to be completed under the Act so as to document the condition of the rental unit; an Arbitrator may consider other evidence in determining the condition of the rental unit at the beginning and end of the tenancy and the cause of any damage, based upon the balance of probabilities.

Given the statement of the caretaker and considering the tenant did not complain to the landlord or seek repairs with respect to mould in the unit, I find on the balance of probabilities that the mould formed during the tenancy and as a result of the actions or neglect of the tenant or persons permitted on the property by the tenant. Therefore, I grant the landlord's request to recover \$600.00 from the tenant to remediate the mould.

Filing fee

As the landlords' application had merit, I award the landlords recovery of the \$50.00 filing fee paid for this Application as permitted under section 72 of the Act.

Security Deposit and Monetary Order

I authorize the landlords to retain the security deposit in partial satisfaction of the unpaid rent.

I provide the landlords with a Monetary Order calculated as follows:

Unpaid and/or Loss of Rent	\$1,549.99
Hydro	151.23
Laundry card	20.00
Mould remediation	600.00
Plus: filing fee	50.00
Less: security deposit	<u>(700.00)</u>
Monetary Order	\$1,671.22

The Monetary Order must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The landlords have been authorized to retain the tenant's security deposit and have been provided a Monetary Order for the balance of \$1,671.22 to serve and enforce as necessary.

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 24, 2014

Residential Tenancy Branch

