



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the Act; served by registered mail on February 21, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the Act.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord permitted to keep all or part of the security deposit?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testified that this month to month tenancy started on October 01, 2013. Rent for this unit was \$1,200.00 per month plus 50 percent of utilities. Rent was due on the first of each month. The tenants paid a security deposit of \$350.00 in increment payments at the start of the tenancy. The tenants provided a forwarding address by text message only to the landlord. The landlord testified that she sublet this unit to the tenants and subsequently became their landlord.

The landlord testified that the tenants only provided verbal notice to end their tenancy and indicated to the landlord that they would be vacating the unit on January 31, 2014. The landlord testified that she had rented the unit to a new tenant who was prevented from moving into the unit on February 01, 2014 as the tenants had not vacated as agreed until February 02, 2014. The landlord seeks to recover a prorated rent for two days of \$40.00 a day X 2 = \$80.00.

The landlord testified that the tenants failed to pay their share of the utilities. The landlord has provided copies of the utility bills and a break down of the total amount due, the amount paid by the tenants and the amount still owed as follows:

Total of all utilities \$1,017.37

Amount paid \$302.00

Amount owed \$715.37.

The landlord testified that the tenants failed to clean the chimney at the end of the tenancy. The landlord has to have this cleaned and seeks to recover the cost of \$91.87 from the tenants.

The landlord testified that when the tenants vacated they only returned one key to the landlord and informed the landlord that the other keys had been lost. The landlord testified that when she tried the key that was returned it did not fit the locks. Due to this the landlord had the locks changed to the front and back door for security reasons for the incoming tenant. The landlord seeks to recover the cost for this work of \$55.98.

The landlord testified that on January 31, 2014 there was a sewage back up in the basement of the unit. The tenants were supposed to have vacated on that date but their clothes and blankets remained strewn around the floor. The tenant notified the landlord who in turn notified her landlord's son who lives on the property. The landlord's son attempted to get the sewer repaired and the landlord and her mother went into the unit to help clean up the mess. The landlord testified that she itemised and bagged up all the tenants' clothing and blankets and these were removed for cleaning.

The landlord testified that she asked the tenants about their insurance to cover any loss and was informed the tenants did not have insurance. The landlord is unsure who was responsible for the blockage which caused the sewer to back up and the landlord only offered to help clean up the basement and to have the tenants' clothing cleaned as the landlord had a new tenant ready to move into the unit on February 01, 2014. The landlord seeks to recover \$50.00 for cleaning the tenants' clothing and \$8.38 for the purchase of a cleaning product to clean these items.

The landlord testified that the tenants failed to leave the rental unit clean and the landlord and the landlord's mother spent three days cleaning and bleaching the basement area where the sewage backed up and cleaning the upstairs of the unit which was left messy and dirty. The landlord seeks to recover \$200.00 for this cleaning.

The landlord testified that the tenants had burnt the top of the stove so badly it could not be cleaned. Burnt pots were also found outside and there was some evidence of burn marks above the stove. The landlord testified that the oven was also left in such a dirty condition it could not be cleaned. The landlord testified that they had to purchase a

second hand stove to replace this stove at a cost of \$50.00. The landlord testified that she did not get a receipt for this stove as it was purchased second hand.

The landlord testified that one of the tenants signed a sticky note giving the landlord permission to keep the security despot of \$350.00 to use as partial payment towards the utilities. The landlord has provided a copy of this stocky note in documentary evidence. The landlord requests an Order to keep the security deposit.

Analysis

The tenants did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlord's documentary evidence and sworn testimony before me.

With regard to the landlord's claim for a loss of rent; if tenants overhold at a rental unit after the effective date of their notice the landlord is entitled to recover from the tenants an amount prorated for the rent for the days the tenants have overheld. As the tenants had notified the landlord that they where vacating the unit on January 31, 2014 and did not vacate until February 02, 2014 I find the landlord is entitled to recover rent of \$80.00 for these days.

With regard to the landlord's claim for unpaid utilities; I am satisfied from the evidence before me that the tenants failed to pay all the utilities due of \$715.37. The landlord is therefore entitled to recover this amount from the tenants.

With regard to the landlord's claim for chimney cleaning; I refer the parties to the Residential Tenancy Policy Guidelines #1 which states in part that the landlord is responsible for cleaning and maintaining the fireplace chimney at appropriate intervals. The tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it. Consequently, it is my decision that the cleaning of the chimney is the

responsibility of the landlord and not that of the tenants. This section of the landlord's claim is therefore dismissed.

With regard to the landlord's claim for replacement locks; the tenants are required to return all the keys to a unit at the end of the tenancy, if the tenants fail to do so the landlord is entitled to have the locks changed to ensure the security of any new tenants coming into the unit. The landlord has provide sufficient evidence showing the cost of changing the locks was \$55.98 I therefore find in favour of the landlord's claim to recover this amount from the tenants.

With regard to the landlord's claim for \$50.00 and \$8.38 for cleaning the tenants' clothes and blankets after the sewer backed up. The landlord must show that the sewer backup was caused by the tenants' actions or neglect in violations of the *Act* or agreement. The landlord agrees that they do not know whose fault it was that caused the sewer to back up. The landlord argues that the tenants should have had insurance to cover any damage to their belongings and as they did not have insurance they are not covered under the landlord's insurance. It is my decision that although the tenants did not have their own insurance to cover damage to their belongings as the landlord is unable to show that the sewer backed up due to the tenants' actions or neglect that any costs incurred by the landlord for cleaning the tenants' clothes cannot be recovered by the landlord from the tenants. Consequently, I find the landlord's claim to recover \$58.38 from the tenants must be dismissed.

With regard to the landlord's claim for a replacement stove; I am satisfied from the undisputed testimony before me that the landlord had to replace the stove in the unit due to the condition the old stove was left in by the tenants. The landlord has not provided a receipt for this replacement stove; however, I find the amount of \$50.00 to be reasonable for a second hand stove and as such I uphold the landlord's claim to recover \$50.00 from the tenants.

With regard to the landlord's claim for cleaning the unit; I am satisfied from the undisputed testimony before me that the tenants did not leave the rental unit in a reasonably clean manner as required under s. 32 of the *Act*. However, I am not satisfied that the tenants are responsible for any costs associated with cleaning up the sewer spillage in the basement as the landlord has not shown that the tenants' actions or neglect caused the sewer to overflow into this area. I must therefore limit the landlord's claim for cleaning to \$100.00.

With regard to the landlord's claim to keep the security deposit; I have reviewed the documentary evidence before me and find one of the tenants has signed a sticky note giving the landlord permission to keep the security deposit. When a tenant has agreed in writing to allow a landlord to apply the security deposit to any outstanding debt of the tenants then I am not required to make an Order in this matter. I have therefore offset the security deposit against the landlord's monetary award.

The landlord is entitled to recover the \$50.00 filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) as follows:

Loss of rent for two days	\$80.00
Unpaid utilities	\$715.37
Replacement locks	\$55.98
Replacement stove	\$50.00
Cleaning	\$100.00
Filing fee	\$50.00
Less security deposit	(-\$350.00)
Total amount due to the landlord	\$701.35

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$701.35**. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order 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 12, 2014

Residential Tenancy Branch

