



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

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; a Monetary Order for damage to the unit, site or property; 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.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- 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

Both parties agreed that this tenancy started on January 01, 2014 although the tenants took possession of the unit in the middle of the month. This was a fixed term tenancy which was due to expire on June 30, 2014. Rent for this unit was \$1,600.00 per month plus 75 percent of utilities. Rent was due on the first day of each month in advance. The tenant originally paid a security deposit of \$1,000.00 however, \$200.00 was returned to the tenants making the amount held in trust by the landlord \$800.00.

The landlord testified that the tenants ended the tenancy on May 31, 2014. The landlord found potential new tenants for the unit and when a second viewing was requested by the landlord the tenants responded that they could not accommodate this until the last week of May. The potential tenants rented the unit from July 01, 2014. Due to this the landlord seeks to recover a loss of rent for June, 2014 of \$1,600.00.

The landlord testified that there are also outstanding utilities; however, the landlord has not yet forwarded copies of the utility bills to the tenants with a written demand for payment.

The landlord testified that at the start of the tenancy the landlord was out of town. The tenants had provided a three day window when they would be arriving from the USA. As the tenants arrived on a day the landlord was not in town the landlord provided the tenants with a keyless entry through the garage and the parties agreed that the landlord would do the move in condition inspection when the landlord returned to town. The landlord testified that the tenants compiled a list of damages and deficiencies in the unit and agreed that this list could be used as a move in condition inspection report. The landlord testified that she met the tenants on January 23, 2014 and walked through the

unit with the tenants. The landlord agreed to the tenants' findings noted on their deficiency list and each party had a copy of that list.

The landlord testified that when the tenants vacated the unit the parties engaged in e-mail correspondence about doing the move out condition inspection. The landlord testified that she gave the tenants a seven day window and asked them to choose a time and date for the inspection as the landlord was flying out of town. On May 31, 2014 the landlord gave the tenants a notice for a final opportunity for inspection to take place on June 03, 2014 at 11.00 a.m. The tenants did not attend the unit on that date to take part in the inspection and the landlord completed the move out inspection in the tenants' absence.

The landlord testified that the following damages and cleaning was found at the inspection:

- The carpets in the small bedroom and master bedroom had staining on them. This is documented on the carpet cleaners report. The carpets had been professional cleaned by the same company six months prior to the tenants moving in and the tenants failed to have the carpets professional cleaned when they vacated. The landlord seeks to recover \$273.00 and has provided an invoice detailing the staining in evidence.
- Five light bulbs were blown and had not been replaced by the tenants. The landlord seeks to recover \$3.00. No receipt for replacement bulbs has been provided in evidence.
- The landlord had to complete some additional cleaning to the walls which had black and greasy marks, the floor had some mud tracked across it and the stove top was left unclean. The landlord spent over two hours cleaning and seeks to recover \$60.00.

- The label on the fridge was held on with scotch tape and had to be put back on with glue. The landlord seeks to recover the cost for the glue of \$20.00. The receipt has not been provided in evidence.
- The tenants were left a garage opener and failed to return that at the end of the tenancy. The landlord seeks to recover \$80.00. The receipt has not been provided in evidence.
- The tenants left garbage and recycling at the unit in the bins. The bin collection was not due for pick up that week and the landlord had no one to take the bins out to the kerb so the landlord removed the tenants' garbage and recycling and took it to the dump. The landlord seeks to recover \$10.00 for dump fees. The receipt has not been provided in evidence.
- A drawer in the pantry had a damaged hinge. A screw had been torn out and the weight of the drawer bent the hinge. The landlord had estimated this repair at \$100.00 but testified that the actual cost was \$76.00. The receipt has not been provided in evidence.
- The stove top was left with white marks. The landlord had attempted to clean it but the marks could not be removed. The stove top was replaced. The landlord had estimated this cost at \$250.00; however, the actual cost was \$286.78. The receipt has not been provided in evidence.
- The toilet roll holder in the master bedroom was damaged. The screw that held it up would not tighten and the holder had to be replaced. The landlord has estimated this cost at \$30.00. The actual cost was \$26.00. The receipt has not been provided in evidence.

The landlord seeks an Order to keep the security deposit of \$800.00 in partial satisfaction of the landlord's claim. The landlord also seeks a Monetary Order for the balance owed plus the \$50.00 filing fee.

The tenants disputed the landlord's claim. The tenants testified that they do not dispute that they owe rent for the first half of July; however, the tenants testified that they understood from the tenant in the basement and the new tenants, that were both contacted, that the new tenants moved into the unit on the weekend of June 15, 2014. The tenants refer to their photographic evidence showing the new tenants' car on the driveway and their furniture on the deck. The tenants also refer to an email from the landlord who stated that the new tenants would properly move on the weekend of June 15, 2014. The tenants testified that they therefore agree that they only owe rent of \$800.00 from June 01 to June 15, 2014 and this can be deducted from the security deposit.

The tenants disputed the landlord's claim for damages. The tenants testified that the landlord was not available to do the condition inspection report with the tenants at the start of their tenancy; so the tenants typed out notes showing the damages they found in the unit when they moved in and just added to the list when they discovered any damages or deficiencies. This was not a walk through condition inspection report and the landlord did not conduct a move in condition inspection report with the tenants on January 23, 2014 when the landlord did come to the unit. The tenants testified that their e-mails show that the landlord agreed twice to a date for a move out inspection but backed out of the arrangement on both occasions. The landlord only then offered a third date after the tenants had vacated and the tenants had no control over anything that occurred in the unit between May 31, 2014 and June 03, 2014. The tenants testified that they did not attend the move out inspection as it was a moot point because the landlord had not completed a move in inspection report. The tenants agreed that they are responsible for one small stain mark on the carpet but they disagreed with the landlord's claim that the other staining was caused by the tenants as they have no idea how any

other staining got there. The tenants testified that they have no evidence that the carpets had been professional cleaned prior to them moving into the unit.

The tenants disputed that there were any burnt out light bulbs and all lights were working at the end of the tenancy. The tenants did mention that they had to replace six light bulbs at the start of the tenancy but as they did not classify this as damage they did not document it on their deficiency list.

The tenants disputed that they left marks on the walls and refer to their photograph evidence showing that the walls were left clean at the end of the tenancy. The tenants testified that their photographs were taken just before they walked out of the home on May 31, 2014.

The tenants disputed that the floors were left with mud and again refer to their photographic evidence showing the floors cleaned. The tenants also testified that the day they moved out was a sunny day and not wet so mud could not have been tracked in. The tenants testified that the stove top was in this condition at the start of the tenancy as depicted by their photographic evidence taken on January 09, 2014.

The tenants disputed the landlord's claim concerning the fridge label. The tenants testified that the fridge label was held on with scotch tape when they moved into the unit but as it was so minor they did not document it on their deficiency list.

The tenants disputed that they were ever given a garage door opener. The tenants testified that they were only given the code for the garage door when they moved in. Later they found a garage door opener in a drawer; however, when it was tested it did not work so was returned to the drawer and left there at the end of the tenancy.

The tenants disputed the landlord's claim concerning the garbage and recycling. The tenants testified that the garbage and recycling bins were shared with the lower tenant

and the pick up from the City was the following week. The lower tenant's garbage and recycling was also in the bins and that tenant could have put the bins out on the curb.

The tenants disputed the landlord's claim concerning the drawer hinge. The tenants testified that it was not a hinge but rather a slider for the drawer. The first time the tenants used the drawer it pulled all the way out and looked like the slider had been miss-installed. The tenants did not notify the landlord that this drawer required repair as it was a minor detail.

The tenants disputed the landlord's claim concerning the toilet roll holder. The tenants testified that this had a stripped screw and gave away shortly after the tenants started to use it. The screw was replaced by the tenants twice but it would not hold.

The landlord asks the tenants if they recall that the landlord came to the unit on January 23, 2014 with an inspection report to complete and after the tenants showed the landlord their list of damages which the landlord agreed to, the parties agreed to use the tenants' damages list as the report. The tenants responded that they did not agree to this and were not aware of a condition inspection report on January 23, 2014. The landlord asks the tenants that if there were other damages why they were not mentioned on their damage list. The tenants responded that they only mentioned the ones they saw at first and had the landlord completed the proper form then all damages could have been noted.

The landlord argues that the garage opener had been left for the tenants and was not in the unit after they moved out. The tenants argue that the garage door opener was left in a kitchen drawer when they moved out.

The landlord argues that the new tenants did not move in until July 01, 2014; however, they did move some belongings into the garage and did meet the landlord at the unit to measure up a few times before they moved in. The landlord testified that she could not provide additional evidence as it was past the deadline for evidence to be sent in

Analysis

With regard to the landlord's claim for unpaid rent and utilities; where there is a fixed term tenancy with a specific date that the tenancy ends then the tenants are responsible for rent up to the date the tenancy can legally be ended. However, the landlord has a responsibility to mitigate the loss by attempting to re-rent the unit in a timely manner. The landlord has testified that the unit was not re-rented until July 01, 2014 the tenants have testified that the new tenants moved into the unit on or about June 15, 2014. When one party's evidence is contradicted by the evidence of the other party then the person making the claim must provide additional corroborating evidence to meet the burden of proof. In the absence of any corroborating evidence such as a signed copy of the new tenancy agreement between the landlord and the new tenants then it becomes one person word against that of the other and the burden of proof is not met. Consequently, I find the landlord is entitled to a loss of rent from June 01 to June 15, 2014 to the amount of \$800.00. The remainder of the landlord's claim is dismissed.

With regard to the landlord's request for unpaid utilities; the landlord is required to provide the tenants with a copy of the utility bills and a written demand for payment within 30 days before making a claim to recover unpaid utilities. The landlord agreed that this requirement has not been met and therefore I dismiss the landlord's request to recover unpaid utilities with leave to reapply.

With regard to the landlord's claim for damages; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;

- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I am not satisfied from the evidence presented that the tenants are responsible for replacement light bulbs, the additional cleaning, the fridge label replacement, the damage to the drawer, and the replacement of the stove top, or the toilet roll holder. The landlord has not met the burden of proof that this damage was caused by the tenant's actions or neglect as the landlord failed to meet their obligations under s.23 of the Act which states:

23 (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

In this matter the landlord replied on the list of damages provided by the tenants and did not complete a proper move in condition inspection report. The purpose of doing an inspection report with the tenants at the start and end of the tenancy is to provide detailed information concerning the condition of the rental unit at the start and end of the tenancy to determine what damage, if any, is caused by the tenants. Other evidence may be considered; however, the burden of proof falls to the landlord and in the matters listed above I am not satisfied that the tenants caused this damage through their actions or neglect. Consequently, the landlord's claim for replacement light bulbs, additional cleaning, the replacement fridge label, the drawer, the stove top and the toilet roll holder are dismissed. Furthermore, the landlord has not provided any receipts or invoices showing the actual cost of the repairs as required in order to meet the test for damages.

With regard to the landlord's claim for carpet cleaning; I am satisfied that the carpets were professionally cleaned prior to the start of this tenancy from the information provided on the carpet cleaner's invoice. I refer the parties to the Residential Tenancy Policy Guidelines #1 which refers, in part, to carpet cleaning and states that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the

tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy. The landlord's and the tenants' photographic evidence clear shows that the carpets have some staining and tracking marks in the bedrooms. I therefore find the tenants should have had the carpets steam cleaned or shampooed at the end of the tenancy and as they failed to do so the landlord has established a claim to recover the cost of carpet cleaning of **\$273.00** and a Monetary Order has been issued to the landlord pursuant to s. 67 of the *Act*.

With regard to the landlord's claim concerning the garage door opener; the landlord must meet the burden of proof that the tenants failed to return the garage door opener and that it had not just been over looked in one of the kitchen drawers. The landlord has also failed to provide verification of the actual cost of the replacement garage door opener. When it is one person's word against that of the other then the burden of proof is not met and the landlord's claim for \$80.00 is dismissed.

With regard to the landlord's claim for the removal of garbage and recycling; the landlord testified that there was no one to put the garbage bins out to the kerb for pick up by the City. However, the tenants have testified that the garbage bins were shared between the upper and lower tenants and the lower tenant could have taken the bins to the kerb as they also contained his garbage. I am not satisfied that the landlord mitigated the loss in this matter and that the landlord could have requested that the lower tenant take the garbage bins to the kerb; consequently, the landlord's claim for \$10.00 is dismissed.

As the tenants have agreed at the hearing that the landlord may keep the security deposit of \$800.00 to offset against the loss of rent I hereby Order the landlord to do so pursuant to s. 38(4)(b) of the *Act*.

As the landlord has been partially successful with this claim I find the landlord is also entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*.

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 **\$323.00** comprised of the carpet cleaning and filing fee. 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: August 12, 2014

Residential Tenancy Branch

