



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devito Construction Ltd
and [tenant name suppressed to protect privacy]

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 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

The parties agreed that this tenancy started on September 01, 2013. The tenants were given the first month's rent free due to the condition of the rental unit and started to pay rent of \$750.00 on October 01, 2013. This was a fixed term tenancy which was not due to expire until September 01, 2014. The tenants paid a security deposit of \$500.00 on September 01, 2013. The landlord did not conduct move in or move out inspections of the rental unit at the start and end of the tenancy. The tenant provided their forwarding address in writing sometime in April, 2014.

The landlord testified that they were given leave to reapply for any further utility bills at the previous hearing held on March 25, 2014. The landlords were instructed to work out what the tenants share of any further utility bills were and to provide a copy of the bills with a written demand for payment within 30 days. The landlord testified that the tenants were given the latest utility bill for the period between December 18, 2013 and February 18, 2014. This was included in the landlord's evidence package. The landlord testified that the bill is for a total amount of \$494.55. The landlord testified that they were able to determine that after the tenants vacated the unit and the unit remained empty there was still power being used. Consequently, the landlord has provided a copy of the utility bill for the period when the unit was empty for the period of April 17, to June 17, 2014. This bill shows the amount charged for the unit was \$41.46. The landlord therefore concludes that there was some additional power being used while the tenants were living at the unit and for which they are not responsible. The landlord therefore seeks to recover the amount for this utility bill of \$453.09.

The landlord testified that the tenants left damages in the unit. The carpets had not been cleaned and were left stained. The landlord had these carpets cleaned at a cost of \$180.00; the tenants did not clean the unit and the landlord seeks to recover \$150.00

for cleaning; there were approximately eight holes left in the walls. These holes were left in the bathroom, the living room, the bedroom and the hall outside the bathroom. The landlord testified that there was also a broken handrail which was repaired by the landlord at a cost of \$40.00. The landlord refers to their photographic evidence showing some damage and holes to the walls, the damaged handrail and carpets. The landlord seeks to recover \$800.00 for the repair to the walls and seeks to amend his application to include the other costs for carpet cleaning, cleaning and the repair for the handrail.

The landlord seeks an Order to keep the security deposit of \$500.00 to offset against their monetary claim. The landlord also seeks to recover the \$50.00 filing fee from the tenants. The landlord testified that there is no further monetary claim for money owed or compensation for damage or loss.

The tenants disputed the landlord's claims. AM testified that the tenancy agreement does not state what share of the utilities are the tenants' responsibility. The landlords unit has outside lights connected to other businesses which are run off the landlord's meter for this unit. The tenants are; however, satisfied that the landlord's utility bill claim of \$453.09 is justified for the power used by the tenants now the landlord has shown that power is being used from a different source and has deducted that amount accordingly.

The tenants disputed the landlord's claim for damage. AM testified that only one hole was made in the wall outside the bathroom when they were moving their belongings out. Any other holes were already present at the start of the tenancy. AM testified that the unit was dirty and needed repairs when they moved into the unit and that is why the landlord gave the tenants the first month's rent for free. The tenant testified that they did not stain the carpets and the carpets were not clean when they moved into the unit. The tenant testified that the handrail was broken prior to the start of the tenancy and the landlord did not complete a move in condition inspection report detailing this damage.

The tenants disputed the landlord's claim to keep all of their security deposit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for unpaid utilities; as the tenants do not dispute the landlord's claim for **\$453.09** in unpaid utilities; I find in favour of the landlord's claim to recover this amount for utilities for the period between December 18, 2013 and February 18, 2014.

With regard to the landlord's claim for damage to the unit; I have applied a test 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.

Sections 23 and 35 of the *Act* say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition

inspection report is intended to serve as some objective evidence of whether the tenants are responsible for damages to the rental unit during the tenancy or if they have left the rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The tenants agreed that they are responsible for one hole in the wall in the hallway. The landlord has provided some photographic evidence showing damage to some other walls but has insufficient corroborating evidence to support his claim that this damage was caused by the tenants during the tenancy. The landlord has provided an invoice for \$800.00 for wall repairs. I must therefore limit the landlord's claim for wall repairs to an amount of **\$75.00** for the hole in the wall for which the tenants agreed they are responsible.

With regard to the landlord's verbal claim for carpet cleaning, cleaning of the unit and the repair to the railing. The landlord has not filed a claim for these damages. The landlord has insufficient evidence to show that the carpets were clean at the start of the tenancy and then left stained by the tenants at the end of the tenancy; that the unit was left unclean, or that the tenants are responsible for damage to the stair railing. Furthermore, the landlord has provided insufficient evidence to meet the burden of proof of the actual cost for these additional repairs. These sections of the landlord's verbal claims are also dismissed.

I Order the landlord to keep the security deposit of **\$500.00** pursuant to s. 38(4)(b) of the *Act* in partial satisfaction of this claim. 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*. A Monetary Order has been issued to the landlord as follows:

Utilities	\$453.09
Repair for one hole in wall	\$75.00
Filing fee	\$50.00
Less security deposit	(-\$500.00)
Total amount due to the landlord	\$78.09

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 **\$78.09** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

The remainder of the landlord's claim is dismissed without leave to reapply.

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 26, 2014

Residential Tenancy Branch

