



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WILDWOOD RANCHES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, 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; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant 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?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on October 15, 2013. Rent for this unit was \$600.00 per month due on the 1st of each month. The tenant paid a security deposit of \$300.00 at the start of the tenancy.

The landlord testified that just after the tenant moved into the unit the roof developed a leak and was dripping through the tenant's ceiling. The landlord called in a roofing company who did some repairs but the roof continued to leak. Eventually the roof was repaired; however, the

tenant refused to pay rent due to the leaking roof. The tenant had also been injured at work and was waiting for compensation. The landlord testified that they recognised the tenant has having difficulty paying the rent so were patient with the tenant until her compensation came through.

The landlord testified that the tenant failed to pay rent of \$300.00 for October, 2013; the tenant owed \$300.00 for November, 2013; \$400.00 for December, 2013; \$600.00 for January, 2014; \$500.00 for February, 2014; and \$300.00 for March, 2014. The tenant was not making an attempt to pay her rent arrears and the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on March 05, 2014. The Notice indicated that the tenant owed rent of \$2,700.00. The landlord seeks to amend this figure to \$2,400.00 as the tenant did make a payment of \$300.00 in March.

The landlord testified that the parties signed a mutual agreement to end tenancy on March 11, 2014 and this was effective on March 15, 2014. The tenant vacated the unit on that date. The landlord seeks a Monetary Order to recover the unpaid rent of \$2,400.00 and seeks an Order to keep the security deposit which will be applied to the unpaid rent.

The tenant agreed that she owes rent of \$2,400.00. The tenant testified that the landlord and tenant had signed an agreement that if the tenant provided an itemized list of her belongings that were damaged by the leaking roof the tenant would be reimbursed for this damage. The tenant testified that she provided a list of damage to her computer and a foam bed mattress with quotes for replacement costs. There was also damage to her daughter's prom dress and a maid of honour dress for which the tenant did not have the original receipts. The owner of the unit was sent this list but as they did not agree with the amount the tenant sought it has not been reimbursed to the tenant or deducted from her rent arrears.

The landlord testified that she has not seen an itemized list. The landlord testified that she was in the tenant's bedroom when the ceiling was leaking with the tenant. The tenant's room was stacked with boxes and cluttered. The landlord told the tenant to move her bed due to the leaking ceiling but the tenant just throw a towel over it and said it would be alright. The tenant did not move her bed. The landlord testified that she understood the tenant's computer did suffer with some water damage but does not know if it still worked or not. The landlord testified that she did not see either of the dresses the tenant mentioned.

The landlord testified that the tenant was asked to provide details for her computer so the landlord could replace it but the tenant did not provide these details.

Analysis

Section 26 of the *Act* states:

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.

The parties did have an agreement signed by the landlord's agent and the tenant in which the tenant agreed that she owed rent of \$2,700.00. The tenant also agreed to provide an itemized list of any property damaged by the leaking roof and to provide written estimates or replacement costs on any or all damaged property from companies or businesses that applies to damaged property.

The landlord has testified that she was aware that the tenant's computer was likely to have been damaged but had no proof that the other items were damaged and if the mattress was damaged then the tenant should have moved the bed to prevent water damage.

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I find the tenant is responsible for the rent arrears. If the tenant's belongings are damaged then it is reasonable for the landlord to what to have proof that the tenant's belongings are damaged and estimates or replacement costs for these belongings. I have insufficient evidence from the tenant to show what damage occurred to her belongings or the cost for replacement. I am not therefore prepared to deduct any amounts from the landlord's claim for unpaid rent.

I find the landlord has established a claim for unpaid rent of \$2,400.00. I Order the landlord to keep the security deposit of \$300.00 pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the unpaid rent.

As the landlord's claim has merit I find in favor of the landlord's claim to recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$2,400.00
Filing fee	\$50.00
Less security deposit	(-\$300.00)
Total amount due to the landlord	\$2,150.00

The tenant is at liberty to file an application for Dispute Resolution for damage to her belongings if the tenant so chooses.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$2,150.00 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.

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: September 11, 2014

Residential Tenancy Branch

