



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METROTOWN INVESTMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and damage to the unit, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this teleconference hearing scheduled for 9:30 a.m., although this hearing lasted until 10:23 a.m. The landlord NP ("landlord"), attended the hearing personally and confirmed that he was authorized to represent the landlord company, MI, as agent (collectively "landlords"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenant with the Application for Dispute Resolution hearing package ("Application") on July 13, 2014, by way of registered mail to the forwarding address provided by the tenant. He provided a tracking number orally during the hearing. He noted that the Application was returned back to him by Canada Post, undelivered. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application on July 18, 2014, the fifth day after its registered mailing.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and damage arising out of this tenancy?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on October 1, 2013 for a fixed term of one year to end on September 30, 2014. Monthly rent in the amount of \$880.00 was payable on the first day of each month. Monthly parking in the amount of \$20.00 was also payable and outlined in the tenancy agreement. A security deposit of \$440.00 was paid by the tenant on September 30, 2013. The landlord confirmed that the landlords still retain the tenant's security deposit. Both parties signed the written tenancy agreement on September 30, 2013, and a copy was provided with the landlords' Application.

The landlord testified that the tenant vacated the rental unit sometime between July 7 and 9, 2014, although he is unaware of the exact date, as she did not provide any notice to him. The landlord testified that the tenant provided a letter ("tenant's letter"), which is undated and found on a counter top in her rental unit, stating that she had to leave the rental unit immediately for health reasons and for the landlord to return her security deposit to a forwarding address. The landlord stated that he found the letter sometime between July 7 and 9, 2014, when he entered the rental unit, after posting a written notice of entry, 24 hours prior. He posted the notice for entry because he was told by co-workers that they had not seen the tenant in the building for a few days and the landlord wanted to ensure that the tenant was still residing in the rental unit.

The tenant's letter was provided with the landlord's Application. It states that the tenant was leaving the rental unit because of marijuana smoking in the building, which was affecting her health. It states that the building was supposed to be smoke-free and that she advised the landlord about this smoking problem, after which he suggested that she leave the rental unit. The landlord confirmed that he was provided with a medical note ("medical note"), dated June 20, 2014, from the tenant's doctor, stating that she is allergic to smoke and should not be in that environment because of health reasons. He provided this medical note with his Application. The landlord testified that he spoke with the tenant's neighbour ("neighbour") and asked him to smoke outside on the balcony and not in the rental unit and the neighbour agreed. The landlord did not receive any other complaints regarding smoke from other tenants and could not smell the smoke himself. The building has a policy of not smoking indoors and the tenant signed the tenancy agreement agreeing not to smoke in her rental unit. The landlord told the

tenant that she could vacate the rental unit if she wished, as he had dealt with the smoking issue by speaking to the neighbour that the tenant complained about. However, he stated that he was not provided with one month's written notice of the tenant's vacancy, prior to her departure. He was only provided with the tenant's letter after she had left.

Therefore, the landlords are seeking \$880.00 in unpaid rent for July 2014, which the landlord confirmed was not paid by the tenant.

The landlords are also seeking unpaid parking charges in the total amount of \$40.00, for June and July 2014. The landlord stated that he verbally requested the June 2014 parking amount of \$20.00 from the tenant, who said that she did not park in the parking space any longer. The landlord advised the tenant that she would have to provide written notice that she no longer required the parking space so others could use it, but he never received this written notice from the tenant thereafter. The tenant stated that she would pay for the June parking in July 2014, but the landlords never received this payment.

The landlords also seek compensation from the tenant for damage to the rental unit in the total amount of \$380.00. They seek \$150.00 for a new bathroom cabinet and mirror unit and \$80.00 for installation of this unit. They seek a rental unit cleaning fee of \$100.00 and a new lock for \$50.00 for the rental unit door.

The landlords provided a monetary breakdown with a description of each charge regarding the above rental, parking and damage amounts, in their Application. The landlords claimed \$1,200.00 in total in their Application, but the landlord orally amended this amount to \$1,300.00 during the hearing, noting that he made a mathematical error when originally adding the amounts sought.

The landlords did not provide any receipts with their Application, as the landlord stated that he was required to submit them to the local headquarters office for approval. He stated that he had not made copies of these receipts or tried to retrieve them for this hearing. Photographs of various areas of the rental unit were provided with the landlords' Application.

The landlord testified that the tenant took the old bathroom cabinet and mirror ("old cabinet") when she vacated the rental unit. He referenced two photographs of the empty area where the old cabinet used to be, indicating that the shadow of the large square area and holes at the top and bottom of this area, is where the old cabinet was installed. The landlord testified that he bought a new mirror and cabinet unit of 2 feet x

2 feet from Home Depot for \$150.00 ("new cabinet"). He also paid \$80.00 via cheque, for a maintenance worker at the rental building to install this new cabinet in the rental unit bathroom. He stated that the \$80.00 price was a flat fee for the entire installation to be completed. The landlords did not provide a photograph of the old cabinet or new cabinet with their Application.

The landlord testified that he paid another tenant, who lived in another rental property of the landlord company, to clean the rental unit, after the tenant vacated. He paid the worker \$100.00 for 5 hours of cleaning at \$20.00 per hour. He paid this worker cash and did not provide a receipt. The landlords provided pictures of items left behind by the tenant which had to be disposed, including a wooden board, a glass table unit, cleaning products, a mirror and flattened cardboard boxes. They also provided photographs showing minor food debris left in kitchen drawers, the fridge and the stove, which had to be cleaned by the worker. They provided photographs of the floor showing barely visible dust and scuff marks and stickers left on the bottom of the bathtub that had to be removed and cleaned by the worker. He also provided a photograph of the curtains showing barely visible stains that required drycleaning, but stated that he did not charge the tenant for this drycleaning.

The landlord testified that he paid \$50.00 for a new deadbolt lock for the front door of the tenant's rental unit. He did not provide a photograph of this new lock. He provided a photograph of the old lock that was broken on the front door. He stated that when he attempted to enter the rental unit in July 2014 using the landlords' master key, that it no longer worked because the tenant had changed the locks. Therefore, he was required to break the old lock and purchase a new set of keys, which cost \$24.00, but he confirmed that the landlords are not seeking this from the tenant. The landlords are only seeking the \$50.00 for the new lock.

The landlords seek to retain the tenant's security deposit of \$440.00 in partial satisfaction of the monetary award.

The landlords seek to recover their filing fee of \$50.00 for this Application, from the tenant.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claim and my findings around each are set out below.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement, must compensate the landlord for damage or loss that results from that failure to comply.

I find that the tenant was in breach of her fixed term tenancy agreement because she vacated the rental premises prior to the September 30, 2014 date specified in that agreement and contrary to section 45(2) of the *Act*. Further, the tenant did not provide any written notice of her intention to vacate the rental unit, as required by section 52 of the *Act*, prior to her departure. She simply left a letter for the landlords to find in her rental unit, after they had to break the lock to enter. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of her tenancy agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for July 2014, the month she vacated the rental unit, and a month for which she was still subject to the fixed term tenancy agreement. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. In the present case, the landlords are only claiming for unpaid rent owing for one month of July 2014 rent, not until the end of September 2014, when the fixed term tenancy was to end. I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenant's exposure to the landlord's loss of rent. I find that the landlords are entitled to \$880.00 for unpaid July 2014 rent. I also award the landlords \$40.00 for unpaid parking for June and July 2014, as the tenant was responsible for this amount, it was specifically outlined in her tenancy agreement, and she had previously paid for parking during her tenancy.

The landlords seek to retain the tenant's security deposit of \$440.00 in partial satisfaction of the monetary award, which they continue to hold. Over that period, no interest is payable. The landlord received the tenant's forwarding address in writing, when he entered the rental unit sometime between July 7 and 9, 2014. The landlords applied for dispute resolution on July 11, 2014. Therefore, they are within the 15 day time limit of section 38(1)(d) of the *Act*, to apply for dispute resolution to retain the tenant's security deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the security deposit in partial satisfaction of the monetary award towards this unpaid rent.

The landlords seek \$380.00 total from the tenant, for damage to the rental unit. The landlord provided oral testimony and documentary evidence, in the form of photographs, to support the landlords' claim for a monetary order for damage to the rental unit. The

landlords did not provide any receipts for these costs claimed, although receipts exist and were provided to the landlord company. There were no condition inspection reports provided by the landlords to demonstrate the condition of the rental unit before and after the tenant moved in. There were no photographs of the rental unit showing that it was cleaned after the tenant vacated.

I am not satisfied that the landlord has provided sufficient evidence that he replaced a bathroom mirror and cabinet and had it installed in the bathroom. The photograph provided does not show a cabinet, just an empty space, which does not clearly show that a cabinet existed there or the size of such cabinet. There were no photographs or receipts of the new cabinet purchased or the installation completed.

Based on his undisputed sworn testimony, I am satisfied that the landlord had to clean the rental unit, in order to dispose of items left behind and clean food debris, as shown in the photographs provided. Accordingly, I award a nominal cleaning fee of \$50.00, as I do not accept that it took 5 hours to clean the rental unit with very little debris shown in the photographs. I am also satisfied that the landlord had to purchase a new front door lock because of the broken lock shown in the photograph provided and so I award him \$50.00, the amount he sought, for this new lock. In total, I award \$100.00 for damage to the rental unit.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$630.00 against the tenant as follows:

Item	Amount
July 2014 Rent	\$880.00
June 2014 Parking Charge	20.00
July 2014 Parking Charge	20.00
Cleaning Fee	50.00
New Front Door Lock	50.00
Less Security Deposit	-440.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$630.00

The landlords are provided with a monetary order in the amount of \$630.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: December 19, 2014

Residential Tenancy Branch

