



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, MNDC, MNR, FF, SS

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order under the Residential Tenancy Act (the Act) to recover losses of revenue and for damage and loss and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim. The landlord testified they provided their *late* evidence to one of the tenants by e-mail and sought for acceptance of this method of service.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Only 1 of the 2 tenants attended the hearing despite evidence from the landlord that both parties had been served the notice of Hearing and application of the landlord in accordance with Section 89 of the Act, inclusive of the landlord's original evidence of July 2014. Prior to concluding the hearing both parties in attendance acknowledged they had presented all of the relevant evidence that they wished to present. The tenant acknowledged receiving the application and evidence of the landlord in July 2014, consisting of 91 pages and 1 compact disc.

As preliminary, the landlord testified they received some *late* evidence from the tenant in the middle of the second week of January 2015 – which the Branch also received 5 days before the hearing. The landlord submitted a *late* amendment to their application which was deemed received by the tenant December 29, 2014 and acknowledged received by the tenant on December 31, 2014. Neither party submitted their respective

evidence in accordance with the Rules of Procedure. It was highlighted that evidence must be served and submitted as soon as reasonably possible. Both parties were apprised of the Rules of Procedure respecting late submissions in evidence / amendments and each were heard on the question of accepting the late evidence, and both parties declined to accept the late evidence of the other. Upon canvassing both parties as to their reasons for their delay I found both parties unreasonably delayed the service of their evidence and as a result the late evidence of both parties was determined inadmissible. The landlord's application for substituted service of late evidence was rendered effectively dismissed. None the less, both parties were given opportunity to present any evidence orally.

The hearing proceeded on the merits of the landlord's original application and evidence – all dated July 2014. I have reviewed all oral, written and document evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed by the parties. The tenancy began June 01, 2013 as a month to month written tenancy agreement and ended June 30, 2014 when both tenants vacated. Rent in the amount of \$1200.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$600.00 which they retain in trust. The parties agreed the tenant would pay an additional \$150.00 each month for all utilities, inclusive of cable and internet services.

The parties disagreed in respect to the landlord's claim that \$150.00 was an estimate amount only and that monthly billings would be provided. However, the parties agreed that the tenancy agreement *Addendum* states the tenant is responsible for 50% of the cable and internet, and 75% of Hydro and Gas bills.

The parties agreed that the landlord permitted the tenants access to the unit on May 25, 2013 so as the tenants could undertake painting of the interior of the rental unit. The parties agree they did not conduct a *mutual inspection* of the unit at the start of the tenancy. On June 03, 2014 the landlord submitted a Notice of Final Opportunity to schedule a condition inspection - proposing it be conducted on June 05, 2013. The Notice was accompanied by a 2 page narrative and a partly completed condition inspection report *from the landlord's perspective*, and stated, "this is my opinion of how the place looks like prior to your move in on June 1(2013). The report is not signed. The parties agreed they conducted a mutual move out inspection of the unit on July 03, 2014, but that they disagreed on the conditions within the unit and the tenant did not sign the report. The landlord provided a copy of their condition inspection of July 3, 2014 accompanied by a 3 page signed statement by MC who was also present during the move out inspection.

The landlord makes the following monetary claims associated with their Monetary Order Worksheet dated July 21, 2014 in the amount of \$4721.72.

The landlord claims the tenant did not pay \$20.00 of June 2014 rent. They provided a receipt dated June 03, 2014 for the amount of \$1180.00. The tenant did not effectively disagree. They stated they simply provided the landlord with the rent and that the female tenant had "shorted" him \$20.00.

The landlord claims loss of revenue for July 2014 in the amount of \$1200.00. They testified they did not receive notice to vacate from the tenant in accordance with the Act and were not afforded opportunity to mitigate potential losses. The tenant testified that in the absence of the second tenant and their strong desire to continue under the terms of the tenancy agreement the landlord "demanded" they vacate in accordance with the

female tenants' notification that they were vacating at the end of June 2014, therefore the landlord ought to have known the tenancy was to end in accordance with their wishes. The landlord disagreed with the tenant's version of facts, stating that they would not have intentionally or knowingly forgone monthly revenue of \$1200.00 from a tenant who reliably satisfied their rent every month.

The landlord claims the tenant painted portions of the rental unit interior which they did not authorize. The landlord testified they verbally authorized the tenant to paint only certain walls in the unit and permitted the tenant prior access to moving into the unit to paint. The tenant claims the landlord granted them permission to paint the entire interior of the unit to their liking and provided no colour restrictions. The landlord provided their aforementioned statement to the tenants dated June 3, 2013, the statement by MC of the move out inspection July 3, 2014 and a series of photographs of the claimed unauthorized painting. The landlord claims the amount of an estimate for painting dated July 11, 2014 in the amount of \$1337.50 for the areas itemized on the invoice but not including ceiling, trim, and wallpaper removal.

Associated with the above claim for painting, the landlord claims their labour and painting supplies for wallpaper removal in the bedroom and bathroom, as well as repainting of the kitchen counter backsplash and kitchen cabinet trim areas painted by the tenant, in the aggregate sum of \$630.00. The tenant generally disputed the landlord's monetary amounts as unreasonable, however did not dispute the landlord's claims arising from the installation of wallpaper in the bedroom and bathroom during the tenancy.

The landlord testified that in early June 2014 they received a text from the female tenant they were leaving the tenancy. The male tenant testified that they intended to continue in the rental unit on their own, under the terms of the tenancy agreement; but, that the landlord informed them they would also have to vacate in accordance with the plans of the female tenant as they were both under the same tenancy agreement and the female tenant had provided notification they were vacating. The landlord disagreed entirely with the tenant's account and understanding of their communication. The landlord

testified they first realized the male tenant had also vacated, at the end of June 2014. the landlord claims lost rent revenue for July 2014 in the amount of \$1200.00.

The landlord claims cleaning costs and costs for garbage removal and disposal of items at the end of the tenancy in the adjusted sum amount of \$160.00, inclusive of a disposal fee of \$20.00 and labour costs to dispose of the tenant's cast-off items. The landlord did not effectively dispute the landlord's claim. The landlord supported their claim via a series of photographs taken on July 3, 2014 indicating areas left unclean, and furniture left behind.

The landlord claims unpaid utilities, and cable and internet services charges which they claim were charges beyond the amount satisfied by the tenant's payment for utilities at \$150.00 per month. The landlord provided copies of all utilities and services charges for the term of the tenancy as well as their accounting of the tenant's share of these charges in accordance with the tenancy agreement Addendum. The tenant argued the tenancy agreement states that all utilities and other services charges were effectively capped at \$150.00 per month. The landlord highlighted that the tenancy agreement states \$150.00 is estimate amount only and that monthly billings were to be provided and satisfied. The landlord testified they provided such reports for the first few periods when the tenant's utilities contributions amounted to a surplus; however, the costs began to accumulate over the high usage periods for utilities and with the addition of augmented cable services ordered by the tenant.

Analysis

It must be known that the landlord, as applicant, bears the burden of proving their monetary claims on balance of probabilities.

On preponderance of the evidence before me, I find that while the Act requires tenants to give one full month's notice that they are vacating, the Act does not automatically entitle the landlord to compensation. There is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of income for the month following the month in which they give their notice – in this case, July 2014.

However, **Section 7** of the Act does provide as follows in respect to *this and all of the landlord's claims* for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the landlord must satisfy each component of the test below:

- 1. *Proof the loss exists,*
- 2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*
- 3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
- 4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

The landlord bears the burden of establishing their claims by proving the existence of a loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the landlord must then provide evidence that can reasonably verify the monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation and to mitigate the losses claimed.

Therefore, in respect to the landlord's claim for unpaid rent for June 2014, I find the agreed rent was \$1200.00 per month and the tenant paid only \$1180.00. As a result, I grant the landlord **\$20.00** for unpaid rent.

In respect to the landlord's claim for loss of revenue for July 2014, I find that I prefer the landlord's version of events over that of the tenant's account they were, effectively, compelled by the landlord's insistence to vacate. Throughout the hearing I found the tenant to be forthright and unwavering in their testimony and assertion of their version of the facts. Therefore, I find that if the tenant was determined to remain in the tenancy as they claim, I do not accept they would have easily capitulated to the landlord's argument to vacate along with their co-tenant. I accept the landlord's evidence that it was not in their interest to lose a reliable tenant and therefore they did not demand for the tenant to vacate. I prefer the landlord's evidence that the tenants of this tenancy did not provide the landlord with Notice to End as required by **Section 45** of the Act and as a result the landlord incurred a rent revenue loss for the month following. As a result of the above I grant the landlord loss of revenue in the amount of **\$1200.00**.

In respect to the landlord's claim for repainting areas of the rental unit which they claim they did not authorize painted by the tenant, I accept the landlord's disagreement with the tenant's conduct. However, despite their submissions respecting this portion of their application, it remains that the landlord and tenant did not have a written agreement verifying the parameters of the landlord's permission for painting, and as a result the landlord cannot support, even on balance of probabilities, that the tenant contravened an agreement of the tenancy. As a result, I find the landlord has not met the test established by Section 7 of the Act and I must **dismiss** this portion of their application.

In respect to the landlord's claim for repainting the kitchen backsplash and cabinet trim, again I find, in light of the tenant's assertions, the landlord has not proven the tenant contravened an agreement of the parties by painting these areas. However, I find that the tenant provided no opposition to the landlord's claim respecting the installation of wallpaper during the tenancy, and I find the landlord is reasonable in their expectation that removal of the installation at the end of the tenancy is the responsibility of the tenant. I find that **Section 32(3)** of the Act clearly states that the tenant is responsible for any damage to the rental unit caused by them and I find that this matter is one of

damage by the tenant. As a result I grant the landlord compensation to remove the wallpaper, in the amount of **\$100.00**.

In respect to the landlord's claim for cleaning, and removal and disposal of the tenant's cast-off items, I accept the landlord's evidence that the rental unit was left sufficiently unclean, and that the tenant left unwanted items in the rental unit which the landlord had to remove. I find the landlord's monetary claim for cleaning and their labour for removal of refuse and other items are not extravagant. However, the landlord has not provided evidence they paid a fee for disposing of the tenant's cast-offs and as a result I must deduct this portion of their claim. As a result I grant the landlord a sum award of **\$140.00**.

In respect to the landlord's claim for unpaid utilities and charges for cable and internet services, I find that the tenancy agreement is sufficiently clear as to what is included in the rent and effectively what is not. I find the parties agreed to the tenant paying \$150.00 for utilities and other services, and that this amount was an estimate amount only, subject to the provision of bills in order to account for the calculation provisions stated in the Addendum for utilities and the other services. While the wording in the tenancy agreement may have been less ambiguous, I find the wording adequately addresses the agreement of the parties that utilities and cable and internet were charges for which the tenant was responsible. As a result, I accept all of the landlord's submissions respecting the unpaid portions for utilities and cable and internet services during the tenancy in the aggregate amount of **\$1014.22** to which the landlord is entitled.

As the landlord was partially successful in their application they are entitled to recover their initial filing fee of **\$50.00**. The security deposit will be offset from the award made herein.

Calculation for Monetary Order is as follows:

Unpaid rent for June 2014	\$20.00
Loss of rent revenue for July 2014	\$1200.00

Wallpaper removal – damage	\$100.00
Cleaning / disposal of tenant's items	\$140.00
Unpaid utilities / cable and internet services	\$1014.22
Landlord's initial filing fee	\$50.00
<i>less Tenant's security deposit: in trust</i>	<i>- \$600.00</i>
	<i>blank</i>
Monetary Order for landlord	\$1924.22

Conclusion

The landlord's application, in part, has been **granted** and the balance **dismissed**.

I Order that the landlord may retain the security deposit of \$600.00 in partial satisfaction of their award, and **I grant** the landlord a Monetary Order under Section 67 of the Act for the amount of **\$1924.22**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: January 21, 2015

Residential Tenancy Branch

