



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cherry Creek Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord company attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being personally served with the Landlord's Application for Dispute Resolution and notice of this hearing on December 31, 2014, no one for the tenants attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord's agent. The landlord's agent testified that she was present and saw the landlord's property manager give the hearing packages to one of the tenants and the other tenant was present. I accept the affirmed testimony of the landlord's agent, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and the testimony of the landlord's agent have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue, utilities and a placement fee for breach of the fixed term?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on July 1, 2014 and was to expire on June 30, 2015. A copy of the tenancy agreement has been provided. Rent in the amount of \$1,000.00 was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$500.00 as well as a pet damage deposit in the amount of \$500.00, both of which are still held in trust by the landlord. The rental unit is a residential house.

The landlord's agent further testified that the tenants fell into arrears of rent by failing to pay rent for the month of October, 2014. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. The effective date of vacancy contained in the notice is October 23, 2014. The landlord's agent went to the rental unit on October 24, 2014 and the tenants had moved out without leaving keys or a forwarding address. The landlord's agent found where the tenants had moved by word-of-mouth which is where the hearing packages were served. The address of the tenants on the Landlord's Application for Dispute Resolution is not the address where the tenants were served. Further, the landlord's agent believes the tenants have moved again since service.

The landlord claims unpaid rent in the amount of \$1,000.00 for the month of October, 2014 as well as loss of revenue for November, 2014 in the amount of \$1,000.00 due to the condition of the rental unit at the end of the tenancy. The rental unit could not be re-rented until December 1, 2014.

Since the tenants abandoned the rental unit, the landlord claims payment of a natural gas bill and a hydro bill. The tenancy agreement does not include utilities, and the landlord has provided copies of the bills that both cover the period of November 1 to 25, 2014 in the amounts of \$54.29 and \$29.04 respectively.

The landlord's agent also testified that a move-in condition inspection report was completed at the commencement of the tenancy, and a move-out condition inspection report was completed after the tenants had vacated the rental unit. A copy has been provided, and it contains notations at move-in and move-out on the same report. It

shows that the move-in portion was completed on July 3, 2014 and the move-out portion was completed on October 27, 2014. The landlord claims damages, and has provided a monetary order worksheet to break-down the damages and amounts claimed. The worksheet includes the unpaid rent, loss of revenue and utilities, as well as the cost of new locks at \$40.30, the cost to change the locks at \$42.00, cleaning costs of \$160.00 which was paid to a cleaning company, replacing light bulbs at \$11.40 and garbage removal at \$420.00. Receipts for those items have been provided and the landlord's agent testified that 6 truck loads of garbage had been taken to the local landfill.

Also claimed is a placement fee for the tenant's failure to honour the fixed-term. The landlord's agent testified that the fee is for the cost of re-renting, however no such term is contained in the tenancy agreement, nor is there a term respecting liquidated damages.

Also claimed is \$504.00 for the time it took the landlord's agent to oversee the cleaning and repairs and re-rental of the unit.

Analysis

Firstly, with respect to the unpaid rent, I am satisfied in the evidence before me, specifically the notice to end tenancy, that the tenants failed to pay any rent for the month of October, 2014 and the landlord is owed \$1,000.00.

I have also reviewed the move-in/move-out condition inspection reports, and it is clear that a number, if not the majority of the items marked as "dirty" on move-out were also marked as "dirty" on move-in. The *Act* states that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. I fail to see how the tenants can be responsible for the costs of cleaning a rental unit at the end of a tenancy when it was in no better condition at the beginning of the tenancy, and the landlord's application for \$160.00 is dismissed.

I am satisfied, however, that the tenants did not leave the keys behind that access the rental unit and the landlord has established a claim in the amount of \$40.30 for purchasing new locks and \$42.00 for the cost to install locks.

With respect to garbage removal, I have reviewed the condition inspection reports which show that food, dishes, bags of clothing, garbage, books and furniture were left behind for the landlord to dispose of. I have also reviewed the invoice, and I find that the landlord has established a claim in the amount of \$420.00.

With respect to the landlord's claim for a placement fee of \$131.25, I have reviewed the tenancy agreement which contains no clauses relating to the cost of re-renting the rental unit or liquidated damages. The *Act* does not permit a landlord to charge any fees relating to re-renting unless a clause to that effect is agreed to at the commencement of the tenancy. Therefore, that portion of the application must be dismissed.

With respect to the utility bills and the landlord's claim for loss of revenue, the *Act* requires a party who makes a claim to do whatever is reasonable to mitigate, or reduce any damage or loss that results in the other party's failure to comply with the *Act* or the tenancy agreement. The landlord has not provided any evidence of how or when the rental unit was advertised for re-renting, but the landlord's agent testified that due to the condition of the rental unit as left by the tenants, it could not have been re-rented prior to December 1, 2014. Having found that the rental unit was not in a reasonable condition at the commencement of the tenancy, other than removing garbage, I do not accept that the tenants are responsible for the landlord's inability to re-rent. Therefore, the landlord's application for loss of revenue and utilities for November, 2014 is dismissed.

With respect to the landlord's claim of \$504.00 for the time that the landlord's agent spent overseeing the work done, I find that to be over-head and not the responsibility of the tenants.

In summary, I find that the landlord has established the following monetary claims:

- \$1,000.00 for unpaid rent for October, 2014;
- \$82.30 for new locks, including purchase and installation;
- \$11.40 for light bulbs;
- \$420.00 for garbage removal;

for a total of \$1,513.70, and the balance of the landlord's claim is dismissed.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

I hereby order the landlord to keep the \$500.00 security deposit and the \$500.00 pet damage deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenants for the difference in the amount of \$563.70.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$500.00 security deposit and the \$500.00 pet damage deposit, and I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$563.70.

This order is final and binding and may be enforced.

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: March 25, 2015

Residential Tenancy Branch

