



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit or property; unpaid rent and/or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit and pet damage deposit. The landlord was represented at the hearing; however, the tenants did not appear.

On December 16, 2014 the Branch received an Application for Substituted Service under section 71(1) of the Act from the landlord's agent with respect to this tenancy. By way of a decision that was issued December 16, 2014 and then clarified by an Arbitrator on January 7, 2015 the landlord was authorized to serve both tenants with hearing documents by registered mail sent to the female tenant's workplace address. The file number for the Application for Substituted Service appears on the cover page of this decision.

On January 9, 2015 the hearing documents for this proceeding were sent to the tenants as authorized and ordered by way of the substituted service order; however, those registered mail packages were returned to sender as a unit number was missing from the address. The landlord enquired with the female tenant's place of employment as to the unit number and the hearing packages were re-sent on March 6, 2015. The registered mail packages were successfully delivered on March 9, 2015. The landlord provided the registered mail receipts for the packages mailed on January 9, 2015 and March 6, 2015 along with print-outs of the Canada Post tracking information.

Section 89(1) of the Act requires an applicant to serve a respondent with an Application for Dispute Resolution in one of permissible ways including (e) "as ordered by the director under section 71 (1)". I was satisfied the landlord served the tenants as ordered by the Director under section 71(1) and the registered mail packages were delivered to the female tenant's place of employment. Therefore, I continued to hear from the landlord without the tenants present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover the amounts claimed against the tenants?
2. Is the landlord authorized to retain the tenants' security deposit and pet damage deposit?

Background and Evidence

The month to month tenancy commenced February 28, 2014 and the tenants paid a security deposit of \$600.00 and a pet damage deposit of \$300.00. The monthly rent of \$1,200.00 was due on the first day of every month and the tenants were required to pay for utilities including water. The tenants provided post-dated cheques for the months of April, May, June and July 2014. The April 2014 rent cheque was returned for insufficient funds in May 2014 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on May 20, 2014 with an effective date of June 2, 2014. The tenants did not pay the outstanding rent for April 2014 and the landlord applied for an Order of possession and Monetary Order on May 26, 2014 under the Direct Request procedure. An Order of Possession and Monetary Order for unpaid rent for the month of April 2014 were issued to the landlord on June 5, 2014.

The landlord submitted that on June 6, 2014 the landlord posted the Order of Possession on the door of the rental unit. Since the tenants did not comply with the Order of Possession, the landlord applied for and obtained a Writ of Possession on June 13, 2014. On June 13, 2014 a bailiff served the Writ of Possession upon the female tenant at her work place. The tenants vacated the rental unit on June 16, 2014.

The landlord attempted to cash the rent cheques for May, June and July 2014 as well and each of these cheques was returned. The landlord incurred a \$5.00 charge for each returned cheque.

In regaining possession of the rental unit, the landlord found the property littered with garbage and an abandoned property. The landlord also found the unit very unclean and uninhabitable due in large part to dog urine and feces on the carpets.

The landlord removed the garbage, cleaned the rental unit, and steam cleaned the carpeting. Unfortunately, the carpeting in the living room, hallway and staircase could not be salvaged and that carpeting was removed. The subfloor was treated and disinfected after the carpeting was removed. The carpeting in the bedrooms was in satisfactory condition after cleaning.

The landlord testified that the carpeting was in place when the landlord purchased the property in 2008 and the landlord estimated that the carpeting was between 6 and 10 years old at the end of the tenancy. The landlord obtained a quote for similar carpeting in the amount of \$2,117.25 although new carpeting has yet to be installed.

The landlord testified that that the rental unit remains vacant as of the date of this hearing as the carpeting has not yet been installed due to the losses associated to this tenancy, and because the landlord is making repairs to the exterior of the home.

By way of this application the landlord seeks to recover a total of \$7,168.85 from the tenants for the following:

1. The filing fee and registered mail costs related to the previous Application for Dispute Resolution in the amounts of \$50.00 and \$37.64 respectively.
2. The filing fee paid to apply for the Writ of Possession in the amount of \$120.00 and the bailiff costs for executing the Writ in the amount of \$300.00.
3. Unpaid and/or loss of rent in the amount of \$3,600.00 representing \$1,200.00 for each of the months of May through July 2014.
4. Returned cheque bank charges of \$20.00 representing \$5.00 each for the months of April through July 2014.
5. Water bills for the months of March 2014 through June 2014 in the amounts of \$18.37, \$21.76 and \$86.59, respectively.
6. Garbage removal in the amount of \$110.00.
7. General cleaning in the amount of \$238.00.
8. Carpet cleaning in the amount of \$218.40.
9. Carpet removal in the amount of \$110.00
10. Disinfect and treat subfloor in the amount of \$95.84.
11. Carpet replacement in the amount of \$2,117.25.
12. Filing fee for Application for Substituted Service in the amount of \$25.00.

As evidence for this proceeding, the landlord provided copies of: the tenancy agreement; the 10 Day Notice; the previous decision and orders issued on June 5, 2015; returned cheques and bank notices regarding the returned cheques; receipts, invoices; and written estimates relevant to the amounts claimed. The landlord also provided photographs of the interior and exterior of the rental unit after the tenants vacated.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement and the Act. A tenant is also required to give appropriate notice in order to end a tenancy. Should the tenant fail to pay rent, the tenant must vacate the rental unit pursuant to a

10 Day Notice to End Tenancy for Unpaid Rent served upon them and failing that, pursuant to an Order of Possession. In this case, the tenants failed to pay rent that was due under the terms of their tenancy agreement, the tenants did not give notice to end the tenancy, the tenancy ended June 2, 2014 pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent yet the tenants did not vacate the rental unit, and the tenants did not comply with the Order of Possession served upon them.

As the tenants did not comply with the Order of Possession, causing the landlord to apply for and execute a Writ of Possession, I award the landlord recovery of the filing fee for the Writ of Possession and bailiff costs, in the amounts of \$120.00 and \$300.00, as claimed.

Since the tenancy ended in June 2014 and the tenants continued to occupy the rental unit until mid-June 2015 I find the landlord entitled to recover unpaid rent up to and including the months of June 2014. Since the landlord is already in possession of a Monetary Order for rent for the month of April 2014, by way of this decision, I award the landlord unpaid rent for the months of May and June 2014 in the sum of \$2,400.00.

Since the tenancy came to an end on June 2, 2014 and the landlord regained possession of the rental unit June 16, 2014, I proceed to consider whether the landlord is entitled to recover loss of rent for the month of July 2014 due to the condition the rental unit was left by the tenants. Under the Act, a tenant is required to leave a rental unit undamaged, vacant, and reasonably clean at the end of the tenancy. From all of the undisputed evidence before me, including the landlord's testimony, photographs, and receipts I accept that the tenants violated their obligations under the Act by leaving the rental unit very unclean, not devoid of abandoned possessions and garbage, and damaged by way of dog urine. I note from the landlord's receipts and invoices that cleaning of the exterior of the property took place on June 16, 2014 and the interior was cleaned June 21, 2014. The carpeting was professionally cleaned on July 1, 2014; carpeting was removed on July 6, 2014 and the subfloor treated and disinfected on July 7, 2014. I find the progress with these repairs to be within the realm of reasonable. Therefore, I grant the landlord's request to recover loss of rent July 2014 in the amount of \$1,200.00 due to the condition of the rental unit left by the tenants.

I further award the landlord the amounts claimed for garbage removal, general cleaning, carpet cleaning, and disinfecting the subfloor as I am satisfied the tenants failed to remove all of their garbage, sufficiently clean the rental unit, and damaged the subfloor by way of dog urine. Therefore, I award the landlord \$110.00, \$238.00, \$218.40 and \$95.84 as claimed for these items, or \$662.24.

Although I am satisfied by the evidence before me that the tenants' actions or neglect resulted in damage to the carpet so great that the carpeting required replacement in certain rooms, the carpeting had already provided a number of years of use and I find it appropriate to reduce the landlord's award by estimated depreciation of the old carpeting. As provided under Residential Tenancy Policy Guideline 40: *Useful life of Building Elements*, carpeting has a typical useful life

of 10 years. Given the estimated age of the carpeting that was removed, I award the landlord 30% of the removal and replacement cost or \$668.17 [calculated as $(\$2,117.25 + \$110.00) \times 30\% = \$668.17$].

Upon review of the tenancy agreement, I accept that the tenants were required to pay for water. I find the landlord established an entitlement to recovery of the amounts claimed for water billed to the landlord for the months of March 2014 through June 2014 in the total sum of \$126.72, as claimed.

Under section 7 of the Residential Tenancy Regulations, a landlord may collect a fee for bank charges the landlord incurs due to returned cheques. I find the landlord entitled to recover the bank charges for the cheques returned for the months of April through June 2014 as the tenancy was in effect during these months. However, I make no award for the bank charge incurred for the month of July 2014 since the landlord is supposed to return post-dated cheques after a tenancy ends and the landlord was not entitled to cash a rent cheque for the month of July 2014. Therefore, I award bank charges in the total amount of \$15.00 to the landlord.

Under the Act, the Arbitrator may order the respondent to pay the applicant the filing fee paid their Application but other costs incurred to serve the other party and prepare for the dispute are not recoverable. Since the landlord was largely successful in this Application, I award the landlord recovery of the \$100.00 paid for this Application. However, I decline the landlord's request to registered mail costs from the tenant. I also deny the landlord's request to recover the filing fee paid for the previous Application for Dispute Resolution as each Application is resolved by way of the decision issued in relation to that Application and I cannot award a filing fee for a previous Application. Nor, do I award the landlord recovery of the filing fee paid for the Application for Substituted Service as the Act does not require a tenant to give a landlord a forwarding address or service address unless the tenant seeks return of their security deposit and the costs associated to locating and serving a tenant is upon the party making the claim.

As the landlord continues to hold a security deposit and pet damage deposit totalling \$900.00, I authorize the landlord to retain those deposits in partial satisfaction of the amounts awarded to the landlord by way of this decision.

In summary, the landlord has been awarded the following by way of this decision:

Writ of Possession and bailiff costs	\$ 420.00
Unpaid rent – May and June 2014	2,400.00
Loss of rent – July 2014	1,200.00
Cleaning and garbage removal	662.24
Carpet removal and replacement	668.17
Water bills	126.72
Returned cheque fees	15.00
Filing fee paid for this Application	<u>100.00</u>

Total awarded to landlord	\$5,592.13
Less: security deposit and pet damage deposit	<u>(900.00)</u>
Monetary Order for landlord	\$4,692.13

To enforce the Monetary Order it must be served upon the tenants and may be filed in Provincial Court to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenants' security deposit and pet damage deposit and the landlord has been provided a Monetary Order for the balance of \$4,692.13 to serve and enforce as necessary.

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: May 12, 2015

Residential Tenancy Branch

