



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, 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; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; the landlord testified that the tenant was served in person on November 04, 2014.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testified that this tenancy started on March 01, 2014 for a fixed term which ended on August 31, 2014. The tenancy then reverted to a month to month tenancy. Rent for this unit was \$750.00 per month plus 50 percent of utilities. The tenant paid a security deposit of \$375.00 on February 22, 2014. Both parties attended the move in condition inspection of the unit at the start of the tenancy. At the end of the tenancy two opportunities were given to the tenant to attend a move out inspection; however, the tenant declined and the inspection was completed in the tenant's absence. The tenancy ended on October 02, 2014 and the tenant provided a forwarding address in writing on October 15, 2014.

The landlord testified that the tenant failed to pay all the rent for September, 2014 leaving an unpaid balance of \$200.00. The tenant was served with a 10 Day Notice to End Tenancy on September 03, 2014 but did not pay the outstanding rent. The landlord seeks a Monetary Order to recover \$200.00 from the tenant. The landlord testified that the tenant did not vacate the rental unit in accordance with the effective date of the 10 Day Notice and overheld at the unit until October 02, 2014. The tenant did state that she would vacate the unit on September 30, 2014 but did not leave until two days later. The landlord therefore seeks to recover two days rent for overholding at the unit to an amount of \$48.39.

The landlord testified that the tenant was provided with copies of each of the utility bills and asked to settle her share of 50 percent. The landlord has provided copies of the bills and notices for payment in documentary evidence. The total amount of the tenant's share for utilities, taking into account the prorated bills for the first and last month of the

tenancy is shown below. The tenant's share of each bill has been documented on the bills provided in documentary evidence. The landlord did not provide the final bill as it had not been received prior to filing this application. The tenant made three payments towards the bills as shown below:

Billing dates	Tenants share	Dates paid by tenant	Amount paid
February 14- March 14 prorated	\$74.25		
March 15 – April 15	\$112.33		
April 16 – May 16	\$112.33		
May 16 – June 17	\$114.02		
June 17- July 16	\$115.73		
July 16 – August 15	\$117.46	July 21	\$100.00
August 15 – September 15	\$115.75	August 01	\$277.00
September 15 to September 30 Prorated	\$57.88	August 31	\$114.02
Total amount of tenants share of bills received	\$819.75	Total of payments made	\$491.02

The landlord has revised her calculations and seeks to recover the amount of \$328.73 from the tenant.

The landlord testified that the tenant had put a stop payment on a rent cheque and the landlord incurred bank charges of \$10.33. The landlord testified that s. 10 of the tenancy agreement informed the tenant that fees will be charged for any fees incurred from the landlord's financial institution of \$25.00 a month. The landlord has limited this to the amounts actually charged by her bank of \$10.33.

The landlord testified that the tenant had failed to return the mailbox key at the time of filing this application. The landlord had sought to recover \$50.00; however, the tenant

has since returned the key and the landlord therefore withdraws this section of her claim.

The landlord testified that the tenant failed to leave the rental unit responsibly clean. The stove, the walls, the fridge, appliances, the floors, the windows and window sills all had to be cleaned. The landlord had estimated the cleaning charges would be \$120.00; however, the invoice from the cleaning company was for \$150.00. The landlord referred to her documentary evidence of the condition inspection reports and photographic evidence showing the condition of the unit. The landlord seeks to recover \$150.00 from the tenant.

The landlord testified that the carpet in the unit was left dirty. The landlord testified that the tenant had kept a dog in the unit for a while during the tenancy and left the carpets stained and dirty. The landlord cleaned the carpets and had to rent the carpet cleaning machine twice due to the condition of the carpets. The landlord also provided carpet shampoo and her labour to clean the carpets. The carpet cleaning machine was \$44.71 to hire; however, with the cost of the shampoo used and the landlord's labour the landlord seeks to recover \$100.00 from the tenant.

The landlord testified that the tenant left the drapes dirty and stained. The landlord seeks to recover \$30.00 to clean the drapes.

The landlord testified that the walls had dings, scuffs and scratches on them. The tenant had parked a bike in the kitchen which had scratched the wall and taken paint off. The walls on the bedrooms, hallway, entryway and dining room were also scratched and scuffed. The landlord fixed the walls and repainted and seeks to recover \$80.00 for her work.

The landlord seeks an Order to be permitted to keep the security deposit of \$375.00 in partial satisfaction of her claim. The landlord also seeks to recover the filing fee of \$50.00.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me. With regard to the landlord's claim for unpaid rent; I refer the parties to s. 26 of the Act which states:

26. 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.

I am satisfied from the evidence before me that the tenant failed to pay all rent for September, 2014 and has an outstanding balance of \$200.00. Furthermore, I find the tenant did not vacate the rental unit until October 02, 2014. A landlord is entitled to recover rent for overholding at the unit. Consequently I find in favor of the landlord's claim to recover \$48.39. The total amount due to the landlord for unpaid rent and overholding is therefore **\$248.39**.

With regard to the landlord's claim for unpaid utilities; the landlord has complied with the Act with regard to providing the tenant with copies of the utilities and a written demand for payment. The last utility bill has not been given to the tenant after she had vacated the rental unit; however, I am satisfied with the landlord's calculation for the prorated amount for the final two weeks and I am satisfied with the calculations made during the hearing as to the tenants share of each bill and the payments made by the tenant towards the utilities. I therefore find the landlord is entitled to recover the amount of **\$328.73** for unpaid utilities.

With regard to the landlord's claim for bank fees; the landlord has provided a copy of her bank statement in documentary evidence and has testified that there is a clause in the tenancy agreement notifying the tenant that fees of this nature will be charged at a rate of \$25.00 per month. I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I am satisfied that the tenancy agreement has a clause that provides for an administrative fee for late fees. If the tenant stopped a cheque then the rent would be described as late and the landlord can recover any costs incurred for the tenant's actions. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlord is entitled to recover **\$10.33** in bank fees.

With regard to the landlord's claim for damages to the unit; I have reviewed the photographic evidence along with the move out condition inspection report. I am satisfied from the undisputed evidence and testimony of the landlord that the unit suffered from some damage and required cleaning at the end of the tenancy. The landlord has sufficient evidence to meet the burden of proof that these damages were caused through the tenant's actions or neglect and that the unit was not left reasonably clean. I therefore find in favor of the landlord's claim to recover the amount of **\$360.00** for cleaning, carpet cleaning, drape cleaning and repair and painting of the walls.

I Order the landlord to keep the tenant's security deposit of **\$375.00** in partial satisfaction of her claim. I further find as the landlord's claim has merit, that the landlord

is entitled to recover the filing fee of **\$50.00** 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 and overholding	\$248.39
Unpaid utilities	\$328.73
Bank fees	\$10.33
Cleaning and damages	\$360.00
Filing fee	\$50.00
Less security deposit	(-\$375.00)
Total amount due to the landlord	\$622.45

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$622.45**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: June 04, 2015

Residential Tenancy Branch

