



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, MND, FF

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for unpaid rent and utilities; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The male Landlord stated that on December 09, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlords submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

On February 17, 2015 the Landlord submitted numerous documents and a USB device to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. These documents included a Monetary Order Worksheet in which the Landlords clearly indicate they have increased the amount of their claim to \$3,628.98.

The male Landlord stated that these documents were served to the Tenant by registered mail on February 19, 2015. The Landlords submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

The male Landlord stated that the service address used for all of the above documents was provided to the Landlord as a forwarding address at the end of the tenancy.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/utilities and damage to the rental unit?

Is the Landlord entitled to retain all or part of the security deposit?

Background and Evidence

The male Landlord stated that:

- this tenancy began on August 01, 2014;
- the Tenant agreed to pay monthly rent of \$800.00 by the first day of each month;
- the Tenant paid a security deposit of \$400.00 and a pet damage deposit of \$400.00;
- a condition inspection report was completed at the beginning of this tenancy, a copy of which was submitted in evidence;
- on November 17, 2014 the Landlords served the Tenant with a Ten Day Notice to End Tenancy, which declared that the Tenant must vacate the rental unit by November 27, 2014;
- the Tenant vacated the rental unit on November 30, 2014;
- the Landlords scheduled a final inspection of the rental unit for December 01, 2014;
- the Landlords provided the Tenant with a Notice of Final Inspection for December 05, 2014;
- the Tenant did not attend either of the scheduled final inspections;
- the final condition inspection report was completed on December 05, 2014, in the absence of the Tenant;
- the final condition inspection report was sent to the Tenant on December 09, 2014; and
- the Tenant left a forwarding address under the Landlords' door on December 05, 2014.

The Landlords are seeking compensation, in the amount of \$323.40, for disposing of furniture left in the rental unit. The male Landlord stated that several pieces of furniture were left in the rental unit, which did not have significant value, and that those items were discarded. The Landlords submitted photographs of the items left behind and an email receipt to show this expense was incurred.

The Landlords are seeking compensation, in the amount of \$105.00, for cleaning the rental unit. The male Landlord stated that the rental unit required cleaning at the end of the tenancy. Photographs that were taken at the end of the tenancy were submitted in evidence, which show that cleaning was required, and the condition inspection report submitted in evidence indicates cleaning was required. The Landlords submitted an invoice to show this expense was incurred.

The Landlords are seeking compensation, in the amount of \$148.00, for cleaning the carpet. The male Landlord stated that the carpet was dirty and smelled of urine at the end of the tenancy. Photographs that were taken at the end of the tenancy were submitted in evidence, which show that the carpet had not been cleaned; the condition inspection report submitted in evidence indicates the carpet smelled of the urine; and

invoice for carpet cleaning indicates there is a strong smell of animal odour in the carpet.

The Landlords are seeking compensation, in the amount of \$1,090.21, for replacing the carpet. The male Landlord stated that the carpet still had a strong odour after cleaning and it needed to be replaced. He stated that the carpet was approximately 2 years old at the start of the tenancy.

The Landlords are seeking compensation, in the amount of \$111.63, for repairing a door. The male Landlord stated that the Tenant damaged the door by screwing into the door. The Landlords submitted a photograph of the damaged door which shows a locking device has been attached to the door/door frame. The male Landlord stated the door was purchased on-line and the Landlords submitted an online advertisement for the door that was purchased.

The Landlords are seeking compensation, in the amount of \$55.16, for replacing the lock on the door to the rental unit. The male Landlord stated that the lock needed to be replaced because the key was not returned at the end of the tenancy. The male Landlord stated the lock was purchased on-line and the Landlords submitted an online advertisement for the lock that was purchased.

The Landlords are seeking compensation for unpaid utilities, in the amount of \$65.36. The male Landlord stated that the tenancy agreement required the Tenant to pay 1/3 of the hydro bill. The Landlords submitted a hydro bill, in the amount of \$219.65, for the period between October 18, 2014 and December 15, 2014. The male Landlord stated that the Tenant has not paid her portion of this bill.

The Landlords are seeking compensation for unpaid rent for November of 2014, in the amount of \$800.00. The male Landlord stated that the rent for November has not been paid.

The Landlords are seeking compensation for unpaid rent for December of 2014, in the amount of \$800.00. The male Landlord stated that the rent was not paid for December and that rent is due because the Landlords stored the Tenant's personal belongings in the unit for the month of December until they were discarded in January of 2015. The male Landlord stated that the rental unit has not been re-rented as the Landlord does not currently intend to rent the unit.

The Landlords are seeking compensation for the cost of mailing documents related to these proceedings to the Tenant.

The Landlords are seeking compensation for the cost of filing this Application for Dispute Resolution as well as a previous Application for Dispute Resolution which was dismissed with leave to reapply.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence, particularly the photographs submitted in evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to remove all of her personal belongings from the rental unit. As the personal belongings left behind appear to have a market value of less than \$500.00, I find that the Landlords had the right to dispose of that property and am entitled to compensation for disposing of it, in the amount of \$323.40.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the rental unit in reasonably clean condition. I therefore find that the Landlords are entitled to compensation for cleaning, in the amount of \$105.00 for general cleaning and \$148.00 for carpet cleaning.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to remove all pet odours from the carpet. I find that the Landlord made a reasonable effort to clean the carpet but in spite of those efforts the carpet needed to be replaced at the end of the tenancy.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. The evidence shows that the carpet was approximately 2.3 years old at the end of the tenancy. I therefore find that the carpet in the unit has depreciated by twenty-three percent, and that the Landlord is entitled to seventy-seven percent of the cost of replacing the carpet, which in these circumstances is \$839.46.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the rental unit in reasonably clean condition. I therefore find that the Landlords are entitled to compensation, in the amount of \$111.63, for replacing the door.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to return the keys to the rental unit at the end of

the tenancy. I therefore find that the Landlords are entitled to compensation, in the amount of \$55.16, for replacing the lock.

On the basis of the undisputed evidence, I find that the Tenant was required to pay 1/3 of the hydro costs incurred during her tenancy. The hydro bill submitted in evidence shows that hydro expenses of \$219.65 were incurred between October 18, 2014 and December 15, 2014. As the Tenant vacated the rental unit on November 30, 2014, I find that she is required to pay a pro-rated portion of this bill. The Tenant must pay 44/59 of this bill, as the bill is for a 59 day period and she only occupied the rental unit for 44 of those days.

The average hydro cost of this bill is \$3.72 per day. The pro-rated portion of this bill for the 44 days the Tenant occupied the rental unit is \$163.68. The Tenant's portion of the pro-rated bill is \$54.56 and I find that the Tenant must pay this amount to the Landlord.

On the basis of the undisputed evidence, I find that the rent for November of 2014 has not been paid. As the Tenant occupied the rental unit for the month of November, I find that she owes rent for that month, in the amount of \$800.00.

Section 7(2) of the *Act* requires Landlords to take reasonable measures to mitigate losses. As I have determined that the Landlords had the right to dispose of the personal belongings left in the rental unit by the Tenant and the Landlords have been compensated for the cost of disposing of those items, I find that the Landlords are not also entitled to compensation for storing those items for one month. In my view the Landlords should have mitigated their losses by disposing of those items in a timelier manner and then preparing the rental unit for rent in the event they were inclined to re-rent the unit. As the Landlords were not under any legal obligation to store the Tenant's personal property, I find they are not entitled to compensation for storing the property in the unit during the month of December.

With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Landlords' claim for mailing costs, as they are costs which are not denominated, or named, by the *Act*.

I find that the Landlords' application has merit and that the Landlords are entitled to recover the fee for filing this Application for Dispute Resolution. I am unable to award compensation for the cost of filing a previous Application for Dispute Resolution, as I am in no position to determine whether the Landlords are entitled to recover that fee.

Conclusion

I find that the Landlords have established a monetary claim, in the amount of \$2,487.21, which is comprised of \$800.00 in unpaid rent, \$54.56 in unpaid utilities, \$1,582.65 in damages, and \$50.00 in compensation for the filing fee paid by the Landlords for this

Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlords to retain the Tenant's security deposit/pet damage deposit of \$800.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlords a monetary Order for the amount \$1,687.21. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order 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: July 14, 2015

Residential Tenancy Branch

