



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' 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 tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants stated that they had provided evidence but this was not received by the Arbitrator prior to the hearing. The Arbitrator did however receive the tenants' evidence after the hearing but in accordance to the rules of procedure it has not been considered as it was sent late. The tenants confirmed receipt of evidence. I have reviewed all oral and written 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.

At the outset of the hearing the parties advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- 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 parties agreed that this tenancy started on September 12, 2014 and a new agreement for a further one year term was entered into on October 01, 2014. This agreement was due to expire on August 31, 2015. Rent for this unit was \$1,325.00 per month due on the 1st of each month in advance, the tenants paid a security deposit of

\$835.00 which comprised of \$660.00 security deposit, \$75.00 for remote deposit and \$100.00 for two fob deposits. Both parties attended a move in and a move out condition inspection of the unit and the tenants provided a forwarding address in writing on June 13, 2015.

The landlord testified that the tenants had asked the landlord if they could end the lease and gave Notice to the landlord in April, 2015. The landlord explained to the tenants that they are responsible for the terms of the lease until such a time as the landlord could rent the unit to new tenants. The landlord started to advertise the unit and a few viewings were arranged.

The landlord testified that the tenants' rent cheque for June was returned NSF. The tenants were served a 10 Day Notice to End Tenancy in person on June 03, 2015. The Notice had an effective date of June 13, 2015. The tenants did not pay the outstanding rent and vacated the rental unit on June 13, 2015. The landlord testified that she continued to advertise the unit and has managed to re-rent the unit for August 01, 2015. The landlord therefore seeks to recover the unpaid rent for June and a loss of rental income for July, 2015 to an amount of \$2,650.00.

The landlord testified that the tenants did not return all the keys to the unit. The mailbox key was not returned and the landlord had to have a new lock fitted at a cost of \$99.75; the gate key and unit key were not returned and the landlord had new keys cut at a cost of \$6.70; and one of the fobs was not returned. The landlord seeks to recover \$50.00 for the new fob and this charge is detailed in the tenancy agreement. The landlord has provided receipts for the mailbox lock and the cutting of two other keys.

The landlord seeks to recover \$25.00 from the tenants as they left the deck in a dirty condition. The landlord paid the building manager \$25.00 to clean the deck and a receipt has been provided in evidence.

The landlord testified that some repairs had to be carried out on the second bedroom door and trim. The damage was caused by the tenant's father's wheel chair. The landlord testified that the back seat clips on both toilet seats were damaged. One was missing and one was cracked. These could not be simply replaced as they are integral to the toilet seat. Both toilet seats had to be replaced. The landlord testified that a kitchen cupboard shelf was left with a missing peg that held the shelf up. The landlord's contractor carried out the repairs and the landlord seeks to recover \$425.25 from the tenants. The landlord has provided photographs and the repair invoice in documentary evidence.

The landlord testified that the tenants failed to leave the carpets clean at the end of the tenancy. The landlord had all the carpets cleaned although has not charged the tenants for the second bedroom carpet and has paid half the cost for the master bedroom carpet. The hallway to the master bathroom and the living room carpets were left dirty and stained. The landlord seeks to recover \$141.75 and has provided photographs and an invoice in documentary evidence.

The landlord testified that there was a fan in the bedroom at the start of the tenancy. This was left there for the tenants use. At the end of the tenancy the fan was missing. The landlord seeks to recover \$44.77 for a replacement fan and has provided the receipt in documentary evidence.

The landlord testified that the tenants allowed two other people to live in the rental unit contrary to the tenancy agreement which stipulates only two occupants. The landlord testified that the tenant's mother stayed there while the tenant's father was in hospital and when the tenant's father came out of hospital he also stayed there. The landlord kept asking the tenants when their family was leaving and the landlord found out in June, 2015 that they were still there. The tenant's parents had stayed for over six months. The strata and neighbours were upset about the additional occupants. The landlord testified that she believed they paid the tenants \$650.00 a month and the landlord seeks to recover \$3,900.00 for the extra wear and tear put on the unit by two additional occupants.

The landlord seeks an order permitting the landlord to keep the security and other deposits to offset against her claim for unpaid rent and damages. The landlord also seeks to recover the filing fee of \$50.00.

The tenants testified that they did not pay the rent for June, 2015 and had given the landlord an indication that they wanted to end the tenancy and asked the landlord to find new tenants. The tenants disputed the landlord's claim for a loss of rent for July, 2015.

The tenant testified that they misplaced one set of keys when they moved out and they do not dispute the landlord's claim for replacement keys, mailbox lock or fob.

The tenants agree they left the deck dirty and failed to clean it at the end of the tenancy; however, the tenants testified that they did not consider it to be extremely dirty. They do not dispute the landlord's claim for \$25.00.

The tenants disputed the landlord's claims for repairs. The tenants testified that the damage to the door and trim was minor, the clips on the toilets were not damaged through the tenants' actions or neglect but rather through normal wear and tear and the kitchen shelf had a missing peg when they moved in. The tenants propped the shelf up by a box. It was so minor that they did not notify the landlord of this.

The tenants testified that they cleaned the carpets when they moved out. They used their parent's carpet cleaner and in the tenants' opinion the carpets were left clean.

The tenants do not dispute that they may have inadvertently packed the fan from the bedroom. The tenants testified that this was left by the previous tenants and the landlord left it in the unit for the tenants to use during their tenancy.

The tenants testified that they did not get the landlord's permission for their parents to move into the unit as it was only a temporary arrangement in an emergency as the tenant's father had to go into hospital and the tenant's mother stayed with the tenants. They stayed from December 28 to January 15, and then left the unit returning again for a weekend visit on February 26 to February 28. The parents did not return until June 01 and stayed for three days. They were never occupants of the unit but rather guests visiting. The tenants testified that their parents made a onetime payment of \$650.00 to help the tenants out. The tenants disputed the landlord's claim to recover \$3,900.00.

The tenants seek to recover their security and key deposits.

The landlord testified that it was her understanding that the tenant's mother stayed from October, 2014 when her husband went into hospital and on February 28, 2015 the tenants told the landlord that their parents had left. The building manager had informed the landlord that he had seen them there for a few weeks.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for unpaid rent for June, 2015; 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 with the undisputed evidence before me that the tenants failed to pay rent for June, 2015. Consequently, the landlord is entitled to recover this from the tenants to an amount of **\$1,325.00**.

With regard to the landlord's claim for a loss of rental income for July, 2015; this was a fixed term tenancy which did not expire until August 31, 2015. The tenants are responsible for the terms of that tenancy agreement until the end of the fixed term. This means that the tenants are responsible for the rent until either the end of August, 2015 or a time when the landlord has re-rented the unit. In this matter the landlord has testified the unit has been rented for August 01, 2015; therefore the tenants remain responsible for the rent for July, 2015. Consequently, I uphold the landlord's claim to recover the amount of **\$1,325.00**.

The tenants do not dispute the landlord's claims that they failed to return the mailbox key, two other keys and a fob. I therefore uphold the landlord's claim for costs associated with changing the mailbox lock and the replacement of two keys and a fob. The landlord is entitled to recover the amount of **\$156.45**.

With regard to the landlord's claim for damage to the door and trim; the costs incurred to replace the toilet seats; and the repairs to the kitchen shelf. The landlord seeks to recover the amount of \$425.25; while I accept that the door and trim were damaged by the actions of the tenant's father using a wheel chair in the unit; I am not satisfied that the tenants can be held responsible for the damage to the toilet seats as the landlord has insufficient evidence that these were damaged through the tenants' actions or neglect and not through normal wear and tear. Furthermore, I am not satisfied the landlord has shown that the tenants are responsible for the peg on the kitchen shelf and that this minor item may not have been seen during the move in inspection. I must therefore limit the landlord's claim to **\$200.00** for the repair to the door and trim.

With regard to the landlord's claim for costs incurred to have the deck cleaned. I am satisfied with the evidence before me that the tenants failed to leave the deck clean and as the tenants have not disputed the landlord's claim for cleaning, I award the landlord **\$25.00** for this work.

With regard to the landlord's claim for carpet cleaning; the tenants testified that they had cleaned the carpets; however, the landlord's testimony and photographic evidence along with the comments made on the move out inspection report shows that the carpet was stained in areas. I therefore uphold the landlord's claim for carpet cleaning to an amount of **\$141.75**.

The tenants did not dispute that they may have inadvertently taken the fan from the unit; I therefore uphold the landlord's claim of **\$44.77** for a replacement fan.

With regard to the landlord's claim for \$3,900.00 for additional occupants; in this matter the landlord has the burden of proof to show the tenant's parents stayed in the unit as occupants for six months or more. The landlord would also have to show that there is a clause in the tenancy agreement where the landlord will charge tenants an amount for additional occupants. I am not satisfied from the evidence presented, that the tenant's parents were anything more than occasional guests. Tenants are permitted to have guests in their unit under the *Act*; Furthermore, the tenancy agreement states that only occupants may live in the unit and if the tenants do not abide by the agreement they may be evicted. There is no term in the agreement which allows the landlord to charge extra for guests. Consequently, I find the landlord's claim for \$3,900.00 is dismissed.

I ORDER the landlord to keep the tenants' security deposit and the deposits for the remote and fobs to an amount of **\$835.00** pursuant to s. 38(4)(b) of the *Act*. This amount has been offset against the landlord's monetary award. The landlord is also permitted to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*.

Conclusion

I hereby issue a Monetary Order in the landlord's favor in the amount of \$2,432.97 pursuant to s. 67 and 72(1) of the *Act*:

Item	Amount
Unpaid rent for June	\$1,325.00
Loss of rent for July	\$1,325.00
Lock, fob and key replacement	\$156.45
Repair to door and trim	\$200.00
Deck cleaning	\$25.00
Carpet cleaning	\$141.75
Fan	\$44.77
Retain Security, key and fob Deposits	-\$835.00
Recover Filing Fee	\$50.00
Total Monetary Order	\$2,432.97

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 23, 2015

Residential Tenancy Branch

