



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 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.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail to a forwarding address provided by one of the tenants on March 25, 2015. Canada Post tracking numbers were provided by the landlord for each of the tenants in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent (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 tenants, 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 or 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 September 01, 2014 for a fixed term which was not due to end until August 31, 2015. The tenants vacated the rental unit on or about January 16, 2015. Rent for this unit was \$1,100.00 per month due on the 1st of each month in advance. The tenants paid a security deposit of \$550.00 on August 28, 2014.

The landlord testified that the tenants attended a move in condition inspection at the start of the tenancy; however, at the end of the tenancy the tenants were given two opportunities to attend the move out inspection but the tenant CF emailed the landlord and said to go ahead with the inspection in her absence. The other tenant LW did not attend the inspection either. CF also emailed the landlord with a forwarding address on March 11, 2015.

The landlord testified that the tenants had disconnected the Fortis Gas on January 16, 2015. CF sent the landlord an email asking why the heat was turned off; however, the email from Fortis confirmed the tenant had disconnected the gas account. The owner went to the unit to look at the situation as it was the cold winter months and this was treated as an emergency entry. It was determined at the time that the tenants had removed substantial all their belongings and had abandoned the unit. An email was also

received from CF on January 16, 2015 confirming she had removed most of her belongings. The landlord referred to a statement written by the owner and the landlord's assistant who attend the unit. The owner also found her keys would not fit the locks and it appeared that the tenants had changed the locks. The landlord fitted new locks to secure the unit.

On January 23, 2015 CF contacted the landlord and asked why the locks had been changed. The landlord informed CF of the reasons why; CF responded by email and stated "Sounds good thanks". The landlord testified that they attempted to resolve these issues with the tenants and informed them that if they just pay rent for January, 2015 the owner will not pursue the tenants for any other claims. The tenants failed to pay January's rent and the landlord then filed their application for Dispute Resolution.

The landlord testified that no rent was received for January, 2015 of \$1,100.00. A 10 Day Notice to End Tenancy for Unpaid Rent was served upon the tenants by posting it to the door on January 17, 2015. The tenants had five days to either pay the outstanding rent or dispute the Notice or the notice would be effective on January 31, 2015. The tenants failed to make a payment and vacated on or about January 16, 2015. The landlord therefore seeks to recover the amount of \$1,100.00 for January's rent.

The landlord testified that this was a fixed term tenancy agreement and the tenants moved out prior to the end of its term. The unit was also left in a damaged condition and there was a great deal of garbage left in the unit and shed. The landlord had to have repairs completed in the unit and it was not suitable to be shown throughout February, 2015. The landlord therefore seeks a loss of rent for February of \$1,100.00.

The landlord testified that the move out condition inspection report shows the damage done during the tenancy. This included damaged and missing curtain rods and curtains, wall damage throughout the unit with nail holes, screws chips and further touch up painting due to damage to the doors and Velcro left all over one wall. The walls and door had to be filled, sanded and repainted. The tenants were told at the start of the

tenancy that if they wanted to hang pictures they should use existing holes. The carpet in bedroom one had to be replaced. The tenants had kept an unauthorised cat in the unit and the carpets had a strong cat urine odour and staining. The carpets in this room were removed, the subfloor was deodorized and a new carpet fitted. The carpet in the main bedroom was saved by cleaning, spot treatments and deodorized. The tenants had also left garbage in the unit and shed which had to be removed and taken to the dump. The back deck and upper level of the unit smelt strongly of cigarettes and cat urine and these areas had to be cleaned and deodorized. This was a non-smoking unit.

The landlord testified that they obtained two quotes for all the repair work mentioned above. Both quotes have been provided in evidence. One quote was for \$1,832.25 and the cheaper quote was for \$1,095.00. The landlord used the contractor who provided the cheaper quote and seeks to recover \$1,095.00 from the tenants.

The landlord testified that once the landlord discovered that the heat had been turned off in the unit she called a plumber who found that the furnace, although old, was working fine and the fan was working fine. The plumber told the landlord the tenants had turned off the furnace and a call out fee of \$108.10 was charged to the owner. The landlord seeks to recover this amount from the tenants. The landlord referred to the invoice from the plumber and the statement from the owner provided in documentary evidence.

The landlord testified that the tenants failed to pay their water utilities. Water was not included in the rent. The water bill is from October 1, 2014 to October 31, 2014. A copy of the bill was sent to the tenants by email and in the landlord's evidence package. The tenants have failed to pay this bill and the landlord seeks to recover the amount of \$71.29.

The landlord seeks an Order to keep the security deposit of \$550.00 to offset against the landlord's monetary claim. The landlord also seeks to recover the filing fee of \$50.00.

Analysis

The tenants did not appear at the hearing to dispute the landlord's claims; therefore, in the absence of any evidence from the tenants, 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 with the evidence before me that the tenants failed to pay rent for January, 2015 of **\$1,100.00**. I therefore find in favor of the landlord's claim to recover this amount from the tenants.

With regard to the landlord's claim for a loss of rent for February, 2015; this was a fixed term tenancy which was not due to end until August 31, 2015. The tenants failed to pay the rent for January which necessitated a 10 Day Notice being served upon the tenants. I refer the parties to the Residential Tenancy Policy Guidelines #3 which states, in part, that; the landlord is entitled to recover rent from a tenant up to the time the tenancy can be legally ended (which in this case is August 31, 2015) or when the unit is re-rented. Under s. 7 (2) of the *Act* the landlord must attempt to mitigate or minimize the loss in a timely manner by getting the unit re-rented.

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner. I have considered the repairs required in the unit, particularly the painting and

replacement carpets. Often carpets have to be ordered and then the work has to be completed. This is also the case for repairs and painting where each step takes time to complete. I am therefore satisfied from the evidence before me that the tenants had an unauthorized cat in the unit which caused damage to the carpets and there was some damage to the walls and door which had to be repaired and there was a great deal of garbage which had to be removed. Due to this I find in favor of the landlord's claim to recover **\$1,095.00** from the tenants for repairs and **\$1,100.00** for a loss of rent for February, 2015.

With regard to the landlord's claim to recover costs for the plumber; I am not satisfied that the plumber needed to be called out due to the actions or neglect of the tenants. The information on the plumber's invoice referred to a call out for the furnace not working correctly. The technician assessed the furnace is old but still working; fan is running all the time. Technician adjusted fan control to bring fan on only with heating cycle. There is no mention that the furnace had been turned off on the plumber's invoice. Consequently, I find the landlord is responsible for repairs or call out charges to assess the furnace and make any repairs and is not entitled to pass this charge onto the tenants. This section of the landlord's claim is dismissed without leave to reapply.

With regard to the landlord's claim for the water bill; water is not included in the rent as indicated on the tenancy agreement provided in documentary evidence. The dates on the water bill show this bill was during the term of the tenancy. A copy of the water bill was sent to the tenants by email and in the landlord's evidence for this hearing. The tenants must therefore have been aware that this bill is their responsibility and they should have paid it within 30 days. I therefore find in favor of the landlord's claim to recover the amount of **\$71.29** from the tenants.

I Order the landlord to keep the security deposit of **\$550.00** in partial satisfaction of their claim pursuant to s. 38(40(b) of the *Act*. This amount has been offset against the landlord's monetary claim.

As the landlord's claim has merit I find the landlord is entitled 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 pursuant to s. 67 and 72(1) of the *Act* in the amount of \$2,866.29 under the following terms:

Item	Amount
Unpaid rent for January	\$1,100.00
Loss of rent for February	\$1,100.00
Unpaid utilities	\$71.29
Damage and garbage removal	\$1,095.00
Retain security deposit	(-\$550.00)
Recover filing fee	\$50.00
Total Monetary Order	\$2,866.29

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: September 02, 2015

Residential Tenancy Branch

