



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 was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords on July 3, 2015 for a Monetary Order for: damage to the rental unit; for unpaid rent and utilities; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep the Tenant’s security deposit; and, to recover the filing fee from the Tenant.

Both Landlords appeared for the hearing and provided affirmed testimony as well as evidence in advance of the hearing. There was no appearance for the Tenant during the hour long hearing or any submission of evidence prior to the hearing. As a result, I turned my mind to the service of the documents by the Landlords for this hearing.

The Landlords testified they served the Tenant with a copy of the Application, the Notice of Hearing documents, and their documentary and digital evidence to the Tenant’s forwarding address; this address was provided by the Tenant at the end of the tenancy on the move-out Condition Inspection Report. This was served by registered mail on July 7, 2015. The Landlords provided a copy of the Canada Post tracking number as evidence to verify this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service by failure or neglect to pick up mail. Based on the undisputed evidence of the Landlords, I find the Tenant was deemed served with the documents for this hearing on July 10, 2015 pursuant to the Act.

Issue(s) to be Decided

- Are the Landlords entitled to unpaid rent and utilities?
- Are the Landlords entitled to the costs resulting from damage to the rental unit?
- Are the Landlords entitled to liquidated damages?

- Are the Landlords entitled to keep the Tenant's security deposit in partial satisfaction of the their monetary claim?

Background and Evidence

Both Landlords confirmed each other's testimony during the hearing as detailed below. This tenancy started on June 15, 2014 for a fixed term due to expire on December 31, 2015. Rent was \$2,850.00 payable by the Tenant on the first day of each month. The Tenant paid the Landlords a security deposit of \$1,425.00 on May 18, 2014 which the Landlords still retain. The parties completed a move-in Condition Inspection Report (the "CIR") on June 19, 2014 which was provided into evidence. As part of the agreement, the Tenant was required to pay for electricity costs used by the Tenant during the tenancy.

In December 2014, the parties signed an addendum to the tenancy agreement that increased the rent from \$2,850.00 to an additional \$300.00 so that the Tenant could have access to more space in the rental unit, namely the tack room of the property. The addendum was signed by the Tenant and provided into evidence for this hearing by the Landlords.

The Tenant provided the Landlords with written notice to end the tenancy on March 31, 2015. Although the written notice did not stipulate the exact move out date, the notice stated that it was a 30 day notice. Therefore, the Landlords took the date the Tenant would be vacating the rental unit to be the end of April 2015. However, although the Tenant herself left the rental unit at some point in May 2015, she did not return back to the unit until June 20, 2015 in order to move out the majority of her belongings. A move-out CIR was completed on June 20, 2015 by the Landlord but was refused for signature by the Tenant. However, the Tenant did provide her forwarding address on the move-out CIR.

The Landlords testified that the Tenant failed to move out of the rental unit by the end of April 2015 as per her notice because she had too many personal belongings to move out by this date. The Landlords testified that the Tenant did not pay rent for May 2015 during which time she was over holding the tenancy. However, the Landlords only sought loss of rent for 22 days instead of the entire month which they would have been entitled to because they started to show the place to new renters during this time period. The Landlords claim prorated rent for 22 days in the amount of **\$1,838.70**.

In addition, the Landlords reduced their \$900.00 claim to **\$600.00** for the failure of the Tenant to pay the increased rent amount of \$300.00 rent for the use of the tack room.

The Landlords testified that the Tenant paid this additional amount each month from December 2014 onwards but failed to pay the additional amounts for May and June 2015.

The Landlords testified the Tenant also failed to pay for utilities during the tenancy as per the tenancy agreement. The Landlords explained that it was difficult to get a utility bill from the hydro company which they eventually managed to obtain for this hearing. The male Landlord explained that the utility bills he provided into evidence related to four sub meters, of which two were linked to usage by the rental unit. The Landlord provided a detailed calculation and breakdown of the electricity costs the Tenant was responsible for into evidence using the utility bills. The male Landlord testified that he took into account a reduced rate that they had received for being on agricultural land and other electricity usage which the Tenant was not responsible for, such as a basement area and driveway lighting, which was deducted from the utility bills. This resulted in an amount of **\$3,274.95** now claimed by the Landlords.

The Landlords also claim for the amount of \$250.00 relating to liquidated damages as a result of the Tenant breaking the fixed term tenancy. The Landlords referred me to Section 5 of the signed tenancy agreement subtitled "LIQUIDATED DAMAGES". This clause provides that if the Tenant ends the fixed term tenancy the Tenant will pay the Landlord \$250.00 as liquidated damages and not as a penalty.

The Landlords testified that the Tenant damaged the walls in bedroom two of the rental unit by painting pencil marks on the walls. The Landlord provided photographic evidence of this and a receipt for the cost of **\$315.00** to have the walls repainted to remedy the damage. The Landlord also pointed to the move out CIR which indicates this damage.

The Landlords testified that the Tenant left a large amount of debris and junk in the yard. This included scrap wood, chicken wiring and animal fencing. The Landlords claim **\$100.00** for five hours spent by the male Landlord to clean up the yard. The male Landlord testified that this was cheaper than paying for a company to complete this work and even though it took him longer than five hours.

The Landlords testified the Tenant failed to replace broken light bulbs throughout the rental unit and pointed to the move-in CIR which indicated that the rental unit had been provided to the Tenant with working light bulbs which were not replaced during the tenancy. The Landlords provided two invoices of bulbs they had purchased, but only claim **\$32.77** of the total amount as they did not use all of the light bulbs.

The Landlords testified the Tenant was provided with a set of keys at the start of the tenancy. However, the Tenant did not return the full set back, leaving four keys unreturned. The Landlords now seek to recover **\$20.00** for the replacement of these keys. However, the Landlords were unable to produce an invoice for this cost. In total, the Landlords seek to recover from the Tenant **\$6,431.42** (\$315.00 + \$100.00 + \$20.00 + \$1,838.70 + \$250.00 + \$3,274.95 + \$32.77 + \$600.00).

Analysis

I have carefully considered the undisputed evidence of the Landlords on the balance of probabilities as follows. Fixed term tenancies are designed to strictly prohibit a tenant or landlord from ending the tenancy without authority under the Act. In this case, I accept the Landlords' evidence that the Tenant broke the fixed term tenancy by giving written notice to end the tenancy earlier than the end date set out in the signed tenancy agreement. Policy Guideline 4 to the Act defines liquidated damages as:

"A clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into..."

[Reproduced as written]

The Tenant signed the tenancy agreement which contained a liquidated damages clause as detailed in the above section of this decision. Therefore, I find the Tenant is liable to pay to the Landlords liquidated damages in the amount of **\$250.00** as required by the tenancy agreement.

I also accept the Landlord's evidence that the Tenant failed to fully vacate the rental unit and provide the Landlords with vacant possession pursuant to the Tenant's written notice to end the tenancy for the end of April 2015. If a tenant continues to occupy a rental unit after giving written notice to end the tenancy, the tenant is considered to be an over holding tenant and is liable to pay for the use and occupancy of the rental unit and rental loss until such time vacant possession is provided to the landlord. In this case, I find the evidence suggests the tenancy ended on June 20, 2015 and that the Tenant continued to use the rental unit after the effective date of the Tenant's notice to end tenancy. Therefore, I award the Landlords the 22 days of prorated rent claimed in the amount of **\$1,838.70** as a result of the Tenant over holding the tenancy.

I also accept the Landlord's testimony and written evidence that from December 2014 onwards the rent amount payable under this agreement increased to an additional

\$300.00 per month as the Tenant was provided with additional space in the property. I accept the Landlords' evidence that the Tenant failed to pay the additional \$300.00 for the last two months of the tenancy and find the Landlords are entitled to **\$600.00** for this portion of their monetary claim.

In relation to the Landlords' monetary claim for unpaid utilities, I accept that under the written tenancy agreement the Tenant was liable for electricity costs she used in this tenancy. I accept the Landlords' undisputed evidence the Tenant did not pay her portion of the electricity used and I accept the breakdown and calculation provided by the Landlord as it accounted for electricity usage the Tenant was not responsible for. Therefore the Landlords are awarded **\$3,274.95** for unpaid electricity costs.

Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean and undamaged at the end of a tenancy. Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary. Policy Guideline 1 to the Act requires a tenant to replace light bulbs during a tenancy.

The Tenant provided no preponderance of evidence prior to this hearing. Therefore, based on the foregoing, I rely on the undisputed testimony of the Landlords, the CIR, the Landlords' photographic evidence, and the Landlords' documents to verify these losses claimed for damage to the rental unit. I find that on the balance of probabilities the Tenant failed to clean the yard, replace light bulbs throughout the rental suite, and caused damage to the bedroom walls which was not remedied at the end of the tenancy. I also accept the costs claimed by the Landlords in respect to the damages are reasonable and verified through the invoices submitted. Therefore, I award the Landlords the costs claimed for damages for a total amount of **\$447.77** (\$315.00 + \$100.00 + \$32.77).

In relation to the Landlords' claim for the replacement of the keys not returned by the Tenant at the end of the tenancy, I deny this portion of the Landlords' claim. This is because the Landlords failed to provide an invoice to verify the loss being claimed.

As the Landlords have been successful in the majority of their claim, they are also entitled to recover from the Tenant the **\$100.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlords is **\$6,511.42** (\$447.77 + \$3,274.95 + \$600.00 + \$250.00 + \$1,838.70 + \$100.00).

I find the undisputed evidence before me is that the Tenant provided the Landlords with her forwarding address on June 20, 2015, the date which I also find the tenancy ended.

The Landlords made their Application on July 3, 2015. Therefore, I find the Landlords made the Application to keep the Tenant's security deposit within the 15 day time limit set by Section 38(1) of the Act. As the Landlords already hold \$1,425.00 in the Tenant's security deposit, I order the Landlords to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining amount of **\$5,086.42** (\$6,511.42 - \$1,425.00). This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlords' copy of this decision.

Conclusion

The Tenant has breached the Act by ending the fixed term tenancy early and causing damage to the rental unit. Therefore, the Landlord may keep the Tenant's security deposit and is granted a Monetary Order for the remaining balance in the amount of \$5,086.42.

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: December 15, 2015

Residential Tenancy Branch

