



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

AMENDED DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

Both landlords and the tenant attended the hearing, and one of the landlords and the tenant each gave affirmed testimony. The parties were given the opportunity to question each other with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overholding and costs associated with overholding?
- Should the landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The first landlord (LL) testified that this fixed-term tenancy began on August 1, 2012 to expire March 31, 2013, and was extended from time to time. The tenancy ultimately ended on October 1, 2015. Rent in the amount of \$1,000.00 per month was originally payable under the tenancy agreement on the last day of each month, in advance, however it was raised with notice to the tenant to \$1,025.00 during the tenancy. On July 22, 2012 the landlords collected a security deposit from the tenant in the amount of \$500.00, and collected a \$300.00 pet damage deposit on August 16, 2012, both of which are still held in trust by the landlords.

The landlords have provided a Monetary Order Worksheet setting out the following claims:

- \$62.55 for recovery of the filing fee and postage costs;
- \$113.72 for re-keying locks;
- \$135.00 for cleaning/paint repairs;
- \$99.75 for carpet cleaning;
- \$43.55 to replace damaged blinds;
- \$3.11 to replace light bulbs;
- \$80.00 for repairing carpet;
- ~~\$100.25~~ \$110.25 for labor and overhead charges;
- \$320.00 for use/occupancy only;
- \$126.00 for rent rebated to new tenant; and
- \$8.00 additionally.

The landlord testified that the landlords' claim totals \$1,107.13.

The tenant did not return all keys to the rental unit at the end of the tenancy and the landlords had to have the locks re-keyed. A copy of a receipt in the amount of \$113.72 has been provided.

A move-in and a move-out condition inspection report was completed by the parties, and a copy of a hand-written document has been provided which sets out the condition of the rental unit at the end of the tenancy.

The landlord testified that the tenant agreed in writing to pay for re-painting and a security deposit statement containing the signature of a tenant has been provided. It is dated October 1, 2015 and sets out deductions for cleaning, garbage removal, rental arrears for over-holding and a rebate given to a future tenant, and repairs.

A copy of a carpet cleaning invoice in the amount of \$99.75 has been provided which also mentions fiber and pet damage.

The landlords obtained a quote for the carpet repair which was too high. The landlords had purchased a threshold but returned it to the store and the landlords claim \$50.00 for obtaining a piece of carpet that the landlords had in storage to prevent them from having to buy a new threshold, as well as \$30.00 for the landlord's time. Those claims are less than the quote. Photographs have been provided and the landlord testified that the pieces he obtained were not a perfect match, which is confirmed by the photographs. The landlords also paid \$110.25 to have those 2 pieces installed. A copy of a receipt has been provided.

Also provided are receipts for purchasing blinds totaling \$43.55 and for purchasing light bulbs for \$3.11.

The landlord also testified that the tenancy agreement specifies an "overholding" clause of \$50.00 per day: "14. OVERHOLDING. If the Tenant remains in possession, contrary to this Agreement or unlawfully, then the Landlord may claim from the Tenant overholding compensation of \$50.00 per day plus pro-rata rent. In addition, the Tenant shall be liable for losses suffered by either or both the Landlord and a new tenant of the premises. The landlord may also appeal to court for an order of possession which, if disobeyed, may lead to prompt forcible eviction." The landlords had given the tenant a 1 Month Notice to End Tenancy for Cause due to repeated late rent which contained an effective date of vacancy of the end of June. Then the landlords gave another on July 31 effective August 31, 2015. However, on August 22, 2015 the parties signed a mutual agreement to end the tenancy on September 12, 2015 at 3:00 but the tenant didn't move out. On September 2, the landlord gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord was successful in obtaining an Order of Possession on September 21, 2015 effective 2 days after service upon the tenant, a copy of which has been provided. The tenant was served with the Order of Possession on September 23, 2015, but didn't vacate the rental unit until October 1, 2015.

The landlords had a new tenant waiting to move in, and the landlord wrote the tenant alerting him of that. The new tenant was patient, and moved into the rental unit on October 4, 2015 but the landlords had to rebate the new tenant the sum of \$126.00. Proof of that has been provided. The landlords claim \$320.00 for over-holding as well as recovery of the rebate due to the tenant's failure to move out on time.

The tenants paid rent to the landlords the amounts of \$480.00 on September 1, 2015; \$300.00 on September 12; \$200.00 on September 22 and \$200.00 on September 23, 2015.

The second landlord (EL) testified that she did the painting on the window sills as well as all of the cleaning indicated in the evidentiary material. The claim is at \$12.00 per hour and the landlord testified that she worked on it for 3 whole days.

The tenant testified that he was trying to move out as soon as possible, but he was working. While trying to move, the landlord was in the suite and in the tenant's way.

Half of the light bulbs were burned out.

The tenant agreed to pay rent for September, 2015 and did so. The landlord said that the tenant didn't have to clean and would take the cost out of the security deposit, and the tenant agreed that the landlords could keep the security deposit and pet damage deposit for that cleaning and repairs.

Some of the dark spots in the bedroom were mold.

Analysis

Firstly, with respect to postage costs, the *Residential Tenancy Act* provides for recovery of a filing fee, but not for costs associated with service or preparing for a hearing. Where a party is successful with an application, the party is generally entitled to recovery of the filing fee.

The tenant's position is that he agreed that the landlord could keep the deposits in full satisfaction of any claim the landlords may have for repairs or cleaning. However, the *Act* requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

With respect to the landlord's claim for re-keying locks, the tenant did not dispute the landlord's testimony that not all of the keys had been returned, and therefore, I am

satisfied in that testimony and considering the receipt provided, that the landlords have established a claim for \$113.72.

Considering the move-out condition inspection, I find that \$135.00 for cleaning and painting is reasonable.

A tenant is expected to have carpets cleaned at the end of a tenancy if the tenant resided in the rental unit for a year or more, and I accept the landlords' claim of \$99.75 for carpet cleaning.

The tenant hasn't disputed broken or damaged blinds, and considering the landlord's testimony and the condition inspection reports, I accept the landlords' claim of \$43.55 to replace damaged blinds. Similarly, light bulbs are expected to remain in working condition at the end of a tenancy and I find that the landlords have established a claim of \$3.11 to replace light bulbs.

I have reviewed the quotes provided by the landlords for repairing the carpets, and I accept that the landlords did some running around to have the repair completed, but I am not satisfied that is the responsibility of the tenant, but is the cost of doing business as a landlord. Further, considering the cost paid by the landlord to have the repair completed at \$100.25, I am not satisfied that the landlords' additional claims of \$50.00 for obtaining pieces of carpet that the landlords had in storage, or \$30.00 for the landlord's time in returning the threshold to the store after changing his mind about how to have the repair done, have been set out, and I dismiss those portions of the claim. I do, however accept the landlords' claim of ~~\$100.25~~ \$110.25.

With respect to the landlords' claim of \$320.00 for overholding, the landlord testified that the tenant made rental payments in September, 2015 which totalled \$1,180.00 and testified that the monthly rent was \$1,025.00, which I find is an overpayment of \$155.00. The landlord also testified that an Arbitrator from a previous hearing with the landlords advised that the landlords could claim the unpaid rent or overholding charges but not both. The tenant agreed to the overholding charges on the tenancy agreement. The landlords served the Order of Possession on September 23 which became effective September 25, 2015. The tenant moved out 6 days later, and at \$50.00 per day, that amounts to \$300.00. Considering the rental overpayment made by the tenant, I find that the landlords have established a claim for the difference in the amount of \$145.00.

The landlord testified that rent for the new tenant is \$1,300.00 per month and the new tenant moved into the rental unit on October 4, 2015. When one does the math, the landlords, in all rights had to reimburse that tenant for 3 days, and I find that the landlords have established a claim in the amount of \$125.80. I have reviewed the

receipt provided by the landlords in the amount of \$126.00, however any over-payment made to the new tenant is not the responsibility of the previous tenant.

I am not satisfied that the landlords have established the additional \$8.00 claim.

In summary, I find that the landlords have established claims for \$113.72 for re-keying locks, \$135.00 for cleaning and painting, \$99.75 for carpet cleaning, \$43.55 to replace damaged blinds, \$3.11 to replace light bulbs, ~~\$100.25~~ \$110.25 for carpet repair costs, \$145.00 for overholding, and \$125.80 for the rebate to a new tenant. Since the landlords have been partially successful with the application the landlords are also entitled to recovery of the \$50.00 filing fee, for a total of ~~\$816.18~~ \$826.18.

The landlords currently hold a security deposit and a pet damage deposit which total \$800.00 and for which the tenant agreed the landlords could keep. Having found that the landlords have established a claim in the amount of ~~\$816.18~~ \$826.18, I set off those amounts and I grant a monetary order in favour of the landlords for the difference in the amount of ~~\$16.18~~ \$26.18.

Conclusion

For the reasons set out above, I hereby order the landlords to keep the \$500.00 security deposit and the \$300.00 pet damage deposit, and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of ~~\$16.18~~ \$26.18.

This order is final and binding and may be enforced.

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: February 19, 2016
AMENDED March 10, 2016

Residential Tenancy Branch