



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNDC MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for unpaid utility bills, damage or loss pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary award? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on April 1, 2015 with a rental amount of \$900.00 payable on the first of each month. The landlord testified that he continues to hold a \$450.00 security deposit and \$400.00 pet damage deposit paid by the tenant on March 13, 2015 and April 1, 2015 respectively.

The landlord gave undisputed testimony that the tenant did not provide written notice to end the tenancy. The tenant also did not dispute the landlord's testimony that she

remained in the rental unit until September 8, 2015. The landlord testified that the tenant left the rental unit unclean and damaged with outstanding utility bills.

The landlord testified that the tenant did not advise him that she was vacating the rental unit. The landlord testified that, when the tenant left the residence and when he discovered that she had vacated the unit, he entered the rental unit and discovered a strong urine smell in the residence. He testified that the tenant had cats within the rental unit and that the tenant often left the cats alone for long periods of time. He testified that, on entering the rental unit, he discovered cat urine and feces within the unit.

The landlord testified that, over the course of the tenancy, he received noise complaints about the tenant as well as complaints about the smell coming from the rental unit. He testified that the tenant was noisy and disruptive, often talking loudly while smoking in the rental unit.

The landlord also testified that the locks needed to be changed at the end of this tenancy as the tenant left all doors and windows unlocked when she vacated the unit. The landlord testified that, as the tenant did not provide notice that she was vacating the unit, the doors and windows to the unit were left open for several days. He testified that, when he inspected the rental unit, he found water damage on the living room floor as a result of the windows being left open. The landlord did not provide a written quote or invoice with respect to the water damage on the floor.

The landlord also testified that he had to have the unit professionally cleaned. He testified that the rental unit was within a brand new home that he had purchased prior to the tenant's move-in. The landlord did not provide an invoice for the professional cleaning of the rental unit. Instead, he submitted an email from a family friend indicating that he had cleaned the rental unit. He testified that there was a great deal of damage from the cats in the rental unit including scratches on the windowsills, blinds and that the unit was generally very dirty.

The landlord testified that the tenant remained in the rental unit eight days after the end of the tenancy. The landlord testified that the tenant did not pay any rent for those eight days and that she also did not pay her 15% of the utilities for those days. The landlord testified that the agreement for the tenant to pay 15% of the utilities was verbal only and not in writing. The tenant disputed that she was required to pay for utilities.

Both parties agreed that the tenant agreed to pay \$100.00 from the pet damage deposit towards damage in the rental unit at the end of the tenancy. The landlord sought \$896.00 in his application.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine an appropriate amount of compensation. In order to claim for damage or loss under the *Act*, the party making the claim bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the landlord claims damage and loss totaling \$896.00. The landlord testified to the damage to the rental unit as well as the circumstances surrounding the end of this tenancy. The tenant did not dispute the landlord's claim that the unit needed to be cleaned by the landlord after she vacated the unit. Nor did she dispute that her cats had caused some damage to the unit. Finally, the tenant did not dispute that she remained in the rental unit until September 8, 2015. The tenant disputed the landlord's claim that she was required to pay for utilities as well as the claim that she caused water damage to the rental unit floor.

The landlord provided minimal evidence of the lack of cleanliness of the rental unit or any specific damage at the end of the tenancy. He was unable to produce receipts for the cleaning and repairs he had done. He was unable to provide an agreement that the tenant was required to pay an amount towards the utilities. I rely on the agreement of the tenant with some of the landlord's testimony as the basis for an award to the landlord.

The tenant did not dispute that the rental unit required cleaning as a result of her cats in the unit. She did not dispute that she agreed to allow the landlord to deduct \$100.00 from her \$400.00 pet damage deposit. The tenant also did not dispute that she remained in the rental unit until September 8, 2015 thereby "overholding" in the rental unit pursuant to section 57 of the *Act*.

57 (1) In this section:

...**"overholding tenant"** means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

...

I find that the landlord is entitled to retain the \$100.00 from the tenant's pet damage deposit for cleaning as previously agreed. I find that, additionally, the tenant is responsible to pay the 8 days that she remained in the rental unit after the end of the month without paying a further rental amount. I find that the landlord is entitled to \$240.00 (\$30.00 per day for 8 days).

I find that the landlord has provided insufficient proof to support a further amount of loss with respect to any water damage to the rental unit. The landlord did not produce any physical evidence of the damage or any quotes for repair for this hearing. The photographic evidence submitted by the landlord does not show water damage.

I find that the landlord has provided insufficient proof to support a claim for a portion of the utilities. The landlord was unable to produce any documents to reflect an agreement in writing or evidence of previous payment of utilities by the tenant.

I find that the landlord has been able to prove the locks requiring re-setting. The landlord established the cost to rekey the locks in the residence by submitting \$26.64 locksmith receipt. The tenant did not dispute that she left the doors unlocked when she vacated the unit. I find that the landlord is entitled to recover \$26.64.

I find that the landlord has established some damage to the rental unit in that he provided undisputed testimony that the blinds had been damaged as well as supporting photographic evidence. Furthermore, the landlord provided a receipt for this repair in the amount of \$262.50. I find that the landlord is entitled to \$262.50 for blind replacement and repair.

I will allow the landlord to retain the tenant's entire security deposit and a further \$239.14 from the tenant's pet damage deposit as outlined below. The remainder of the tenant's pet damage deposit in the amount of \$170.86 is to be returned to the tenant.

Less Security Deposit	\$450.00
Less Pet Damage Deposit	400.00
Cleaning rental unit/agreed deduction	-100.00
Over holding eight (8) days	-240.00

Lock rekeying	-26.64
Blind repair and replacement	-262.50
Recovery of Filing Fee for this application	-50.00
Amount of deposits to be returned to the tenant	\$170.86

Conclusion

I allow the landlord to retain a total of \$679.14 towards his losses. To recover this loss, I allow the landlord to retain the tenant's entire security deposit (\$450.00) and a portion of the tenant's pet damage deposit (\$239.14). The landlord is ordered to return \$170.86 to the tenant.

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: April 7, 2016

Residential Tenancy Branch