



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF, SS
 MNSD, MNDC, FF, SS, O

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant.

The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; to recover the filing fee from the tenant for the cost of the application; and for an order permitting the landlord to serve documents in a different way than required by the *Act*.

The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; to recover the filing fee from the landlord for the cost of the application; and for an order permitting the tenant to serve documents in a different way than required by the *Act*.

The landlord attended the hearing, however was represented by an agent. The tenant also attended, and the landlord's agent and the tenant each gave affirmed testimony. The parties were given the opportunity to question each other respecting the evidence and testimony 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, and neither party sought an order permitting service of documents in a different way than required by the *Act*. Therefore, I dismiss the landlord's application and the tenant's application in that regard.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of use of a portion of the rental unit and recovery of cleaning costs and furniture replacement?
- Has the tenant established a monetary claim as against the landlord for return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on March 22, 2014 and was to expire on March 31, 2016, thereafter reverting to a month-to-month tenancy or renewed for another fixed term. The tenants moved out of the rental unit on February 28, 2016. Rent in the amount of \$6,600.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$3,300.00 as well as a pet damage deposit in the amount of \$3,300.00. The rental unit is a 6,000 square foot house with 5 bedrooms. A copy of the tenancy agreement has not been provided by either party.

The landlord's agent further testified that she received an email from the tenant on December 10, 2015 stating that the tenant had purchased a house and asking if the tenancy could end a month earlier than the fixed term. The landlord responded by email the same day agreeing, congratulating the tenant on the purchase, and reminding the tenant that the tenancy ends on March 31, 2016. The landlord agreed to end the tenancy early and asked for the rent for January and February. The landlord didn't ask for rent for March assuming the landlord would keep the deposits. The landlord also testified that neither party mentioned the deposits in the emails. Neither party has provided a copy of the emails, however the landlord's agent testified that the rental unit is still not rented due to the damages left by the tenant which are still being repaired, and will cost in excess of \$100,000.00.

The landlord's agent also testified that a move-in condition inspection report had been completed by the parties at the beginning of the tenancy. The parties also attended the rental unit for a move-out condition inspection report, however during that inspection, the tenant left before it was completed. The tenant caused leaks in the drains of the rental unit as evidenced by a golf ball found by a contractor in a pipe.

The tenant had changed the locks to the rental unit, and replacing them cost the landlord \$173.25. No receipt has been provided.

The landlord's agent also testified that she received an email from the tenant on March 14, 2016 which contains the tenant's forwarding address.

The tenant left the rental unit leaving the water utility bills outstanding, for which the landlord claims \$542.75 for the 4th quarter for 2015 and \$462.93 for the 1st quarter for 2016. The landlord also claims \$6,600.00 for unpaid rent for March, 2016; \$173.25 for changing the locks on the rental unit; and recovery of the \$100.00 filing fee.

The tenant testified that she sent the email to the landlord to advise that the tenant would like to move out earlier than the fixed term and asking if the landlord had a problem with that. The landlord never mentioned the security deposit or the pet damage deposit, and the tenant assumed the landlord would return them.

The tenant has provided a Monetary Order Worksheet setting out the following claims:

- \$510.00 for carpet cleaning;
- \$837.50 for cleaning services;
- \$367.50 for carpet cleaning;
- \$7,920.00 for a 5% rental rebate;
- \$1,736.00 to replace a damaged dresser;
- \$6,600.00 for recovery of the security deposit and pet damage deposit.

At the beginning of the tenancy, the tenant emailed the landlord about the condition of the rental unit. It was not clean, there was garbage all over, and the carpets had dog diarrhea on them which took 3 sessions for the tenant's cleaners to clean up. The fridge smelled so bad that the tenant could not put food in it. The fridge contained fish oil, and the tenant has provided a photograph that the tenant testified was taken a few days after taking possession of the rental unit. The move-in condition inspection report was completed a few days before the tenant moved in, and the tenant didn't know the fridge smelled badly until moving in. The tenant has provided receipts from cleaning companies, and testified that the rental house is 6,000 square feet and 2 people were cleaning.

The tenant further testified that the tenant was never made aware that the house leaks and started to do so when it rained. The tenant denies putting a golf ball in any pipes, and testified that she emailed the landlord about leaks. Patch-up jobs were done, but the leaking never stopped. One room was unusable due to ½ cm deep of water. Water

was higher than the carpet in one of the bedrooms. The tenant was also not able to use it or the study.

The tenant's dresser was damaged by the water, and a photograph has been provided. The tenant has also provided on-line advertisements showing the cost of replacement dressers similar to the tenant's. The tenant testified that the dresser was 3 or 4 years old at the time of moving into the rental unit, and the tenant claims \$1,736.00 to replace it. Photographs have been provided which the tenant testified were taken on various dates.

The whirlpool in the rental unit did not work and the first time the tenant turned it on, it leaked into the room below. Also, the tenant was unable to unlock the front door at the beginning of the tenancy. The tenant contacted the landlord's agent who said the landlord wouldn't pay for a new lock and suggested the tenant use the garage door. The tenant arranged for the new lock, and the landlord paid for it. The tenant denies having to pay the landlord back.

Also, during the tenancy, the tenant deducted a receipted amount from rent with the landlord's consent to pay someone to clean the perimeter drains and repair leaks. The landlord also supplied new carpet to replace the carpet that was under water.

The tenant does not deny owing the landlord the water bills.

The tenant attended the move-out condition inspection, but the landlord and an agent for the landlord were speaking in their native language, not in English, and screamed at the tenant. So the tenant left.

The tenant claims \$6,600.00 for recovery of the deposits; \$837.50 for cleaning services at the beginning of the tenancy; \$367.50 and \$510.00 for cleaning the carpets; \$1,736.00 for the damaged dresser; a rental rebate of \$7,920.00, being 5% for loss of use of 2 rooms; and recovery of the \$100.00 filing fee; for a total of \$18,071.00.

Analysis

With respect to the landlord's claim for unpaid rent, I have read the emails, and it's clear that the parties agreed to end the tenancy on February 28, 2016. Neither party mentioned the deposits in those emails, nor did either party mention the payment of rent for the last month of the fixed term. The *Act* specifies how a tenancy ends, one of which is a mutual agreement in writing. The landlord clearly knew by December 10, 2015 that the tenant was vacating the rental unit on February 28, 2016 and the landlord agreed in writing. The landlord also testified that the rental unit is not rentable due to its condition left by the tenant after she moved out, and that the water damage was caused by a golf

ball in a pipe. There is absolutely no evidence before me to substantiate that. The tenant testified that the house leaked whenever it rained and the landlord made patch-up repairs. It is a landlord's responsibility to deal with repairs and particularly where there is water damage. I am not satisfied that the loss of rental revenue is a result of the tenant's failure to comply with the *Act* or the tenancy agreement. Therefore, I find that the landlord is not entitled to recovery of the rent for the last month of the fixed term, or for any loss of rental revenue, and the landlord's claim of \$6,600.00 is dismissed.

The tenant does not deny the water utility bills, and therefore I find that the landlord is entitled to recovery of \$1,005.68.

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 *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.

In this case, the landlord and the tenant claim damages. The landlord testified that repairs will be beyond \$100,000.00 which is greater than the amount allowed to be claimed under the *Residential Tenancy Act*. Further, the landlord has not provided any evidentiary material at all, and the tenant denies responsibility for changing the locks. I have reviewed the emails exchanged between the parties, and I am not satisfied that the landlord has established that changing the locks to the rental unit was required as a result of the tenant's failure to comply with the *Act* or the tenancy agreement or the amount of the cost. Therefore, the landlord's application for a monetary order for damage to the unit, site or property is dismissed.

In the absence of any evidence from the landlord, I am not able to make a determination that the leaking of the rental unit was or was not caused by the tenant depositing a golf ball in pipes. The tenant denies that, and testified that the rental unit has been leaking when it rains all through the tenancy, causing the tenant to not be able to use 2 rooms in the house. The tenant claims recovery of 5% of the rental amount from the beginning of the tenancy to the end of the tenancy, being 24 months, however the tenant moved out after 23 months. The tenant also moved in on the 22nd of March, 2014 and testified that the leaking started shortly after moving in. The landlord did not deny the square footage of the house or that the 2 rooms were approximately 300 square feet in size combined, as claimed by the tenant. Considering the size of the home and the amount

of rent payable, and having found that the landlord has failed to establish that any leaks were caused by the tenant, I find the claim of 5% to be reasonable. I find that the tenancy was devalued by \$7,590.00 ($\$6,600.00 \times 5\% = \$330.00 \times 23 = \$7,590.00$).

With respect to the tenant's claim for cleaning services and carpet cleaning services, no one has provided a copy of the move-in or the move-out condition inspection reports, but the parties agree that the move-in inspection report showed a reasonably clean and undamaged rental unit. The tenant testified that the inspection was completed a few days before moving in, and that dog diarrhea didn't exist during the inspection, but did exist at move-in. She also testified that the fridge smelled so bad she couldn't put food in it at move-in which wasn't noticed during the inspection. The photographs of the fridge show an unclean fridge, which the tenant testified consisted of fish oil. The tenant also testified that the photographs were taken at various times, and it's clear that a lot of the cleaning required was for water damage, which the tenant is not responsible for. Some of the photographs of the carpets and fridge are marked that the photographs were taken at move-in. The receipts provided by the tenant are dated March 21, 22 and 23, 2014, and the tenancy began on March 22. I accept the testimony and evidentiary material of the tenant and I find that the tenant has established the claims for cleaning and carpet cleaning totalling \$1,715.00.

With respect to the tenant's claim for replacement of the damaged dresser, I have reviewed the photographs and I accept the testimony of the tenant that the dresser was damaged by the leaking water. The landlord bears the obligation of repairing damage caused by leaks, however the tenant testified that the home leaked whenever it rained, and there is no evidence before me that the tenant did anything to mitigate any damage that may have been caused by the dresser sitting on wet carpeting. I find that the tenant has failed to establish element 4 in the test for damages, and I dismiss the tenant's claim for replacement of the dresser.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fees.

Having found that the landlord is owed \$1,005.68 and the tenant is owed \$6,600.00 for the security deposit and pet damage deposit, \$7,590.00 as rent abatement, \$1,715.00 for cleaning and carpet cleaning, I set off those amounts, and I grant a monetary order in favour of the tenant for the difference in the amount of \$14,899.32.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed.

The landlord's application for an order permitting the landlord to serve documents in a different way than required by the *Act* is hereby dismissed.

The tenant's application for an order permitting the tenant to serve documents in a different way than required by the *Act* is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$14,899.32.

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: August 12, 2016

Residential Tenancy Branch