



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 Landlord on February 27, 2016 for a Monetary Order for: damage to the rental unit; for unpaid rent; 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 and pet damage deposits; and, to recover the filing fee from the Tenant.

One of the Landlords appeared for the hearing and provided affirmed testimony. The Landlords also provided documentary evidence as well as photographic evidence on a USB stick prior to the hearing. There was no appearance for the Tenant during the 60 minute hearing or any submission of written evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlords.

The Landlord testified that she served the Tenant with a copy of the Application, the Notice of Hearing documents and two separate sets of evidence packages by registered mail. The Landlord testified that the Canada Post website shows that the Tenant received and signed for both the Application documents and the evidence. Based on the undisputed evidence of the Landlord, I find the Tenant was served with the required documents pursuant to Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Landlord which I have summarized as follows.

Issue(s) to be Decided

- Are the Landlords entitled to unpaid rent and the costs associated with breakage of the fixed term tenancy?
- Are the Landlords entitled to damages and cleaning to the rental unit?
- Are the Landlords entitled to keep the Tenant’s security and pet damage deposit?

Background and Evidence

The Landlord testified that this tenancy started on November 1, 2014. A number of tenancy agreements were entered into, the last one of which started on September 1, 2015. The tenancy agreement was provide into evidence and shows that the term was fixed term and due to end on August 30, 2016 and then to continue on a month to month basis thereafter. Rent under the agreement was payable in the amount of \$1,650.00 on the first day of each month.

The Tenant paid \$825.00 as a security deposit and \$825.00 as a pet damage deposit (herein referred to as the "Deposits"), which the Landlords still retain. The Landlords completed a move-in Condition Inspection Report (the "CIR") on October 29, 2014.

The Landlord testified that in January 2016 she received an email from the Tenant asking whether she could break the fixed term and whether she could stay for some period of time into February 2016 without paying rent. The Landlord testified that she informed the Tenant that she was willing to work with her in finding another renter but that the Tenant would still be obligated to pay rent for the time she resided in the rental unit.

The Landlord testified that on or around February 15, 2016 she discovered that the Tenant had abandoned the rental unit without giving any prior written notice of the exact date she intended to leave. The Landlord testified that she attempted to contact the Tenant to complete a move-out CIR without any luck. As a result, the Landlord completed the move-out CIR in the absence of the Tenant on February 15, 2016. The CIR was provided into evidence for this hearing.

The Landlord testified that the Tenant had provided her with a forwarding address in writing prior to the ending of the tenancy. The Landlord then used this address and applied to keep the Tenant's Deposits on February 27, 2016, which was the address where the Landlords served the Tenant with documents for this hearing.

The Landlord testified that the Tenant failed to pay rent for February 2016. As a result, she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on February 2, 2016. The 10 Day Notice was provided into evidence and shows a vacancy date of February 12, 2016, which the Landlord suspected was the day the Tenant may have moved out of the rental unit.

The Landlord testified that she only had a short period of time to try and re-rent the unit to mitigate the loss the Tenant would have been liable for as a result of ending the fixed

term tenancy. As a result, she paid \$50.00 to place an advertisement that would reach more people than she would have reached had she used free sites and that she also lowered the rent to \$1,550.00 in an effort to get someone quickly. The Landlord explained that the advertisement worked and she was able to re-rent the rental unit to new renters for March 2016 onwards for the remaining duration of the Tenant's fixed term tenancy. As a result, the Landlord now claims for unpaid rent for February 2016 in the amount of **\$1,650.00**, the **\$50.00** for the advertisement cost, and **\$600.00** for loss of rent for having to reduce the rent \$100.00 per month for the tenancy the Tenant had breached. The Landlord provided a copy of the tenancy agreement for the new renters into evidence to support the costs being claimed.

The Landlord testified that the Tenant vacated the rental unit having failed to clean it and causing damage to it. As a result, the Landlord claims the following costs from the Tenant.

The Landlord testified that the Tenant failed to clean the rental unit and that it was so filthy that after they spent a considerable amount of time to clean the rental unit themselves, it was too much and they then sought the help of professional cleaners. The Landlord referred to a multitude of digital photos to demonstrate the extent of the cleaning that was required to the entire rental unit. The Landlord testified that the Tenant's pets had defecated so much in the yard that the cleaning companies would not pick this up. The Landlord claims **\$160.00** and **\$333.75** for professional cleaning as evidenced by receipts produced by the cleaning companies as well as **\$550.00** for their own time in cleaning the rental unit.

The Landlord testified that the Tenants had overloaded the washer and dryer several times during the tenancy and when the Landlord went to use these appliances after the Tenant left, they no longer functioned. The Landlord testified that she did not call a repair person as it was obvious that the appliances were broken and it made more sense not to incur more costs from doing so. As a result, the Landlord purchased a new washer and dryer and now seeks to claim from the Tenant 25% of the costs in the amount of **\$418.88**.

The Landlord seeks to claim **\$80.50** for the replacement cost of downspouts, as evidenced by a receipt, which the Tenant caused during the tenancy. The Landlord referred to her photographic evidence to show that the Tenant had bent and damaged the downspouts on the exterior of the home. The Landlord also claims **\$18.00** for the cost of disposing of garbage left behind by the Tenant at the end of the tenancy to the landfill.

The Landlord testified that the Tenant had damaged all of the hardwood flooring in the rental unit. The Landlord referred to a multitude of photographs showing evidence of pet damage as well as items stuck to the floor. The Landlord testified that the damage could not be repaired and had to be replaced. The Landlord explained that the flooring was approximately 16 years old but in good condition. As a result, the Landlord only seeks to claim 25% of the replacement and installation costs in the amount of **\$578.81**. The Landlord also testified that the Tenant's pets had caused considerable damage to quarter rounds which surrounded the flooring which had to be replaced at a cost of **\$368.98**. The Landlord referred to a letter provided by the cleaning company which explained the considerable damage that had been caused by the Tenant's pets throughout the rental unit.

The Landlord testified that the Tenant left the yard in a complete mess as evidenced by her photographs. As a result, she employed a landscaping company who provided an invoice in the amount of **\$1,454.25** which also details the extensive work undertaken to repair the yard.

The Landlord testified that the Tenant had removed the air conditioning units from the rental property at the end of the tenancy. As a result, she had to get these replaced for the new renters at a cost of **\$1,298.00**. The Landlord testified that the Tenant had also broken a glass window in the rental unit as well as damaging window screens in the rental unit. For this, the Landlord provided a receipt in the amount of **\$262.50** for the repair and replacement.

The Landlord testified and referred to her photographs showing the extensive damage to the rental unit walls including gauges and scuff marks as well as damage caused by the Tenant's pet. As a result, the Landlord stated that the doors had to be repaired and repainted by a professional company at a cost of **\$262.50** and the drywall had to be repaired in many of the rooms for a cost of **\$525.00**.

The Landlord testified that after the doors and drywall were repaired, the entire rental unit walls had to be repainted. The Landlord testified that they mitigated the painting cost of the walls by doing the painting themselves as her husband is a painter at a cost of **\$1,425.00** which included a helper. The Landlord testified that if they had opted for a professional company to do this, it would have ended up costing a lot more.

During the hearing, the Landlord withdrew her claim for the costs associated with serving the 10 Day Notice and for having to travel back and forth to the rental unit; these items are now dismissed.

The Landlord also withdrew her claim for cleaning items as she was in the process of finding the receipt for this amount. The Landlord also wanted to claim an additional amount of \$3,143.17 from the Tenants for damage to the rental unit. However, the Landlord had not put the Tenant on notice of this additional amount by amending the Application pursuant to Rule 4.1 of the Rules of Procedure; such an increase in a monetary claim cannot be done by the service of evidence alone. Therefore, I provided the Landlord with leave to re-apply for this amount as well as for the cleaning items the Landlords did not have a receipt for.

Analysis

Not all of the extensive evidence provided by the Landlords has been documented above. However, I have carefully considered all the undisputed evidence on the balance of probabilities as follows.

Section 26(1) of the Act states that a tenant is required to pay rent when it is due under the tenancy agreement. In addition, fixed term tenancies cannot be breached without authority by a landlord and tenant and are designed to provide both parties security and permanency for the agreed fixed time period. In this case, I find the Tenant disclosed no authority to break the fixed term tenancy and still had an obligation to pay rent under the signed agreement for February 2016. I accept that the Tenant failed to pay this amount and therefore the Landlord is awarded **\$1,650.00** for February 2016 unpaid rent.

When a tenant breaks a fixed term tenancy, the landlord must take reasonable steps to mitigate loss as required by Section 7(2) of the Act. In this case, I find the Landlords took diligent steps in re-renting the property by incurring \$50.00 in advertising costs and reducing the rent by \$100.00 per month for the remaining six months of the fixed term. Policy Guideline 3 to the Act provides an example of when a landlord would be eligible to claim for the difference between what the landlord would have received from the defaulting tenant and what they were able to re-rent the premises for the balance of the un-expired term of the tenancy. I find the Landlords mitigate loss and are accordingly awarded **\$600.00** for lost revenue for the balance of the fixed term and the advertising costs of **\$50.00**. I find this amount is far less than the costs the Landlords would have been eligible for (\$1,650.00) had they not rented the unit for March 2016.

Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. In addition, 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.

In relation to the costs claimed for the washer and dryer, I find the Landlords failed to mitigate this loss by having the appliances examined by a repair person. As the Landlord failed to call out a repair person who would have then provided evidence of the need for replacement, I find there is insufficient evidence before me to support a finding that these appliances needed to be replaced. Therefore, I deny this portion of the Landlords' monetary claim.

In relation to the Landlords' monetary claim for the replacement and installation of the flooring, I accept the Landlord's evidence that the flooring was left in such a state that it could not be repaired and had to be replaced. However, when making an award for such a replacement, I must turn to Policy Guideline 40 which provides for the useful life of building elements. This guideline determines that the useful life of hardwood flooring is 20 years. I note that the Landlord only sought to claim 25% of the total costs incurred as evidenced by the receipts provided. As the Landlord testified that the flooring was 16 years old, I limit the Landlord's monetary claim to 20% which was the useful life left on the flooring. This amounts to **\$463.05**. In addition, I find there is sufficient evidence before me that the Tenant's pet caused damage to the quarter round of the flooring which had to be replaced at a cost of **\$368.98**.

In relation to the remainder of the monetary claims, I am satisfied by Landlord's undisputed oral testimony as well as the documentary evidence as supported by the photographs that the Tenant failed to comply with Section 37(2) of the Act. The Tenant provided no preponderance of evidence to rebut the Landlords' evidence and I find the Landlord is eligible to these costs as evidenced by the submitted receipts which I have summarized below:

- \$1,650.00 for February 2016 unpaid rent
- \$600.00 for lost revenue
- \$50.00 for advertising costs
- \$1,043.75 for cleaning costs (\$160.00 + \$333.75 + \$550.00)
- \$80.50 for damage to the downspouts
- \$18.00 for garbage removal
- \$1,454.25 for yard repair
- \$262.50 for window replacement and damaged windscreens
- \$832.03 for replacement of the flooring and quarter round
- \$1,298.00 for replacement of the air conditioning units
- \$787.50 for the repair to the doors and drywall (\$262.50 + \$525.00)
- \$1,425.00 for painting costs

Therefore, the total amount awarded to the Landlords is **\$9,501.53**. As the Landlords have been successful in this matter, the Landlords are also entitled to the **\$100.00** filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlords is **\$9,601.53**.

As the Landlords already hold \$1,650.00 in the Tenant's Deposits, 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 Landlords are awarded the outstanding balance of **\$7,951.53**.

Conclusion

The Tenant has breached the Act by not paying rent and causing damage to the rental unit. Therefore, the Landlords may keep the Tenants' Deposits and I grant the Landlords a Monetary Order for the remaining balance of **\$7,951.53**.

Copies of this order are attached to the Landlords' copy of this decision. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court. The Tenant may also be liable for the enforcement costs of the order.

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: October 17, 2016

Residential Tenancy Branch

