



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROTHERS AGENCIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FFL

Introduction

On July 20, 2018, the Landlord submitted an Application for Dispute Resolution seeking a monetary order for loss of rent; for damage and cleaning of the rental unit; to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee for the Application.

The matter was set for a conference call hearing. The Landlord's agent ("the Landlord") and the Tenant, Ms. J.D. attended the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony. The Tenant testified that she received a copy of the Landlord's documentary evidence by email on October 30, 2018.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to a monetary order for damage and cleaning?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on October 1, 2016, as a one year fixed term tenancy. The tenancy was renewed for a further year on October 1, 2017. Rent in the amount of \$1,325.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$525.00 and a pet damage deposit of \$525.00. Utilities for the rental unit were not included in the rent. Water utility was

shared on a 50/50 basis. The Landlord provided a copy of the tenancy agreement. The tenancy agreement contains a liquidated damages clause that requires the Tenant to pay \$500.00 if the Tenant ends the fixed term tenancy early.

The Parties testified that the Tenant moved out of the rental unit on June 30, 2018. The Tenant testified that she received a 1 Month Notice To End Tenancy For Cause from the Landlord. She testified that she disputed the 1 Month Notice; however, she moved out of the rental unit prior to the dispute hearing.

Unpaid Rent

The Landlord testified that the amount of \$67.69 was not paid for May 2018, rent. The Landlord testified that the Tenant only paid \$400.00 towards June 2018, rent and the Tenant failed to pay the entire rent owing for the month of July 2018. The Landlord withdrew the claim to recover August 2018 rent during the hearing.

The Landlord testified that the Tenant disputed a notice to end tenancy and a hearing to decide whether or not the tenancy will end was scheduled for July 19, 2018. The Landlord submitted that the Tenant is responsible for paying July 2018 rent. The Landlord testified that on June 30, 2018 the Tenant informed her that she was leaving the unit.

In reply, the Tenant admitted and accepted that she owes \$67.69 for May 2018, rent and \$925.00 for June rent.

The Tenant does not feel she should be found responsible to pay for July 2018, rent. The Tenant acknowledged that she disputed the notice to end tenancy and moved out prior to the hearing. The Tenant moved out of the unit on June 30, 2018.

Liquidated Damages \$500.00

The Landlord testified that the tenancy agreement has a liquidated damages clause that requires the Tenants to pay \$500.00 as liquidated damages for the Landlords costs of re-renting the rental unit, if the Tenant ends the fixed term tenancy early.

The Landlord submitted that the Tenant was the cause of the tenancy ending due to her breach of the Act due to repeated late payments of rent. The Landlord is seeking \$500.00.

In reply, the Tenant testified that she was difficulty paying the rent due to financial troubles. The Tenant submitted that she should not have to pay the liquidated damages because the Landlord chose to end the tenancy by issuing a notice to end tenancy.

Water Charge \$247.68

The Landlord is seeking compensation for the Tenants responsibility to pay for water utilities.

In reply, the Tenant testified that she accepts responsibility for the water bill in the amount of \$247.68.

Hauling

The Landlord is seeking \$120.75 for the cost of hauling and disposing garage from the unit.

In reply, the Tenant testified that she accepts responsibility for the hauling cost in the amount of \$120.75.

Key Charge

The Landlord is seeking \$136.44 for the cost of rekeying and replacing the locks to the rental unit.

In reply, the Tenant testified that she accepts responsibility for the key costs in the amount of \$136.44.

Flea Treatment \$388.50

The Landlord testified that the contractors repairing the rental unit after the Tenant moved out reported that they were being eaten alive by fleas. The Landlord had the rental unit treated for fleas on July 31, 2018, by a pest control company. The Landlord testified that the unit was treated for fleas again one week later. During the hearing the Landlord withdrew the claim to recover the cost of the second treatment. The Landlord is seeking \$194.25. The Landlord provided a receipt.

In reply, the Tenant testified that she had two cats for the last three years of the tenancy. The Tenant testified that her cate were treated with a flea control program. The Tenant accepted responsibility to pay the amount of \$194.25.

Cleaning \$441.00

The Landlord is seeking to recover the amount of \$441.00 for the cost to clean the rental unit at the end of the tenancy.

The Landlord provided a copy of a receipt dated August 22, 2018, for professional cleaning of the rental unit.

In reply, the Tenant agreed to pay the amount of \$441.00 for the cost of cleaning the rental unit.

Basement Wall

The Landlord applied for the amount of \$536.39 for the cost of materials and labour to rebuild a wall in the basement of the rental unit. The Landlord provided a receipt for the repair cost. During the hearing the Landlord lowered the claim amount to \$300.00.

In reply, the Tenant testified that the Tenants removed a three foot area of a wall in an unfinished basement area. She testified that the Landlord improved the area to a higher degree than it was at the start of the tenancy.

The Tenant agreed to pay the amount of \$300.00 for the cost of repairing / replacing the wall.

Repairs

The Landlord testified that she is seeking to recover the cost of \$472.50 for repairs to fireplace tile a damaged bedroom door, and missing kitchen cupboard knobs and a cost for hauling away garbage. The Landlord provided an invoice dated September 5, 2018, in the amount of \$472.50. The invoice does not break down the specific amounts being charged for each item. The Landlord provided two photographs of cabinets with missing knobs. The Landlord did not provide any photographic evidence of the fireplace tile or the damaged door. The Landlord provided a copy of a condition inspection report dated October 1, 2016 and July 5, 2018. The condition inspection report does not include a reference to the fireplace tile. The report does not indicate the doors were damaged. The report does not mention that knobs were missing from the kitchen at the move out inspection.

In reply, the Tenant testified that she moved out of the rental unit and was removed from the tenancy agreement at that time. She testified that she returned to the rental unit in September 2016, and was added to the tenancy agreement. She testified that

she participated in a walkthrough inspection of the rental unit upon her return in 2016. She testified that the knobs from the cupboards were already missing when she returned in 2016.

The Tenant testified that the tiles around the fireplace were already damaged at the start of the tenancy. The Tenant testified that the bedroom door was old and would not close all the way. She testified that it was off the hinges.

The Landlord replied that the door would not close properly so it was replaced. She stated that the skin on the door had started to peel.

Security Deposit and Pet Damage Deposit

The Landlord applied to keep the security deposit and pet damage deposit in partial satisfaction of the claims.

Analysis

The party making a claim for compensation against another party bears the burden of proof. Section 7 of the Act provides that if a Landlord or Tenant does not comply with the Act, the regulations, or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.
3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Unpaid Rent

The Tenant accepted responsibility to pay the amount of rent claimed by the Landlord for May 2018 and June 2018. I award the Landlord \$992.69 for May and June 2018 rent.

I find that the Tenant did not accept the notice to end tenancy issued by the Landlord. The Tenant disputed the Notice and a hearing was scheduled for July 19, 2018. By disputing the notice, the Tenant was seeking to have the tenancy continue. I find that the Tenant changed her mind about disputing the notice and moved out of the rental unit on June 30, 2018. The Landlord was not given advance notice that the Tenant was moving out and the Landlord was not able to re-rent the unit and suffered a loss of July 2018 rent.

I find that the Tenant actions of disputing the notice to end tenancy put the end of the tenancy in doubt. I find that the Tenant is responsible to pay the rent owing for July 2018. I award the Landlord the amount of \$1,325.00.

Liquidated Damages \$500.00

I find that the tenancy agreement contains a liquidated damages clause that the Tenant must pay \$500.00 if the fixed term tenancy is ended early. I find that the Tenant chose to move out of the rental unit prior to attending a hearing for the dispute of the Notice to end tenancy. Since the Tenant made the decision to move out of the rental unit; I find that the Tenant is responsible for ending the fixed term tenancy early.

I award the Landlord \$500.00 for the liquidated damages claim.

Water Charge \$

The Tenant agreed to pay the amount of \$247.68 claimed by the Landlord. I award the Landlord the amount of \$247.68.

Hauling

The Tenant agreed to pay the amount of \$120.75 claimed by the Landlord. I award the Landlord the amount of \$120.75.

Key Charge

The Tenant agreed to pay the amount of \$136.44 claimed by the Landlord. I award the Landlord the amount of \$136.44.

Flea Treatment

The Tenant agreed to pay the amount of \$194.25 claimed by the Landlord. I award the Landlord the amount of \$194.25.

Cleaning \$441.00

The Tenant agreed to pay the amount of \$441.00 claimed by the Landlord. I award the Landlord the amount of \$441.00.

Basement Wall

The Tenant agreed to pay the amount of \$300.00 claimed by the Landlord. I award the Landlord the amount of \$300.00.

Repairs

There is insufficient evidence from the Landlord to establish that the Tenants are responsible for the replacement of a door, kitchen knobs, and the repair of fireplace tile. There is no photographic evidence of a damaged door or damaged tile. In addition the Landlord did not provide full details of the amounts of each specific claim to establish the value of each loss.

The Landlord has failed to prove there was a breach on the part of the tenant and has not proven the value of each loss. The Landlords claim for the cost of these repairs / claims is dismissed.

Security Deposit

I order that the Landlord can keep the security deposit of \$525.00 and the pet damage deposit of \$525.00 in partial satisfaction of the claims for unpaid rent.

Filing Fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with most of the

claims, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Monetary Awards

I find that the Landlord has established a total monetary claim of \$4,357.81 comprised of unpaid rent; liquidated damages, cleaning, damage and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$1,050.00 towards the claim of \$4,357.81, I find that the Landlord is entitled to a monetary order in the amount of \$3,307.81. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Landlord was successful with claims for loss of rent, liquidated damages, cleaning costs, and some damage. The Landlord is awarded the amount of \$4,357.81.

I order that the Landlord can keep the security deposit in the amount of \$1,050.00 in partial satisfaction of the Landlords award.

The Landlord is granted a monetary order for the balance owing of \$3,307.81.

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 19, 2018

Residential Tenancy Branch