



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, MNSD, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("*Act*") for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to retain all or a part of the tenant's security deposit, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on August 15, 2018. A registered mail tracking number was submitted in evidence which has been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website, the registered mail package was returned to sender as unclaimed. The landlord stated that the package was mailed to the address provided by the tenant as their written forwarding address via a text received August 2, 2018.

Based on the above, I find that the tenant was deemed served in accordance with section 90 of the *Act* five days after August 15, 2018, which would be August 20, 2018. As I am satisfied that the tenant was duly served and did not attend the hearing, the

hearing continued without the tenant present. I find that this application was undisputed by the tenant as a result.

Preliminary and Procedural Matter

The landlord provided an email address for himself and the tenant in the landlord's application. This decision will be emailed to both parties. Any applicable orders will be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on November 20, 2017 and was scheduled to end on May 31, 2019. Instead, the landlord stated that the tenancy ended by way of an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"). The landlord testified that he received an Order of Possession through the Direct Request process and that this application is for his monetary claim against the tenant.

Monthly rent was \$1,500.00 per month and was due on the first day of each month. The landlord confirmed that the tenant paid a \$750.00 security deposit at the start of the tenancy, which the landlord continues to hold. The security deposit has accrued \$0.00 in interest to date. Not included in the monthly rent was heat, water, sewer or electricity.

The landlord's monetary claim for \$6,994.72 is comprised as follows:

| ITEM DESCRIPTION | AMOUNT CLAIMED |
|----------------------------------|----------------|
| 1. June water bill | \$113.96 |
| 2. Outstanding July rent | \$1,500.00 |
| 3. Hydro bill (May 10 – July 10) | \$204.82 |
| 4. Hot water tank replacement | \$1,200.00 |

| | |
|---|-------------------|
| 5. Move out clean | \$480.00 |
| 6. Re-paint basement | \$705.00 |
| 7. Replace missing doors | \$234.90 |
| 8. Replace damaged wainscoting | \$83.10 |
| 9. Carpet cleaning | \$105.00 |
| 10. Land fill fees for garbage | \$15.95 |
| 11. July water bill | \$120.00 |
| 12. Hydro bill for July | \$32.00 |
| 13. Loss of August rent due to condition it was left in | \$1,500.00 |
| 14. Curtain and curtain rods stolen (x3) | \$300.00 |
| 15. Flooring repair | \$400.00 |
| TOTAL | \$6,994.72 |

Regarding item 1, the landlord has claimed \$113.96 for the June water bill that was not paid by the tenant. The landlord presented the bill in support of this portion of their claim and indicated that the water was not included in the monthly rent as per the tenancy agreement.

Regarding item 2, the landlord has claimed \$1,500.00 for unpaid July 2018 rent. The tenant did not vacate the rental unit according to the landlord until July 28, 2018, and failed to pay rent for July.

Regarding item 3, the landlord has claimed \$204.81 for the unpaid hydro bill between May 10, 2018 and July 10, 2018. The landlord referred to the bill submitted in evidence in support of this portion of their claim.

Regarding item 4, the landlord has claimed \$1,200.00 for the cost to replace the hot water tank that the landlord stated was tampered with by the tenant and damaged. The landlord confirmed that the hot water tank was at least 10 years old; however, believes the tenant is responsible for the cost to replace it as it was tampered with according to the contractor/technician who replaced it. In support of this portion of their claim the landlord submitted an invoice in the amount of \$1,349.25, and explained that the landlord is only claiming for \$1,200.00 in total although he paid more to replace the damaged hot water tank as he ended up adding a drain pan which the landlord does not seek compensation for in this claim. The landlord also referred to a text dated November 21, 2018 which reads in part from the technician who replaced the hot water heater:

...We found that the unit was burning incorrectly. **The pilot assembly had been removed incorrectly.** Also because the unit was back drafting, **I believe that the main burner was tampered with.** Because of this we did not feel that it was safe to use this water heater and recommend that we replace it. You agreed and it has been replaced.”

[Emphasis added]

In addition, the landlord stated that he believes the tenant attempted to repair the hot water tank versus letting the landlord know so that the landlord could have a technician attend to service the hot water tank. The landlord also submitted a photo of the bottom assembly having been removed from the hot water tank in support of this portion of the claim. The landlord stated the hot water tank was working perfectly at the start of the tenancy.

Regarding item 5, the landlord has claimed \$480.00 for the move-out clean which, according to the landlord, was not completed by the tenant. The landlord stated that the tenant did not clean anything before vacating the rental unit and that it took two days to bring the rental unit back to a reasonably clean condition. The landlord stated that it took over 70 hours of cleaning and that he is only seeking \$480.00 in cleaning costs.

The landlord testified that the rental unit was newly renovated in 2017 and that the tenant was the first tenant since the renovation. The photo evidence referred to during the hearing showed a broken dresser left behind, many bags of garbage, a chair which had no value according to the landlord, damage to the laminate flooring and other worthless items left behind by the tenant.

Regarding item 6, the landlord has claimed \$705.00 for the cost to repaint the basement as the paint was new in 2017 and not even one year later, the tenant created over 70 holes in the walls. The landlord explained that before he decided to rent, he was thinking of selling the home so the rental unit was in “for sale” condition and had never been occupied since it was newly renovated. Instead, the landlord stated he decided to rent and it was heavily damaged by the tenant. The landlord referred to a receipt for paint and labour for the amount claimed. The landlord also stated the tenant painted without permission which had to be repaired due to her sloppy painting work and that there was a very strong smell of cigarette smoke in the rental unit throughout.

Regarding item 7, the landlord has claimed \$234.90 for replace missing door that were removed by the tenant for a reason unknown to the landlord. The landlord referred to photo evidence and a receipt in support of this portion of their claim.

Regarding item 8, the landlord has claimed \$83.10 to replace damaged wainscoting in the rental unit. The landlord provided receipts and photo evidence in support of this portion of their claim.

Regarding item 9, the landlord has claimed \$105.00 for carpet cleaning. The landlord provided photos of the dirty carpets before they were cleaned and a receipt in the amount of \$105.00.

Regarding item 10, the landlord has claimed \$15.95 for the cost to dispose of all the garbage left behind by the tenant. The landlord stated that he was not charging for his labour to bring the garbage to the dump, only the cost to dispose of the garbage.

Regarding item 11, the landlord has claimed \$120.00 for the unpaid July water bill. The landlord again stated that water was not included in the monthly rent.

Regarding item 12, the landlord has claimed \$32.00 for the unpaid partial hydro bill for July, which the landlord stated was an estimate as the amount was for a partial month. The landlord stated that hydro was not included in the monthly rent.

Regarding item 13, the landlord is seeking the loss of rent for the month of August 2018 in the amount of \$1,500.00. The landlord testified that he would not have lost August 2018 rent had the tenant left the rental unit in a reasonably clean condition, which the tenant failed to do. Instead, the landlord stated that it took several weeks to repair and clean the rental unit and due to the experience, he decided to sell the rental unit in September 2018, versus re-renting it.

Regarding item 14, the landlord has claimed \$300.00 for the cost to replace three curtain rods and the curtains that the landlord stated were removed without permission by the tenant. The landlord referred to the condition inspection report in support that the items were there at the start of the tenancy and missing at the end of the tenancy.

Regarding item 15, the landlord has claimed \$400.00 to repair the damaged laminate flooring. The landlord stated that he completed the work himself and that there were four boards that had to be replaced but that it took about a 10 hour day to remove the

other boards to access the 4 that he had in stock to replace the damaged boards. The landlord showed several photos of the damage boards in support of this portion of their claim.

The landlord also stated that the tenant allowed other occupants to reside in the rental unit, which lead to the heavy damage throughout the rental unit.

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

As the tenants were served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, and taking into account that I find the landlord's evidence and testimony support their full monetary claim, I find the landlord's application is fully successful in the amount of **\$6,994.72**.

In reaching this finding I have considered the photographic evidence, tenancy agreement, receipts/invoices and the condition inspection report. In addition, I find that the tenant breached sections 37 and 26 of the *Act*. Section 37 of the *Act* requires that a tenant leave the rental unit in a reasonably clean condition less reasonable wear and tear and I find that the photo evidence supports that the tenant breached section 37 by damaging the rental unit in many areas as claimed by the landlord. Section 26 of the *Act* requires that a tenant pays rent on the date in which it is due in accordance with the tenancy agreement. Based on the undisputed evidence before me, I find the tenant breached section 26 of the *Act* by breaching the fixed term tenancy by failing to pay July 2018 rent and the utilities claimed by the landlord.

I also note that I am not applying the 10 year useful life of the hot water tank as I find the tenants deliberately tampered with a working hot water tank and that they are responsible for the full cost as a result. I find the tenant tampering with the hot water tank resulted in damage for which the tenant is liable.

As the landlord's claim is successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**. Based on the above, I find the landlords have established a total monetary claim of **\$7,094.72** as described above, plus the recovery of the cost of the \$100.00 filing fee, which is added to the claimed total pursuant to section 72 of the *Act*.

The landlord applied within 15 days of being served with the tenant's forwarding address by text on August 2, 2018, having applied on August 10, 2018 for dispute resolution. Pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenant's full security deposit of \$750.00, which has accrued no interest to date, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$6,344.72**.

Conclusion

The landlord's application is fully successful.

The landlord has established a total monetary claim of \$7,094.72 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$750.00 in partial satisfaction of the landlord's monetary claim.

The landlord has been granted a monetary order pursuant to section 67 for the balance owing by the tenant to the landlord in the amount of \$6,344.72. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The tenant is cautioned to comply with section 37 and 26 of the *Act* in the future.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 24, 2018

Residential Tenancy Branch