



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, MNR, FF

Introduction

This hearing dealt with the landlord's application for a monetary order for unpaid utilities, compensation for property taxes, compensation for costs arising from cleaning and repair of the unit, and recovery of the filing fee for this application. Both parties participated in the hearing and gave affirmed testimony.

Issues to be Decided

- Whether the landlord is entitled to a monetary order under the *Act*

Background and Evidence

Pursuant to a written residential tenancy agreement the term of tenancy was from November 1, 2006 to October 31, 2007. Thereafter, tenancy continued on a month-to-month basis until August 17, 2008, when the tenant vacated the unit. Rent in the amount of \$3,300.00 was payable in advance on the first day of each month and was paid up to the end of August 2008. At the outset of the tenancy the landlord collected a combined security and pet deposit from the tenant in the total amount of \$3,300.00.

A move-in inspection and report were completed at the start of the tenancy. However, while the parties undertook a cursory walk through of the unit together at the end of tenancy, a move-out inspection report was not completed.

Prior to this hearing the parties appeared before a dispute resolution officer as a result of the tenant's application to have his security and pet deposit returned. At the time of that hearing the landlord's agent had not prepared a statement of costs which he

considered the landlord was entitled to recover from the tenant. By decision dated October 27, 2008, a monetary order was issued in favour of the tenant. Specifically, the landlord was ordered to pay the tenant the combined security and pet deposit plus interest, in addition to the tenant's filing fee. Subsequently, the landlord filed an application for dispute resolution in order to recover certain costs, which led to the scheduling of this particular hearing.

During the hearing the parties exchanged views on costs being claimed by the landlord. While full agreement was reached between the parties on some of these costs, the tenant challenged the quantum billed to the landlord by certain trades people in others.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the landlord has established a claim as follows:

\$150.00 (carpet cleaning) – 100% of the claim

\$252.50 (other cleaning) – 50% of the claim

\$582.75 (replacement and painting of washroom door) – 100% of the claim

\$ 81.81 (fine for breach of Fire Alarm Bylaw-law) – 100% of the claim

\$ 31.86 (utility bill: water) – 100% of the claim

\$ 22.95 (utility bill: water) – 100% of the claim

\$ 25.89 (utility bill: water) – 100% of the claim

\$ 28.84 (utility bill: water) – 100% of the claim

\$ 25.27 (utility bill: water) – 100% of the claim

\$200.00 (re-locate sundeck railing) – 100% of the claim

\$450.00 (patch sundeck vinyl) – 100% of the claim

Total claim allowed: \$1,851.87

I find the landlord is also entitled to recovery of the \$100.00 filing fee, bringing the total amount of the monetary claim allowed to \$1,951.87.

The landlord also made application to recover the costs to remove marks on walls, patch drywall patches around the house and supply & paint patches in 3 different paint colours in the total amount of \$720.00. In the absence of consensus between the parties on the degree to which the tenant may be responsible for the repairs, and in the absence of a move-out inspection report or pictures, I am unable to conclude that the above costs were for work which is beyond what was required to address normal wear and tear. Accordingly, I dismiss this particular aspect of the landlord's claim.

Further, the landlord has made application to recover the full cost of Property Taxes from the tenant for 2007 and 2008, respectively, as follows:

\$3,501.22

\$3,858.19

Total: \$7,359.41

Section 13 of the *Act* requires that a residential tenancy agreement sets out, in addition to other particulars, which services and facilities are included in the rent. Section 1 of the *Act* defines "service or facility" as including any of the following:

- (a) appliances and furnishings;
- (b) utilities and related services;
- (c) cleaning and maintenance services;
- (d) parking spaces and related facilities;
- (e) cablevision facilities;

- (f) laundry facilities;
- (g) storage facilities;
- (h) elevator;
- (i) common recreational facilities;
- (j) intercom systems;
- (k) garbage facilities and related services;
- (l) heating facilities or services;
- (m) housekeeping services;

Further to clearly marked boxes under section **3. RENT** in the subject residential tenancy agreement, as follows, the landlord's manual notation appears above the heading, **b) What is included in the rent:**

+ Hydro, Terasen Gas, Water + Taxes.

A requirement that residential tenants pay property taxes is not usual nor, clearly, is it in keeping with a "service or facility" as defined by the *Act*.

The property appears to be registered in the landlord's name, and the Property Tax Notices were mailed directly to her attention at her address. There is no evidence that the landlord sought reimbursement for property taxes from the tenant by the payment due dates of July 3, 2007 and July 2, 2008. Rather, it appears that the landlord first brought the proposed reimbursement of two year's worth of property taxes to the tenant's attention after the tenancy ended. In the result, it was seemingly not until this late stage that the landlord clearly communicated the full impact of this provision in the tenancy agreement to the tenant.

Section 6 of the *Act* speaks to "Enforcing rights and obligations of landlords and tenants." Specifically, section 6(3)(c) states:

6(3) A term of a tenancy agreement is not enforceable if

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

There is no evidence that the parties clearly communicated about the tenant's payment of taxes prior to the end of tenancy. Further to this, I find that the landlord's simple manual notation of "Taxes" in the tenancy agreement is sufficiently vague and non-specific to Property Taxes, so as to render it a provision in the tenancy agreement that is not enforceable under the *Act*. Accordingly, I therefore dismiss this aspect of the landlord's claim.

Conclusion

I hereby grant the landlord a monetary order under section 67 of the *Act* for **\$1,951.87**. This order must be served on the tenant and may be filed in the Small Claims Court and enforced as an order of that Court.

DATE: December 11, 2008

Dispute Resolution Officer

