



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 conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; for the return of the security deposit; and to recover the filing fee associated with this application.

By the landlord: as an application for a Monetary Order for damage to the unit; for unpaid rent; to keep the security deposit; and to recover the filing fee associated with his application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to recover the filing fee?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite. Pursuant to a written agreement, the fixed term tenancy started on April 21st, 2010 and was to end April 20th, 2011. The rent of \$640.00 was payable on the first of each month. The tenant paid a security deposit of \$320.00. Condition inspection reports were completed at the start of the tenancy, and when it ended prematurely on March 21st, 2011.

In their documentary evidence, the landlords provided 32 photographs to support their monetary claim concerning damages to the suite which they stated were taken during the move-out inspection report. They testified that the tenant had a total of three cats during the tenancy, and that the smell of urine and pet feces circulated through the whole ventilation system in the house. They said that on March 14th, 2011 they served the tenant with a Notice to inspect premises scheduled for the next day, and they said that the tenant was not present during the inspection. The landlords said that the tenant had changed the lock to her bedroom door and that it had to be forced open. They discovered dirty litter boxes, and stains of cat urine and feces on the carpets. They stated that one of the cats must have escaped from the tenant's bedroom, but that they were not aware that it had gone missing. They said that they found one of their minivan tires punctured the next day, and that the attending police officer stated that it was coincidentally suspicious that it occurred within hours of the tenant's cat missing. In their statement of account, they state that the puncture could not be repaired, that the tire was no longer available and that they had to install two new tires. In that same statement of account, the landlords state that the tenant told them that her boyfriend must have been upset because he gave her the cat as a gift. They stated that the tenant's boyfriend lived in the unit and smoked inside, which were both contrary to the tenancy agreement, and that this was also evidenced by an increase of the utility bill by as much as 40%. They said that although they are a busy family, they never observed or heard any evidence of the tenant ever cleaning the suite.

The landlords said that the tenant moved out on March 20th, 2011 without giving proper notice, and that she provided a false forwarding address, causing the original package of evidence to be returned to the landlords from the post office.

The landlords stated that even after cleaning the carpets four times, the pet stains and odour are still prevailing. Concerning damages to the walls and ceiling, they stated that there were several tape marks, holes and pet scratches on the walls. They said that the toilet was plugged 20 centimetres deep with feces, plastic, paper and cigarette butts.

The landlords submitted a monetary claim as follows:

| | |
|------------------------------------|-------------------------|
| - Unpaid rent for April 2011: | \$ 640.00 |
| - Cleaning unit: | \$ 403.20 |
| - Garbage disposal: | \$ 90.00 |
| - Blinds cleaning: | \$ 89.60 |
| - Replace door knob in bedroom: | \$ 15.00 |
| - Missing light bulb: | \$ 7.00 |
| - Cleaning outside unit: | \$ 30.00 |
| - Replace range drawer rollers: | \$ 126.54 (quote only) |
| - Repair complete suite: | \$ 4723.04 (quote only) |
| - Combined utility cost increase: | \$ 170.00 |
| - Tire replacement: | \$ 672.00 |
| - Filing fee: | \$ 100.00 |
| - Less a pre-existing carpet burn: | \$ 200.00 |
| - Less security deposit: | \$ 320.00 |
| - Total: | \$ 6546.38 |

In her documentary evidence, the tenant provided 8 photographs showing the condition of the suite on March 21st, 2011. She also provided a copy of an RCMP letter dated

April 18th, 2011, confirming that on March 15th, 2011, someone broke into the tenant's suite and removed two litter boxes and one of three cats were missing.

The tenant testified that her written submissions provided with her package of evidence are all true. In reviewing these submissions, it is apparent that they are at complete odds with the landlords' version; for example, the tenant states that her mother bought her a new vacuum cleaner and that the landlords complained it was too loud; that they complained about the air fresheners; and that her visitors did not smoke inside the suite. In that same letter, the tenant states that the landlords broke into her bedroom on March 15th to inspect the suite and allowed her cat to escape. She states that she became so distraught with her cat's disappearance that she was unable to study for a final exam and that she will have to redo the course. She states that the landlords stole her computer and her door knob; that she cleans the litter box every day; that she called the police and that they advised her that she should seriously think about moving; and that she moved out on March 20th, 2011 because she felt no longer safe.

The tenant submitted a monetary claim as follows:

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|---|-----------|
| - Veterinary bill: | \$ 332.07 |
| - Locking door knob: | \$ 14.55 |
| - Computer tower: | \$1000.00 |
| - Moving costs: | \$ 152.00 |
| - Rent for March 20 th to March 31 st : | \$ 220.00 |
| - Course completion: | \$ 390.00 |
| - Security Deposit: | \$ 320.00 |
| - Total: | \$2428.62 |

The tenant's mother reiterated her daughter's claim; she said that the landlords did not allow her daughter to use their garbage and that she took it to her place; that the police letter did not make a reference about a stolen computer because her daughter did not

notice it missing until the next day; that her daughter failed a course due to this upheaval; and clarified that her daughter did not have a boyfriend.

The landlords stated that whether or not he was a boyfriend, the male in question was often at the residence, and that they were not aware that one of the tenant's cats went missing during the inspection.

The tenant also stated that she received the landlords' evidence on July 12th, 2011, which is one day late, and questioned the admissibility of that evidence. The landlords stated that they sent the package of evidence by registered mail on July 9th, 2011.

Analysis

Concerning the late evidence, I have heard undisputed submissions from the landlords that the tenant's forwarding address was incorrect at first and that their original application had to be re-submitted. That application was re-sent to the tenant, and it included the same documentary evidence that the tenant received one day late. I find that the landlords were not wilfully negligent and that even with the latest package being received one day late, the tenant was not prejudiced and that she had sufficient time to prepare for this hearing.

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met.

I am not persuaded that the tenant proved, on the balance of probabilities, that the landlords are responsible for the missing cat or that they stole the tenant's computer. The tenant did not bring convincing evidence to support the theft, and she did not call back the police who could have conducted an investigation based on the tenant's allegation. The landlords testified that they were concerned with the condition of the unit, and that the infiltrating smell of pet odour was the reason for inspecting the unit. I find insufficient evidence to support that the landlords breached the Act or the tenancy agreement and I dismiss the tenant's claim concerning the veterinary bills and the replacement of her computer. Section 31(3) of the Act states in part that; a tenant must not change a lock that gives access to his or her rental unit, unless the landlord agrees in writing. Since the tenant did not obtain the landlord's permission to change her bedroom lock I dismiss this portion of her claim.

Section 45(2) of the *Residential Tenancy Act* states in part that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. The tenant chose to move early because the police told her that she was not in a safe environment. The tenant did not clarify whether the environment in question pertained to the suite itself, or her visitors. The police advised her to seriously consider moving; they did not tell her to move immediately. A remedy for the tenant would have been to seek assistance from the Residential Tenancy Branch, or to file for dispute resolution if she could not come to an agreement with the landlords. I find that the tenant breached Section 45(2) and therefore she is not entitled to claim for moving expenses and for rent between March 20th and March 31st, 2011.

Turning to the landlords' claim; based on my finding that the tenant breached section 45(2) of the Act the landlords are entitled to recover the loss of one month's rent of \$640.00 for April 2011.

Concerning damages, the tenant presented no evidence to refute the photographs or the condition inspections reports. Concerning these reports, she reported existing

damages that were not part of the claim, and provided no evidence to support her testimony that the toilet was not working properly. The tenant's photographs were panoramic in nature, and they did not focus or identify the details identified by the landlords' photographs. Nevertheless, her photographs still confirmed the presence of cat hair and heavy carpet staining, which support the landlords' testimony and their documentary evidence.

Section 37 of the *Residential Tenancy Act* provides in part that upon vacating a rental unit, the tenant must leave the unit reasonably clean and undamaged, except for reasonable wear and tear. I find that the tenant left damages that were beyond reasonable wear and tear and that the landlords are entitled to recover their losses. Concerning the estimates for repairs and the stove rollers, Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. Since these repairs are estimates and have not been completed to date, I am unable to assess how the landlords met their statutory obligation to mitigate their loss, nor did they provide sufficient details on the extent of damages and cost concerning carpentry or the ceiling. Therefore, concerning the two quoted claims, I grant the landlords an arbitrary amount for a combined sum of \$2000.00.

Concerning the increase of utilities, the parties' testimony was at odds concerning visitors staying overnight. The tenant object to characterizing a male visitor as "boyfriend", however it was apparent that she had frequent visits from male friends that, on her own admission, resulted in an occasional dispute. I accept that the utilities experienced a significant increase and whether or not visitors stayed overnight, the tenancy agreement stated that utility charges would be adjusted if they increased by more than 6%.

Concerning the punctured tire, this damage was on a vehicle and not part of the residential property rented by the tenant; that it was not caused by the tenant; and that it

had no connection to the tenancy agreement. Therefore I find that I do not have jurisdiction over this claim under the *Residential Tenancy Act*.

Therefore I award the landlords this portion of their claim and grant the landlords a monetary claim as follows:

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|------------------------------------|------------|
| - Unpaid rent for April 2011: | \$ 640.00 |
| - Cleaning unit: | \$ 403.20 |
| - Garbage disposal: | \$ 90.00 |
| - Blinds cleaning: | \$ 89.60 |
| - Replace door knob in bedroom: | \$ 15.00 |
| - Missing light bulb: | \$ 7.00 |
| - Cleaning outside unit: | \$ 30.00 |
| - Replace range drawer rollers and | |
| - repair complete suite: | \$ 2300.00 |
| - Combined utility cost increase: | \$ 170.00 |
| - Less a pre-existing carpet burn: | \$ 200.00 |
| - Total: | \$ 3544.80 |

Conclusion

The landlords established a claim of \$3544.80. Since they were partially successful, I grant the landlords partial recovery of the filing fee for \$50.00 and a claim totalling \$3594.80. I authorize the landlords to keep the tenant's \$320.00 security deposit and pursuant to Section 67 of the Act, I grant the landlords a monetary order for the balance of \$3274.80

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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: July 18, 2011.

Residential Tenancy Branch