



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent or rental income loss, compensation for damage and loss under the Residential Tenancy Act (the "Act"), regulation or tenancy agreement, recovery of the filing fee, and an order to retain the security deposit in full or partial satisfaction of the claim.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

The Landlord stated at the hearing that they have not applied for rental income loss for January 2012 and oil bill costs for October 2011 to January 2012, but intend to do so in a separate application. The Tenant stated that she is also planning to file an application but declined to disclose the details of her dispute.

The Landlord requested to amend their Application to include a claim for a water bill, further advertising costs, and rental income loss for December 2011. The Landlord sent in the evidence and request for amendment with revised monetary order worksheet to our office and copies to the Tenant in advance of the hearing. The Tenant confirmed that she had received copies of this prior to the hearing. I granted the Landlord's request to hear the amended claim.

Registered mail and ferry/travel costs

The Landlord has claimed mailing costs ($\$23.83 + \$25.75 + \$11.03 + \$14.88 + \$27.09 = \102.58) and ferry costs for the Landlord's travel to the rental unit ($\$155.80 + \$190.80 = \$346.60$).

I find that the Landlord is not able to claim the registered mail costs (\$102.58) or the ferry/travel costs (\$346.60) associated with their claim against the Tenant as the Act does not allow parties to recover the costs that are outside of our jurisdiction. The cost of doing business (which includes ferry/travel costs) and the costs connected with serving documents or preparing the Application are outside the jurisdiction of the Act. As a result I dismiss these portions of the Landlord's claim totalling \$449.18.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent or rental income loss, compensation for damage and loss under the Act, regulation or tenancy agreement, recovery of the filing fee, and an order to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The Landlord and Tenant agree that they had a fixed term written tenancy agreement which commenced on April 01, 2011, with an end date of March 31, 2012. The tenancy agreement states that the rent is \$900.00 per month, due on the first of the month. The parties agree that the Landlord currently holds a security deposit from the Tenant in the amount of \$450.00. The parties agree that the Tenant advised the Landlord on July 24, 2011 in writing that she would move out on September 30, 2011. The parties agree that the rent in the amount of \$900.00 was paid for September 2011 and that the Tenant has not paid any further rent. The parties agree that the tenancy agreement states that water is included in the rent. The parties agree that the signed tenancy agreement addendum states that the fuel bills (for the heating oil for the furnace) for the duration of the lease are the Tenant's responsibility. The parties also agree that the addendum allows farm animals, cats, and dogs, as long as this is in compliance with the bylaws. The parties also agree that the addendum states that painting, carpeting and home improvements must be approved by the landlord and if approved the landlord will pay for materials. The Landlord provided in evidence a copy of the tenancy agreement and addendum which were both signed by the parties on March 28, 2011. The rental unit is a two bedroom character house on a one acre property.

Rental income loss October, November, and December 2011

The Tenant testified that she found a new place to rent and gave the Landlord two month's notice that she would be moving out for September 30, 2011. The Tenant stated that she was unaware that her fixed term tenancy agreement meant that she was responsible for rent until the end of the tenancy agreement unless the rental unit was re-

rented. The Tenant stated that she was not immediately aware that she could sublease the rental unit. The Tenant stated that she attempted to find someone to sublease the place; but that she had no success and she no longer had access to the rental unit after she moved out on September 30, 2011. The Tenant stated that although the Landlord had originally asked her to pay \$1,000.00 per month, she had negotiated to pay \$900.00 per month from the start of her tenancy. The Tenant stated that she should not be responsible for the rental income loss.

The Landlord testified that the Tenant broke the fixed term tenancy agreement, which was not due to expire until March 31, 2012. The Landlord stated that the Tenant could have subleased the rental unit and could have sent prospective tenants to them at any time and they would have shown them the rental unit, however the Tenant failed to re-rent the place. The Landlord stated that they paid for several ads in the local newspaper as well as a magazine, and they also placed ads in prominent locations at the local market store and on a popular free internet site. The Landlord provided copies in evidence of the advertising they had placed. The Landlord stated that they advertised the rental unit for \$1,000.00 per month, just as they had when the Tenant had originally had applied to rent it. The Landlord stated that they gave the Tenant a break on the rent at her request, and that they allowed her to only pay \$900.00 per month as they used to be friends. The Landlord stated that they were not able to obtain a new tenant to rent until February 01, 2012 and the new tenant agreed to pay \$1,000.00 per month rent. The Landlord is seeking rental income lost for the months of October, November, and December 2011 in the amount of \$2,700.00 (\$900.00 x 3 months).

Advertising costs

The Landlord is claiming \$71.68 to compensate for magazine ads placed October, November, and December; as well as \$108.48 for four weeks of rental ads in the local newspaper and internet listing. The Landlord provided copies in evidence of the receipts for the advertising costs.

The Tenant stated that she should not be responsible for the advertising costs for the same reasons she gave when stating she should not be responsible for the rental income loss.

Bill for filling oil tank for furnace

The Landlord submitted into evidence a copy of the oil bills. The first oil bill shows that the oil tank was filled on March 28, 2011 prior to the tenancy commencing. The second

oil bill shows that the oil tank was filled on October 02, 2011, after the tenancy ended, at a cost of \$490.17. The Landlord is seeking the \$490.17 for the oil bill, and stated that the tenancy agreement and addendum signed by the Tenant indicate that the Tenant is responsible for this bill.

The Tenant stated that she is in agreement with paying the oil bill for the furnace if the days the Landlord was renovating, prior to her move-in, are offset from the bill.

The parties agree that the Landlord was renovating a bathroom at the start of the tenancy until April 03, 2011, and that the Tenant received a \$100.00 rent rebate from the Landlord for three days of rent (April 01-03, 2011) to cover the inconvenience from the bathroom renovation. The Landlord states that they would agree to deduct \$7.98 from their oil bill claim which represents the three days the Tenant was inconvenienced.

Repair and painting costs

The parties performed a move in and a move out inspection and provided a copy of the inspection report into evidence. The parties also provided photographic evidence of condition of the rental unit before and after the tenancy.

The Landlord is seeking \$1,209.60, estimated costs for a professional contractor, to replace a countertop (\$240.00 + \$369.60 materials), repair a cabinet, cupboard, and re-hang a door (\$300.00), and paint the bedrooms (\$300.00). The Landlord stated that they could not afford to pay a contractor so they decided to do the work themselves before a new tenant moved into the rental unit, but that neither of them are professional carpenters or painters. The Landlord stated that the Tenant had permission to do some painting in the rental unit early in the tenancy and some paint was provided by the Landlord. The Landlord stated that the Tenant had promised to do a beautiful job. The Landlord stated the Tenant did a poor job, over-painting, not properly covering up the surface underneath in both bedrooms, neglecting to do a second coat, and painting more areas than what was agreed to. The Landlord stated that the Tenant also did not finish the job and left paint on windows and did not properly paint the trim. The Landlord indicated that the Tenant got some paint on the floors as well, but that the Landlord has since put down carpet and covered this up.

The Landlord stated that the Tenant removed a pantry room door and then tried to restore it at the end of the tenancy, but had cracked the door frame and the door would no longer close properly so the Landlord had to make repairs to it and re-hang it. The Landlord also stated that the Tenant cut a hole in the laminate kitchen counter top and removed a cabinet door and shelf to fit a dishwasher in below the counter, however the

Tenant did not restore the shelf and door when she moved out and the countertop has a permanent hole in it. The Landlord stated that she did not give the Tenant permission to cut a hole in the countertop.

The Landlord stated their actual time and costs for the work they have done are as follows:

- 4 hours repairing and re-hanging the pantry room door that the Tenant had removed and then not properly re-installed. Materials cost \$30.00.
- 4 hours replace and install cabinet shelf, repair and reinstall/hang cabinet doors, and put filler plug in countertop hole. Filler plug cost \$3.00.
- 128 hours to repaint in two coats to cover the paint job done by the Tenant (2 people x 4 days x 8 hours per day = 64 hours, plus 1 person x 8 days x 8 hours per day = 64 hours) . Painting material costs unknown as receipts not provided.

The Tenant stated that she had the Landlord's permission to paint and the Landlord provided some paint. The Tenant stated that the rental unit is old and the walls were old and dated. The Tenant stated that she made the rental unit look better by the painting it.

The Tenant stated that she hung the pantry room door and felt the job was sufficiently done.

The Tenant stated that the laminate counter top was very old and nicked and chipped in several spots and although she cut a small hole into it for the cord for the dishwasher, the value of this counter top is not more than \$40.00. The Tenant stated that she had intended to put in the shelf and re-hang the cabinet door but did not have the chance before moving out.

The Tenant stated that the Landlord did not let her come back into the rental unit to do any work required after the tenancy ended. The Tenant stated that the Landlord's hours, especially the painting hours, are excessive considering the rental unit had only two bedrooms.

Water bill

The parties agree that the Tenant had 10 chickens, 7 ducks, 2 dogs, and 1 cat during her tenancy and that these animals were permitted by the Landlord and by the tenancy agreement and addendum. The parties agree that the property is approximately one acre.

The Landlord stated that they knew the Tenant had these various animals from the start of the tenancy and the tenancy agreement addendum referred to this. The Landlord stated that the Tenant should pay their water bill of \$1,345.84 as there was excessive water usage by the Tenant. The Landlord stated that the Tenant's water usage was wasteful and not what the tenancy agreement had contemplated. The Landlord stated that the previous tenants had a dog and possibly a chicken, but they did not use as much water as this Tenant.

The Tenant stated that the Landlord never communicated any concerns about water usage to her during the tenancy, and knew she had animals from the beginning. The Tenant stated that the tenancy agreement clearly states that water is included in the rent and animals are allowed. The Tenant stated that the animals needed water, and that she also did a lot of work on the garden and property for the Landlord, as permitted by the tenancy agreement, and this used water as well.

The Landlord requested a monetary order for the amounts claimed and an order to retain the security deposit to offset amounts owed.

Analysis

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

Rental income loss

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the first of the month. The Tenant signed a fixed term tenancy agreement with the Landlord and the tenancy was not due to end until March 31, 2012. The Tenant moved out by September 30, 2011, but did not have a mutual agreement to end the fixed term tenancy with the Landlord. The Tenant breached the tenancy agreement. I am satisfied with the evidence that the Landlord was not able to find a new tenant for the rental unit until February 01, 2012, and that they attempted to mitigate or minimize their losses by advertising for a new tenant within a reasonable period of time. I find that the Landlord advertised for the same rent (\$1,000.00) as they had advertised when they attracted the Tenant. I do not find that the Landlord prevented the Tenant from subletting, and I find that the Tenant failed to find a tenant to sublet the rental unit to. I find that the Landlord is entitled to loss of rental income as claimed, **\$2,700.00** for October, November, and December 2011 (3 months x \$900.00 per month).

Damages and losses

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicant has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent pay for the loss the Applicant must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

As part of the evidence submissions which I considered, the parties provided photographs of condition of the rental unit before and after the tenancy, evidence of estimated costs for repairs and repainting, advertising receipts, and verbal testimony about labour hours and work performed.

Advertising costs

I find that the Landlord is entitled to \$71.68 to compensate for magazine ads placed October, November, and December; and \$108.48 for four weeks of rental ads in the local newspaper and internet listing, for a total of **\$180.16**. The Landlord provided receipts for both of these costs and they are reasonable.

Bill for filling oil tank for furnace

The Tenant does not dispute that she owes the Landlord for part of the oil tank bill and that it was a term of her tenancy agreement. The Tenant stated that the bill should be adjusted for the period of time she was not in the rental unit. I find that the oil bill should be adjusted for March 28 to April 03, 2011 inclusive (7 days) where the Tenant was not

residing in the rental unit and the Landlord was undertaking bathroom renovations. There were 189 calendar days in the oil billing period of March 28-October 02, 2011 inclusive. $189 \text{ days} \div \$490.17 = \$2.59 \text{ per day} \times 7 \text{ days} = \18.13 . $\$490.17 - \$18.13 = \$472.04$. I find that the Landlord is entitled to **\$472.04** for the Tenant's oil usage for the rental unit.

Repair and painting costs

I have reviewed the Landlord's testimony, evidence, and professional contractor estimate. I find that the contractor did not perform the work; therefore, I find that the Landlord should not be reimbursed for the work at the same rates as a professional contractor. I find that the Landlord undertook work on the rental unit and is entitled to partial compensation, at a rate of \$15.00 per hour, as the Landlord was not able to do the job as efficiently as a professional contractor. The testimony and evidence of the parties, particularly the photographs and move in/move out inspection report were helpful in determining the condition of the rental unit before and after. I find that the condition of the rental unit walls was fair overall, but old and outdated. There was no evidence that the Landlord had painted the rental unit for the Tenant at the commencement of the tenancy. Many rooms had wallpaper or laminate or wood panelling. The cabinets and doors were old and in fair condition, but not new.

I find that it was the Tenant's responsibility, as required by the Act, to properly re-hang the pantry door that she removed and restore the door frame and surround to the same condition as she moved in, as well to re-hang the kitchen cabinet door and repair the shelf and counter top. As the Tenant did not do this before she moved out, the Landlord undertook these tasks. I find that the hours claimed by the Landlord to undertake these tasks were reasonable, and that the Landlord is entitled to reimbursement for these hours. I find that the Landlord is entitled to **\$120.00** (4 hours re-hang pantry door and repair frame and surround and 4 hours reattach and repair kitchen cabinet door, shelving, and countertop = 8 hours x \$15.00). I dismiss the Landlord's claim for materials (\$30.00) and a filler plug (\$3.00), as the Landlord failed to provide receipts to support these amounts.

With regards to the hours the Landlord claimed were for painting, the evidence supports that the Tenant painted the main bedroom and the second bedroom during the tenancy. The condition of the walls in the bedrooms as indicated on the move-in inspection report was fair, and the pictures submitted by the Landlord show that they were old and dated before the Tenant painted them. I find that the Tenant's paint job was not professionally done by a contractor, was not properly finished, and did not improve the condition of the rental unit. I find that it was reasonable for the Landlord to repaint over the painting

done by the Tenant to restore the rental unit to equivalent condition to what it was in when the Tenant first moved in, so that it would be ready to be rented out to a new tenant. The Landlord stated that a contractor would have cost them more, however, I disagree as the contractor's bill indicated that he would have charged only \$300.00 for painting the two bedrooms and while his hourly rate would have been more, he would have done the job more efficiently. I do not find it plausible that the Landlord spent 128 hours repainting the areas painted by the Tenant, and I note that the rental unit is only a two bedroom unit, and some of the walls remained as unpainted wood panelling based on the Landlord's testimony and photographic evidence. Based on the photographic evidence, it seems plausible that 20 hours of repainting is reasonable to properly cover up and clean the areas painted by the Tenant. As a result, I find that the Landlord is entitled to **\$300.00** for labour costs (20 hours X \$15.00). The Landlord neglected to provide their receipts for paint supplies, as a result I decline to award any supplies in relation to the painting work.

Water bill

I dismiss the Landlord's claim for the water bill as the tenancy agreement clearly states that water is included in the rent, and the Landlord was aware when the tenancy agreement was entered into that the Tenant would have ducks, chickens, dogs and a cat. I find that the Landlord neglected to put restrictions on the Tenant's water usage in the tenancy agreement.

In summary, I find that the Landlord has established a monetary claim of **\$3,772.20** (rental income loss \$2,700.00; advertising cost \$180.16; oil bill Tenant portion \$472.04; Landlord costs to re-hang pantry door, repair frame and surround, repair kitchen cabinet door, shelves and countertop \$120.00; and Landlord painting costs \$300.00).

Section 72 of the Act specifies that the filing fee can be awarded as determined by the Dispute Resolution Officer. As the Landlord has in part succeeded in their Application, I find that the Landlord is entitled to recover the **\$50.00** fee for this proceeding. This brings the total amount of the monetary order to **\$3,822.20**.

I order that the Landlord retain the security deposit (\$450.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$3,372.20**.

Conclusion

I grant the Landlord's claim in part for damage to the unit site or property and for damage or loss and the filing fee, however, the Landlord's claim for registered mail costs and ferry/travel costs are dismissed.

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$3,372.20**.

The order accompanies the Landlord's copy of this decision. The order must be served on the Tenant and may be filed in the Supreme 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: February 06, 2012.

Residential Tenancy Branch