



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Melectra Enterprises Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, OPC, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for cause and because the tenant breached an agreement with the landlord; for a Monetary Order for damage to the unit, site or property; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (*Act*), regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on. July 23, 2013 Canada Post tracking numbers were provided by the landlord's agent in testimony. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and the landlords agent appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. The landlord was permitted to provide additional evidence after the hearing had concluded however the landlord failed to do so as directed. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for Damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The landlord's agent testifies that this tenancy started on September 05, 2012 for a fixed term tenancy which is due to end on August 31, 2013. Rent for this unit is \$1,490.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$745.00 on September 05, 2012. A Move in inspection was completed with both parties and a Move out inspection was done in the tenant's absence as the tenant vacated the rental unit on August 01, 2013 without notifying the landlord. No forwarding address has been received to date from the tenant.

The landlord's agent testifies that this tenancy was for four people however the tenant allowed an additional three people to live in the rental unit and this was noted from May, 2013 when the landlord went to the unit and saw that each room had additional beds in it. The landlord testifies that people were coming and going from the unit and it seems

as if the tenant was renting out rooms as if the unit was a hotel. The tenant was verbally requested to correct this breach in May, 2013. The landlord testifies that the tenant failed to remove the additional occupants and was sent a breach letter concerning this on June 06, 2013 when the tenant was asked to have any additional occupants vacate the rental unit within seven days. A copy of this breach letter has been provided in evidence.

The landlord seeks to recover an additional \$510.00 per month for May, June and July for the additional occupants living in the unit as utilities were included in the tenants rent and extra utilities were being used. The landlord testifies that extra wear and tear would have also increased on the property due to the extra occupants.

The landlord testifies that the tenant did not pay rent for July, 2013 and the landlord seeks to recover the amount of \$1,490.00 in unpaid rent along with a \$40.00 NSF fee as the tenants cheque did not clear. The tenant was served with a 10 Day Notice due to this unpaid rent on July 14 or July 15, 2013 and still failed to pay the rent owed. The landlord testifies that the tenant caused damage to the walls and doors. There were many scuff and holes on the walls and one bedroom had been painted a dark brown and then covered in painted murals/graffiti. The landlord testifies that the tenant was given a quote to show how much it would cost to have the bedroom repainted to see if the tenant wanted to do this work themselves. The tenant did not do the work and the landlord seeks to recover \$1,050.00 for painting. The landlord has provided photographic evidence of the walls and doors and an Invoice for the painting to remedy the tenants paint job.

The landlord's agent testifies that the tenant also caused damage to the floors as paint was left on the wooden floors. The floors had to be redone and the landlord seeks to recover \$1,280.00 for this work. The landlord's agent testifies that the tenant's dog also caused damage to the window sills on the three living room windows. The landlord seeks to recover \$225.00 for this work. The landlord has provided photographic

evidence of the paint on the floor and the damage to a window sill along with an invoice to rectify the damage to the window sills

The landlord's agent testifies that the landlord incurred a service fee of \$372.50 for the landlord's agent's services to get the unit re-rented. The landlord's agent agrees that the tenancy was due to end on August 31, 2013 without the option to extend the tenancy. The landlord has provided an invoice from the landlord's property manager to re-rent the unit.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me.

With regards to the landlords claim for additional rent due to the three additional occupants in the rental unit; the landlord has provided a copy of the breach letter sent to the tenant regarding these additional occupants, however there is no provision under the *Act* for me to award the landlord additional rent unless the tenancy agreement signed by both parties provides for additional rent to be charged for extra occupants. However, I am able to consider awarding the landlord compensation for additional wear and tear caused by additional occupants and for an increase in utilities due to the tenant allowing additional occupants to stay in the unit for three months.

The landlord has not provided in evidence any utility bills to show that an increase occurred or how much that was over this period compared with a period prior to the extra occupants residing in the unit. Therefore I must limit the landlords claim to \$200.00 per month for three months to a total sum of **\$600.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for unpaid rent for July, 2013; I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied with the landlord's undisputed testimony that the tenant failed to pay rent for July, 2013 of \$1,490.00. The tenant was served a 10 Day Notice to End Tenancy and had five days to pay the rent but failed to do so. Consequently the landlord is entitled to recover the unpaid rent of **\$1,490.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for \$40.00 for NSF fee. The addendum to the tenancy agreement informs the tenant that the landlord will charge a fee of \$40.00 for any cheque unpaid. However the Regulations only allow a landlord to charge a maximum of \$25.00 for late fees and NSF fees. Consequently I must limit the landlords claim to **\$25.00** pursuant to s. 7(1)(d) of the Residential Tenancy Regulations.

With regard to the landlords claim for damage to the walls and doors, the floor and the window sills of the unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Having reviewed the evidence before me I find the landlord has shown that this damage exists, and the actual amount to rectify the damage. However the landlord has not shown that this damage was caused by the actions or neglect of the tenant as the landlord has failed to provide a copy of the inspection reports completed at the start and end of the tenancy. The purpose of completing these reports is to show the condition of the rental unit at the start of the tenancy and to compare that to the condition of the rental unit at the end of the tenancy. Without these reports I am unable to determine that this damage was caused during the tenancy. Consequently, this section of the landlords claim is dismissed without leave to reapply.

With regard to the landlords claim for a service fee from the landlord's property manager to re-rent the unit; I have considered the landlords claim and find the tenancy was a fixed term tenancy that was to end on August 31, 2013 without the option of extending the tenancy. I therefore find the landlord would have had to re-rent the unit for September 01, 2013 even if the tenant had not vacated the unit on August 01, 2013. I do find however that as the tenant did breach the terms of the tenancy agreement by vacating a month before the end of the tenancy that the landlord had to advertise the unit sooner than expected. I will therefore allow the landlord to recover half the fees paid to the landlord's property manager. The landlord is therefore entitled to recover **\$186.25.**

I Order the landlord to keep the security deposit of **\$745.00** pursuant to s. 38(4)(b) of the Act. This sum will be offset against the unpaid rent. I further find the landlord is

entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Compensation for additional occupants	\$200.00
Unpaid rent	\$1,490.00
NSF fee	\$25.00
Fees for property manager	\$186.25
Subtotal	\$1,901.25
Plus filing fee	\$50.00
Less security deposit	(-\$745.00)
Total amount due to the landlord	\$1,206.25

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,206.25**. The order must be served on the respondent and is enforceable through the Provincial Court 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: August 26, 2013

Residential Tenancy Branch

