Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: O, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's application filed on August 14, 2015, which was subsequently amended on September 14, 2015. The landlord seeks a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of all or part of the security deposit and pet damage deposit / and recovery of the filing fee.

Both parties attended and gave affirmed testimony. The parties were inclined to be argumentative, and testimony was occasionally conflicting. Documentary evidence submitted by both parties was somewhat disordered.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is 1 of what are 3 rental units located within a 2 storey house.

While it appears that the tenant moved into the unit on March 26 or 27, 2015, pursuant to a written tenancy agreement the 5 month fixed term of tenancy is from April 01 to August 31, 2015. The agreement provides that at the end of the fixed term the tenant will "move out of the residential unit." Monthly rent of $1,380.00 is due and payable in advance on the first day of each month. The tenancy agreement documents that a security deposit of $690.00 and a pet damage deposit of $690.00 were collected. The tenancy agreement also provides that the tenant will pay 1/3 of the monthly hydro. However, by way of an addendum to the tenancy agreement, the cost of hydro is addressed differently, as follows:

> Regarding the usage of electricity. The suite is heated using electricity which is included in the rent. The rental rate is set based on typical electricity usage based on reasonable other uses such as washing. If excessive usage occurs the rental rate may be adjusted accordingly. The tenant has the ability to program the thermostat and is expected to do so to minimize excessive usage. Instructions will be emailed by the landlord.

The landlord testified that the above provision was mistakenly included in the addendum attached to the subject tenancy agreement, and that this particular addendum had been used for previous renters in tenancies where the monthly rent was higher than the rent in the subject tenancy. The landlord testified that this contradiction concerning hydro was the result of error / oversight, and was discovered late in the subject tenancy. A move-in condition inspection report was completed with the participation of both parties.

The tenant vacated the unit on August 31, 2015. A move-out condition inspection report was completed with the participation of both parties on August 31, 2015, and the tenant provided her forwarding address on the report. Following this, however, the landlord undertook a further inspection on September 01, 2015, and made additional notations on the move-out condition inspection report; the landlord has differentiated these additional notations from notations originally made and signed off by both parties, by way of a "star."

As earlier noted, the landlord's application was filed on August 14 and later amended on September 16, 2015. The tenant testified that she has also filed an application for dispute resolution and that the related hearing is scheduled to occur in February 2016.

Analysis

Based on the documentary evidence and testimony, the various aspects of the landlord's application and my related findings are set out below.

$262.06: *1/3 of hydro from April 01 to July 14, 2015*
$83.92: *1/3 if hydro from July 15 to August 31, 2015*

I find that the terms of the tenancy agreement and the terms set out in the addendum are at odds where it concerns the tenant's responsibility for hydro. Notwithstanding the landlord's testimony that this inconsistency was an error or an oversight, the provisions are nevertheless contradictory. In the result, I find that the landlord has established entitlement limited to **$172.99**, which is ½ the total amount claimed ($345.98 ÷ 2).

$250.00: *estimate of repairs to hardwood floor*

The landlord claims that the repairs are required as a result of water damage, and that the damage was not visible at the time of the move-out condition inspection as some of the tenant's possessions covered the affected area. Accordingly, the landlord did not discover the damage until after the move-out condition inspection report had been completed and signed off by both parties, and all of the tenant's belongings had been completely removed. The tenant denies any responsibility for the damage. The landlord testified that no repairs have presently been undertaken.

I find that it is the responsibility of the parties to affix their signatures to move-in and / or move-out condition inspection reports only after such time as they have satisfied themselves that the report(s) accurately document the status of the unit. In the circumstances of this dispute, the landlord apparently discovered the alleged damage after the completion of the move-out condition inspection and the affixing of respective signatures on the move-out condition inspection report. The landlord acknowledged that notations made on the move-out condition inspection report concerning "damaged hardwood" were made after-the-fact by the landlord. Following from all of the above, I find that the landlord has failed to meet the burden of proving entitlement to the amount claimed, and this aspect of the application must therefore be dismissed. Finally, the attention of the parties is drawn to section 14 of the Regulation which addresses **Rental unit to be empty**, and provides as follows:

> 14 The landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act *[condition inspections]* when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

$221.76: *area rug replacement*

The parties dispute whether or not there had been an agreement pursuant to which the tenant would purchase the used area rug from the landlord. Ultimately, the tenant decided to have the area rug cleaned and then returned it to the landlord. In turn, the landlord undertook to return it to the tenant, taking the position that the area rug was unable to be properly cleaned of cat hair. The tenant declined to retain the area rug and the landlord has not presently incurred any cost to replace it.

I find that the email interactions between the parties related to a potential purchase of the area rug are insufficiently conclusive. I also find that the tenant had the area rug cleaned and returned it to the landlord. Notwithstanding the landlord's decision not to keep the area rug, I find that the landlord has failed to meet the burden of proving that

the tenant ought to bear any responsibility for replacing the area rug. This aspect of the application is therefore dismissed.

$75.00: *cleaning in unit*

Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy:**

> 37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
>
> (2) When a tenant vacates a rental unit, the tenant must
>
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
>
> (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In consideration of the above statutory provisions, and in view of the results documented on the move-out condition report while both parties were present, I find that the landlord has not met the burden of proving that the tenant failed to leave the unit "reasonably clean, and undamaged except for reasonable wear and tear." Accordingly, this aspect of the application must be dismissed.

$131.25: *carpet cleaning (2 rooms and a stairway)*

The tenant testified that she used a machine to clean the carpet herself. The landlord takes the position that the carpet was insufficiently clean. For reasons identical to those set out immediately above, I find that this aspect of the application must also be dismissed.

$50.00: *filing fee*

As the landlord has achieved a limited measure of success with this application, I find that the landlord has established entitlement to recovery of ½ half the filing fee in the amount of **$25.00**.

Total entitlement: $197.99 ($172.99 + $25.00)

I order that the landlord retain **$197.99** from the combined security deposit and pet damage deposit of **$1,380.00** ($690.00 + $690.00). I find that the balance owed to the tenant is **$1,182.01** ($1,380.00 - $197.99).

Documentary evidence indicates that by way of the landlord's cheque # 352, $261.99 of the tenant's $690.00 pet damage deposit was repaid, and that by way of the landlord's cheque # 353, $64.02 of the tenant's $690.00 security deposit was repaid [**repaid total: $326.01**]. It is not clear whether the tenant has cashed either of these cheques. I find that the net amount still owed to the tenant is therefore **$856.00** ($1,182.01 - $326.01), and I grant a **monetary order** in favour of the tenant for that amount.

Conclusion

The landlord is ordered that she may withhold **$197.99** from the tenant's combined security deposit / pet damage deposit.

Further to the total amount already repaid to the tenant of **$326.01**, pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **$856.00**. Should it be necessary, this order may be served on the landlord, filed 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: November 24, 2015

Residential Tenancy Branch