



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application (as amended) pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent and for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1410 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord JL (the landlord) attended the hearing on behalf of both landlords and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the landlords served the tenant with the dispute resolution package on 1 October 2015 by registered mail. The landlords provided me with a Canada Post customer receipt that showed the same. The landlord testified that the mailing was sent to the forwarding address provided by the tenant at the end of the tenancy. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord testified that the landlords served their amended application by registered mail on 2 February 2016. In accordance with sections 89 and 90 of the Act, I find that the amendment was duly served.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and damage? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

This tenancy began 15 February 2014. The tenancy ended 28 September 2015 when the tenant vacated the rental unit. Monthly rent in the amount of \$1,100.00 was due on the first. The landlords continue to hold the tenant's security deposit in the amount of \$550.00, which was collected 28 January 2014.

The landlord testified that the tenant contributed \$225.00 monthly towards utilities. The landlord testified that at the end of the year the equal payment plan is reconciled with actual use.

The landlord testified that the tenant contributed \$600.00 to rent for September on or about 9 September 2015, but did not pay the balance of rent or the utilities amount. On or about 11 September 2015 the tenant gave notice that he would vacate the rental unit by 28 September 2015. This notice was sent by email.

The landlord testified that she began advertising the rental unit at the end of September by placing an advertisement in the paper. The landlord testified that she then determined that she would move into the rental unit. The landlord testified that she began occupying the rental unit on 1 December 2015. The landlord testified that it was not possible to occupy the rental unit earlier as she had holidays for November and had to give notice at her own rental unit.

The landlord testified that the tenancy agreement addendum provided for division of utilities proportionally between the upstairs and downstairs rental unit on the basis of occupants. The landlord testified that the initial division was for 65% of all utilities. This was subsequently reduced to 60% for electricity, 55% for gas and 50% for water in June 2015.

The landlord testified that the yard maintenance was the responsibility of the tenants and the other occupants in the lower unit as they both used the yard. The landlord testified that the tenant was only charged for one half of the lawn fees. The landlords provided me with a photograph of the overgrown lawn.

The landlord testified that the tenant left lightbulbs missing at the end of tenancy that were functional at the beginning. The landlords provided me with a receipt from a home repair store for lightbulbs. The receipt was dated 8 October 2015 and was in the amount of \$40.05.

The landlord testified that the tenant told the landlords that there was a leak in the rental unit. The landlord testified that her nephew went to inspect the leak, but was not permitted to enter the rental unit. The landlord testified that the tap was loose, but not leaking and that she assumes that this is what the issue was.

The landlords claim for \$635.00 in utilities arrears. The landlord testified that the tenant made a payment of \$225.00. The landlord testified that the tenant owes the following amounts:

Item	Amount
Natural Gas Billed in July	\$11.10
Natural Gas Billed in August	7.34
Natural Gas Billed in September	10.30
Natural Gas Billed in October	23.72
Natural Gas Billed in November	31.08
Electricity Billed in July	77.50
Electricity Billed in August	126.11
Electricity Billed in September	151.91
Electricity Billed in October	146.12
Electricity Billed in November	118.00
Water Billed in June	28.64
Sewer Billed in June	46.28
Water Billed in October	26.76
Sewer Billed in October	43.24
Total Utilities Arrears	\$848.10

The landlords provided me with invoices to substantiate the utilities amounts.

The landlords claim for \$2,415.05:

Item	Amount
Unpaid September Rent	\$500.00
Unpaid October Rent	1,100.00
Lawn Cutting	50.00
Missing or Burnt Out Lightbulbs	40.05
Call Out Fee	40.00
Utilities	635.00
Filing Fee	50.00
Total Monetary Order Sought	\$2,415.05

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

On the basis of the landlord's testimony, I find that the tenant failed to pay rent in the amount of \$500.00. Pursuant to the tenancy agreement, the tenant owed rent for September on 1 September 2015. There is no indication that the tenant was entitled to deduct any amount from rent. On the basis of this evidence, I find that the tenant breached section 26 of the Act. The landlords are entitled to the full amount of their loss totaling \$500.00.

Subsection 45(1) of the Act sets out that:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date after the landlord receives the notice, and
- (b) is before the day in the month...that rent is payable under the tenancy agreement.

The tenant sent his notice to end tenancy on 11 September 2015. Pursuant to subsection 45(1) of the Act, the earliest date the tenant could have ended the periodic tenancy on 11 September 2015 was 31 October 2015. In failing to provide notice that complied with subsection 45(1) of the Act, the tenant breached the Act.

The landlords submit that by failing to provide appropriate notice, the tenant caused the landlords to incur a rent loss for October. The landlord testified that the landlord first

advertised the rental unit at the end of September. The landlord testified that she then decided to convert the rental unit to her own use.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act. The duty to mitigate means that a party cannot recover for losses he or she could have avoided.

The landlords delayed advertising the rental unit until late September and then decided to move into the rental unit herself. I find that this evidence is inconsistent with the landlords' duty to mitigate their losses. For this reason, I refuse the landlords' claim for October's rent loss.

The landlords claim for the cost of replacing lightbulbs.

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" (Guideline 1) sets out the obligation under subsection 37(2) includes replacing all lightbulbs at the end of tenancy.

On the basis of the landlords' evidence I find that tenant did not replace the lightbulbs in contravention of subsection 37(2) of the Act. The landlords provided a receipt indicating that the direct cost of the tenant's breach was \$40.05. I find that the landlords have substantiated the full amount of their claim for lightbulbs.

The landlords claim for the cost of cutting the lawn. The landlord testified that the yard was shared with the downstairs occupants.

Pursuant to Guideline 1 landlords are responsible for maintenance of yards for multi-unit residential complexes. This is because it is not an area over which the tenant has exclusive control. As the tenant did not have exclusive control over the yard, the landlords are not entitled to recover the cost of lawn care from the tenant.

The landlords claim \$40.00 for attending a call by the tenant regarding a leak and then the tenant refusing access. The landlords did not provide proof of notice to enter or permission for the tenant to enter. There is no evidence that the leak constituted an emergency repair. The landlords have not shown that this call constituted a breach of the Act or tenancy agreement. Accordingly, there is no basis for awarding compensation to the landlords for refusal to allow the landlords access to the rental unit that day.

The landlords provided sworn and uncontested evidence that the tenant occupied the rental unit until 28 September 2015. The landlords claim for the tenant's portion of utilities until the end of October.

I find that the tenancy agreement authorizes charges of utilities on the basis of the proportion of occupants on the upper and lower units. I accept the landlords' evidence regarding the percentage attributable to the tenant. The tenant contributed \$225.00 towards his utilities amount. On the basis of this evidence, I find that the tenant failed to pay for utilities for the period he occupied the rental unit totaling \$474.02:

Item	Amount
Natural Gas Billed in July	\$11.10
Natural Gas Billed in August	7.34
Natural Gas Billed in September	10.30
Natural Gas Billed in October	23.72
Electricity Billed in July	77.50
Electricity Billed in August	126.11
Electricity Billed in September	151.91
Electricity Billed in October	146.12
Water Billed in June	28.64
Sewer Billed in June	46.28
Water Billed in October	26.76
Sewer Billed in October	43.24
August Utility Payment	-225.00
Utilities Arrears for Occupied Period	\$474.02

On the basis of the evidence before me the tenant did not occupy the rental unit for October (billed in November). For this reason, the tenant could have not used any utilities for the month of October. On the basis that tenant did not have any utility use in October, I find that the landlord may not claim for this amount.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

The landlords applied to keep the tenant's security deposit. I allow the landlords to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$514.08 under the following terms:

Item	Amount
Unpaid September Rent	\$500.00
Lightbulbs	40.05
Utilities	474.02
Offset Security Deposit Amount	-550.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$514.07

The landlords are provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsections 9.1(1) and 77(2) of the Act.

Dated: June 07, 2016

Residential Tenancy Branch