



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing and gave affirmed testimony, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord testified that the tenant was served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on January 18, 2017 and was given the opportunity to provide proof of that service after the hearing had concluded. I have now received a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord also took the liberty of providing digital evidence after the hearing had concluded. It would not be appropriate for me to consider that evidence, and any evidence either party wants to provide must be received well in advance of the hearing, and I decline to review it. All other evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 1, 2012. The tenant rented the apartment from the landlord for the tenant's daughter, but the tenant sub-let it to someone else. The tenancy ultimately ended on April 1, 2016.

Rent in the amount of \$1,000.00 per month was originally payable, and was increased from time-to-time:

- March 2012 to June 2013 - \$1,000 per month;
- July 2013 to September 2013 - \$1,035.00 per month;
- October 2013 to September 2014 - \$1,085.00 per month (\$50.00 for parking spot, not a rent increase);
- November 2014 to November 2015 - \$1,135.00 per month including parking;
- December, 2015 to May 2016 - \$1,270.00 per month including parking.

A written tenancy agreement was not signed by the parties but rent was due on the 1st day of each month. No security deposit or pet damage deposit was collected by the landlord.

The landlord further testified that the tenant was required to make repairs to the rental unit, but didn't do so, and is now in arrears of rent the sum of \$4,580.00 from January, 2016 to May, 2016, including loss of rental revenue. The rental unit was re-rented for a new tenancy to begin on May 15, 2016.

The rental unit is an apartment within a complex, built in about 1981, and the landlord does not reside on the property. No move-in or move-out condition inspection reports were completed.

The landlord has provided a copy of a Monetary Order Worksheet setting out the following claims:

- \$1,960.00 kitchen flooring labor only;
- \$4,580.00 unpaid rent to May 15, 2016;
- \$390.88 flooring material for the hallway and kitchen;

- \$746.45 Baseboard and vanity;
- \$518.34 – laminate flooring for the living room and baseboard paint;
- \$274.68 – broken light fixtures in the living room and bathroom;
- \$120.60 for paint;
- \$229.07 for paint;
- \$51.35 for spacers and glue for tiling;
- \$50.00 entry fob;
- \$52.42 for hemming curtains;
- \$224.00 purchasing curtains;
- \$41.63 for molding;
- \$41.40 for missing keys;
- \$17.90 for a deadbolt;
- \$118.99 for miscellaneous material for repairs;
- \$500.00 labor for shelving replacement; and
- \$7,050.00 for the tenant pocketing rent from a sub-tenant.

The landlord testified that the kitchen flooring was perfect at the beginning of the tenancy, and the landlord has provided a copy of a quote and photographs taken around April 11, 2016.

In January, 2016 the tenant paid \$1,135.00 for rent but rent at that time was \$1,270.00, leaving a balance outstanding of \$135.00. No rent was paid for February, March, April or May, 2016.

The claim for flooring material is for the laminate in the hall and vinyl tile in the kitchen. The landlord has replaced both with ceramic tiles, and 2 receipts have been provided. The landlord testified that laminate is a lot cheaper.

The bathroom vanity was broken at the end of the tenancy, and the landlord's nephew replaced it and had to also replace baseboards in the living room, bedroom and hallway. A receipt in the amount of \$324.00 for the vanity and an invoice has been provided.

The tenant left big holes in walls that had to be repaired; 2 were very large.

The tenant was given 2 access fobs but only returned one. The landlord had to purchase another from the current caretaker, and a receipt has been provided.

Blinds had been removed so the landlord had to buy new blinds for the living room and curtains. The curtains cost \$224.00, however no receipt has been provided.

The claim for molding is for the transition pieces between tile and laminate in doorways.

The landlord emailed the tenant on April 11 and asked where the key and fob were, and the tenant replied that they were in the fridge. The key and 1 fob were in the fridge, but the landlord's nephew had already changed the lock. A receipt has been provided. There was also a deadbolt on the door at the beginning of the tenancy but the landlord's nephew was in the process of replacing it when the tenant replied to the landlord's email.

The claim for miscellaneous materials is for a locker and shelving in the locker, and the \$500.00 claim for replacing shelving was a cash purchase and no receipt has been provided.

The landlord's claim of \$7,050.00 should read 16 months at \$300.00 per month. The landlord was told that the tenant's daughter would be living in the rental unit and she was supposed to pay \$1,000.00 per month, but the tenant sub-let it. A copy of an email from the sub-tenant has been provided for this hearing indicating that the sub-tenant paid rent in the amount of \$1,300.00 per month, and the landlord claims the \$300.00 per month excess.

The landlord's claim for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit is meant to refer to such a deposit paid by the sub-tenant to the tenant.

Analysis

Firstly, with respect to the landlord's claim for unpaid rent, the landlord testified that from September, 2013 to November, 2014 rent was \$1,035.00 except increased by \$50.00 for parking. November, 2014 rent was \$1,085.00 and \$1,220.00 commencing December, 2015. That's an increase of \$135.00 per month. The regulations specify the amount of increases allowed, and for 2015 the maximum increase was 2.5%, or \$27.13 per month. The landlord testified that the tenant paid \$1,135.00 in January, 2016, and I accept that \$50.00 of that was for parking, however the landlord ought not to have collected more than \$1,162.13 ($\$1,085.00 + \$27.13 + \50.00). The difference is \$27.13 for January, 2016, and \$1,220.00 for each of February, and March, for a total of \$2,467.13.

The landlord also claims \$7,050.00 because the tenant sub-let to someone other than the person the landlord was told would be living in the rental unit. The landlord allowed a sub-let, regardless of who rented it, I am not satisfied that the landlord is entitled to recover any money from the tenant.

Where a party makes a claim against another party for damages, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate such damage or loss.

The *Act* also states that the landlord must ensure that the move-in and move-out condition inspection reports are completed, and the regulations go into detail of how that is to happen. Further, the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. In this case, the landlord did not have a written tenancy agreement, did not collect any security deposit from the tenant, and did not complete a move-in or a move-out condition inspection report. Therefore, there is no evidence to satisfy me that the flooring didn't need replacing at the beginning of the tenancy, and the landlord's claim of \$1,060.00 is dismissed, as well as the claims of \$390.88 for flooring material, \$324.00 for the vanity, \$518.34 for flooring, \$274.68 for broken light fixtures, \$76.57 for grout, \$51.35 for spacers and glue, \$52.42 for hemming curtains, \$224.00 for purchasing curtains, \$41.63 for transition pieces, baseboards, miscellaneous material and labor for shelving replacement.

The Residential Tenancy Policy Guidelines put the useful life of interior paint at 4 years. The tenant rented the rental unit for 4 years, and therefore, I decline to order that the tenant pay for paint and materials.

I accept that the landlord had to purchase another access fob, and I allow the \$50.00 claim, as well as \$41.40 for keys and \$17.90 for a deadbolt.

The landlord also testified that the tenant didn't make repairs as the parties had agreed and the landlord lost rental revenue as a result. The landlord has claimed unpaid rent, and having found that the landlord has failed to establish that the damages were caused by the tenant, I dismiss the landlord's claim for loss of rental revenue for April and May.

With respect to the security deposit collected by the tenant from the sub-tenant, that is a matter between them, and the landlord has no claim against it.

Since the landlord has been partially successful the landlord is also entitled to recovery of the \$100.00 filing fee.

In summary, I find that the landlord has established a claim of \$2,467.13 for unpaid rent, \$50.00 for an access fob, \$41.40 for keys, \$17.90 for a deadbolt, and recovery of the \$100.00 filing fee, for a total of \$2,676.43.

Conclusion

For the reasons set out above, the landlord's claim for a monetary order for damage to the unit, site or property is hereby dismissed.

The landlord's application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit is hereby dismissed.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,676.43.

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 14, 2017

Residential Tenancy Branch