



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenants CNR, MNR, MNDC

For the landlords – MND, MNR, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together. The tenants seek a Monetary Order to recover the cost of emergency repairs and for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), regulations or agreement. The tenants also requested to cancel the 10 Day Notice to End Tenancy for unpaid rent but have withdrawn this section of their application as they have moved from the rental unit. The landlords seek a Monetary Order to recover unpaid rent and utilities, for damage to the rental unit and to recover the filing fee. The landlord also seeks to keep the security deposit.

Both Parties served the other Party by registered mail with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared and were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Were there emergency repairs? If so are the tenants entitled to recover any amount paid for these repairs?



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- Are the tenants entitled to compensation for damage or loss under the *Act* and if so how much?
- Are the landlords entitled to a Monetary Order to recover any unpaid rent and utilities?
- Have the landlords established their claim for damages to the rental unit?
- Are the landlords entitled to keep all or part of the security deposit and any accrued interest?

Background and Evidence

Both Parties agree that this tenancy started on October 01, 2008 and ended on September 23, 2009. They also agree that rent was \$760.00 per month and was due on the first of the month. Although the tenancy agreement states that utilities and cable are the responsibility of the tenants, the Parties agree that they had a verbal agreement that the rent paid was to be allocated as \$530.00 for rent and the remainder to cover the costs for utilities and cable fees. The tenants paid a security deposit of \$265.00 on September 30, 2008. No move in or move out condition inspection was completed.

The tenants testify that they accepted the tenancy on the terms that the landlord would only be living in the upper portion of the house and use the guest suite in the basement for the summer months. The tenants agree that the landlord told them it would be noisy during these times. The tenants discovered that there were two electric meters for the property one was for the basement which they occupied but which also contained the guest suite for the landlord's use. The tenants claim that the landlord let other people stay in the guest suite and the tenants were paying for their electricity. The tenants claim the landlord's son and his friends also stayed in the house at times other than specified by the landlord i.e. the summer months. They claim the landlords son held loud parties and used the cable facilities which the tenants were charged extra for. Due to this the tenants and landlord agreed that the cable would be put into the tenants name in January 2009. The tenants are seeking a Monetary Order to recover this additional use of the electricity and cable.



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The tenants claim that during the tenancy they had a problem with the fridge/freezer leaking and not working correctly. The tenants did notify the landlords who told them to contact their local repairman to look at the fridge. The landlords also told the tenants they could use another fridge in the cold room at the house although this also did not work correctly. The tenants contacted a friend of their sons who carried out some work on the fridge at a cost of \$246.64.

The tenants claim the toilet seal and toilet tank were leaking. They again contacted the same repairman who repaired the toilet at a cost of \$104.37. The tenant did not notify the landlord of this repair until after it was completed.

The tenants claim they had a problem with the dryer; it would become hot and seize up. They claim they did talk to the landlord about this issue but he did not mention it again and they used the same repairman to carry out work. However, the tenants agree that they do not think any repairs were actually made to the dryer despite them paying a bill of \$211.14.

The tenants claim they paid their repairman to repair a leak in the bedroom window including repair for black mould, caulking, plaster and touch up paint. This repairman also states in his invoice that the carpet needs to be replaced as there is mould in it. This work was charged to the tenants at \$102.33.

The tenants claim the stove was always an issue during their tenancy. It was very dirty when they moved in and the elements and fuses kept burning out. They paid the same repairman \$79.89 for these repairs. The tenants agree that they did not contact the landlord to notify him of the problems with the stove before the repair was carried out. (Receipt for all repairs provided).

The landlords testify that they were unaware of the repairs required to the stove, toilet, dryer or leaking window and claim they were not notified of any problems with these appliances or window until after they had given the tenants a 10 Day Notice for unpaid rent. The tenants then told the landlords about the emergency repairs they had carried out and that's why the rent for September was unpaid. The landlord asked to see the bills and was told by the tenant that he had posted them to the landlords address. When the bills turned up some time later the

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landlords claim they became suspicious of these costs and the repairs allegedly carried out. The landlord hired another repair man to look at the appliances to see if any repairs had been made. This repairman carried out a service check and reports that the repairs appear not to have been carried out as specified on the tenants repair bill. The fridge and dryer repairs do not match the components in the appliances and the elements on the stove appear to be older than three months but could possibly have been replaced but the elements were too dirty to make that determination. The landlords also claim that there is no evidence of a repair to the window or surrounding plaster work and no evidence of any mould. The landlords are claiming \$85.20 for the cost of hiring this repairman to inspect the appliances.

On inspecting the rental unit the landlord's testify that a large section of the carpet had been cut away in the middle of the bedroom floor. They state that the tenant told them it was due to mould coming in from the window. However, the landlords claim that the window is on the other side of the room. The landlords removed the remainder of the carpet and underlay and inspected the floor themselves and with a carpet fitter. They found no evidence of any mould on any of these areas. The landlords agree that the carpet was approximately eight years old but in relatively good condition. The landlords are claiming the cost to replace this carpet at \$586.18. (Photographs and receipt provided).

The landlords question the tenants about their repairman and were told he was a friend of the tenants son. The landlords were shocked that this person was not qualified to make any of the repairs the tenant's claim he made.

The landlords also claim the tenants or their cat has caused damage to the blinds in the rental unit. They have been bent at the ends and the cords have been ripped. The landlords have obtained two estimates to replace these blinds and are claiming the smaller amount of \$500.00 (no photographs provided, receipt provided.)

The landlords testify that the tenants did not clean the rental unit at the end of the tenancy. The tenant does not dispute this. The landlord is claiming \$75.00 to clean the rental unit.

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The landlords claim the tenants owe rent for September of \$530.00 and have not made any payments for electricity and cable since the cable was put into the tenant's name in January, 2009. The landlords have provided a detailed breakdown of money owed to them and have provided bills, receipts and bank statements detailing what is outstanding. The landlords claim the outstanding balance of unpaid rent, electricity and cable is \$1,559.81.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both Parties. I will deal with the tenants application first. I find the tenants and landlords did have a verbal agreement as to how the rent would be apportioned but also find the cable and electricity use was far in excess of the amount the landlords calculated it would be. The tenants argue that this is due in part to the landlords letting other people stay in the guest suite which is connected to the tenant's electric meter and the landlord's son and friends coming to stay and using the cable service which the tenants were paying for. However, the tenants have given no indication as to how frequently these other persons stayed at the house. Therefore, it is difficult to determine what amount of electric or cable would have been used by other people. The tenants agree that they did not pay rent for September 2009 and the landlords are claiming that the tenants owe \$1,559.81 for rent, electric and cable.

Consequently, I find the tenants do owe rent for September, 2009 of \$530.00. I have deducted 20% from the remainder for the outstanding cable and electricity bills of \$1029.81 due to the shared electricity meter for the guest suite and the landlord's family use of the cable to an amount of **\$205.96**.

With regard to the tenants application for a monetary Order for the cost of emergency repairs; I find that section 33 (1) of the Act specifies what constitutes an emergency repair and section 33 (3) refers to the steps the tenants must take to meet the conditions to make emergency repairs themselves. In this instance I find the repairs do not constitute emergency repairs and the tenants did not make at least two attempts to contact the landlord to make the repairs themselves with the exception of the fridge/freezer. I also find that the landlord's evidence more

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compelling as it is supported by an inspection of the appliances that confirms their suspicions that the repairs were not completed to the appliances as specified on the repair invoice. There is also no evidence to support the tenants claim that there was a leaking window or that a window repair had been carried out. Consequently, I dismiss the tenants application for a monetary order to recover the costs of emergency repairs.

With regard to the landlords claim for unpaid rent, utilities and cable fees I find they have provided sufficient evidence to support the majority of their claim with bank statements, electrical bills and cable bills. However, this has been reduced by \$205.96 as detailed above due to the shared electricity meter and their sons' use of the cable. Therefore, the landlords are entitled to recover **\$1,353.85** pursuant to section 67 of the *Act*.

The landlords' claim that they had to replace the bedroom carpet as the tenants had cut a large square from the carpet. The tenants admit that they did this because there was a large stain on the carpet which they believed to be mould and which caused a bad smell in the room the tenants also argue that the carpet was old. I find the landlords evidence shows that the carpet, underlay and floor did not show any signs of mould and the tenants did not ask their permission to cut the square from the carpet. Consequently, I find that the tenants did damage this carpet beyond repair and despite the age of the carpet I find the landlords are entitled to recover the cost of replacing the carpet to a sum of **\$586.18** pursuant to section 67 of the *Act*.

The landlord is claiming the cost of having to clean the suite at the end of the tenancy. Section 32(2) of the *Act* states: *a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit*. This also means that the tenant's are responsible to clean the unit at the end of the tenancy. The tenants admit that they did not return to the rental unit the day after they vacated to carry out the final clean. Therefore, I find the landlords are entitled to recover the cost of **\$75.00** from the tenants pursuant to section 67 of the *Act*.

The landlords claim the tenant's cat caused damage to the blinds in the suite. However, the landlords have provided no evidence to corroborate their claim that this damage was caused by the cat or the extent of the damage. No move in condition inspection report was in place to

indicate what condition the blinds were in at the start of the tenancy. Therefore, the landlord's application to recover \$500.00 for replacement blinds is dismissed.

The landlords paid \$85.20 to have the appliances inspected after receiving the invoice from the tenants for repair work that was allegedly carried out. As this inspection report confirms the landlord's suspicions that repairs to the appliances were not likely to have been carried out I find the landlords are entitled to recover the amount of **\$85.20** from the tenants.

The landlords have applied to keep the security deposit for repairs to the rental unit. Sections 35(3) and 35(5) of the Act require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection. In failing to conduct the condition inspection report when the tenants moved out, I find the landlord contravened s. 35(3) of the *Act*. Consequently, s. 36(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished. I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the landlord to keep **\$266.01** from the tenants' security deposit and accrued interest in partial payment of unpaid rent and damages.

As the landlords have been largely successful with their claim I find pursuant to section 72(1) of the *Act* that they are entitled to recover their filing fee of **\$50.00** paid for this application. A Monetary Order has been issued to the landlords for the following amount:

Unpaid rent for September, unpaid utilities and cable, less 20% deduction for the tenants (\$205.92).	\$1,353.85
Cleaning costs	\$75.00
Appliance inspection	\$85.20
Filing fee	\$50.00



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Subtotal	\$2,150.23
Less security deposit and accrued interest	(-\$266.01)
Total amount due to the landlords	\$1,884.22

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 **\$1,884.22**. The order must be served on the tenants and is enforceable through the Provincial Court as an order of that Court.

I HEREBY FIND in partial favour of the tenants monetary claim. The tenants are entitled to the amount of **\$205.96** which has been offset against the amount owed by them to the landlords.

The remainder of the tenants application is dismissed without leave to reapply.

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 11, 2010.

Dispute Resolution Officer