

DECISION

Dispute Codes MND MNSD FF
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Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking a Monetary Order for damage to the unit or property, to keep the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking a Monetary Order for the return of their security deposit, money owed or compensation for loss under the Act, and to recover the cost of the filing fee from the Landlord.

Service of the hearing documents by the Landlords to the Tenants was done in accordance with section 89 of the *Act*, sent via registered mail on October 19, 2009. The Tenants confirmed receipt of the Landlords' hearing documents.

Service of the hearing documents by the Tenants to the Landlords was done in accordance with section 89 of the *Act*, sent via registered mail on January 27, 2010. The Landlords confirmed receipt of the Tenants' hearing documents.

Both Landlords and both Tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Landlords' evidence was sent in different packages to the Tenants. The first being sent on October 16, 2009 and the last and largest evidence package sent to the Tenants via registered mail on February 5, 2010.

The Tenants questioned if I would be accepting the Landlords' late evidence as it was not received five days prior to the hearing.

The Landlords advised that the evidence was sent in response to the Tenants' application for dispute resolution which was served to the Landlords via registered mail on January 27, 2010.

Issues(s) to be Decided

Are the Landlords entitled to a Monetary Order for a) damage to the unit or property and b) to keep the security deposit under sections 38 and 67 of the *Residential Tenancy Act*?

Are the Tenants entitled to a Monetary Order for a) the return of their security deposit and b) money owed or compensation for loss under the Act under sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony included that the month to month tenancy began on December 1, 2000 and ended on September 30, 2009; however both parties agreed that the Tenants were given permission to retain possession of the rental unit until either October 3, 2009 or October 4, 2009, whichever day they were able to remove their remaining possessions. The monthly rent was payable on the first of each month in the amount of \$900.00 and the Tenants paid a security deposit of \$450.00 on or before December 1, 2000. There was no move-in inspection report completed nor was there a move-out inspection report completed. The Landlord's listed the rental unit for sale on October 15, 2009.

Landlords' Claim

The Landlords testified that the rental house was built in 1954, that their parents owned the home for many years before the Landlords took ownership in 1997. The Landlords had two separate tenancy agreements prior to entering into a tenancy agreement with these Tenants in 2000.

The Landlords advised that the photos they submitted into evidence were taken anywhere between March 2008 and August 2009. The following is a summary of the Landlords' claim of \$4,525.00 (a detailed copy of which was submitted into the Landlords' evidence) and their testimony: (Note: references to evidence below relate to the evidence accepted in relation to the Landlords' application and not the evidence submitted by the Landlords in response to the Tenants' application)

- a) \$298.98 to repair gutters, drain pipes, and exterior motion lights – The Landlords did not provide receipts of the actual cost to make the repairs and the Landlords could not provide testimony as to the age of the gutters, drain pipe or motion lights. The repair work was completed during the Tenants' tenancy in July or August 2009.

- b) \$417.31 to repair interior walls and ceilings in downstairs room and downstairs washroom – the Landlords could not provide testimony in support of when these walls and ceilings were previously repaired or painted. The repair work was completed after the Tenants' tenancy in October 2009 and there were no receipts provided in the Landlords' evidence.
- c) \$268.00 to remove graffiti off of the garage and window – The Landlords could not provide proof as to when this graffiti was created or by whom. The Landlords argued that the garage was built in 1985 and that exterior was vinyl. The repair work was completed during the Tenants' tenancy in August 2009 and there were no receipts provided in the Landlords' evidence.
- d) \$150.00 to remove garbage from the rental unit – The Landlords argued that they had to remove garbage from the rental unit on August 21, 2009 which was done during the Tenants' tenancy. The Landlord did not submit receipts in support of this claim.
- e) \$662.00 to replace linoleum in the craft room – The Landlords argued that the floor was new in 1985 and was replaced during the week of October 2009, after the tenancy ended. There were no receipts in support of the Landlords' claim.
- f) \$265.00 to repair the wooden garage door – The Landlords' advised that they rebuilt the damaged garage door from an existing wood door at a cost of \$265.00. No receipts were submitted in support of this claim and the work was completed around August 15, 2009 during the tenancy.
- g) \$150.00 to repair the storage shed door. The Landlord argued that the female Tenant agreed that her son damaged the shed door while the female Tenant denied admitting that her son caused the damage. The Landlords could not provide testimony as to the age of the shed door but new that it was older than the garage which was built in 1985. The shed door was repaired sometime in August 2009, during the tenancy, and the Landlords did not submit evidence in support of the cost of the repair.
- h) \$222.00 to repair the vinyl siding on the house– The Landlords believe the siding was new in 1985 however they have no proof of the exact age. The Landlords argued that the Tenants caused the damage however they could not provide definitive testimony or proof of the allegation. The siding was repaired in August 2009, during the tenancy, and there are no receipts in support of the Landlords' claim.
- i) \$220.00 to replace two toilets – The Landlords did not provide proof as to the age of the toilets however they are certain they were both new in 1985 when their father completed the renovations. The Landlords argued that one of the toilets was cracked and the other had a dark stain ingrained in the porcelain. The toilets were replaced in August 2009, during the tenancy, and the Landlords did not provide receipts in support of their claim.

- j) \$800.00 to \$1000.00 was estimated as the costs to repair and repaint three bedrooms and the hallway – The Landlords argued that they removed the carpets and installed laminate flooring and then painted. The Landlords argued that these rooms were painted in 2000 however no evidence was provided in support of this testimony. The work was performed after the tenancy and no evidence was provided in support of the amounts claimed.
- k) \$600.00 to replace the kitchen floor – this floor has not been replaced and the amount is estimated. The Landlords testified that they have no proof that the damage was caused by these Tenants.
- l) \$120.00 for rent – The Landlords argued that the Tenants stayed in the rental unit past September 30, 2009. The Tenants testified and provided evidence in support that they had an agreement with the Landlord that they could have possession until October 3rd or 4th, 2009 because no one else was moving into the unit. The Landlords confirmed that the Tenants had permission to move their possessions out of the rental unit either October 3rd or October 4, 2009.

Tenants' Claim

The Tenants testified that they vacated the rental unit after giving the Landlords written notice, via e-mail.

The Tenants provided the Landlords written notification of their forwarding address on October 6, 2009 and the Landlords confirmed receipt of the Tenants' forwarding address.

The Tenants testified that they are seeking a Monetary Order in the amount of \$2,537.65 which is comprised of the following: (a detailed copy of the Tenants claim was submitted into their evidence)

- a) \$120.00 for compensation for the Tenants moving their possessions out of the rooms so the Landlords' could complete renovations to the rental unit. The Tenants confirmed that they had a verbal agreement with the Landlords to accommodate the renovations.
- b) \$160.00 for compensation to clean up the mess left behind by the Landlords after the renovations. The Tenants confirmed they had an agreement with the Landlord's for the renovations to be completed.
- c) \$376.12 (\$300.00 + \$26.12+ \$50.00) for rent during the renovations while the Tenants were away on vacation, extra utilities used by the Landlords during the renovations, and the cost of an electric fan that the Tenants purchased. The Tenants confirmed that they agreed to allow the Landlords access to the rental unit during their absence to complete the renovations.

- d) \$600.00 – for the Landlord taking over the garage as the Landlords' storage. The Tenants confirmed that they did not provide evidence that the garage was to be utilized solely by the Tenants during the tenancy.]
- e) \$600.00 – for compensation to have to look at a fence painted pink – the Tenants are seeking \$200.00 for each of the three years that the Landlords failed to paint the fence after someone had vandalized the fence. The Tenants argued that they requested several times; in writing and verbally that the Landlords repaint the fence.
- f) \$200.00 – for loss of quiet enjoyment – the Tenants are seeking compensation for the period when the Landlords were completing renovations during their tenancy primarily during August and September 2009.
- g) \$481.53 for the return of the security deposit plus interest – The Tenants argued that the Landlords have refused to return their security deposit and referred to their evidence in support of this claim.

Analysis

Evidence

The Landlords confirmed that they did not send the Tenants their last package of evidence until February 5, 2010, via registered mail. When asked why they waited so long to provide the evidence to the Tenants, the Landlords argued that this evidence was submitted in response to the Tenants' application, which was not served to the Landlords until it was mailed on January 27, 2010.

The Residential Tenancy Branch Rules of Procedure #4.1 b) provides that if the date of the hearing does not allow service of the respondent's evidence to meet the five (5) day requirement of service, then this evidence must be served on both the Residential Tenancy Branch and the Applicant at least two (2) days before the hearing. In this case I find that the Landlords' evidence was received by all parties within the two day requirement for a "respondent" and will only be considered as evidence in response to the Tenants' application.

The remaining testimony and evidence was carefully considered in my following decisions.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage

or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Landlord's Application

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

After careful review of the evidence and testimony before me, in the absence of a move-in or a move-out inspection report, I find that the Landlords have failed to prove that the Landlords' claims stem from damages caused solely by these Tenants.

I also note that the items being claimed are all over the age of 25 five years except for the painting in the three bedrooms and hallway for which the Landlords testified was painted during or before the year 2000. The Residential Tenancy Policy Guideline #37 provides that the useful life of interior paint is four (4) years and there is no useful life greater than twenty-five (25) years. That being said, I find all twelve claims for damages, filed by the Landlords, have exhausted their useful life expectancy and the resulting depreciated value of each item is zero.

With respect to the Landlords' claims for rent of \$120.00 for the period in October 2009, I find that the Landlords and Tenants had a verbal agreement which allowed the Tenants possession of the rental unit until October 4, 2009.

Based on the aforementioned, I hereby find that the Landlords have failed to prove the test for damage or loss, as listed above and I hereby dismiss the Landlords' claim, without leave to reapply.

As the Landlords have not been successful with their application I decline to award recovery of the filing fee.

Tenant's Application

Upon review of the evidence and testimony relating to the Tenants' claims, I find that the Tenants entered into a verbal agreement with the Landlords, allowing the Landlords access to the rental unit to complete repairs and renovations. As both parties were part of this agreement I find that the Tenants have failed to prove the merits of their claims of \$1,256.12 (\$120.00 + \$160.00 + \$300.00 + \$26.12 + \$50.00 + \$600.00) which were directly related to the renovations or storage of the Landlords' materials in the garage. Based on the aforementioned I find that the Tenants' have failed to prove the test for damage or loss, as listed above, and I hereby dismiss their claim of \$1,256.12, without leave to reapply.

The Tenants have claimed \$600.00 for having to look at a fence that was painted pink. While it may not be nice to look at a fence that is half painted pink the color of the fence does not lessen the functionality of it. A claim for something is cosmetically unappealing does not meet the test for damage or loss as listed above and I hereby dismiss the Tenants' claim for \$600.00, without leave to reapply.

The Tenants are seeking \$200.00 for loss of quite enjoyment for the period the Landlords were performing renovations or repairs of the rental unit. It is noted above that I have found that the Tenants had a verbal agreement with the Landlords to allow the Landlords access to the rental unit for the purpose of these renovations or repairs. Based on the aforementioned I find that the Tenants have failed to prove the test for damage or loss, as listed above and I hereby dismiss their claim of \$200.00.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit or file for dispute resolution no later than October 21, 2009. The Landlords filed application for dispute resolution on October 15, 2009.

As I have dismissed the Landlords application above, I find that the Tenants are hereby entitled to the return of their \$450.00 security deposit, in full, plus interest of \$30.71.

As the Tenants have been partially successful with their application I hereby award recovery of the \$50.00 filing fee.

Tenant's Monetary Claim – I find that the Tenants are entitled to a monetary claim from the Landlords as follows:

Return of the Security Deposit	\$450.00
Security Deposit Interest of from December 1, 2000 to February 11, 2010	30.71
Filing fee	<u>50.00</u>
Monetary Order in favor of the Tenants	\$530.71

Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$530.71**. The order must be served on the Landlords 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: February 11, 2010.

Dispute Resolution Officer