FINAL DECISION

Dispute Codes:

MNDC, MNSD, MND, MNR, FF

Introduction

This was a cross-Application hearing.

This reconvened hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for damages to the rental unit, unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant has made Application requesting compensation for damage or loss, return of the deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the reconvened hearing. At the start of the hearing I reminded the parties that they would continue to provide affirmed testimony.

All evidence was reviewed and receipt confirmed by the parties.

Receipt of the tenant's amended Application increasing the monetary claim, was received by the landlord.

Background and Evidence

This tenancy commenced on November 15, 2009; although the date of possession is under dispute. Rent was $2,000.00 per month, due on the fifteenth of each month; a deposit in the sum of $1,000.00 was paid on November 15, 2009. The tenants moved out on December 18, 2009.

The tenants have made the following claim for compensation:

Return double the deposit	2,000.00
Gas bill	313.63
Hydro bill	112.91
Security system costs	563.60
Moving costs	656.25

Trailer costs	200.00
Refrigerator	2,058.60
Washer/dryer	1,859.98
	9,764.97

The landlord has made the following claim for compensation:

Unpaid rent	2,000.00
Administration costs – claim preparation	100.00
	2,447.75

Tenant's Submission:

The tenants did not receive the keys to the rental unit until November 17, 2010; but their security company was given access on November 16, 2009.

The tenants supplied photographs of the home, in support of their claim. The tenants expected the landlord to paint and complete some required repairs prior to the move in date and these repairs were not completed. The tenants submitted that the house was not cleaned prior to move in, that the large refrigerator viewed prior to move in had been replaced with an apartment sized fridge and that the washer and dryer did not work.

The house had a boiler system controlling the radiant heat. For the first ten to twelve days of the tenancy the house was warm, but subsequently problems were experienced with the heat. The tenants testified that the landlord failed to respond to multiple requests that the heat be repaired and that at one point a part for the pump was left at the house, but not installed.

The tenants gave the landlord written Notice on December 4, 2010, ending the tenancy, which was placed in the landlord's mailbox. On December 18, 2010, the tenants gave the landlord another written Notice that they were moving on that date; this note included the tenant's forwarding address. The landlord refused to return to the house to complete a condition inspection. A copy of the December 18, 2010, note was supplied as evidence.

The tenants are claiming costs for gas as he believes the heat system was using gas, but it was not producing any heat. The tenants submitted that the landlord should be responsible for this cost as a result of a failure of the landlord to repair the heat. The tenants did have use of hot water, which operated as part of the boiler system. A copy of a gas bill was submitted as evidence, showing a previous balance of $313.63, for an account at the rental unit which was terminated on December 18, 2009.

As the tenants did not have heat from approximately November 29, 2010; they are claiming the cost of additional hydro, as the result of having to operate heaters in the

rental unit. A copy of a hydro bill from November 15 to December 14, 2009, in the sum of $112.91 was submitted as evidence.

When the tenants moved in they had their own security company install additional sensors and the account was transferred to their company from the landlord's previous service provider. The tenant's provided a copy of the installation invoice dated November 16, 2009. The tenants testified that they had planned to remain in the home and they incurred costs for removal of the system and are therefore entitled to return of that cost.

The tenants moved out of the rental unit as the result of the landlord's failure to make the repairs agreed upon prior to move in. The tenants submitted that water leaked in through the chimney, down a bedroom wall, that a window was cracked, some wallpaper in a bathroom had not been replaced, painting was required, some screw holes were left in walls, mould was present under a sink and in a bathroom, the inside of the fireplace was not cleaned, window seals were broken resulting in fogging windows, there was a stain on the carpet and a hole behind a door. The tenant submitted that all of these little items were to have been repaired.

The tenants submitted a copy of invoices for the purchase of brand new washer and dryer purchased on November 20, 2010. The tenants testified that the landlord failed to repair the rental unit machines, despite their request he do so. The tenants have retained the machines they purchased.

As a result of their dissatisfaction with the rental unit and the landlord's response to their concerns, the tenants were forced to move and, as a result, incurred costs. A copy of a moving company invoice dated December 18, 2009, in the sum of $656.25, was submitted as evidence. The tenants have claimed $200.00 for the cost of a trailer, used in moving.

The tenants supplied copies of typed notes in relation to estimates for repairs:

- that on November 21, 2009, a contractor attended at the home and provided estimates for work to be competed inside and that on December 4, 2010, the tenant told the contractor that the home owner refused to pay for repairs;
- that on November 22, 2009 a roofer was contacted and repairs were made to the roof; and
- that on December 12, 2009, the security system was restored to its original condition by an installer.

These notes were all signed and dated by the tenant, with second signatures, which were illegible.

Landlord's Submission:

The landlord gave the tenants the keys on November 15, 2009, and the tenants had their security system installed the next day.

The landlord provided photographs of the home and boiler heating system. The heating system was in full working order when the tenants moved in to the rental unit and the landlord suspected the tenants had turned off the switch to the system, in an attempt to save on gas costs.

The landlord provided copies of documentation from his heating company dated May 31, 2010 which indicted that some minor repairs were addressed on October 31, 2009, and that the radiant hot water heating system was in full working order. Just after November 15, 2010, a new actuator motor was installed and that the only way the house would not have had heat would be if someone turned off the main switch.

The landlord submitted that a heating technician had attended at the home, in response to the tenant's complaints. The landlord submitted a copy of a February 18, 2010, invoice which indicated a visit was made to the home on November 3, 3009, to check the system and that the system was again checked on December 14, 2009. A note from the technician indicated that on December 14, 2009, they discovered that the system pump was not working, that it had been turned off, that this had occurred on several occasions over the past 2 weeks and that the system had to be checked for airlocks.

The landlord testified that if the hot water was working then the radiant heat would have been functioning, as the hot water ran off of the radiant boiler system.

The landlord acknowledged that he did replace the original refrigerator with a brand new, 18 cubic foot unit. The washer and dryer worked and the new tenants, who moved in after December 18, 2009, have reported no problems with either machine.

The landlord supplied copies of six months of cleaning service receipts for the house; demonstrating that he had this service on a weekly basis, prior to renting the house. The house was clean; everything was painted and was operational at the start of the tenancy. The wall in the bedroom had experienced some leaks in the past and had not recently had any problems. This wall was painted after the tenants moved and there was no evidence of any moisture.

The landlord questioned the typed notes submitted by the tenant as evidence of the security costs, estimates for work and roof repair. The landlord pointed out that these notes contained no business letterhead, no names or dates and appeared to be unreliable.

The landlord did not receive Notice on December 4, 2009, and first learned that the tenants were moving out on December 18, 2009, when the male tenant came to his home and handed him the keys and a plastic bag, which contained the Notice dated

December 18, 2009. The tenants refused to attend at the rental to unit to complete a condition inspection report.

The landlord is claiming unpaid rent for the period December 15 – January 14, 2010.

The landlord has also claimed costs incurred in preparation for the hearing and for reinstallation of the security system; no receipts were provided for these items.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation is the reason the party making the application incurred damages or loss;
3. Verification of the amount of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 7 of the Act provides:

> ***7*** *(1) 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 damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

In other words, a party must take steps to attempt to minimize any loss they might claim, by attempting to reach a resolution and allowing the respondent a reasonable opportunity to address the problem.

I have considered the tenant’s submission that the home was in a state that required cleaning and repair and find, on the balance of probabilities, based upon the conflicting photographs and testimony, that the rental unit was not in a state that would require the tenants to move out of the unit without providing the landlord with Notice, as required by section 45 of the Act.

Based upon the conflicting testimony and the balance of probabilities, I find that the heating system was operational and, that even if there were problems with the system,

it is possible this was due to the pump having been switched off. I also base this decision on the invoices supplied by the landlord which indicated that the system was fully operational and that repairs were made prior and during the tenancy. Further, the tenants submitted they had heat until approximately November 29, 2009 and that they gave Notice on December 4, 2009. This would have allowed the landlord only 4 days to respond and would have meant the tenant's had heating problems for a very short period of time. I find that the tenant's claim of Notice given on December 4, 2009, would have failed to provide the landlord with an opportunity to mitigate the loss now being claimed.

I find that the tenants had the benefit of gas and hydro services during their tenancy and that they are responsible for those costs. There is no evidence before me that the tenants were without heat, no evidence of costs related to running fans and no evidence that the heating system used gas, while it was inoperable, as claimed by the tenants. Therefore, the claim for utility costs is dismissed.

There is no evidence before me that the tenants incurred any cost in having the security system removed. The tenants voluntarily chose to have additional sensors installed and any costs related to this system should not be borne by the landlord. I can see no breach of the Act in relation to this claim and no verification of the cost of system removal; therefore this portion of the claim is dismissed.

In relation to the tenant's claims that repairs were required, I find the hand-written notes submitted by the tenants as evidence of professional assessments and repair, questionable. These notes, which the tenant claimed had been signed by professionals, were all typed in the same form, not on letterhead and did not provide a printed name or legible signature. The landlord raised the issue of the veracity of these notes and I find his concern has some weight; leading me to discount those notes as having any value.

The tenants chose to purchase a new washer and dryer only 5 days after the tenancy commenced and then took the machines with them. If I were to accept that the tenants took possession of the unit on November 17; then the tenants obtained new machines within the first 2 days of the tenancy. There is no evidence before me that the machines in the rental unit did not work and I find, on the balance of probabilities; that the claim for replacement machines is without merit. I also base this decision on the fact that the tenants have kept the machines; thus they have not suffered a loss.

Section 45 of the Act provides, in part:

> ***45*** *(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*
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> > *(a) is not earlier than one month after the date the landlord receives the notice, and*

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the written Notice given on December 18, 2009 was effective February 14, 2010. There is no evidence before me that any written Notice was given on December 4, 2009, and given the disputed testimony, I find that the only written Notice was given on December 18, 2009.

I find that there is no basis for the tenant's claim requesting return of rent paid for November to December, 2009. I base this on the failure of the tenant's Application in relation to the reasons for ending the tenancy without proper Notice, as provided by the Act.

I find that the tenant's claim for moving and trailer costs is dismissed, as the tenants were in breach of the Act when they failed to give proper Notice. The tenants chose to move out without providing the landlord a reasonable opportunity to address concerns and I find that some of those concerns were either unfounded or had been addressed.

In relation to return of the deposit paid, section 38(1) of the Act provides, in part:

38 *(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and
(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit

Section 38(6) of the Act provides:

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

On December 18, 2010, the landlord was given the tenant's written forwarding address. The landlord submitted an Application claiming against the deposit, on June 3, 2010; which exceeded the period of fifteen days from February 14, 2010; the effective end

date of the tenancy. Therefore, I find that the tenants are entitled to return of double the deposit paid.

Therefore, I find that the tenants are entitled to the following:

	Claimed	Accepted
Return rent paid	2,000.00	0
Gas bill	313.63	0
Hydro bill	112.91	0
Security system costs	563.60	0
Moving costs	656.25	0
Trailer costs	200.00	0
Refrigerator	2,058.60	0
Washer/dryer	1,859.98	0
	9,764.97	2,000.00

I have found that the tenancy effective end date, based upon the written Notice given by the tenants on December 18, 2009; was February 14, 2010. Therefore, I find that landlord is entitled to unpaid rent in the sum of $2,000.00 claimed for the period of December 15 to January 14, 2010.

The landlord did not provide any verification of the costs incurred in relation to reinstallation of his security system; therefore; I dismiss that portion of his claim.

The landlord has not provided any verification of any administrative costs in relation to this Application. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but “costs” incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is denied and the landlord is at liberty to write them off as a business expense.
Therefore, I find that the landlord is entitled to the following:

	Claimed	Accepted
Reinstallation cost for security system	347.75	0
Administration costs – claim preparation	100.00	
	2,447.75	2,000.00

As each Application has merit I decline filing fees to either party.

Conclusion

The tenant's claim for compensation is dismissed.

The tenants are entitled to return of double the deposit paid in the sum of $2,000.00.

The landlord's claim for compensation is dismissed.

The landlord is entitled to payment of rent in the sum of $2,000.00

The amounts owed by each party are set-off; therefore, a monetary Order is not required.

Neither party is entitled to filing fee costs.

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 29, 2010.

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Dispute Resolution Officer