

DECISION

Dispute Codes MND MNSD MNDC FF SS
 MNDC MNSD FF

Introduction

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

The Landlords filed seeking an Order to serve documents or evidence in a different way than required by the Act and for a Monetary Order for damage to the unit, site or property, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenants for the cost of this application.

The Tenants filed seeking a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, the return of all or part of the pet and or security deposit, and to recover the cost of the filing fee from the Landlords for the cost of this application.

Service of the original and amended hearing documents by the Landlords to the Tenants was done in accordance with section 89 of the Act, sent via registered mail on May 17, 2010, and September 23, 2010 respectively. 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 August 5, 2010. The Landlords confirmed receipt of the Tenants' hearing documents.

The parties appeared, acknowledge receipt of the evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Are the Landlords entitled to serve documents in a manner other than what is required under the Act under section 71 of the *Residential Tenancy Act*?

Have the Landlords proven entitlement to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Have the Tenants proven entitlement to Orders under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the tenancy agreement was effective December 1, 2006, for an initial fixed term that was renewed up to June 30, 2008, after which switched to a month to month tenancy. Rent was payable on the first of each month in the amount of \$1,200.00 and the Tenants paid a security deposit of \$600.00 on November 5, 2006. A move in inspection report was completed on December 1, 2006 and no move-out report was completed at the end of the tenancy.

Landlords' testimony

After clarification of what substitute service meant the Landlords withdrew their request for substitute service. They confirmed they are seeking a monetary order of \$15,168.00 and some of the items being claimed are also going through their insurance claim.

The Landlords confirmed the Tenants provided them with verbal notice in March 2010 that they had purchased a house, for which they would be getting possession on April 22, 2010, and that they would be vacating the rental unit at the end of April 2010.

The rental unit was purchased by the Landlords in February 2006, just after it was freshly painted throughout. It was occupied by a previous tenant until November 1, 2006. The Landlords had the carpets steam cleaned on November 5, 2006. The rental house was built sometime in the early 1970's. The Landlords did not have work or maintenance performed on the rental unit prior to the Tenant's occupying the unit December 1, 2006. The Landlords did not know the age of any of the contents of the house and confirmed that everything, including the window blinds, were present at the time they took possession in February 2006.

A new tenant has occupied the rental unit since April 30, 2010.

The Landlords are seeking compensation as follows:

- 1) \$1576.80 to replace the carpet in the basement. The Landlords removed the basement carpet and replaced it with carpet tiles prior to the new tenant taking possession. They estimate the cost of these carpet tiles to be approximately \$500.00. They did not submit receipts for this as they are seeking the cost to replace the carpet and the amount claimed here is based on an estimate. The carpet and underlay has not been replaced to date.
- 2) \$1,000.00 for the cost to replace the carpet in the three bedrooms. These carpets have not yet been replaced and the amount claimed is an estimate.
- 3) \$410.00 to replace seven window blinds. Four of the blinds have been replaced for the two bedrooms however the Landlords did not submit receipts in support of this claim. The remaining blinds have not been replaced.
- 4) \$883.00 for the cost to replace the kitchen counter. This counter has not yet been replaced however the Landlords argue it was damaged because the

Tenants let the sink overflow onto the counter and floor. The amount claimed is an estimate.

- 5) \$300.00 for cleaning costs. The new tenant was hired by the Landlords to clean the rental unit at a cost of \$300.00 as supported by the invoice provided in the Landlords' evidence.
- 6) The Landlords are seeking \$200.00 for oil replacement. They stated that they expected the Tenants to replace the oil for the furnace to the same level it was when they first took occupancy. They confirmed there is nothing in writing pertaining to the requirement for oil in the tank at the end of the tenancy and they confirmed that they have not paid to put oil in the tank. The new tenant paid to have oil put in the tank.
- 7) The Landlords stated they have filed two insurance claims to cover the costs to replace and install the kitchen flooring (\$5585.44 + \$1,865.34) and the cost to repair the damage of the exterior of the house (\$739.66). Each insurance claim will cost the Landlords a deductible of \$500.00. They are seeking reimbursement for the \$1,000.00 in deductible and confirmed that these amounts have not yet been paid. They did not provide documentation in their evidence in support of these amounts.
- 8) \$100.00 to recover the cost of the filing fee from the Tenants.

The Landlords argued that although the tenancy agreement was effective December 1, 2006, the Tenants occupied the unit as of November 18, 2006. The Landlords are of the position that they completed repairs when notified of what was required and that the deck was finished with a product normally used on decks. In response to the Tenant's evidence about a \$50.00 rent increase that was to cover their increased usage of utilities.

The Landlords provided the Tenants with at least five days notice to show the home to prospective tenants and at no time did they say the house looked amazing. The new tenant has never had any problems with the dishwasher. The Tenants told the Landlords that they had possession of their new home on April 22, 2010, so the

Landlords planned to attend the rental unit on April 23, 2010 to do repairs. They did bring their tools and air mattresses etc. and did camp inside the rental unit from April 23, 2010 until the police were called the evening of April 28, 2010 after which they packed up and left by 10:00 p.m. that night. They only moved into the rental unit when they arrived because the Tenants had already moved out most of their possessions.

The Landlords returned to the rental unit on April 30, 2010 at 1:00 p.m. There was no move-out inspection completed as the Tenants declined to attend as noted in their e-mail provided in the evidence. The Tenants' father attended around 2 or 3 p.m. and returned the keys to the Landlords.

Tenants' testimony

The Tenants are seeking a monetary claim of \$1,533.33 which consists of \$333.33 for recovery of April 2010 rent (8 days x \$41.66 per day) plus double the return of their security deposit of \$1,200.00 (2 x \$600.00).

The Tenants stated that the Landlords just showed up at the rental unit on April 23, 2010 to move in and begin to complete repairs to the unit. The Tenants were in the process of moving their possessions out of the unit only to find the Landlords moving in and ripping the deck and other areas of the rental unit apart.

It is the Tenants' position that the Landlords are asking for them to pay for the renovations on a house that has not had regular maintenance to it. The Landlords only fixed things as they broke. They gave the Landlords two months notice they were moving out and it was the new tenant who wanted the renovations completed before they would take possession of the unit. The Tenants cleaned the carpets in the basement and would have cleaned the upstairs had the Landlords not moved into the house began ripping it apart for construction and smoked inside house.

The Tenants questioned the validity of the Landlords' evidence because during their tenancy the Landlords removed the ivy from the front of the house yet some of the

photos provided in their evidence show the ivy. The Tenants suggest that some of these photos were taken prior to their tenancy and some after so how could it show damage allegedly caused by them. They also pointed out that the paint on the exterior of the house is different in some of the photos.

The Tenants believe they should have the return of double their security deposit for lack of maintenance on the rental unit and for having the loss of comfort for the last eight days of their tenancy.

The Tenants testified that at no time during their tenancy did the kitchen sink overflow onto the floor or countertop. The counter top trim required replacement at the beginning of the tenancy as noted on the move-in inspection report which supports the condition of the counter at the beginning.

Landlord's closing statement

The Landlord testified that all of the photos were taken between the dates of April 27 and April 30, 2010.

Analysis

The documentary evidence I have considered in this decision is: photos of the interior and exterior of the rental unit, the move-in inspection report, e-mails between the Landlords and Tenants, written statements from the Landlords and the Tenants, a RCMP report, and an invoice for cleaning of the rental unit.

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

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.

Landlord's claim

The Landlords' claim is for \$15,168.00 in damages however when the Landlords provided a breakdown of the items they were claiming these totaled \$13,660.24 and were comprised of items put through their insurance of \$8,190.44 (\$5585.44 + \$1865.34 + \$739.66) and items not put through insurance totaling \$5,469.80 (\$1576.80 + \$1,000.00 + \$410.00 + \$883.00 + \$300.00 + \$200.00 + \$1,000.00 + \$100.00)

Landlords can only be compensated for damages or loss through one source. The testimony supports the Landlords' have claimed the replacement and installation of the kitchen floor and the repair to the exterior of the house through their insurance therefore I dismiss their claim of \$8,190.44 for the aforementioned items being covered through their insurance.

The Landlords have sought \$1576.80 to replace basement carpeting. This amount is based on an estimate and the carpet has not been replaced. The evidence supports the

Landlords removed the carpet and replaced it with carpet tiles however they did not submit receipts to support the date when this carpet was replaced or at what cost to the Landlord. There is no evidence to support the age of the previous carpet. Based on the aforementioned I find the Landlords failed to provide sufficient evidence to prove the test for damage or loss in the amount of \$1576.80; therefore this amount is dismissed.

The Landlords have sought \$1,000.00 for carpet replacement in 3 bedrooms, there is no indication of the age of the existing carpet, and the carpet has not been replaced. A new tenant occupies the unit therefore the actual need to replace the carpet is at question. \$883.00 is claimed for kitchen counter replacement, the age of the counter is unknown however based on the photos it appears the counter is from the late 1970's or early 1980's, the counter is noted on the move-in inspection report as requiring repair to the trim, the counter has not yet been replaced, a new tenant occupies the unit, and this amount is based on an estimate. A claim of \$200.00 for heating oil has been sought by the Landlords however the Landlords did not purchase this oil and therefore have not suffered the loss. There is insufficient evidence to support the Tenants were required to provide or supply oil in the tank at the end of the tenancy. Upon review of these three claims I find the Landlords have failed to provide sufficient evidence that they have satisfied the test for damage or loss, as listed above, and I hereby dismiss their claim of \$2,083.00 (\$1,000.00 + \$883.00 + \$200.00).

\$410.00 has been claimed to replace seven window blinds. The age of the existing blinds is unknown and only four of the seven blinds have been replaced. The Landlords did not provide evidence to support that four of the blinds have been replaced and at what cost, therefore I find there is insufficient evidence to support the test for damage or loss, and I hereby dismiss their claim of \$410.00.

The evidence supports that the rental unit required cleaning at the end of the tenancy. While I understand that the relationship between the parties had broken down by then it does not preclude the Tenants from complying with section 37 of the Act which states that a tenant vacates a rental unit the tenant must leave the rental unit reasonably

clean. The Landlord has provided evidence to support they suffered a loss of \$300.00 for cleaning costs at the end of the tenancy. Therefore I approve the Landlords claim of \$300.00 for cleaning the rental unit.

The Landlord has sought reimbursement of \$1,000.00 to compensate for two deductibles of \$500.00 paid for their insurance claims. The Landlords confirmed they have not yet paid these amounts nor is there evidence to support that two claims have been filed with their insurance provider. Therefore I find the Landlords have failed to provide sufficient evidence to support their claim and I hereby dismiss their request for \$1,000.00 compensation for insurance deductibles.

The Landlords have been partially successful with their application therefore I award recovery of \$50.00 from the \$100.00 filing fee.

Tenants' claim

The evidence supports the Tenants paid the full \$1,200.00 for April 1, 2010, rent which entitles them to exclusive possession of the rental unit, free from unreasonable disturbance, and reasonable privacy, until the end of the tenancy on April 30, 2010, in accordance with Section 28 of the Act. In this case the Landlords violated section 29 of the Act when they appeared at the rental unit on April 23, 2010 and moved in temporarily to complete repairs. The Landlords moved into the rental unit, amongst the Tenants' remaining possessions, prior to the expiry of the tenancy agreement. Based on the aforementioned I find the Tenants have proven the test for damage or loss and are entitled to reimbursement of their April 2010 rent in the amount of \$333.33.

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 Tenants never provided the Landlords their forwarding address in writing, the tenancy ended April 30, 2010, and the Landlord filed for dispute resolution on May 17, 2010,

once they received a service address for the Tenants through their insurance company on May 11, 2010. Therefore the Tenants are not entitled to the return of “double” their security deposit as the Landlords were not required to return the security deposit until after a decision was made on their application for dispute resolution.

Section 35 of the Act sets out the requirements that must be followed by the landlord and the tenant regarding a move-out inspection and how it is to be completed at the end of the tenancy. The evidence supports the Tenants declined to attend a move-out inspection in one e-mail sent to the Landlords however there is no evidence to support the Landlords offered the Tenants at least two opportunities to attend the inspection or that the Landlords issued a final written notice of inspection, as required under sections 35 and 36 of the Act. Therefore the security deposit and interest will be used to offset the monetary award to the Landlords in accordance with section 72 of the Act.

The Tenants have been primarily successful with their application, therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants’ security deposit as follows:

Cleaning costs	\$300.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlords)	\$350.00
Less Security Deposit of \$600.00 plus interest of \$18.62	- 618.62
TOTAL OFF-SET AMOUNT DUE TO THE TENANTS	\$268.62

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

Reimbursement of April 2010 rent	\$333.33
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Tenants)	\$383.33
Plus balance due of security deposit and interest from above	268.62
TOTAL AMOUNT DUE TO THE TENANTS	\$651.95

Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$651.95**. The order must be served on the respondent 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: October 04, 2010.

Dispute Resolution Officer