Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND MNR MNDC

Introduction

This hearing convened on October 4, 2010, and reconvened for the present session on November 09, 2010. This decision should be read in conjunction with my interim decision of October 5, 2010.

At the onset of the hearing the Landlord's legal counsel advised that the male who has attended today's hearing is the Landlord's common law spouse and has acted as Landlord in this case. Both Landlords provided affirmed testimony during this hearing.

Issues(s) to be Decided

1. Is the Landlord entitled to receive compensation for damages to the unit, site or property?
2. Is the Landlord entitled to compensation for unpaid rent or utilities?
3. Is the Landlord entitled to compensation for loss under the Act, regulation or tenancy agreement?

Background and Evidence

The Landlords provided clarification of what their claim consists of as follows:

1) $300.00 for the cost to clean the rental unit and sort out the Landlords' possessions which have been stored in the garage. The Tenants vacated October 31, 2009, and the Landlords' contractor attended the unit on November 2, 2009 to secure and winterize the property. The Landlords have been residing in a different city and have only attended the unit once since then which was for approximately one hour in April 2010. Therefore this amount is an estimate of how long it will take the Landlords to sort through, clean, and move their possessions back into the house at a rate of $10.00 per hour.
2) $400.00 to replace damaged doors. When asked which doors were damaged the Landlords provided testimony pertaining to only one exterior door located in

the basement. They stated the door was a metal door which appeared to be kicked in as it was bent. This cost is an estimate to replace the door. The existing door is still in use after the contractor straightened the door back in November 2009.

3) $250.00 to remove and reinstall additional locks and deadbolts on five exterior doors. The Landlords argue that keys were broken off in all of the locks when the contractor attended the rental unit on November 2, 2009. There are two locks which still require changing and this amount is an estimate cost to replace those two.
4) $150.00 for missing window coverings and blinds. The Landlords stated that they had purchased window blinds two years prior to the tenancy and confirmed they did not provide evidence to support this. The window coverings and blinds have not yet been replaced and this amount is an estimate.
5) $510.00 for damaged tiles and paint. The Landlords left boxes of tiles and some unused paint in the rental unit which have now been damaged. The items have not been replaced and this amount is an estimated cost.
6) $105.60 for travel costs incurred by the Landlords to attend the rental unit at the end of September 2009.
7) $1,000.00 to replace the Landlords' leather couch and loveseat which were left inside the rental unit. The Landlords claim the couch and loveseat were purchased in 2003 and confirmed they have not yet been replaced. This amount is an estimate of what a couch and loveseat may cost.
8) $50.00 for the cost to replace the broken glass on the stereo cabinet. The Landlords state the cabinet was approximately 8 years old and this amount is an estimate as the glass has not been replaced.
9) $150.00 to replace a two door cabinet and book shelf. The Landlords claim this shelf was approximately two years old and is estimated to cost $150.00 to replace.
10) Unpaid rent of $1,250.00 ($750.00 for August, $250.00 partial unpaid for September, and $250.00 partial unpaid for October). The Landlord argues she did not receive rent of $600.00 plus $150.00 (the amount deducted for labour) plus the balance of labour ($150.00 x 2) for September and October and the $100.00 short payment of rent for each month. The Tenants paid only $500.00 towards rent on September 9, 2009 and again on September 30, 2009.
11) $375.94 unpaid utilities which include the hook up fee of $306.00.
12) $1,011.84 to reimburse the Landlords for their contractor's invoice of November 5, 2009 when the contractor attended on November 2, 2009 and November 3, 2009 to winterize and secure the property.
13) $385.00 to cover the cost of the electrical permit which lapsed because the electrical work was not completed by the required date.

14) $498.62 ($220.35 for motel, $188.27 fuel, $90.00 meals) in travel costs which were incurred by the Landlord when she attended the rental unit on September 28, 2009. The Landlords reside in another city and the rental unit is located 88 kms outside of the nearest town where the Landlords had to stay during their visit. They argued that the RCMP instructed them to attend and inspect the rental unit because they received reports that there was a large increase in the consumption of hydro.
15) $2,000.00 to cover the Landlords' legal fee costs. The Landlords are of the opinion that they are entitled to recover these costs given the malicious nature of the damages.

The Landlords testified that the Tenants wanted to move into the unit right away so on July 25th and 26, 2009 the Landlords rushed to move out their personal possessions and left town. They communicated with the Tenants through the Tenants' father as he was the only one who had a telephone. They provided the Tenants with their bank account and hydro account information during a telephone conversation on August 6, 2009. The Landlords also left the keys to the rental unit with the Tenants' father. They state they spoke with the father in August 2009 and that he confirmed the Tenants had already moved in and were working on building a deck. The Tenants' father waited until August 31, 2009, to call the Landlords to advise that the Tenants would not be paying $600.00 for rent and only wanted to pay $450.00. The Landlords called back on September 1, 2009 at approximately 9:00 a.m. and left a message on the father's answering machine instructing the Tenants not to move in. The female Tenant called them back at 9:44 a.m. and told the Landlords they had already moved in when they agreed that rent would be $600.00 per month. The Landlords confirmed that no police reports were filed for vandalism to the rental property after they were advised of the condition of the property, nor have the Landlords attempted to claim their losses through their insurance.

The Tenants testified that they were only ever given 3 keys to the rental unit and the Landlord has confirmed the return of these three keys, so how could they have broken the keys off in five locks. They confirmed they vacated the rental unit on October 31, 2009 and have not returned. The exterior basement door was already dented before they took possession of the rental unit. They confirmed that they moved the tiles into the basement, out of their way, and that they did not break any of them. There were a few broken tiles at the onset of their tenancy and they took care to move them as they were into the basement. They referred to the Landlord's photographic evidence in tab 7 on page 9 as support of their statement that only the top couple of tiles were broken. As for the Landlords' property, they had a verbal agreement that the Tenants were to move the Landlords' property into the shed however the shed was already filled so they

moved the articles into the garage. The Landlords had vacated the property leaving numerous items inside including kitchen dishes and articles left inside the cupboards. All of these items were packed up and relocated as per their agreement. The male Tenant wanted to correct his previous statement to read that he called hydro on September 9, 2009 and requested that they back date the hydro account to September 1, 2009 and put it in the Tenants' name. The Tenants confirmed that their verbal agreement included that they were supposed to put the hydro in their name and pay 100% of the hydro cost but that there was never any mentioned of a hydro hook up fee. They restated their argument that the Landlord's photographic evidence is comprised of photos from her past photo collection and pointed out that the 2x4 referred to in the contractor's invoice was already nailed to the wall in the Landlords' "before" photos.

The female Landlord initially stated that she left 16 keys with the Tenants' father. She confirmed there was no evidence to support that she left the father with all of these keys and then stated the father was minding the house from May 2009 onwards. She confirmed that no one attended the rental unit on October 31, 2009 on the Landlords' behalf. The Landlords' contractor attended November 2, 2009 and one other day shortly afterwards and then no one attended to check on the property until April 3, 2010 when the Landlord attended for one hour to take a quick inspection of her possessions.

Analysis

Each participant submitted a voluminous amount of documentary evidence all of which has been carefully considered, along with the testimony, in making my decision.

A "**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. That being said, in the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

I heard disputed testimony as to the terms of this tenancy agreement which included the Landlords' allegations that the Tenants entered into a contract for services to finish the construction to the rental unit. In the absence of a written tenancy agreement, and in the presence of the disputed testimony, I decline to rule on any matters pertaining to an

alleged contract for services to complete construction on the rental unit. There is insufficient evidence to support that a contract for services was substantially linked to the payment of rent. Contract for construction services are not provided for under the *Residential Tenancy Act*.

In determining the onset of this tenancy I have considered and questioned that if the Tenants had occupied the rental unit since the end of July 2009, then why did the Landlords not issue a 10 Day Notice in August 2009 when rent was not paid? Then I considered testimony relating to the telephone conversations which took place on August 31, 2009 and September 1, 2009 whereby the parties were discussing the amount of rent to be paid when the Landlords left a message on September 1, 2009 advising the Tenants not to move in. Then I reviewed the testimony pertaining to the 10 Day Notice which was not issued until September 10, 2009, for which the Tenants promptly applied to dispute the Notice. This request to dispute the Notice brings questions forward pertaining to the contents of the Notice. I also considered the hydro invoice of October 5, 2009 which clearly indicates the Landlord's account was discontinued as of August 31, 2009. Given the evidence before me, I place more weight on the Landlords' testimony pertaining to the telephone conversations which took place August 31 and September 1, 2009, plus the written statements provided by the Tenants' witnesses of the dates they assisted the Tenants in moving in. (Note: It is not an uncommon practise for tenants to occupy a rental unit a day or two prior to the onset of the tenancy). Based on the aforementioned I find that on a balance of probabilities the Tenants did not occupy the rental unit until the end of August 2009 and therefore the effective date of the tenancy was September 1, 2009.

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

The Landlords have breached section 23 of the Act when they failed to complete a move in inspection form and section 35 of the Act when they failed to complete a move out inspection form. In this case I find there to be overwhelming evidence that this rental unit was in a state of incomplete construction. There is undisputed testimony that the Landlords left town prior to removing and properly storing their possessions. They left it up to the Tenants to pack and store the Landlords' possession without providing the Tenants clear instructions, in writing, as to how or where they wanted the articles stored. The Landlords made the choice to reside in a different city and made no effort to have an Agent attend the rental unit on their behalf on October 31, 2009. Instead they had a contractor attend two days later to secure and winterize the property.

The Landlord has left the rental unit uninhabited for the past 13 months and is seeking an estimated amount of $300.00 to cover the cost to clean and sort through the Landlords' personal possessions. Any property that has been left unattended for over a year would require cleaning and there is insufficient evidence to support the Tenants should be responsible for such a cost. I note that there is no provision in the Act which provides a landlord compensation to unpack and clean the landlord's possessions which were stored on the property. Based on the aforementioned I hereby dismiss the Landlords' claim of $300.00.

In the absence of move-in or move-out inspection reports and in the presence of disputed testimony I find the Landlords have provided insufficient evidence to support that any doors were damaged during the tenancy. Estimating a cost to replace a door, without providing evidence to support the age and cost of the existing door, or without providing sufficient evidence to support that it was damaged during the tenancy, does not meet the test for damage or loss as listed above. Therefore I hereby dismiss the Landlords' claim of $400.00.

In reviewing the contractors November 5, 2009 invoice I note that while he mentions that he replaced locks and installed padlocks and winterized the property, he also notes "basement door damaged". There is no mentioned on his invoice that the locks were required to be changed because the existing locks were damaged or that there were keys broken in them. I have considered that if the Tenants returned the keys to the rental unit to the Landlord on October 31, 2010, and the Landlords reside in another city, how the contractor was expected to gain access to the rental unit two days later without the keys. After considering that the rental property is several kilometres out of town and considering the Landlords' testimony that the contractor was hired to "secure

and winterize the property", I question if the contractor was originally hired to change all the locks to prevent the Tenants or anyone else from gaining entry to the rental unit with the pre-existing keys and to winterize the property. I also must consider the fact that the Tenants vacated the property October 31, 2009 and no one attended the property on behalf of the Landlords until November 2, 2009. This left the property unattended and vulnerable for anyone to attend and cause the alleged damage to the locks. The Landlords' photos show that the door handles and locks were removed however there are no close up photos which display a straight on view of the key holes to support that keys were broken off in them. Based on the aforementioned and in the presence of the Tenants' opposing testimony, I find the Landlords' have provided insufficient evidence to support their claim of $250.00 to replace two remaining locks.

In the absence of a move-in and move-out inspection reports and in consideration of the state of construction of the property and that the Landlords possession are currently stored in the shed and the garage, I find the Landlords have provided insufficient evidence to support that window coverings and blinds are missing. I note also that the photos provided by the Landlords display a few windows that do not have window coverings installed. There was no testimony or evidence provided to support which windows the claimed coverings were removed from. Therefore I dismiss the claim of $150.00 for window coverings.

There is photographic evidence that two flooring tiles are broken however there is insufficient evidence to support if these two tiles were broken prior to or during the tenancy. The Landlord claims there were boxes of tiles broken yet there are no photos to support such a claim. There is the request for the cost of paint however there is no evidence to support the actual cost of the paint or if the paint was damaged during the tenancy. Therefore I find the Landlords have not proven the test for damage or loss and I dismiss their claim of $510.00.

The Landlords have chosen to live in a different city and to acquire the services of a lawyer to assist with their claim. There is insufficient evidence to support the Landlords' opinion that the Tenants' actions were malicious and therefore the Landlords should be entitled to reimbursement of their legal fees. I find that because the Landlords have chosen to incur these costs they cannot be assumed by the Tenants. This dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. I note that *Black's Law Dictionary, sixth edition*, defines costs, in part, as:

> *A pecuniary allowance....Generally "costs" do not include attorney fees unless such fees are by a statute denominated costs or are by statute allowed to be recovered as costs in the case.*

Therefore, I find that the Landlords may not claim legal fees and costs for being absent Landlords, as they are costs which are not denominated, or named, by the *Residential Tenancy Act.* Based on the aforementioned I hereby dismiss the Landlords' claim of $2,105.60. ($105.60 + $2,000.00).

The Landlords are seeking $1,000.00 to replace a couch that based on the "after" photos appear to have suffered damage. I note that the "before" photos do not provide a clear view of the couch and loveseat in the areas that suffered the damage. In the absence of move-in and move-out inspection reports, and in the presence of the Tenants' opposing testimony I find there is insufficient evidence to support the couch and loveseat incurred damage during the tenancy. Therefore I find the Landlords have not proven the test for damage or loss, as listed above and I hereby dismiss their claim of $1,000.00.

A total of $200.00 has been claimed as an estimate to replace a broken glass on a stereo cabinet ($50.00) and to replace a two door cabinet ($150.00). The "before" and "after" photos do not provide sufficient evidence of the age and condition of these articles before and after the tenancy. I also note that these were personal articles of the Landlords and in the absence of clear instructions of how and where to store these items the Tenant cannot be held responsible for any damage that may have been caused due to the storage of these items. In the absence of a move-in and move-out inspection report and in the presence of the Tenants' opposing testimony I find there is insufficient evidence to support these items suffered damage during the tenancy and I hereby dismiss the Landlords' claim of $200.00.

As stated above I decline to hear matters pertaining to the alleged contract of service for construction work in exchange for either $150.00 or $250.00 in a reduction of rent. The Landlords argued the base rent was to be $600.00 while the Tenants argue it was supposed to be $500.00. As noted above, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. I have considered the documentary evidence which supports the Tenants made two payments of $500.00 each towards rent. One payment on September 5, 2009 for September rent and another on September 30, 2009 for October rent. I cannot give weight to the 10 Day

Notice to End Tenancy as an indication of what the monthly rent was to be as this Notice was disputed by the Tenants. In the presence of opposing testimony and in the absence of any definitive evidence to support that rent was not $500.00 per month I hereby dismiss the Landlords' claim for unpaid rent for August, September and October 2009. Having found above that the tenancy began September 1, 2009, I find the Tenants have paid their rent in full for September with their September 5, 2009 payment, and October with their September 30, 2009 payment.

The Landlords' testimony supports the hydro was connected in July 2009 however the electrical permit was issued February 19, 2009 and states the contractor needs power to complete renovations. There was no documentary evidence provided which indicates the actual date or cost incurred to hook up the hydro. I heard undisputed testimony that the Tenants were responsible for the cost of the use of hydro during their tenancy however there is opposing testimony as to who was responsible for the hook up costs of $306.00 which was incurred prior to the tenancy. In the absence of definitive evidence to support the Tenants had agreed to pay the hook up charge I hereby dismiss the Landlords' claim of $306.00. After careful review of the hydro bills submitted in the Landlords' evidence I note that these invoices relate to past due amounts for billing periods between August 1, 2009 and September 9, 2009. The most recent invoice dated October 5, 2009 confirms the Landlords' account has been adjusted and states "Your account closed on Aug 31, 2009. This is an adjusted bill and replaces any bill(s) you may have received after Aug 05, 2009" This supports the Tenants testimony that the hydro account was initially put in their name as of September 9, 2009 and was then adjusted to September 1, 2009. Therefore I find the Landlord has provided insufficient evidence to support she paid hydro costs after August 31, 2009 and I hereby dismiss the remainder of her claim of $69.94. ($375.94 - $306.00).

The evidence supports the Landlords hired a contractor to attend the rental property two days after the tenancy ended to secure and winterize the property in the Landlords' absence. As noted above, on a balance of probabilities I find the Landlord instructed the contractor to secure the property by replacing the door locks and installing new latches and locks to prevent the Tenants from gaining access with the existing keys. Again I question how the contractor was expected to gain access to the unit when the keys were returned to the Landlords in a different city. Given the location of the property it would not have been financially feasible to call a locksmith in to rekey the locks and was less expensive to have the contractor replace them all. That being said, this word was completed based on the Landlords' wishes after the tenancy ended. Section 25 of the Act provides that the landlord must pay all costs associated with the changes of locks prior to the start of a new tenancy. Therefore, in the absence of sufficient evidence to support that the locks were damaged during the tenancy, I dismiss the Landlords' claim

to change the locks. Winterizing a property after a tenancy has ended so the property can remain vacant does not meet the test for damage or loss as listed above. I find that the Landlords have chosen to incur these costs by choosing to reside in a different city therefore these costs cannot be assumed by the Tenants. There is no provision under the Act that requires a tenant to pay an absent landlord costs to hire an agent to do the landlord's business, therefore I dismiss the Landlords' claim of $1,011.84.

The evidence supports the Landlords purchased an electrical permit on February 19, 2009 which lists the site contractor or site contact as someone other than the Landlords or the Tenants. There is no evidence before me to support the Tenants were in any way required to perform electrical work based on this permit and therefore I find the Landlords have provided insufficient evidence to support that the Tenants were responsible for the electrical permit lapsing and I dismiss their claim of $385.00.

In response to the Landlords' claims of $498.62 ($220.35 for motel, $188.27 fuel, $90.00 meals) in travel costs I find that the Landlords have chosen to incur these costs by choosing to reside in a different city. Therefore these costs cannot be assumed by the Tenants. There is no provision under the *Residential Tenancy Act* that requires a tenant to pay an absent landlord costs for accommodations when they are in town to do their business as a landlord, therefore I dismiss the Landlords' claim of $498.62.

Conclusion

I HEREBY DISMISS the Landlord's claim in it's entirety, 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: November 16, 2010.

Dispute Resolution Officer