



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order for damage to the unit, site or property, a Monetary Order to recover unpaid rent, a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The landlord also seeks to retain the security and pet deposits and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to each of the tenants. The landlord has provided the Canada Post tracking information and the tenants are deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave affirmed testimony, 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:

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords entitled to a Monetary Order for unpaid rent?

- Are the landlord's entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords entitled to keep the security and pet deposits?

Background and Evidence

Both parties agree that this month to month tenancy started on December 04, 2009 and ended on February 27, 2011, Rent for this unit was \$750.00 and was due on the first day of each month in advance. The tenants paid a security deposit of \$375.00 and a pet deposit of \$190.00 both on November 26, 2009. The landlords did not do a move in or a move out condition inspection at the start or end of the tenancy, but did walk through the unit with the tenant at the end of the tenancy. The tenants gave the landlord their forwarding address in writing on February 27, 2011.

The landlord testifies that the tenants phoned them on February 06, 2011 to give Notice to end the tenancy. The landlord states they were away at the time and they asked the tenants to phone them when they got back. The landlord states the tenants verbally told them that they were moving out on March 01, 2011. They state they told the tenants this was inadequate notice but the next day, February 07, 2011, the tenants gave them written Notice to end their tenancy.

The landlord states they did start to advertise the unit for rental but found it was not very presentable due to the packing boxes of the tenants. The landlord's testify they advertised the unit in the newspaper and have provided evidence of this. The unit was eventually re-rented on April 01, 2011. The landlords seek to recover unpaid rent for March, 2011 of \$750.00 due to the improper notice period by the tenants.

The landlords testify that although they did not do a move in condition inspection of the unit they have provided photographs of the unit that they used in the advert when they rented the unit to these tenants. They state these pictures show the good condition of the unit. The landlord have also provided a letter from the previous tenant who states the unit was left in good condition at the end of his tenancy on October, 2009 and he received his security

deposit back. The landlords state when the tenants moved into the unit in December, 2009 they did not express any concerns about the condition of the unit.

The landlord's testify that at the end of the tenancy they had access to the unit but could not see the true condition of the unit due to packing boxes. The landlords state they did walk through the unit with the male tenant and pointed out areas of concern such as the general lack of cleanliness, carpet stains, mould on windows, a broken chair belonging to the landlord, the stove and oven had not been cleaned, the bathroom was not clean, there was mould in the bathroom and on the baseboards in this room. The landlord states the bathtub had clearly been leaking but the tenants had not informed them of this during their tenancy so repairs could have been carried out.

The landlord has provided extensive photographic evidence showing the condition of the unit. These also show some damage to the flooring because of the leaking bath, they show an area of silicone put on the shower enclosure, hair and dirt, filthy blinds, which were replaced, damage the landlords allege was caused by the tenants' cats to the walls and window sill, damage to the bathroom door along with other minor damage and cleaning.

The landlord's testify that the carpets could not be cleaned. They state they did try to steam clean them and used a chemical cleaner to get rid of pet stains but to no avail. The landlords state the tenants told them they had used a diluted pet stain cleaner on the carpets. The landlords state the carpet had to be removed and was replaced with laminate flooring.

The landlord has provided receipts for the supplies purchased to remedy the alleged damage and cleaning left by the tenants. These receipts come to a total sum of \$4,349.16. However, during the hearing the landlord removed some of these items on the receipts from their claim. The landlords now seek to recover \$4,089.36 for painting supplies, cleaning supplies, flooring, mould cleaner, cork boarding, insulation on the front door, underlay for flooring, new baseboards, pet cleaning supplies and flooring supplies. The landlords testify they had to repaint the walls, remove the baseboards for the new flooring and replace this with new baseboards, clean the unit, remove the mould, replace the cork wall removed by

the tenants, replace the insulation on the front door and attempt to clean the pet stains from the carpets before making the decision that it would have to be replaced due to these stains not being treated correctly by the tenants during the tenancy.

The landlords also seek to recover the sum of \$8,400.00 to clean, repair and paint the unit. The landlord's testify that they spent a total time of 420 hours doing this work and claim \$20.00 per hour. One of the landlords states she took three weeks off work and spent 12 to 15 hours a day working in the unit. She states her father took a week off work and also worked evenings and weekends, she states her brother in law also put some hours in at weekends and her mother also helped. The landlords state this work had to be completed as the unit was not rentable.

The tenants dispute the landlord's claims. The state that the landlord did not comply with their responsibility to carry out inspections of the unit and they were not aware that the bathtub leaked or they would have informed the landlord. The tenants testify that the bathroom floor was already stained when they moved in which shows that this leaking had occurred prior to their tenancy. The tenants also state that there was no fan in the bathroom and only a small window which was wedged with tinfoil. The tenant states in his experience in the construction trade window sills will start to leak over time which will cause the paint to chip and mould will grow around the windows,

The tenants state that on the move in day they pointed out the stains on the bedroom and living room carpets to the landlord. They state they did have pets until October 2009 but then gave them away. In any event their cat was litter box trained and did not have accidents on the carpet.

The tenants state that they believe the landlords are attempting to get the tenants to pay for their renovations to the unit. The tenant's testify that the wall of cork board in the kitchen was removed with the landlord's permission because it leaked water onto the floor. They state they kept asking the landlord what they should replace it with but they never got back to them concerning this.

The tenants testify that during the move out walkthrough with the female landlord she was trying to compare the condition of the unit then with the condition of it at the start of their tenancy but this was being done from memory as she had not completed a condition inspection report. The tenants state the landlord gave them a good reference when they moved out.

The tenant's testify that the landlord knew about the leaky windows but did not repair them. They also state the washing machine overflowed twice into their unit and they were never informed by the landlord. They state they had to clean this water up and found it had stained and damaged the walls. The tenants claim after they had their son the female landlord was often in their unit visiting and never mentioned anything about the condition of the unit.

The tenant's testify that their tenancy did not start until December 04, 2009 and state that they gave written Notice to end their tenancy on February 07, 2011 after giving verbal notice the day before. They accept now that they were in the wrong and did not give sufficient notice but state they did offer to make up the difference with their security deposit and additional rent for March however the landlord declined this offer.

The landlord testifies that in regard to the leak in the bathroom; this occurred because the tenants did not wipe up the water and it resulted in damage to the floor. The tenants should also have wiped up the moisture around the windows to prevent mould build-up. The landlord questions the tenants and asks if they did not know about the leak in the tub why did they put silicone in and around the corner of the shower screen. The tenants reply that they did silicone the shower screen to prevent water leaking on the other side. They claim this kept it dry on the outside of the screen. The tenant reiterate that there was staining at both ends of the bathtub at the start of their tenancy which shows that this was a pre-existing problem which the landlords did not address.

The tenant's testify that they did not use the landlords' chairs and these were put away at the start of the tenancy along with the landlords curtains. They state they have no knowledge of a chair being broken.

The landlord testifies that when she gave the tenants a good reference on February 07, 2011 this was before they had moved out and she had seen the damages. The landlord agrees that there were a couple of stains on the carpet at the start of the tenancy but states they are only claiming for replacement flooring because of the new stains. The landlord testifies that they did not have a professional carpet cleaner but hired a carpet cleaning machine and attempted to clean the carpets themselves. This is when they decided to replace the carpets.

Analysis

With regard to the landlords claim for unpaid rent for March, 2011; in this matter I refer the Parties to s.45(1) of the *Act* which states, in essence, that the tenants may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is received by the landlord the day before the day in the month, that rent is payable under the tenancy agreement. In this case the Notice to end tenancy given to the landlord by the tenants in order to end the tenancy on February 28, 2011 should have been received by the landlord by January 31, 2011 at the latest. As the tenants did not give written Notice until February 07, 2011 the landlord is therefore entitled to recover rent for March, 2011 as March 31, 2011 would have been the earliest date the tenancy could have ended. Consequently, I upheld the landlords request to recover rent for March to the sum of **\$750.00**.

With regard to the landlords claim for damages and cleaning; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

1. Proof that the damage or loss exists
2. Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this in mind I have reviewed the documentary evidence and verbal testimony and conclude that the landlords did not do a move in or a move out condition inspection of the rental unit. Sections 23 and 35 of the Act say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed. Therefore, I find that the landlord has failed to satisfy element two of the above test, The tenants agree they did not clean the carpets at the end of the tenancy however the landlords did not mitigate there loss by having these professionally cleaned before making the decision to take them up and replace them with laminate flooring. Therefore I find the landlords did not fully satisfy element four of the above test.

With the issue of damage to the bathroom floor the tenants argue that the floor was already stained in this area due to a pre-existing leak from the bath and agree they did put silicone around the shower enclosure to attempt to reduce water going on to the floor. The landlord argues had the tenants notified them of this leak they could have rectified the problem. In this matter I find both Parties must share some responsibility for damage to the floor which could have been prevented from worsening if the tenants had informed the landlords so they could have taken corrective action. As there is no evidence from the landlords to show that this was not a pre-existing condition it is my decision that the landlords are entitled to a nominal sum in compensation of **\$200.00**.

The landlord has provided some before and after pictures of the unit which are all undated. However the before pictures do not show close ups of areas of the rental unit where as many of the after photos do. I therefore find this misleading as to the true condition of the unit at the start of the tenancy as depicted by the landlord's photos. The landlord has also provided a written statement from a previous tenant however this previous tenant was not asked to attend the hearing as a witness and give sworn testimony or submit to cross examination by the tenants. Therefore, I can place little weight on this documentary evidence.

Under the *Residential Tenancy Act* 32(2) a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required

Consequently, the majority of the landlords claim for damages cannot succeed and is limited to a nominal amount for the bathtub leak as stated above. The remainder of the landlords claim for damages and cleaning is dismissed without leave to reapply.

The landlords have applied to keep the tenants security and pet deposit of \$565.00. I find the landlords may keep these deposits in partial satisfaction of their claim for unpaid rent.

As the landlords have been partially successful with their claim I find they are entitled to recover half their filing fee from the tenants to the sum of \$50.00. The landlords are entitled to a Monetary Order for the balance owing as follows:

Unpaid rent for March, 2011	\$750.00
Compensation for leak	\$200.00
Subtotal	\$950.00
Less security and pet deposits	(-\$565.00)
Plus half of filing fee	\$50.00
Total amount due to the landlords	\$435.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$435.00**. The order must be served on the respondents 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: June 29, 2011.

Residential Tenancy Branch