



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF
 MNDC MNSD FF

At the outset of the hearing the Landlord requested that I have the Tenant's Agent dismissed from the hearing because she did not want the Agent involved in her business.

I confirmed with the Tenant that he requested the Agent to attend and provide evidence on his behalf as she was the person who attended the move out inspection as his Agent. The Agent confirmed she was here to provide evidence for the Tenant and that she was the person who attended the move out inspection.

Based on the aforementioned, I found the Tenant's request to have his Agent attend the hearing to present evidence meets the requirements of the *Residential Tenancy Branch Rules of Procedure* and the hearing continued with the Agent in attendance.

Introduction

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

The Landlords filed seeking a Monetary Order for damage to the unit, site or property, unpaid rent or utilities, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant. The Landlords specifically requested that their application be joined with the Tenant's application.

The Tenant filed seeking a Monetary Order for the return of double his security deposit, for money owed or compensation for damage or 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 Tenant was done in accordance with section 89 of the Act, sent via registered mail. The Tenant confirmed receipt of the hearing documents.

Service of the hearing documents by the Tenant to the Landlords was not done in accordance with section 89 of the *Act*, as they were sent via registered mail to the address where the Landlords' maintenance person resides and not the Landlords.

The Landlord requested that I dismiss the Tenant's application because service was not conducted in accordance with the *Act*. She confirmed that she received the Tenant's application and his evidence towards the end of March 2011 and that she filed her cross application on April 5, 2011 specifically requesting to have her application joined with the Tenant's application. Based on the aforementioned I find the Landlord's request to have me dismiss the Tenant's application, just to make him have to initiate the process again, to be frivolous especially when the Landlord appeared today fully prepared to discuss the matters of the tenancy that are significantly linked to both applications. Therefore I declined the Landlord's request and I proceeded to hear both applications before me.

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

Issue(s) to be Decided

- 1) Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
- 2) If so, have the Landlords met the burden of proof to obtain a Monetary Order as a result of that breach?
- 3) Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
- 4) If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement that began on August 15, 2009 and was set to end on July 31, 2010 at which time the Tenant was required to vacate the property. Rent was payable on the first of each month in the amount of \$620.00 and on July 24, 2009 the Tenant paid \$310.00 as the security deposit. The move in inspection report was completed and signed by the Tenant on August 22, 2009 and the move out inspection walk through was attended by the Tenant's Agent and the Landlords' Agent on July 31, 2010 and signed by both Agents.

The Landlord testified that they were instructed to use the Agent's new address as the Tenant's forwarding address however when they filed their first application for dispute resolution and attempted to serve the documents to the Agent's address they were returned stating "not at this address". They did not receive the Tenant's valid address until they were served with his notice of dispute resolution on March 31, 2011.

The Landlord stated that at the end of the tenancy the Tenant left the rental property damaged and unclean as noted on the move-out inspection report. They had to get the unit cleaned and repaired as soon as possible as they had new tenants coming in to occupy the unit at the end of August 2010. The Landlords are seeking monetary compensation as follows:

- 1) \$89.60 for professional carpet cleaning. Their tenancy agreement addendum, page 3 item 2 under other provisions, states that professional carpet cleaning is required upon move-out. The Landlord referenced her evidence which included a copy of the tenancy agreement, addendum and the professional carpet cleaning receipt dated August 18, 2010.
- 2) \$190.39 to replace the tub surround that was damaged during the tenancy. The Landlord reference the move-in and move-out inspection reports and photographic evidence provided to support that the tub surround had been damaged. The existing tub surround had been installed in 2007 when the Landlords completed renovations on the property. The male Landlord had noticed the damage prior to the end of the tenancy so planned to have it replaced as soon as the Tenant vacated the property. They had pre-purchased the replacement on July 14, 2010 to ensure they had it available to install as soon as the Tenant vacated the property.
- 3) \$150.00 for labour to have the tub surround removed and replaced by their maintenance person, as supported by their evidence of a cheque duplicate.
- 4) \$120.00 to have the large holes in the walls patched, sanded, and repainted. Their photographic evidence displays the damage that was caused to the walls during the tenancy. They provided a copy of a cheque duplicate to support that they paid their maintenance person to conduct the repairs at the end of July 2010.
- 5) \$65.00 to have the handle and locks changed on the storage unit. Neither the Tenant nor his Agent returned keys for the rental unit or the storage unit. The Landlords are not claiming for the cost of changing out the locks on the rental unit itself as they would have done so for the new tenants anyways. They provided a copy of the cheque duplicate that supports they paid \$65.00 to have new locking handles purchased and installed.

- 6) \$28.67 for the Tenant's share of water, sewer and garbage utilities. Section 5 (a) of their tenancy addendum supports the cost of these utilities are the responsibility of the Tenant. This bill had not been received by the Landlords until after the tenancy ended and a copy has been provided in the Landlords' evidence. The full amount of the bill represents charges based on the two duplexes as there is only one meter. The Landlord has prorated the amounts based on dates and divided it by the number of occupants in each unit.
- 7) \$50.00 to recover the cost of the filing fee they lost on their application that was filed just prior to August 14, 2010. She stated that they feel they had acted within a reasonable amount of time, two weeks after the end of the tenancy, and attempted to serve the Tenant at the forwarding address provided by the Tenant's Agent as written on the bottom of the move-out inspection report and supported in the Agent's written document listing her forwarding address. The Landlords could not complete service as the documents were returned stating "not at this address". As a result they suffered a loss of \$50.00 which was paid to initiate their application.

The Tenant's Agent testified and confirmed she signed the move-out inspection report agreeing to the condition of the rental unit at move-out. She wrote instructions down for the Landlords' Agent requesting that she be sent copies of the move out report to her new address as she was the Tenant's Agent.

The Tenant testified that they did clean the carpets. He said they rented a cleaner but no longer has evidence to support this as he did not keep the receipt. He stated that he could not see the tub surround noted on the move out inspection. He was under the impression that it was okay because the Landlord did not say anything about it when he was in his unit in the spring inspecting a water leak.

The holes in the wall and floor were made by the telephone company when they came to install the satellite dish he had ordered. When he moved out he had to return their equipment which left holes in the wall when he removed it.

He does not feel he should be responsible for paying for water usage as the Landlord used his water two or three times to wash the exterior of all the buildings and the driveways.

The Tenant stated that he gave the storage unit keys to his Agent a few weeks after his tenancy ended. I asked why he would not return them directly to the Landlords to which he responded: "I chose not to have dealings with them".

He confirmed that he never provided the Landlords with his forwarding address and he never requested in writing to have his security deposit returned.

The Agent confirmed she received the Tenant's storage room keys approximately ten days after the tenancy had ended so she mailed them to an address the Landlord's had used previously.

In closing the Landlord advised the address used by the Agent was never provided to their tenants as a service address and was in fact a temporary address they had when they were away on vacation. They never received the storage room keys. Their tenancy agreement addendum is very clear that they do not accept self cleaning of carpets and that professional carpet cleaner must be used. Lastly, the Landlords did not use the Tenant's water two or three times to clean the buildings or driveways.

The Landlord agreed to fax me a copy of page 23 that was missing from her original evidence package and a copy of the document provided by the Tenant's Agent listing her new forwarding address.

Analysis

The fax, as requested, was received from the Landlords on June 7, 2011. A copy of the fax documents is attached to this decision to ensure the principles of natural justice are upheld.

I have carefully considered the aforementioned and the evidence which included, among other things, copies of the tenancy agreement, addendum, and move in and move out inspection reports, copies of invoices and proof of payment from the Landlords, and the photographic evidence.

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

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must (a) leave the rental unit reasonably clean and undamaged and (b) give the landlord all the keys.

Section 32(3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 21 of the *Residential Tenancy Regulation* states that in dispute resolution proceedings, a condition inspection report completed in accordance with the regulation is evidence of the state of repair and condition of the rental unit or residential property on property on the date of the inspection.

Based on the aforementioned sections of the Act and regulation I find the Landlords' have suffered losses due to the Tenant's breach of sections 37 and 32 of the Act and I therefore award them monetary compensation as follows:

AMOUNT CLAIMED	ITEM CLAIMED	AMOUNT AWARDED
\$89.60	Professional carpet cleaning	\$89.60
190.39	Tub surround replacement (depreciated amount awarded see * below – allowed 70 % of the amount claimed as I have determined the useful life as 10 years and this was 3 years old)	\$133.27
150.00	Labour to install tub surround	150.00
120.00	Labour & Materials to repair walls	120.00
65.00	Replace locks	65.00
28.67	Utilities for water/sewer/garbage	28.67
50.00	Losses suffered due to incomplete forwarding address instructions	<u>50.00</u>
	AMOUNT DUE TO THE LANDLORDS	\$636.54

* 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.

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

Tenant's application

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 and/or pet deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit or pet damage.

The evidence supports the Tenant did not provide the Landlords with a forwarding address and has not previously requested the return of his security deposit.

Based on the aforementioned the Tenant has not met the requirements of the *Act* by providing the Landlords with his forwarding address, therefore his application is premature and is hereby dismissed.

The Tenant has not been successful with his application and therefore must bear the burden of the cost to file his application.

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

Monetary award as listed above	\$636.54
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlords)	\$686.54
Less Security Deposit of \$310.00 plus interest of \$0.00	- 310.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORDS	\$ 376.54

Conclusion

The Landlords' decision will be accompanied by a Monetary Order for **\$376.54**. The order must be served on the respondent Tenant 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 08, 2011.

Residential Tenancy Branch