



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for unpaid rent or utilities, to keep the 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 this application.

Service of the hearing documents, by the Landlords to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 6, 2011. Mail receipt numbers were provided in the Landlord's evidence. Each Tenant is deemed to be served the hearing documents on March 11, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

The parties entered into a written fixed term tenancy agreement that began on February 1, 2011 and was set to switch to a month to month tenancy after July 31, 2011. Rent was payable on the first of each month in the amount of \$975.00. The Tenants paid a security deposit of \$487.50 and \$50.00 towards the pet deposit on February 1, 2011 and made arrangements to pay the balance of \$10.00 for the pet deposit on March 1, 2011.

The Landlord testified that although only two people are listed on the tenancy agreement they each moved in with a partner or spouse. They were given the keys to the unit on January 28, 2011 after the move in inspection was completed.

On February 8, 2011 the male Tenant and his partner approached the Landlord and said they would like to move out of the rental unit. The Landlord told them that if the remaining Tenant and her partner wanted to stay and take over the lease that would be okay, otherwise they were responsible for the fixed term lease.

Then on February 14, 2011 the female Tenant informed the Landlord that they could not find roommates to replace the male Tenant and his partner so they too would like to move out. It was during this conversation that the Landlord was told that the Tenants wanted to move out of the unit because they were getting bitten by unknown bugs. The Landlord advised the Tenants that they should have informed her of this issue sooner and she advised them that she would get a pest control company in to inspect the unit. The Tenant had offered to purchase sprays to treat the unit herself however the Landlord informed the Tenant that they needed professionals to deal with this issue as she has children residing in the upper floor.

On February 17, 2011 the Landlords provided the Tenants written notice that the pest control company would be inspecting the rental unit on February 18, 2011. The Landlord referred to the inspection report and letter from the pest control company that she provided in her evidence which documents the presence of bed bugs at different stages of development. She pointed out that the evidence supports that given the large presence of bedbugs the pest control staff determined that the bedbugs were living and breeding on the furniture for more than two months.

Prior to this tenancy the rental unit had been occupied by tenants from October 2007 to November 30, 2010. The unit remained empty for December 2010 and January 2011 while the Landlord painted and had the carpets cleaned. The Landlord advised they never had bedbugs in their home until these Tenants moved in.

The Tenants ended their lease and vacated the property by February 28, 2011. A move out inspection was completed, the Tenants provided the Landlord with their forwarding address and the Landlord returned the \$50.00 pet deposit to them.

The Landlord is seeking a monetary order for the cost of utilities in the amount of \$75.00. She confirmed the Tenants did not initial the tenancy agreement where it notes they are required to pay 35% of utilities; however it does indicate that utilities are not included. She is also seeking the cost of the pest control inspection at \$100.80 and

treatment at \$364.00 plus the loss of rent for March 2011 as she was not able to re-rent the unit until April 1, 2011.

To clarify further the Landlord advised that after the unit was treated with pest control chemicals she had to let the unit air out before re-renting it. She also advised that two weeks after the treatment was completed she hired the pest control company that has the dog to come in and sniff to see if the treatment was successful. She testified that the dog inspection took place on March 30, 2011 and the entire house passed with “no alerts” and they were given the all clear.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, copies of: the tenancy agreement, the pest control inspection, the pest control invoice, the pest control assessment letter, the Tenants' notice to end tenancy, the natural gas bill for the period of February 5, 2011 to March 7, 2011 of \$207.89, and the electricity bill for the period of February 5, 2011 to March 31, 2011 of \$128.68.

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

Section 45 (2) of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

The evidence supports the fixed term tenancy was not scheduled to end until July 31, 2011, at which time the tenancy would switch to a month to month tenancy. Therefore I find the Tenants ended this tenancy in breach of section 45 (2) of the Act. The Landlord was not able to re-rent the unit until April 1, 2011 resulting in a loss of rent of \$975.00 for the month of March 2011. Based on the aforementioned I find the Landlords have met the burden of proof for loss of rent and I approve their claim in the amount of **\$975.00**.

I accept the evidence that the Tenants were required to pay 35% of utilities. The evidence supports the Tenants did not pay the Landlord for natural gas and hydro usage during the period they occupied the rental property. Based on the bills provided in the Landlords' evidence I find the Tenants are responsible for \$19.59 for hydro (35% of \$128.69 divided by 55 x 24) and \$75.92 for natural gas (35% of \$207.89 divided by 31 x 24) for the period they occupied the rental unit and which are covered by these invoices. Therefore I approve the Landlords' claim for utilities in the amount of **\$75.92**.

Section 32(3) of the Act provides 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 32 (2) of the Act provides a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The evidence supports the pest control experts determined the bed bugs had been active in the Tenants' furniture for a period greater than two months, which is longer than the Tenants had been occupying the rental unit. After careful consideration of this evidence in conjunction with the Landlord's testimony that they had not had bed bugs in the rental unit prior to this tenancy, I accept that the costs incurred by the Landlords to have the unit inspected and treated are the result of the Tenants' actions of bringing furniture into the rental unit that contained bedbugs. Based on the aforementioned I find the Landlords have met the burden of proof for damage or loss and I award them **\$539.80** (\$100.80 + 364.00) for costs incurred to inspect and treat the rental unit.

The Landlords have been 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 this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit as follows:

Loss of rent for March 2011	\$975.00
Utilities – Hydro and Natural Gas	75.92
Pest Control investigation and treatment	539.80
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$1,640.72
Less Security Deposit of \$487.50 plus interest of \$0.00	- 487.50
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,153.22

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,153.22**. The order must be served on the respondent Tenants and is enforceable through the Provincial Court and 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 17, 2011.

Residential Tenancy Branch