# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with applications by the landlord and the tenants. The landlord applied for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants applied for double recovery of their security deposit, as well as for further monetary compensation under the Act.

The hearing convened on two dates, July 7, 2011 and August 29, 2011. The landlord, an advocate for the landlord and both tenants participated in the conference call hearing on both dates. A witness for the landlord gave testimony on July 7, 2011.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Issue

The tenants raised a preliminary issue regarding service of the landlord's application on the tenants. The landlord filed their application for dispute resolution on March 22, 2011 but the tenants did not receive a copy of the landlord's application until 52 days after the landlord was required to serve the tenants with his application. The tenants submitted that on that basis the landlord's application ought to be dismissed.

The landlord's response was that he first sent the tenants' hearing package to them at the address they provided on March 23, 2011. The package was returned, so the landlord sent the package again on April 8, 2011. Again the package was returned. On May 29, 2011 the landlord sent the package a third time to the same address, and this time the package was received. The address which the tenants provided as their forwarding address is also noted as the tenants' address on the landlord's application for dispute resolution.

The tenants acknowledged that they may have made a mistake and given the landlord the wrong street name in their forwarding address on March 18, 2011, but they had already given the landlord their correct forwarding address on March 11, 2011.

I found that the evidence of the landlord on this point was credible, and I determined that the forwarding address that the tenants provided the landlord did provide the incorrect street name. I found that the landlord made reasonable attempts to serve the tenants with notice of their application in accordance with the Act, and I declined to dismiss the landlord's application.

On August 19, 2011, the tenants submitted additional evidence regarding the issue of the landlord's service of his application on the tenants, and again requested that the landlord's application be dismissed. When the teleconference hearing reconvened on August 29, 2011 I informed the parties that I had already made my determination on this preliminary issue, and I would not be revisiting it.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?
Are the tenants entitled to double recovery of their security deposit?
Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on November 1, 1998. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of $800. Rent was due on the first day of each month.

The tenants vacated the rental unit and returned the keys to the landlord on March 3, 2011. No move-out inspection was done. The tenants provided their written forwarding address to the landlord on March 11, 2011. On March 22, 2011 the landlord filed an application for monetary compensation for damages and unpaid rent, as well as for an order to keep the security deposit in partial compensation of the monetary claim.

The landlord's evidence regarding his claim was as follows.

1) Unpaid rent and lost revenue

The tenants only paid $1700 of their rent for February 2011, leaving $400 in unpaid rent. The tenants did not give written notice of their intention to vacate the rental unit until February 12, 2011, and the landlord was not aware of the tenants' intention to

move out until that date. As soon as the landlord became aware that the tenants were moving, he began advertising online to attempt to re-rent the unit. However, it was too late in the month, he got no response to the ads, and was only able to re-rent the unit for April 1, 2011. Furthermore, there was a lot of damage done to the rental unit which the landlord had to repair. The landlord has claimed $2100 in lost revenue for March 2011. The landlord did not provide copies of any ads for re-rental.

2) Repairs to vinyl flooring in sunroom, basement and sun deck

The landlord testified that the vinyl flooring in the sunroom and basement, as well as on the sundeck, was damaged. The flooring was new in 1996. The landlord purchased materials and performed the labour to repair the flooring in the sunroom and basement. The landlord had not yet repaired the vinyl on the sun deck, but provided an estimate of $784 for repairs to the sun deck.

3) Repairs to skylight in bathroom

There was damage to the wall areas surrounding the skylight in the bathroom, which the landlord believed was caused by the tenants not using the bathroom fan. The landlord purchased materials and performed the labour to repair the skylight. The landlord claimed $157.31 for materials and $120 for six hours of labour to repair this item.

4) Cleaning

The tenants did not clean the rental unit, and the landlord carried out cleaning and carpet cleaning. The carpet cleaning did not remove odour that the landlord believed was caused by the tenants' pets, so the landlord had to remove the carpet and underlay. However, the landlord was not claiming costs for replacement of the carpet and underlay, only for the carpet cleaning job. To support his claim for cleaning costs, the landlord submitted four photographs, one of which depicted a closet door removed from its track; one photograph of the sundeck, and two photographs of some old pieces of wood in the yard area. The landlord claimed $150 for 10 hours of cleaning, at a rate of $15 per hour.

5) Utilities

The tenants did not pay the water and sewage bill for November 3, 2010 to March 2, 2011. The total of the bill, including a late payment fee, is $299.90.

The tenants' response to the landlord's claim was as follows.

1) Unpaid rent and lost revenue

The tenants only paid $1700 for February 2011 rent because it came to their attention that the landlord had increased their rent beyond the permissible amount. Before February 1, 2011 the tenants informed the landlord that they were planning to meet with their potential new landlord but could not do so until February 1, 2011, and they would like a day's grace before giving their notice to end tenancy. The landlord agreed to this. The tenants then gave their written notice to end tenancy on February 12, 2011. On February 28, 2011 the tenants received the landlord's verbal consent to stay in the rental unit an extra three days, due to the death of one of the tenants' relatives. On March 3, 2011, the landlord agreed that the tenants would only be responsible for paying for the three days in March. The landlord was doing renovations and was not making efforts to re-rent the unit.

2) Repairs to vinyl flooring in sunroom, basement and sun deck

The vinyl flooring in the sunroom, basement and sundeck were all more than 10 years old, and any damage done to the flooring was normal wear and tear. The landlord didn't fix things during the tenancy, he either did not follow through or he got the tenants to do repairs. There was a flood in the basement with more than one inch of water on the floor, and the tenants had to clean it themselves. The landlord only came in to paint where there were stains from the water damage.

3) Repairs to skylight in bathroom

The paint in the walls of the skylight was the wrong type of paint, and it just peeled. There was nothing wrong with the drywall. The tenants used the fan, but it was connected to the bathroom light so they couldn't leave the fan on indefinitely.

4) Cleaning

The carpets were more than 10 years old, and were well-used at the beginning of the tenancy. There was no damage other than normal wear and tear. The tenants provided photographs to demonstrate that they cleaned the rental unit before they moved out. The tenants acknowledged that they did remove the closet doors and put them in storage, because they were dangerous for the tenants' children and they were always coming out.

5) Utilities

The tenants acknowledged that they did not pay the water and sewage bill for November 3, 2010 to March 2, 2011. The tenants' position was that they were not responsible for the sewage portion of the bills, and they have applied for recovery of all payments of sewage, as set out below.

The tenants' evidence regarding their claim was as follows.

6) Double recovery of security deposit

The tenancy ended on March 3, 2011 and the tenants gave the landlord their written forwarding address on March 11, 2011. The tenants did not receive the landlord's application to keep the security deposit until April 7, 2011. The tenants submitted that the as they did not receive the landlord's application until well past 15 days after providing their forwarding address, the landlord ought to lose the right to keep the security deposit. Furthermore, the landlord did not schedule or conduct a move-out inspection with the tenants, and on that basis the landlord is not entitled to claim the security deposit.

7) Overpayment of rent

At the beginning of the tenancy, monthly rent was $1600. In 2006, the landlord increased the rent from $1600 to $1664. In 2007, the landlord again increased the rent, from $1664 to $1730. Both of these increases complied with the maximum permissible rent increase for those years. In February 2008, the landlord increased the rent from $1730 to $1799.20. In 2008 the maximum permissible rent increase was 3.7 percent, which would have allowed the landlord to increase the rent to $1794.01. The rent increase for 2008 was therefore beyond the permissible amount. The landlord continued to increase the rent on a yearly basis, as follows: beginning February 2009, the rent was increased to $1890; beginning February 2010 the rent was increased to $2000; and beginning February 2011 the rent was increased to $2100. The tenants paid these amounts in rent until February 2011. In February 2011 the tenants paid $1700.

The tenants have claimed return of their overpayments of rent totalling $1514.74, calculated based on what the increase would have been each year if the landlord had properly increased the rent each year to the maximum permissible amount. For example, the maximum permissible amount that the landlord could have increased the rent beginning February 2008 was to $1794.01, but the tenants paid $1799.20 or an overpayment of $5.19 per month for 12 months. If the landlord had increased the rent in February 2008 to $1794.01, then the maximum permissible increase beginning in February 2009 would be from $1794.01 to $1860.38. The tenants paid $1890 beginning February 2009, which they calculated as an overpayment of $29.62 per month.

8) Sewage charges

The tenancy agreement indicates that the landlord was not responsible for “Water.” The tenants paid water bills for the rental unit to the municipality. In 2007, the municipality began charging for sewage as well as for water. The tenants paid a total of $1157.68 in sewage costs from 2007 through to November 2010. The position of the tenants is that as sewage was not included in the tenancy agreement, the tenants were not responsible for these charges, and they should be reimbursed for all sewage costs they paid.

The landlord’s response to the tenants’ claim was as follows.

6) Double recovery of security deposit

The landlord filed their application to keep the security deposit on March 22, 2011. The landlord attempted to serve the tenants their hearing package by registered mail to the address provided by the tenants.

7) Overpayment of rent

The landlord acknowledged that he mistakenly increased the rent beyond the permissible amount. This was the first time that the landlord rented a house, and he was not aware of the rules. He rounded up the rent a little bit more than the permissible amount each time.

8) Sewage charges

The municipality changed the rules regarding sewage in 2007. The city charges include water, sewage and garbage. The landlord submitted that the tenancy agreement should be interpreted to include sewage charges with “water” as one of the items that is not included in rent and must be paid by the tenants.

Analysis

In considering all of the evidence, I find as follows.

Landlord's claim:

1) Unpaid rent and lost revenue

I accept the testimony of the tenants that by the beginning of February the landlord was aware that the tenants were planning to move out at the end of the month. Whether or not a tenant has given written notice to vacate, as soon as a landlord is aware that a tenant is going to move out, the landlord must take all reasonable steps to attempt to re-rent the unit as soon as possible. In this case, the landlord did not provide sufficient evidence to establish that he took all reasonable steps to re-rent the unit for March. I therefore find that the landlord is only entitled to any unpaid amount of rent outstanding for February 2011 and pro-rated rent for the first three days of March 2011.

2) Repairs to vinyl flooring in sunroom, basement and sun deck

As set out in the Residential Tenancy Policy Guidelines, the average life of vinyl flooring is 10 years. The flooring in this rental unit was at least 15 years old, and therefore had depreciated to no monetary value. I therefore find the landlord is not entitled to compensation for the repair or replacement of these items.

3) Repairs to skylight in bathroom

The average life of paint is four years. The landlord's photograph of the skylight showed no damage other than peeling paint. I therefore find the landlord is not entitled to compensation for this item.

4) Cleaning

The landlord did not conduct a move-in or move-out inspection with the tenants, and only provided four photographs of the rental unit to support his claim for cleaning costs. The landlord did not provide a detailed breakdown of the time spent for cleaning specific items. The tenants' photographs showed fairly clean areas of the rental unit. However, the tenants acknowledged that they had removed and did not reinstall the closet doors. I therefore grant the landlord $15 for one hour of labour to reinstall the closet doors.

5) Utilities

As I will address below, under “sewage, the tenants were responsible for paying the water bills. I find that the landlord is entitled to $299.90 as claimed for the unpaid water bill for November 3, 2010 to March 2, 2011.

Tenants’ claim:

6) Double recovery of security deposit

The landlord did apply within 15 days of having received the tenants’ forwarding address to keep the security deposit. When a landlord fails to properly complete a condition inspection report, the landlord’s claim against the security deposit for damage to the property is extinguished. In this case, the landlord applied to keep the security deposit in partial compensation of monetary claims for damage to the property as well as for unpaid rent, lost revenue and unpaid utilities. As the landlord’s claim was not only for damage to the property, I find that the landlord complied with the requirement under section 38 to make an application to keep the deposits. The tenant is therefore not entitled to double recovery of the deposits, only recovery of the base amount of the security deposit, $800, plus applicable interest.

7) Overpayment of rent

The landlord did increase the rent beyond the permissible amount beginning in February 2008, and the tenants are entitled to recovery of any overpayment of rent. However, the tenants did not properly calculate the amount of overpayment in their claim. When a landlord improperly raises the rent, the proper amount of rent remains at the rate it was before the landlord first improperly raised it. In this case, the rent before February 2008 was $1730, and would have remained at that rate until the end of the tenancy. Therefore, the tenants overpaid $830.40 from February 2008 to January 2009; $1920 from February 2009 to January 2010; and $3240 from February 2010 to January 2011, for a total of $5990.40 in overpaid rent. The tenants are entitled to recovery this amount.

8) Sewage charges

The landlord could not have foreseen that the municipality would change its policy and include sewage charges in their bills. I do not accept the tenants’ submission that by not referencing “sewage” on the tenancy agreement, the landlord must be responsible for paying sewage. The tenancy agreement does not reference “garbage,” but the municipality’s bill included garbage collection. The tenants are not entitled to recovery of sewage charges.

As both parties were only partially successful in their claims I find that neither is entitled to recovery of the filing fee for the cost of their applications.

Conclusion

The landlord is entitled to $30 in unpaid rent for February 2011, as the rent was $1730 and the tenants paid $1700 for that month, and $167.43 of pro-rated rent for March 1 to 3, 2011. The landlord is also entitled to $15 for reinstalling the closet doors and $299.90 for the unpaid utilities bill, for a total of $512.33. The remainder of the landlord's application is dismissed.

The tenants are entitled to the return of the security deposit of $800 plus applicable interest of $92.10, and recovery of overpayment of rent of $5990.40, for a total of $6882.50.

I grant the tenants an order under section 67 for the balance due of $6370.17. This order may be filed in the Small Claims Court and enforced 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: September 14, 2011.

Residential Tenancy Branch