



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

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a Monetary Order for unpaid utilities, damage to the unit, site or property, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenants.

The Tenants filed seeking a Monetary Order for the return of their 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 Landlord.

The parties appeared at the teleconference hearing, gave affirmed testimony, confirmed receipt of hearing documents and evidence submitted by the other, and were 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 be compensated for damages to the unit and for unpaid utilities as a result of that breach?
3. Have the Landlord's breached the tenancy agreement by collecting money for garbage picked up that was to be included in the cost of rent?
4. What is the disposition of the security deposit?

Background and Evidence

I heard undisputed testimony that the parties entered into a written month to month tenancy agreement that began on May 1, 2010 and ended on April 30, 2011. Rent was

payable on the first of each month in the amount of \$900.00 and on March 29, 2010 the Tenants paid \$450.00 as the security deposit. Garbage pickup was included in the cost of rent however the Tenants were required to pay 35% for the cost of Hydro and Water. A move out inspection took place on April 30, 2011 which began at approximately 1:30 p.m. and ended sometime around 3:15 pm.

The parties disputed whether a move in inspection was ever completed. The Agent stated that she lost the move in form and did not submit evidence to support a move in was conducted. The Landlord and Agent testified they were both in attendance at the move out inspection which became a very argumentative process. The female Tenant signed the move out inspection document but did not agree with what was listed on the form.

The Landlord and Agent provided testimony as to the condition of the rental unit at the end of the tenancy stating the Tenants failed to properly clean the rental unit and enclosed porch as supported by the move out inspection report and their photographic evidence. The Tenants had mounted a television stand to the wall which left holes that needed to be filled; they damaged two doors which had screws left in one and another had screws removed leaving holes in it; and they removed a standalone pantry cabinet from the rental unit when they left. In addition to damages the Landlord is seeking compensation for over holding the rental unit for one day because the Tenants were supposed to be completely moved out by 1:00 p.m. on April 30, 2011 and they appeared to purposely stall their move out to delay the Landlord and Agent from conducting the inspection. They began the inspection at approximately 1:30 p.m. and ended it around 3:15 p.m. on April 30, 2011.

After a brief discussion the Landlord requested to withdraw their claim for unpaid utilities and confirmed they were claiming the following:

\$ 30.00	filling of holes in approx. 5 walls and two doors
\$230.00	Cleaning (11.50 hours x \$20.00 / hr) (detailed listing provided in the Landlord's evidence)
\$ 32.29	Cleaning supplies purchased as supported by receipts provided
\$ 8.00	Replacement bathroom light bulbs – No receipts provided
\$ 29.00	Overholding charges for one day (April 30, 2011)
\$100.77	Replacement of missing pantry cabinet – No receipts provided and no evidence to support cabinet existed at the beginning of the tenancy

The Landlord acknowledged that they had charged the Tenant for garbage pickup when it was noted on the tenancy agreement that it would be included in rent. They offered a credit of \$52.86 in overpayment of utilities as a result.

The Tenant testified that the unit was not cleaned at the onset of her tenancy and that her mother had to come in and clean everything at the beginning because she was eight months pregnant at the time. She initially stated they fully cleaned the rental unit at the end of their tenancy and when asked specifically what they had cleaned she confirmed they did not clean the window sills, ledges, tracks or blinds, inside the oven, behind the fridge and stove, but they did clean the bathroom really well.

The Tenant confirmed they had installed a wall mount for their television; she left a candle burning on the window ledge; they did not repair the holes left in the walls, and alleged the screw holes in the doors were present at the beginning of their tenancy. She stated she was not aware of a pantry cabinet in the rental unit and suspects the Landlords are claiming this so they can keep her security deposit.

Pertaining to the Tenants' claim she is asking for the return of her security deposit and credit for the full amount charged to her for garbage pickup as the amount calculated by the Landlord is not correct. She provided copies of the bills she received and payments they had made to calculate her refund.

The Landlords confirmed the amounts charged by them and the amounts paid by the Tenants as provided in the Tenants' evidence.

Analysis

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 claim

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 except for reasonable wear and tear, and (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 32 (2) and (3) of the Act provide: (2) 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; (3) 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.

After careful review of the evidence before me I find the Tenants left the rental unit in a state that required additional cleaning to bring it up to reasonable health, cleanliness and sanitary standards and the required repairs were above normal wear and tear.

Based on the aforementioned I find the Landlord has met the burden of proof for damages and I hereby approve his claim for \$30.00 filling holes, plus \$230.00 for cleaning the rental unit, and \$32.29 for cleaning supplies for a total amount of **\$292.29**.

The Landlord has claimed \$8.00 for replacement light bulbs and \$100.77 to replace a cabinet however he has not provided evidence to support the actual cost of the alleged loss. Therefore I find there to be insufficient evidence to support these claims and they are hereby dismissed.

The Landlord has applied for one day of overholding the rental unit because the Tenants delayed the beginning of the move out inspection by thirty minutes. The evidence supports the move out inspection was scheduled to begin at 1:00 p.m. and did not begin until 1:30 p.m. because the Tenants were stalling. I find there is insufficient evidence to support the Landlord suffered a loss as a result of the inspection being delayed by thirty minutes and therefore this claim is dismissed.

The Landlord has only been partially successful with his application, therefore I decline to award recovery of the filing fee.

Tenant's application

The evidence supports the Tenants were charged \$65.75 (\$62.28 + 62.28 + 63.31 x 35%) for the cost of garbage removal even though it is noted on their tenancy agreement that this was to be included in their rent. The Landlords agreed to this being an oversight and offered a refund of \$52.86.

As per the aforementioned I find the Tenants have met the burden of proof they were overcharged and I approve their claim in the amount of **\$65.75**.

The Tenants have only been partially successful with their claim; therefore I decline to award recovery of the filing fee.

OFFSET OF MONETARY AWARDS

Landlord's Monetary Award	\$292.29
Less Tenants' Monetary Award	- 65.75
Less Tenants' Security Deposit plus interest of \$0.00	<u>- 450.00</u>
TOTAL AMOUNT DUE TO THE TENANTS	(\$223.46)

The Landlords are hereby Ordered to return the \$223.46 balance of the Tenants' security deposit forthwith.

Conclusion

The Tenants' decision will be accompanied by a Monetary Order for **\$223.46**. This Order is legally binding and must be served upon the Landlord.

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 01, 2011.

Residential Tenancy Branch