



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Preliminary Issues

After reviewing the Landlords' application for dispute resolution, at the outset of the hearing, the Landlords confirmed they wished to amend their application to include a request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlords had indicated this request in the notes written in the details of the dispute; therefore the Tenants were made aware of the Landlords' request in the initial application and would not be prejudiced by the Landlords' request to amend the application. Based on the aforementioned I approve the Landlords' request to amend the application to include the request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

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 all or part of the pet and or security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlords, gave affirmed testimony, 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, have the Landlords met the burden of proof to obtain monetary compensation as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy agreement that began August 1, 2010 and was set to end July 31, 2011 at which time the Tenants were required to vacate the rental property. Rent was payable on the first of each month in the amount of \$1,950.00 (\$2,000.00 - \$50.00 for utility discount) and on June 30, 2010 the Tenants paid \$1,000.00 as the security deposit. The Tenants were responsible for 100% of the natural gas and hydro costs. There was no move-in inspection report completed and there was no move-out inspection report completed. The Tenants vacated the property on or before July 25, 2011 and left the keys to the unit with the downstairs tenant.

The Landlords are seeking the following monetary compensation for losses incurred as a result of this tenancy:

- \$1,950.00 for July 2011 rent as the rent cheque was returned insufficient funds;
- \$116.90 for outstanding natural gas costs;
- \$218.59 for the outstanding hydro bill
- \$75.00 for three NSF cheques (3 x \$25.00) for NSF cheques that occurred in December 2010, February 2011, and July 2011;
- \$404.28 for costs to clean the rental unit as the Tenants left the unit dirty and did not attend the requested move out inspection

The Tenants accept responsibility for the items being claimed above except for the cleaning charges. They affirmed that although their possessions were moved out by July 25, 2011 the female Tenant remained in town to attend to cleaning the unit on July 29, 2011. They state they called the Landlords' agent on July 29, 2011 to request the move out inspection however no one attended the unit while there were there. They are of the opinion that they left the rental unit cleaner than when they first occupied the unit.

The Agents for the Landlords affirmed that the unit was very clean at the onset of tenancy and that the Tenants did not complain about the state of cleanliness at the beginning. They argue that the Tenants did not attend the rental unit between July 25, 2011 and July 29, 2011 as they were at the unit each day all day long cleaning up the mess the Tenants left behind.

The Landlords advised that six people spent several days cleaning the unit with the majority of the cleaning being completed by July 31, 2011. Their claim for cleaning costs is based on an estimate that they acquired on August 13, 2011. They made reference to two photos that were taken in July 2010 which prove the state of

cleanliness of the unit at the start of the tenancy plus the photos that were taken at the end of the tenancy which prove the Tenants did not clean the unit.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

The Tenants have accepted responsibility for the following items being claimed:

- \$1,950.00 for July 2011 rent
- \$116.90 for outstanding natural gas costs;
- \$218.59 for the outstanding hydro bill
- \$75.00 for three NSF cheques

Accordingly I award the Landlords monetary compensation for the amounts claimed for July rent, natural gas, hydro, and NSF fees.

Section 21 of the *Residential Tenancy Regulation* provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

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.

With respect to the evidence surrounding the condition of the rental unit at the end of the tenancy I favor the evidence of the Landlords and their Agents, who testified to the condition of the rental unit at both the beginning and end of the tenancy, which was

supported by their photographic evidence. I accepted that evidence over the testimony of the Tenants who stated that they attempted to contact the Agents on July 29, 2011 to conduct the move out inspection and alleged that they had had the rental unit cleaned by July 29, 2011. The Tenants made no effort to provide documentary evidence in support of this testimony.

I favored the evidence of the Landlords over the Tenants, in part, because the evidence was forthright and credible. The Landlords and their Agents readily acknowledged that they did not complete move in or move out inspection reports and did not issue a final notice to conduct the move out inspection. In my view the Landlords' willingness to admit a breach of the Act when they could easily have stated they did issue the final notice of inspections lends credibility to all of their evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Tenants explanation that they left the rental unit cleaner than at the beginning of the tenancy improbable. Given that the Landlords provided photographic evidence of the condition of two rooms at the beginning of the tenancy and several photos of the condition at the end of the tenancy, plus this was the Landlords' primary residence, it is reasonable to conclude, on a balance of probabilities, the Tenants failed to clean the rental unit at the end of the tenancy. Accordingly I find that the Tenants breached section 37(s) of the Act, as noted above. The Landlords have claimed an amount for cleaning based on a quote that was provided August 13, 2011, after the cleaning had already been completed by the Landlords; therefore the amount being claimed is not an accurate value of the loss incurred.

The Landlords' failure to complete inspection reports means that pursuant to sections 24 and 36 of that Act the Landlords' right to claim against the security deposit for

damages has been extinguished. This does not prevent the security deposit being offset against a monetary award under section 72 (2)(b) of the Act.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly I award the Landlords **\$250.00** for cleaning costs, pursuant to section 67 of the *Residential Tenancy Act*.

In relation to photocopying and mailing fees being claimed, I find that the Landlords have chosen to incur these costs that cannot be assumed by the Tenants. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Therefore, I find that the Landlords may not claim these costs, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*, and are costs of doing business as a landlord.

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

July 2011 rent	\$1,950.00
Natural gas costs;	116.90
Hydro bill	218.59
NSF cheques	75.00
Cleaning the rental unit	250.00
Filing Fee	50.00
SUBTOTAL	\$2,660.49
LESS: Security Deposit \$1,000.00 + Interest 0.00	1,000.00
Offset amount due to the Landlords	<u>\$1,660.49</u>

Conclusion

The Landlords’ decision will be accompanied by a Monetary Order in the amount of **\$1,660.49**. This Order is legally binding and must be served upon the respondent Tenants.

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: November 15, 2011.

Residential Tenancy Branch