



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for a monetary order for compensation for damage or loss under the Act, regulation, and the tenancy agreement, for damage to the unit site or property, unpaid rent, and an order to retain the security deposit and pet deposit in partial satisfaction of the claim.

The Landlords provided affirmed testimony that they served the Tenants, by registered mail with the Application for Dispute Resolution and Notice of Hearing on September 30, 2011, and provided the receipt and tracking slip from Canada Post as evidence. I find that the Tenants were served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenants did not participate in the conference call hearing. The Landlords were given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter(s)

Decision of August 31, 2011 on prior application of the Tenants

The Landlords stated that the Tenants made a previous Application for dispute resolution, which resulted in a monetary award to the Tenants. The decision of August 31, 2011 (the same date as that hearing) stated that the Tenants applied for compensation for damage or loss under the act, authorization to obtain a monetary order for their security deposit and pet damage deposit, and their filing fee. The decision of August 31, 2011 provided a monetary order to the Tenants for their security deposit and pet damage deposit and doubled those amounts as required by the Act, and determined that the Tenants were also entitled to one month's rent due to the issuance of the Two Month Notice, and determined that the Tenants were entitled to a monetary award for reduced services and facilities during the tenancy as the Landlords stored belongings in one of the rooms of the rental unit, resulting in the Tenants being unable to use that room during the course of their tenancy. The decision of August 31, 2011 also determined that the tenancy ended on April 03, 2011 and that the Tenants complied with the Two Month Notice move out date.

Security deposit and pet damage deposit

I find that due to section 77(3) of the Act and the legal principal of Res judicata, I cannot grant the Landlords' request for the security deposit and pet damage deposit as this matter was already heard and decided upon at the hearing of August 31, 2011 and the security deposit and pet damage deposit were ordered to be paid to the Tenants. The Landlords' request for the security deposit and pet damage deposit is dismissed.

The move out and end of tenancy and whether unpaid rent is due

I find that due to section 77(3) of the Act and the legal principal of Res judicata, I cannot rehear the matter of when the tenancy did or did not end, as this matter was already heard and decided upon at the hearing of August 31, 2011 and the tenancy end date and move out date was determined to be April 03, 2011. The Landlord's request for to have the move out date and tenancy end date to be reheard is dismissed.

As the August 31, 2011 decision determined that the tenancy ended and the Tenants moved out on April 03, 2011 in accordance with the Two Month Notice, there is no further entitlement to rental income for the Landlords. The Landlords failed to provide any evidence that the Tenants failed to pay any rent that was owed for the tenancy. The August 31, 2011 decision found that the Landlords owe the Tenants for one month's rent due to the issuance of the Two Month Notice. The Landlords' claim for unpaid rent or rental income owed pursuant to this tenancy is dismissed.

Costs relating to submission of evidence and copies of DVD/CD of evidence

The Landlords provided a receipt for \$44.80 stating this is what it cost her to make two copies of a DVD/CD of their evidence. The Landlords also submitted a receipt for \$20.25 with their evidence which is the cost of the registered mail they sent to the Tenants.

The costs of preparing the Application and evidence and registered mail are not covered by the Act and cannot be reimbursed to a party as the Act has no jurisdiction over this. As a result I dismiss the Landlords' request for a monetary order for amounts relating to their copying and mailing of evidence.

Tenants' written submission of evidence

In response to the Landlords' Application, the Tenants made a written submission in advance of the hearing. The Landlords stated that they had not received any evidence or written submission from the Tenants in response to their Application. As the Tenants

did not attend the hearing, I find that they have not proven service of their evidence on the Landlords and therefore I dismiss the Tenants evidence and decline to consider it.

Issue(s) to be Decided

Are the Landlords entitled to monetary compensation from the Tenants?

Background and Evidence

The Landlords failed to provide a copy of the written tenancy agreement into evidence for the current hearing. The decision of August 31, 2011 found that the Landlords and Tenants had a written tenancy agreement which commenced on August 14, 2010 and ended pursuant to the Tenants moving out on April 03, 2011, the date indicated on a Two Month Notice to End Tenancy which the Tenants had received from the Landlords. The monthly rent for this furnished rental unit was \$1500.00 per month due on the 31st of each month.

Although the decision of August 31, 2011 found that the tenancy ended on April 03, 2011, the Landlords stated that they were not sure when the Tenants moved out as the keys were not returned to them on April 03, 2011 when their agent went to meet with the Tenants that morning to do the move out inspection. The Landlords stated that on the morning of April 03, 2011 the Tenants had not completely moved out and had not returned the keys and asked the Landlords' agent to get out and leave the rental unit. The Landlords stated that they went to the house on April 30, 2011 to take possession and found it vacant and dirty and one key to the rental unit was left inside on the wall.

The Landlords stated that they moved into the rental unit and that they have been working on getting the cleaning and other work done, however, they cannot afford to get it all done at this time and are having to live in it as is.

Claim for compensation for cleaning and repairs

The Landlords stated that although they did not do a move-in or move-out inspection in regards to this tenancy, the rental unit was left in a filthy condition and the Tenants did no cleaning of the rental unit.

The Landlords stated that they made a DVD/CD on the condition of the rental unit when they went there on April 30, 2011 and that the DVD/CD depicts the condition of the rental unit before any cleaning or repairs were done by the Landlords.

The Landlords stated that they have paid \$200.00 for cleaning of the rental unit to KC and \$600.00 for cleaning and carpet cleaning to another person as well.

The Landlords provided a written signed letter from KC who stated that she received \$200.00 to compensate her for cleaning that she did of the rental unit. The Landlords

stated that they do not have a copy of the receipt for the \$600.00 cleaning and carpet cleaning or a written statement from the other person.

The Landlords stated that the walls of the rental unit are dirty with children's drawings. The Landlords stated that the cleaners have not been able to remove these from the walls and that they would like to repaint the whole interior of the house which they estimate will cost \$2,200.00.

The Landlords stated that they are not happy with the condition of most of the carpets despite the carpet cleaning that they paid to get done; as a result they are estimating that it will cost \$1,500.00 to replace the carpets in the bedrooms and on the stairs.

Claim for compensation for harassment

The Landlords claim \$2500.00 for harassment in public by the former Tenants after the tenancy ended. The Landlords stated that although the tenancy has ended, one of the former Tenants has approached the female Landlord at a mall near where she worked and demanded that she pay the monetary order that they have from the August 31, 2011 hearing decision. The female Landlord stated that she told this former Tenant that she did not have the money and that they owe her money which she is filing an Application for. The female Landlord stated that the former Tenant swore at her but eventually left the mall. The Landlords stated that this is not the first time that one of these Tenants swore at them, and that when the Landlords went to the rental unit with a plumber to install the dishwasher the female Tenant swore at them then as well.

Claim for compensation for Landlords' items or furnishings removed or damaged

The Landlords stated that they did not make a written inventory of the furnished items left in the rental unit at the time the tenancy commenced, however, they have believe that certain furniture items have been removed or destroyed by the Tenants or their pets and they request monetary compensation from the Tenants as follows:

\$400.00 estimated cost to replace a broken bed frame
\$850.00 estimated cost to replace a ruined double mattress
\$150.00 estimated cost to replace a missing 20" RCA television
\$960.00 estimated cost to replace nine ruined rugs

The Landlords are also seeking to have the dishwasher either repaired or replaced, as they feel the Tenants broke it. The Landlords stated that as required by a previous order from a hearing and decision of February 23, 2011 they purchased a new dishwasher for the Tenants at a cost of \$680.00 and had it installed by a plumber at a cost of \$100.00. The Landlords stated that the dishwasher is now not working and is mouldy inside. The Landlords estimate that it would cost \$250.00 to fix it.

The Landlords are also seeking monetary order for the \$100.00 filing fee they paid for their Application for dispute resolution.

Analysis

Based on the testimony, evidence, and a balance of probabilities, I find the following:

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have the Respondent pay for the loss, the Applicant must prove the following:

- that the damage or loss exists;
- that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- the actual amount required to compensate for the claimed loss or to repair the damage; and
- that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Claim for compensation for cleaning and repairs

The Landlords stated that they made a DVD on the condition of the rental unit when they went there on April 30, 2011 and that the DVD depicts the condition of the rental unit before any cleaning or repairs were done by the Landlords. The Landlords did not provide any way of viewing the DVD/CD of evidence. The Landlords stated that this evidence was provided to the Tenants by registered mail prior to the hearing and the registered mail tracking number was provided by the Landlords at the hearing. The Landlords confirmed that a move in and move out inspection did not occur and that they have no documentation listing the condition of the rental unit at the time the tenancy commenced. Although I agree that the Tenants were served with the DVD/CD evidence and my office does now currently have the ability to view DVD/CD information, I do not find that the information contained on the DVD/CD particularly helpful. While the DVD/CD does depict a rental unit that is not very clean, the DVD/CD does not help determine the condition of the rental unit at the time of move-in compared to the condition at the time of move-out which was determined to be April 03, 2011. The

Landlords have provided no evidence of the condition of the rental unit at the time of move-in.

The Landlords stated that they did not perform a move-out inspection with the Tenants and I find that the Tenants failed to reschedule a new date with the Landlords. As stated in the August 31, 2011 decision the Landlords responded to a letter provided to them by the Tenants on March 26, 2011 which requested a move-out inspection be held on April 03, 2011 at 9:00 A.M. and attended the rental unit at the requested time. The move-out inspection did not occur and that the decision of August 31, 2011 confirms that the Tenants by their own admission had not finished vacating the rental unit on the morning of April 03, 2011, but they stated it was later in the day that they moved out. Section 14 of the Residential Tenancy Regulation (the "Regulation") generally requires a move-out inspection to occur when the rental unit is vacant. The August 31, 2011 decision did not determine the cleanliness of the rental unit or whether a move-out inspection occurred, I find that a move out inspection did not occur on April 03, 2011.

The August 31, 2011 decision does not indicate that the Tenants performed any cleaning before they moved out of the rental unit later in the day on April 03, 2011. Considering how the tenancy ended after many disputed circumstances, I find it more probable than not that the Tenants failed to clean the rental unit at the time they moved out, and there is no indication in the Tenants statements contained in the decision of August 31, 2011 that they performed any cleaning or returned to the rental unit. The Tenants were provided opportunity to attend the current hearing, and I have deemed them properly served however they failed to attend and present their evidence.

The Landlords have failed to provide any evidence to support the condition of the walls of the rental unit prior to the Tenants' moving in. The Landlords also failed to provide any documents relating to an estimate to repaint the walls of the rental unit. As a result I dismiss the Landlords' claim for painting costs.

The Landlords have failed to provide any evidence to support the condition of the carpet in the rental unit prior to the Tenants' moving in. The Landlords failed to provide any evidence of a \$600.00 bill for cleaning costs and carpet cleaning; as a result I dismiss the Landlords' request for reimbursement for a \$600.00 bill. The Landlords also failed to provide any evidence of the cost to replace the carpets. As a result I dismiss the Landlords' claims for carpet replacement costs.

The Landlords have provided a copy of a witness letter from KC that states that she received \$200.00 in payment for cleaning that she had done for the Landlords at the rental unit. I find this to be a reasonable amount for cleaning and is supported by a written statement equivalent to a receipt. As a result I find that the Landlords are entitled to a monetary award of \$200.00 to compensate them for cleaning costs.

Claim for compensation for harassment

The Landlords stated that the female Tenant had sworn at the Landlords when they entered her rental unit with a plumber to install a new dishwasher. I do not find that this incident resulted in any damages or losses to the Landlords and I dismiss the Landlords claim for compensation in relation to this incident.

The Landlords stated that further harassment occurred after the tenancy had ended and that it occurred in relation to the Tenants requesting payment of a monetary order issued pursuant to the Act. I do not find that the Landlords are entitled to any compensation for the alleged harassment by the Tenants after the tenancy ended. As a result I dismiss the Landlords claim for compensation for harassment.

Claim for compensation for Landlords' items or furnishings removed or damaged

The Landlords have failed to provide any proof that the items/furnishings claimed were their property provided to the Tenants in the rental unit. The Landlord failed to do a move-in inspection and failed to have a document signed by the Tenants with an itemization of the furnishings and belongings were being left in the rental unit by the Landlord at the time the tenancy commenced.

In the decision of August 31, 2011 the Tenants stated that the new dishwasher had never worked since it was installed and although their claim for compensation was denied there was no finding made that they had broken it. The Landlords provided no evidence that the new dishwasher was ever working or properly installed by a licensed plumber, and provided no evidence that the Tenants had broken the dishwasher.

I find that the Landlords have failed to provide sufficient evidence to substantiate their claim for compensation for their items or furnishings being removed or damaged by the Tenants. As a result I dismiss the Landlords request for compensation for damage or removal of their furnishings and items.

Filing fee

As the Landlords were only partially successful in their Application, I find that they are entitled to a monetary order for \$50.00, which is half of their filing fee ($\$100.00 \div 2$).

Conclusion

I allow part of the Landlords' claim for compensation for cleaning costs, in the amount of \$200.00, and I dismiss all of the other claims by the Landlords as noted in the decision details above.

I also allow part of the Landlords' claim for the filing fee, in the amount of \$50.00, as they were partially successful in their Application.

I grant the Landlords an order under section 67 of the Act for **\$250.00**.

This order may be filed in the Provincial Court (Small Claims) 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: December 22, 2011.

Residential Tenancy Branch