



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNSD, MNDC, FF
Tenants: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. Both parties sought monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for compensation or money owed; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 32, 33, 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by them on April 3, 2009 for a 3 year fixed term tenancy beginning on May 1, 2009 for a monthly rent of \$2,000.00 due on the 1st of each month and security deposit of \$1,000.00. The agreement stated that water was included in the rent. The tenancy ended when the tenant's vacated the rental property on or before September 30, 2011.

The landlord seeks the following compensation:

Description	Amount
Water usage	\$2,620.32
Fence post replacement	\$540.00
Water tank replacement	\$859.18
Commercial workbench	\$521.00
Total	\$4640.50

The parties agree that after the start of the tenancy the landlord notice a major increase in the cost of water for the rental unit and the tenants agreed that the landlord would pay the first \$288.27 for each water bill and the tenants would pay the balance.

The landlord submitted the tenants at no time disclosed that they were using water for the tenant's business of carpet cleaning until the tenants submitted a letter dated October 17, 2011 into evidence for this hearing that states: "We mutually agreed at that time I would arrange to compensate you this portion through our business – [business name] as the additional water usage may be attributed to water [N] uses to fill up the fresh water tank in his carpet cleaning unit."

In an earlier submission dated October 11, 2011 for this hearing the tenant submitted the following statement: "Please also note that we are a family of six people which means that our family's water usage will be considerably higher than that of an average family of 3 or 4."

The tenants testified that the usage they mention in the letter of October 17, 2011 refers to a 5 gallon tank that the tenant filled occasionally from home. The tenants further testified that there may have been many contributing factors that lead to the increased usage.

The female tenant suggested that it may have been the result of a leak under the kitchen sink; a leaky shower stall; or running toilet; the large number of members in the family and their specific usage and the fact that the house was older. The tenant testified that they had never had such high water bills at their previous home, the tenants provided no evidence of costs from their previous home for comparisons.

The female tenant further testified the landlord never provided her with copies of any water bills and she just took the landlord's word that the bills were so high and that the only reason they agreed to pay the additional amounts was that the landlord had threatened a rent increase to cover the costs and the tenants did not want to pay any more rent.

The landlord submits the tenants are responsible for the replacement of fence posts that were near the driveway. The landlord stated the fence was approximately 8 years old; that she had lived in the rental unit until 2007 and that other tenants lived in the unit from that time until these tenants moved in.

The landlord asserts the water usage of these tenants caused the fence posts to rot and require replacement. The posts were replaced in July 2010. The tenants state the fence at the back of the yard was also falling down and required replacement and that this fence was much more than 8 years old and that damage resulted from extreme winds during that period.

The landlord explained the back fence is in really bad shape but that that fence belongs to the back neighbour and there is nothing the landlord can do about that fence.

The parties agreed that in December 2009 the water tank broke down and flooded its area. The landlord testified the tank was 4 years old and under a 9 year warranty. The landlord testified she did not pursue the warranty as she needed to replace the tank as soon as possible and the warranty process would have taken too long.

The landlord testified that while she had no direct proof that the breakdown resulted from the tenant's use she thought it was likely as a result of the tenants' use of water for their business. The tenants testified they had nothing to do with this breakdown and that it was regular wear and tear.

The landlord asserts when the tenancy began there was a workbench in the workshop area that was not there at the end of the tenancy. In their submission dated October 11, 2011 the tenant submitted that there was only 1 workbench in the workshop not 2 as referred in the landlord's submission and that the 1 workbench was in the workshop when the tenancy ended.

The landlord clarified in the hearing there were two benches at the start of the tenancy in the workshop. The tenants assert there was only one for the duration of the tenancy. The landlord submitted a copy of a move out Condition Inspection Report from the previous tenants indicating there were two work benches. She also submitted a copy of a move in Condition Inspection Report for these tenants and there is no mention of any benches in the workshop.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In regard to the landlord's claim for the replacement of fence posts, due to the age and the fact that at least two other parties had lived in the rental unit prior to the tenants, I find the landlord has failed to provide any evidence to even suggest that these tenants were responsible for causing damage to the fence posts so severe that they required replacement within one year of the start of their tenancy. As such, I find the landlord has failed to establish the loss (cost of repairing fence posts) results from a violation of the *Act*, regulation or tenancy agreement, on the tenants' part. I dismiss this portion of the landlord's Application.

I also find the landlord has not provided any evidence to support her claim that the tenants are responsible for the damage to the water heater and even by her own

testimony she is not sure what happened to the water heater. I therefore find the landlord has failed to establish that she has suffered a loss resulting from a violation of the *Act*, regulation or tenancy agreement, on the tenants' part. I dismiss this portion of the landlord's Application.

I accept the landlord had noted on the move out Condition Inspection Report of the previous tenants that there were two benches in the workshop. Since the landlord knew enough to include them on the previous Report by not recording their presence in these tenants' move in Condition Inspection Report (that was completed on the same day as the other tenant's move out Report), I find the landlord has failed to establish there were two benches at the start of the tenancy.

As to the water usage, I find it highly unlikely that tenants faced with a landlord who wants to charge them for increased water usage in the amounts demonstrated by the evidence submitted (in some cases over \$150.00 for a usage period) would never ask to see a bill but agree to the increased amount. Further I find it unlikely that faced with this proposition by the landlord, if the tenants truly believe the increased usage resulted in part because of the fixtures and age of the house that the tenants would agree to additional charges.

I do however find it quite probable that a party who did not want the other party to be aware of inappropriate usage would conceal information and accept an agreement to pay additional costs. I also note the tenants acknowledge in the letter dated October 17, 2011 that they would pay the water costs from their business account. As such, I can only conclude the tenants see these additional water costs as business expenses and not an expense incurred for residential usage.

For these reasons, I find the tenants breached the tenancy agreement through their failure to disclose, despite repeated discussions with the landlord, their inappropriate usage of residential water and therefore the landlord is entitled to reimbursement for all water usage for the duration of the tenancy.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the tenancy ended on September 30, 2011 and the landlord filed her Application for Dispute Resolution on October 11, 2011, I find the landlord has complied with her obligations under Section 38(1). As such, the tenants are not entitled to the compensation noted under Section 38(6).

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,670.32** comprised of \$2,620.32 water usage and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit held in the amount of \$1,000.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,670.32**.

I note that during the hearing the parties confirmed the tenants provided the landlord with a cheque in the amount of \$298.00 for water usage that the landlord has not yet negotiated. I order the landlord may now negotiate this cheque; once successfully cleared the sum will constitute a payment towards this monetary order.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

Further, as I have ordered the landlord may retain the security deposit above, I dismiss the tenants' Application in its entirety.

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