



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF, O, RR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenants pursuant to section 72; and
- other unspecified remedies.

The tenants applied for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenants confirmed that they received copies of the landlord's dispute resolution hearing package sent by the landlord by registered mail on December 8, 2011. The landlord confirmed that the female tenant handed her a copy of the tenants' application for dispute resolution on February 10, 2012. I am satisfied that the parties served these documents and their written evidence to one another in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for loss or damage arising out of this tenancy? Are the tenants entitled to a reduction in rent for services or facilities committed to as part of this tenancy but not provided during a portion of this tenancy? Which of the parties are entitled to the tenants' security deposit? Is the landlord entitled to recover the filing fee for her application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, receipts and invoices, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

This periodic tenancy for the rental of a manufactured home commenced on May 21, 2006. Monthly rent by the end of this tenancy was set at \$800.00, payable in advance on the first of each month. The tenants vacated the rental unit on November 30, 2011, on the basis of their November 1, 2011 written notice to end this tenancy. The landlord continues to hold the tenants' \$325.00 security deposit paid on or about May 26, 2006.

The landlord entered into written evidence copies of the May 26, 2006 joint move-in condition inspection report and the November 30, 2011 joint move-out condition inspection report. The female tenant noted on the last page of the move-out condition inspection report that she did not agree that the report fairly represented the condition of the premises when the tenants vacated the rental unit. The tenants entered into written evidence a copy of their own version of the move-out condition inspection report in which they outlined their assessment of the final condition of the premises when they vacated the rental unit.

The landlord applied for a monetary award of \$1,369.13, which included the following items listed in her monetary order breakdown entered into written evidence:

| Item | Amount |
|--|-------------------|
| Cleaning (10 Hours @ \$10.00 per hour) | \$100.00 |
| Painting of manufactured home and addition | 1,131.20 |
| Replacement of Ceiling Fan and Light | 92.93 |
| Electrician to Install Fan | 100.00 |
| Door Handle for Oven Damaged | 50.00 |
| Replace 2 Curtain Rods | 30.00 |
| Replace 2 Curtains & 2 Blinds once part of set | 100.00 |
| Picture Developing | 40.00 |
| Less Security Deposit | -325.00 |
| Recovery of Filing Fee for this application | 50.00 |
| Total Monetary Award Requested | \$1,369.13 |

The tenants applied for a monetary award of \$275.50. Their application included a claim for a reduction in rent of \$130.50 from October 4, 2011 until November 30, 2011,

because they were without a functioning dishwasher when the landlord refused to repair the dishwasher. The tenants arrived at the \$130.50 amount on the basis of \$2.25 per day for the 58 days they were without a dishwasher. In their application, they agreed that the landlord was entitled to retain \$180.00 of their security deposit. They requested the return of the remaining \$145.00 of their security deposit plus the \$130.50 for the landlord's refusal to repair their dishwasher.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I will first address the monetary award sought by the tenants, followed by each of the items as listed above in the landlord's application for a monetary award.

There is no dispute between the parties regarding the tenants' assertion that on October 4, 2011, the landlord advised the tenants that she was unwilling to repair the dishwasher in this rental unit. Since the parties agreed that the dishwasher formed a part of the facilities that the landlord committed to include in this tenancy agreement, I allow the tenant's application for a monetary award for the landlord's reduction in the value of the facilities provided as part of this tenancy. Under the circumstances, I allow the tenant's claim for a monetary award of \$2.25 per day for the final 58 days of this tenancy. This results in a monetary award in the tenant's favour in the amount of \$130.50.

The landlord testified that she spent 10 hours cleaning the rental unit and asked for reimbursement of her time at a rate of \$10.00 per hour. The tenants agreed that they did not leave the rental unit in clean condition, but maintained that no more than 5 hours would have been necessary. Based on my review of the inspection reports, the photographic evidence and the oral testimony of the parties, I find on a balance of probabilities that a full 8 hour day of cleaning was likely necessary at the end of this tenancy. Had the landlord hired someone to perform this task, I find that she would

likely have to pay at least \$15.00 per hour. For these reasons, I find that the landlord is entitled to a monetary award of \$120.00 for cleaning, some of which was likely included in the landlord's claim for preparation for painting.

At the hearing, I noted that Residential Tenancy Branch Policy Guideline 37 establishes that the useful life of interior repainting is estimated at 4 years. The landlord testified that the interior walls of this type of manufactured home are not expected to be repainted, as they are wallpapered. She said that this repainting only became necessary when the tenants did not properly cover damage that they had caused through hanging paintings and making various ill-repaired holes in the walls. Since the manufactured home is in excess of 4 years in age and the walls had not been painted during this tenancy, I find that the landlord would not be entitled to recover the costs of repainting most of the interior walls of the rental unit. However, the parties agreed that by July 1, 2008, the landlord had extended the rental premises by completing an "addition" to the manufactured home which included a mudroom. After some discussion between the parties, they agreed that the approximate size of this addition constituted 27% of the total living area of the rental unit as it existed by the end of this tenancy. Based on this agreed estimate, I find that the portion of the landlord's repainting costs that are eligible for a monetary award is \$305.42 (i.e., $27\% \times \$1,131.20 = \305.42).

I find that the landlord is entitled to recover that portion of her \$305.42 expenditure for repainting that occurred earlier than would have been anticipated based on the remaining useful life of the existing paint job completed by July 1, 2008. The repainting of the addition part of the rental unit occurred 40 months after the previous paint job rather than the 48 month useful life for such painting. I find that the landlord is thus entitled to a monetary award of \$50.90 to recover a portion of her repainting costs ($8/48 \times \$305.42 = \50.90).

I heard conflicting testimony from the parties with respect to the landlord's claim for replacement of the ceiling fan and light, and the cost of hiring an electrician to install a ceiling fan. The landlord testified that the ceiling fan was a standard feature of this manufactured home which was removed by the tenants, replaced by another ceiling fan, and finally replaced with a smaller and different light fixture at the end of this tenancy. The tenants confirmed that they did remove the original brass light fixture and replaced it with their own ceiling fan during this tenancy. They testified that they removed their ceiling fan when they ended their tenancy but could not reinstall the original brass light fixture because it had been broken while it was being stored. They admitted that the white light fixture they installed in its place did not cover the entire area covered by their previous fan. They denied that there was a ceiling fan installed when the tenancy commenced. The landlord had no photographs of the original ceiling fan and had no

information from the manufacturer of the home due to a fire in that plant. The parties disputed whether a light switch on the wall had operated the original ceiling fan that the landlord maintained was removed by the tenants and never replaced.

Although I have given the landlord's claim for this item careful consideration, I am not convinced that the landlord has demonstrated to the extent necessary that there was a ceiling fan in place when this tenancy commenced. However, I do accept that the ceiling fan installed by the tenants and removed by them at the end of their tenancy and the replacement of the original brass light fixture with another light fixture did damage the premises to an extent that exceeded that to be expected through normal wear and tear. For this reason, I allow the landlord \$75.00 for the damage arising as a result of the tenant's replacement of a number of fixtures to the ceiling of this rental unit.

The tenants entered into written evidence a statement that they did not dispute the landlord's claim for a monetary award of \$50.00 to replace the door handle for the oven or the landlord's claim of \$30.00 to replace two curtain rods removed during their tenancy. On this basis, I find that the landlord is entitled to a \$50.00 monetary award for replacement of the door handle for the oven and \$30.00 for replacement of the two curtain rods.

In their written evidence, the tenants agreed that they were responsible for one missing valance and the damage of one blind, for an amount of \$50.00. The landlord did not dispute their assertion that the other blind was noted as damaged in the joint move-in condition inspection report and that only one of the valances was missing. As such, I find that the landlord is entitled to a monetary award of \$50.00 for replacement of 1 valance and 1 blind.

I dismiss the landlord's application for recovery of her photographic costs as these are not costs that are recoverable to prepare for a dispute resolution hearing. As it was necessary for the landlord to apply for dispute resolution in order to retain a portion of the tenants' security deposit and the landlord was partially successful, I allow the landlord to recover her \$50.00 filing fee for this application. I allow the landlord to retain a portion of the tenants' security deposit plus interest in satisfaction of the landlord's application for a monetary award.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms which requires the landlord to return \$40.44 from the tenant's security deposit forthwith:

| Item | Amount |
|--|------------------|
| Cleaning (8 Hours @ \$15.00 per hour = \$120.00) | \$120.00 |
| Painting | 50.90 |
| Damage Arising out of Tenants' Replacement of Light Fixture with Ceiling Fan and Substitution with Another Light Fixture | 75.00 |
| Door Handle for Oven | 50.00 |
| Replace 2 Curtain Rods | 30.00 |
| Replacement of 1 Valance and 1 Blind | 50.00 |
| Less Rent Reduction for Dishwasher (58 days @ \$2.25 per day = \$130.50) | -130.50 |
| Less Security Deposit plus Interest (\$325.00 + \$10.84 = \$335.84) | -335.84 |
| Recovery of Filing Fee for this application | 50.00 |
| Total Monetary Order | (\$40.44) |

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 21, 2012

Residential Tenancy Branch