



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNR, MNSD, MNDC, FF

For the tenants – MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications.

The tenants applied for a Monetary Order for the return of their security deposit and to recover the filing fee from the landlord for the cost of this application.

The landlord applied for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the tenants were permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the landlord entitled to keep all or part the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to recover all or part of their security and pet damage deposits?

Background and Evidence

Both parties agree that this tenancy started on March 01, 2011. This is a fixed term tenancy which was due to expire on February 29, 2012. Rent for this unit was \$1,125.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of \$562.50 on January 30, 2011 and a pet deposit of \$562.50 on April 23, 2011. The tenants gave notice to end the tenancy on October 31, 2011 and moved from the rental unit on November 30, 2011. The landlord has returned \$512.50 from the pet deposit to the tenants on December 09, 2011.

The landlord's application

The landlord testifies that the unit was re-rented for January 01, 2012 and the landlord reduces her monetary claim to for unpaid rent for December, 2011 to \$1,125.00 as this was a fixed term tenancy which the tenants ended before the end of the fixed term.

The landlord testifies that the utilities had to be put back into the landlords name and these utilities had to be left on in the unit even through the unit was empty for December. The landlord testifies that she has estimated the utility cost to be \$175.00 and seeks to recover this sum from the tenants. The landlord testifies that at the time of filing her claim she had not received a utility bill. The landlord testifies that she has since had a gas bill for December of \$90.52. This bill has not been included in evidence.

The tenants' dispute the landlords claim for rent and utilities. The tenants' testify that they were forced to end the tenancy due to conflict between them and the tenants living downstairs. The tenants state the landlord would intervene in the tenants' disputes but seemed to take the side of the downstairs tenants. On one occasion the downstairs tenant ran at the tenants with a golf club. The tenants testify that they called the police and gave the landlord Notice to End Tenancy the next day.

The tenants' dispute that they are responsible for paying utilities after their tenancy ended. The tenants' testify that all utilities were paid up to date when they moved out. The tenants also claim that their gas bill also covered the downstairs tenants' costs for running hot water for their unit.

The landlord testifies that she conducted a move in condition inspection with the tenants and conducted a move out condition inspection with the tenants on November 30, 2011. The landlord testifies that as this inspection was conducted when it was dark outside the landlord missed seeing some areas of damage to the yard and the interior of the unit. The landlord testifies it was noted during the inspection that the tenant had not wiped down the outside of the kitchen cabinets. The landlord states these required some additional cleaning by the landlord who seeks to keep \$30.00 from the security deposit.

The landlord testifies that after the tenants had moved out the landlord discovered the window in the garage was broken. The landlord states the tenants were the only users of the garage and seeks to recover the sum of \$125.00 to replace the window. This damage was not noted on the move out inspection but the landlord has provided a picture of the window in evidence.

The landlord testifies that during the inspection she thought the floors looked odd but did not note it on the inspection form. After the tenants had moved out the landlord testifies that she found the floors were left filthy and she had to clean these herself. The landlord seeks to recover \$80.00 for this work and has provided pictures of dirty cloths and water in evidence.

The landlord testifies that there was a bubble found in the bathroom wall. The landlord claims she had a contractor look at the wall and this contractor informed the landlord that it was not a plumbing issue but thinks it was caused by moisture from the shower curtain. The landlord states she has not yet had an invoice from the contractor to repair this work but believes it will cost \$100.00.

The landlord therefore requests an Order to keep the sum of \$335.00 from the tenants' security deposit. The landlord states she had duplicate copies of the inspection reports and was unsure which one the tenants had.

The landlord testifies that after the tenants moved out she found that the tenants' dog had dug a hole in the yard and the tenants had left dog feces in the yard. The landlord testifies that she deducted the sum of \$50.00 from the tenants' pet deposit to fill this hole and pick up the dog feces. The landlord has provided pictures of the hole and feces in evidence.

The tenants dispute the landlords claim. The tenant testifies that they have a different inspection report to the one the landlord has provided in evidence. The tenant states the first two pages of the report are different but have been written in the landlords own handwriting. The last page with the tenants' signatures' is the same page. The tenants were permitted to send this report in after the hearing had concluded.

The tenants testify that they did not break the garage window and as far as they are aware it was not broken by them during or after their tenancy. The tenants' testify that both sets of tenants had access to the garage and the downstairs tenants used it for storage. The tenants claim the landlord did not make note of the garage on either inspection report.

The tenants' testify that they did clean the kitchen thoroughly but may have missed wiping down the outside of the cabinets but they were not left dirty. The tenants' testify that the landlord alleges the floors were left dirty however this is not noted on the move out report and the tenants testify that the floors were vacuumed and mopped twice before they moved out. The tenants also dispute the landlord's pictures and state these just show some dirty water and cloths and not of the floor.

The tenants' testify that there was a bubble in the paint on the bathroom wall. The tenants testify that they used an inner liner and a shower curtain to prevent water getting on the walls and used the bathroom fan and opened a window when they showered. The tenants testify that they asked the landlord what else they should do and the landlord confirmed to them that the tenants did what they could to protect the walls. The tenants' testify if the fan was not sufficient to take the steam and condensation away then it is not their responsibility.

The tenants testify that their dog did dig a hole in the yard which they filled in before they left. The tenants state their dog could have dug another hole. The tenants also state that although they did pick up some dog feces they could have missed some.

The tenants' application

The tenants seek to recover their security deposit and the balance of \$50.00 from their pet deposit. The tenants state they did not give the landlord written permission to make any

deductions from their security deposit and the tenants dispute the landlords claim for unpaid rent, utilities and damages.

The tenants' testify that the only reason they broke the lease was because of conflict with the downstairs tenant which neither they nor the landlord could resolve. The tenants' testify that they are entitled to quiet enjoyment of their rental unit and this requirement was not being met. The tenants testify that the landlord would always take the side of the downstairs tenant without consulting the tenants and this left them feeling uncomfortable living in their unit. When the downstairs tenant becomes aggressive towards them they state they told the landlord they would have to move out.

The female tenant testifies that her employer has sent in a letter in evidence stating how upset the female tenant was at her work place with the situation that was going on. The tenants state this was an older house in which both sets of tenants could hear everything that went on in the other tenants unit. The downstairs tenant complained about everything and the landlord just said that the tenants had to fix the problem.

The tenants testify that the downstairs tenants' letter provided in evidence from the landlord shows that she has given the landlord a different version of events that happened when she came out of her unit in a threatening manner with a golf club. The tenant testifies that they attempted to get a mutual agreement to end the tenancy however the landlord told them to keep giving it another chance.

The landlord testifies that her written submissions show that she did not take sides between the tenants but did try to establish harmony between them and encouraged them to do so. The landlord testifies that she had an objective view point from both sides' complaints.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords reduced claim for unpaid rent. The landlord testifies that as this was a fixed term tenancy the tenants cannot end the tenancy until the end of the fixed term on February 29, 2012. The tenants argue that they had to end the tenancy early due to the

unresolved conflict with the downstairs tenant and because the landlord failed to protect their right to quiet enjoyment of their rental unit.

Having considered both arguments I find if the tenants were having a conflict with the downstairs tenant and the landlord did not take action to protect their right to quiet enjoyment of their rental unit that the tenants' recourse would have been to file an application for Dispute Resolution seeking an Order for the landlord to comply with the *Act*. As the tenants failed to do this and instead gave the landlords one months notice to end the tenancy I find the tenants are in breach of the tenancy agreement and s. 45 of the *Act*. Consequently, I uphold the landlord's application to recover unpaid rent for December, 2011 to the sum of **\$1,125.00**.

With regard to the landlords application for unpaid utilities; In this matter I find the landlord had the utilities put into her own name after the tenants moved out and find that some of this usage was for the downstairs tenants hot water. I further find the landlord has provided no evidence for this hearing regarding the utility bill. It is my decision that the tenants responsibly for utilities ended on the day they moved out and their utility accounts were settled up to that date. Therefore the landlord's application to recover unpaid utilities is dismissed without leave to reapply.

With regard to the landlords claim for cleaning and damages; I have applied a test used for damage or loss claims to determine if the landlord has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be

proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I have reviewed the Move in and Move out condition inspection reports and find the report submitted by the landlord is different to the report submitted by the tenants. Both reports appear to have been written in the same hand writing. I would caution the landlord that the purpose of doing these reports is to provide evidence of the condition of the unit at the start and end of the tenancy to determine what, if any, damages have been caused during the tenancy. When a copy of a report has been altered or is different this means that little emphasis can be placed on the content of the report.

I find that the landlords claim for damages and cleaning does not meet all of the components of the above test. The landlord has not submitted sufficient evidence to support their claim that the tenants did not leave the rental unit to a reasonably clean standard. A landlord may be required to do some additional cleaning after a tenant has moved out and the *Act* only provides that the tenants leave the rental unit in a reasonable clean condition. I also find the landlord has provided insufficient evidence to show that the tenants are responsible for breaking the window or for the bubbles in the paint on the bathroom wall. Consequently, this section of the landlords claim is dismissed without leave to reapply.

With regards to the landlords claim to keep \$50.00 from the pet deposit, I find the tenants agree that their dog did dig a hole in the yard and the tenants agree that they may have missed some dog feces in the yard when they were clearing up. Consequently, on a balance of probabilities I find the landlord is entitled to keep **\$50.00** from the tenants pet deposit to pay for the landlords time in remedying these items pursuant to s. 38(4)(b) of the *Act*.

With regard to the landlords claim to keep the tenants security deposit; as the landlords claim for unpaid rent has been successful it is my decision that the landlord is entitled to keep the tenants security deposit of **\$562.50** pursuant to s. 38(4)(b) of the *Act* and this sum will be offset against the landlords claim for unpaid rent.

The tenants claim to recover the security deposit is therefore dismissed without leave to reapply.

As the landlord has been partially successful with her claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. As the tenants have been unsuccessful with their claim I find the tenants must bear the cost of filing their own application.

The landlord will receive a Monetary Order pursuant to s. 67 Of the *Act* as follows:

Loss of rental income for December	\$1,125.00
Less security deposit	(-\$562.50)
Damage to yard by tenants dog	\$50.00
Less balance of pet deposit	(-\$50.00)
Filing fee	\$50.00
Total amount due to the landlord	\$612.50

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$612.50**. The order must be served on the tenants and is enforceable through the Provincial Court as an order of that Court.

The reminder of the landlords claim is dismissed without leave to reapply.

The tenants claim is dismissed in its entirety without leave to reapply.

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 23, 2012.

Residential Tenancy Branch