



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with applications from the landlords and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and 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; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

The tenants did not attend this hearing, although I waited until 10:05 a.m. in order to enable them to connect with this hearing scheduled for 9:30 a.m. The landlords' agents attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to a monetary award for damage arising out of this tenancy? Which of the parties is entitled to the tenants' security deposit? Are either of the parties entitled to recover their filing fees from the other party?

Background and Evidence

This two-year fixed term tenancy commencing on September 1, 2010 was scheduled to end on September 1, 2012. Monthly rent was set at \$1,600.00, payable in advance on

the first of each month. The landlords continue to hold the tenants' \$800.00 security deposit paid on July 29, 2010.

The female agent (the agent) testified that an informal "walk-through" was conducted at the beginning of this tenancy with the tenants. She said that no formal joint move-in condition inspection report was prepared or provided to the tenants resulting from that inspection. However, she said that deficiencies noted during the joint move-in condition inspection were identified and included in the "Other" category in the Residential Tenancy Agreement (the Agreement). These deficiencies included the following as noted in the Agreement:

- *basement toilet to be replaced before September 1, 2010;*
- *basement and garage to be rented in as is condition;*
- *ceiling in the dining room and bedroom on main floor to be repaired by Sept. 15;*
- *the carpets to be shampooed by September 3, 2010;*
- *\$100 to be retained from damage deposit for carpet cleaning at the end of tenancy agreement;*
- *Hot water tank will be replaced if/when it breaks.*

The agent testified that no joint move-out condition inspection was conducted with the tenants as they vacated the rental premises on very short notice and left their keys in the mailbox. The landlords did not provide any evidence that a joint move-out condition inspection was scheduled or requested by the landlords. The agent said that no formal move-out condition inspection was conducted by the landlord or her agents, but photographs entered into written evidence by the landlord, were taken after this tenancy ended.

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

The landlords' application for a monetary award of \$5,000.00 included the following items listed in a March 10, 2012 Monetary Order Worksheet prepared by the agent:

Item	Amount
Painting, Cleaning and Repairs	\$1,500.00
Deadbolt for Doors	33.58
Replacement Blinds	48.89
Paint and Supplies - Receipt 1	327.63

Paint and Supplies – Receipt 2	108.30
Estimate for Wall Repair Works, Painting and Rubbish Removal	621.60
Estimate for Electrical Work to remove 220 outlet, conduit and cable	225.00
Estimate for Storage of Tenants' Belongings – 4 months	667.52
Estimate for Replacement of Damaged Floor	952.00
Replacement of Light Fixtures	26.26
Replacement Keys	8.03
Photography Printing Costs - Receipt	33.05
Padlock for Storage Room - Receipt	18.45
BC Hydro Bill – December 2011	73.52
Carpet Cleaning as per the Agreement	100.00
Loss of Rent for December 2011	1,600.00
Administration Cost for Ending Tenancy Early as per the Agreement	500.00
Recovery of Filing Fee for this application	50.00
Canada Post – Postage- Receipt 1	17.72
Canada Post – Evidence Package- Estimate	50.00
Total Monetary Order Claim for Above-Noted Items	\$6,961.55

The landlords submitted extensive receipts, estimates, correspondence and photographs in a large binder.

The tenants' application for a monetary award of \$6,276.04 included the following items:

Item	Amount
Double \$800.00 Security Deposit	\$1,600.00
Estimated Cost of Emergency Repairs, Supplies and Appliances	2,600.00
Estimated Moving Costs	2,150.00
Loss of Rent	875.00
Recovery of Filing Fee for this application	100.00
Total Monetary Order Claim for Above-Noted Items	\$7,325.00

The tenants submitted receipts, copies of emails, correspondence and a range of documents to support their application for a monetary award.

The landlords submitted written and oral evidence that the agent drafted a Mutual Agreement to End a Tenancy (the Mutual Agreement), a standard Residential Tenancy Branch form prepared when the parties to a tenancy agreement agree to end a tenancy on a mutually acceptable date. The tenants entered into written evidence a signed copy of that Mutual Agreement dated September 23, 2011. This copy of the Mutual Agreement indicated that the tenants agreed to vacate the rental premises at 1:00 p.m. on December 1st, 2011. The agent and both tenants signed this Mutual Agreement.

The agent testified that she signed the Mutual Agreement on September 23, 2011 and provided this Agreement to the tenants on or about September 28, 2011 for their signature. The agent submitted a copy of the original draft of the Mutual Agreement which she testified had November/December pencilled in for the tenants' consideration. She entered written evidence in the form of emails from the tenants to support the agent's evidence that the tenants did not actually sign the Mutual Agreement until November 29, 2011. This is consistent with the tenants' written evidence which stated in their chronology that they sent an email to one of the agents on November 29, 2011 advising that they had decided not to sublease the premises "but to sign the flexible mutual agreement to end tenancy they had provided us with and move out." The tenants also included in their written evidence a copy of their November 29, 2011 email in which they noted that they had vacated the premises and left the keys in the mail slot in the front door. The agents did not dispute the tenants' written evidence stating that the tenants provided their forwarding address to the landlords at that time.

The agent testified that she commenced efforts to rent the premises to another tenant by placing advertisements on a popular rental website once the tenants vacated the rental unit by November 29, 2011. She said that she was able to find new tenants who commenced renting the same premises occupied by the tenants as of January 1, 2012. She said that the new tenants are paying a monthly rental of \$1,675.00 for the same premises rented to the tenants.

Analysis – Damage

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.

Based on the written and photographic evidence of the parties and the undisputed oral testimony provided by the agents, I am satisfied that there was damage arising out of this tenancy that exceeded the normal wear and tear that could be expected over a tenancy of this duration. Much of this damage appears to have arisen as a result of the tenants' attempt to renovate the basement of the premises so that they could sublet it to a tenant or tenants. I find that the landlord has provided sufficient evidence to demonstrate that these renovations were unauthorized and caused losses that have incurred costs to restore. Since the landlords are receiving more monthly rent than they were receiving under this fixed term tenancy, I find that the landlords are not entitled to a monetary award for any estimated work that was not done prior to the new tenants moving into this rental property. By obtaining additional rent for these premises, I find that the landlords have not demonstrated that they incurred losses arising from damage attributed to the tenants that was not repaired prior to the new tenants occupying the premises. I also reject the landlords' claims for estimated repairs on the basis that the landlords have not provided evidence of the actual monetary amount of any loss or damage for these items. In coming to this determination, I also note that the landlords did not prepare a joint move-in condition inspection report nor did they provide a move-out condition inspection report.

I have set out below the results of my consideration of the landlords' application for monetary awards for damage resulting from my examination of the evidence, including receipts, photographs, emails and other documents submitted by the parties. These are set out in the order requested by the landlords in their Monetary Order Worksheet.

I allow the landlords' claim of \$1,500.00 for painting, cleaning and repairs as I accept the agents' undisputed testimony that this expense was incurred as a result of the tenants' modifications to the basement. The landlords entered into written evidence a receipt for this work that has been undertaken and photographs to demonstrate the need to conduct this work. The photographs show that the tenants painted some of the basement rooms purple, installed unauthorized wiring and conduit, and installed walls to separate living spaces.

I dismiss the landlords' application for a monetary award for a deadbolt for doors without leave to reapply as I am not satisfied that this expense is one that should be absorbed by the tenants at the end of this tenancy.

I allow the landlords' claim for a monetary award of \$48.89 for replacement blinds as I accept the agent's undisputed testimony that these blinds were purchased to replace blinds removed from the premises by the tenants at the end of this tenancy.

I allow the landlords' claim for \$327.63 and \$108.30 for paint and supplies, documented by receipts entered into written evidence by the landlords.

For the reasons outlined above, I dismiss the landlords' claim for estimates of wall repair work, electrical work, storage of tenants' belongings, and replacement of the damaged floor without leave to reapply for the reasons outlined above. I also note that the landlords did not actually incur storage costs, but left some of the tenants' belongings in the rental property after the tenants vacated the premises. Similarly, the agent confirmed that the floors have not been replaced and many of the other repairs claimed were not conducted before the new tenants occupied the premises.

I allow the landlords' application for a monetary award of \$26.26 to replace light fixtures resulting from this tenancy.

I dismiss the landlords' application for a monetary award for replacement keys as this is not an expense that the tenants bear responsibility for at the end of their tenancy. I also dismiss the landlords' application for a monetary award for the processing of photographs for this hearing as this is not an allowable expense. There is no leave to reapply for either of these items.

I allow the landlords' application for a monetary award of \$18.45 to replace a padlock for the storage room resulting from this tenancy.

I dismiss the landlords' application for a monetary award for the reimbursement of their hydro bill for December 2011 without leave to reapply as I am not satisfied that they are entitled to a recovery of this item, nor am I satisfied by the dates and amount noted in the bill submitted by the landlords for this item.

I allow the landlords' application for a deduction of \$100.00 from the tenants' security deposit pursuant to the provisions of the signed fixed term tenancy agreement.

Since the agent signed the Mutual Agreement, I dismiss without leave to reapply the landlords' application for a \$500.00 Administration Cost for ending this tenancy early. This liquidated damages provision of the tenancy agreement only called for the application of this \$500.00 cost "if the tenant ends the fixed term tenancy before the end of the original term." Since I find that this tenancy ended on the basis of a signed

Mutual Agreement to end this tenancy, I find that both parties were involved in the decision to end this tenancy by Mutual Agreement. In coming to this determination, I recognize the problems with the timing of the tenants' signature to this Mutual Agreement and the resultant loss of rent for the landlord in December 2011. Despite these problems, I find that the tenancy ended on the basis of a signed Mutual Agreement which I find prevents the landlords from obtaining liquidated damages as claimed in their application.

I dismiss the landlords' claim for recovery of Canada Post costs for pursuing their application for dispute resolution without leave to reapply as these claims are not recoverable under the *Act*.

Analysis – Landlord's Claim for Rental Losses Arising from this Tenancy

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that there is ample written evidence from both parties to demonstrate that the tenants did not agree to sign the Mutual Agreement until more than two months after the agent drafted this Agreement. In the interim, disputes arose as to whether the tenants had undertaken unauthorized physical alterations to the rental premises designed to enable them to house an unauthorized sub-tenant in the basement of the rental property. One of these disputes led to the landlords' issuance of a 1 Month Notice to End Tenancy for Cause, disputed by the tenants, resulting in a decision by another Dispute Resolution Officer of the Residential Tenancy Branch on November 10, 2011.

Under these circumstances, I find that the two month delay in the tenants' signature of the Mutual Agreement and alteration of the signed Agreement provided by the landlords does not absolve the tenants from responsibility for the landlords' loss of rent for December 2011. By delaying signing this "Mutual Agreement" until November 29, 2011 and advising the landlords that they had left the premises and vacated the rental unit, the tenants essentially attempted to avoid responsibility for abandoning the rental unit with very little notice.

Since I find that the tenants only gave the landlords two days notice that they would be ending this tenancy, I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the September 1, 2012 date specified in that agreement. As such, the landlords are entitled to compensation for losses incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for December 2011. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the evidence presented, I accept that the landlords did attempt to the extent that was reasonable to re-rent the premises as soon as it became certain that the tenants would not be continuing their tenancy. As such, I am satisfied that the landlords have discharged their duty under section 7(2) of the *Act* to minimize the tenants' loss.

As the tenants did not pay any rent for December 2011, I find that the tenants are responsible for the landlords' loss of rent for December 2011. On this basis, I find that the landlords are entitled to a monetary award of \$1,600.00. However, the landlords' mitigation of losses resulted in their obtaining an extra \$75.00 from January 2012 until the end of August 2012, when the tenants' fixed term tenancy was to end. The landlords are scheduled to obtain \$75.00 in additional rent from the new tenants for the 8 months that remained in the tenants' fixed term tenancy. For this reason, I find that the actual rental loss resulting from the landlords' successful mitigation of the tenants' losses is to be reduced by \$600.00 (8 months at \$75.00 per month). This results in a total rental loss of \$1,000.00 for the tenants' failure to remain in the tenancy until the end of their fixed term.

Analysis – Return of Security Deposit

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the security deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the tenant's provision of the forwarding address or the date when the tenancy has ended. In this case, both parties have applied for the tenants' security deposit.

I find that the landlords have not returned the security deposit within 15 days of receipt of the tenants' forwarding address. Although the landlords applied to retain the tenants' security deposit, their application received by the Residential Tenancy Branch on January 23, 2012, was submitted well beyond the 15-day period for doing so in

accordance with section 38(1) of the *Act*. The landlords provided no evidence that they had obtained the tenants' written permission to retain their security deposit.

Under these circumstances, I find that the landlords have not complied with section 38 of the *Act* and as a result the tenants are entitled to a return of their \$800.00 security deposit plus applicable interest. No interest is applicable over this period. I also find that the tenants are entitled to an \$800.00 monetary award pursuant to section 38(6) of the *Act*, an amount that is equivalent to the amount of their original security deposit.

Analysis – Remainder of Tenants' Application for a Monetary Award

With the exceptions of those items relating to the tenants' claim for a return of their security deposit as outlined above, I dismiss the remainder of the tenants' application for dispute resolution without leave to reapply. In addition to their failure to participate in this hearing, I find that the tenants have submitted insufficient evidence to support their claims that they are entitled to monetary claims for emergency repairs, supplies, appliances, moving costs or their loss of rent. I am not satisfied that the tenants sought and obtained the landlords' authorization to conduct repairs and to secure a sub-tenant to rent a portion of their rental premises. As was noted in my comments regarding the landlords' application for a monetary award on the basis of estimates, I find that the tenants have provided insufficient evidence to demonstrate their entitlement to reimbursement for actual and verifiable losses that they sustained as a result of this tenancy.

As both parties were partially successful in their claims, I find that they both bear the costs of the filing fees for their applications.

Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows them to recover their losses and damage arising out of this tenancy and their filing fee but credits the tenants with the amount of their security deposit and a payment under section 38(6) of the *Act* stemming from the landlords' failure to return their security deposit in accordance with the *Act*.

Item	Amount
Painting, Cleaning and Repairs	\$1,500.00
Replacement Blinds	48.89
Paint and Supplies - Receipt 1	327.63
Paint and Supplies – Receipt 2	108.30
Replacement of Light Fixtures	26.26
Padlock for Storage Room - Receipt	18.45
Carpet Cleaning as per the Agreement	100.00
Landlords' Loss of Rent for December 2011 (\$1,600 - \$600.00 = \$1,000.00)	1,000.00
Less Security Deposit	-800.00
Less Tenants' Monetary Award for Landlords' Failure to Return Security Deposit (-800.00
Total Monetary Order	\$1,529.53

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) 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.

I dismiss the remainder of both applications 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: March 28, 2012

Residential Tenancy Branch