



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by way of conference call in response to an application made by the tenants for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Both tenants attended the conference call hearing, provided evidence in advance of the hearing, and gave affirmed testimony. However, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on January 17, 2012, the landlord did not attend. The tenants provided proof of such mailing in advance of the hearing, and I find that the landlord has been served in accordance with the *Residential Tenancy Act*. All evidence and the testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on October 1, 2011 and ended on January 1, 2012. Rent in the amount of \$750.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$400.00 which was ordered to be retained by the landlord at a previous dispute resolution proceeding. The rental unit is a basement suite in a house that is also occupied by the landlord.

The first tenant testified that the parties had a verbal agreement which provided the tenants with storage, which was to be shared with the landlord. The tenant had to clean out the shed and erect shelving to house the tenant's belongings which took time over a 4 day period. The landlord was very pleased and even showed his family what the tenant had done, but the landlord changed the locks on the shed about the 3rd week of

the tenancy. The tenants then had to rent a storage unit for \$220.00, and provided a receipt to prove that cost. Further, the tenant is a carpenter and had a job to fix windows for a customer in mid-October, 2011 but could not access the tools to complete the job because they were locked in the shed. The quote for completing the job was \$180.00, and the tenants claim that amount from the landlord and \$220.00 for the cost of the rental storage unit. The tenant testified that the summary of the tenants' claim contains an error stating that the cost was \$210.00, and the receipt in the amount of \$220.00 is the correct amount.

The tenant further testified that the parties had a verbal agreement which provided the tenants with the use of laundry facilities, and then about a week after the tenancy began the landlord told the tenants that the landlord's child had a skin disease so the tenants could no longer use the laundry facilities. The tenant testified to doing about 3 loads of laundry per week and had to drive to a laundromat about 12 kilometres from the tenant's rental unit. The tenant also cut the lawn a few times, and the landlord stated that the mower was under warranty and asked the tenant to take it to a repair place and then pick it up. The tenant expected the landlord to give the tenant some gas money, but the tenant didn't ask and the landlord didn't offer any.

The tenants further claim \$200.00 for moving expenses. The landlord was successful in obtaining an Order of Possession for unpaid rent or utilities, but the landlord also changed the locks on the shed and the mail box.

In November, 2011 a storm blew through the area and the internet was not working. The landlord had changed the access code or something for the internet. Internet service was a material term of the tenancy because one of the tenants attends school and required it for assignments.

The other tenant testified that in late November, 2011 while doing homework with a friend the internet stopped working. The landlord told the tenant to check the box, and everything looked fine; the internet came back on in about a half hour. However, the next day it was shut off again and never came back on again. The landlord said that it worked well upstairs using an Ethernet cable, but the tenants used wireless and had no Ethernet cable; the landlord had the wireless connection disconnected. The tenant had a lot of work to do every day on the computer and missed assignments.

The tenants also provided a summary of the tenants' claim:

1. \$50.00 for cleaning the shed and erecting shelving;
2. \$225.00 per month for laundry for the months of Oct, Nov, and Dec/11 @ \$75.00 per month;

3. \$220.00 for storage unit rental;
4. \$180.00 for loss of work;
5. \$500.00 for punitive damages;
6. \$30.00 for gasoline to take the lawn mower in for repairs and picking it up again;
7. \$200.00 for moving expenses;
8. \$50.00 for disconnection of the wireless internet;
9. \$250.00 for punitive damages regarding the tenants' inability to complete assignments on time.
10. Costs.

The tenants also provided a copy of the tenancy agreement, which is very poorly written and does not indicate what is included in the rent other than, "Cable, stove and fridge are provided, with everything working and it MUST be kept that way."

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

I have reviewed the tenancy agreement and the other documentation provided by the tenants. I find that the tenancy agreement contains clauses that are not legal or enforceable, such as, "If there is any suspicious activity happening, the owner is allowed to check the basement suite at anytime," and, "If you decide to move out and other tenants need to see the basement it will be shown, if you're not home," and "Please be advised that if you are not staying long term, you will not receive your damage deposit."

There is nothing in the tenancy agreement that states that storage or wireless internet is included in the rent. However, I accept the testimony of the tenants that storage space was promised. The receipts provided for storage space are dated November 1, 2011 and December 1, 2011, which I find corroborates the testimony, and I find that the landlord removed that facility from the tenants without notice. The *Act* requires that if a landlord removes a facility, the landlord is required to reduce the rent accordingly.

I further accept the testimony of the tenants with respect to laundry facilities and wireless internet.

With respect to punitive damages, such damages are an award to punish a person for wrong-doing and I have no authority to make such an award.

With respect to the tenants' claim for gasoline to have the mower repaired, I am not satisfied that the tenants are entitled to any money under the *Residential Tenancy Act*. The tenant was not required to take the mower to have it repaired or to return it. The tenant did so at the request of the landlord, but no discussion took place about payment for that favour.

With respect to the tenants' claim for cleaning the shed, I have no evidence before me to satisfy that the tenant asked for any compensation or was promised any compensation by the landlord. Nor can I find that the landlord has breached the *Act* or the tenancy agreement which caused the tenant to suffer a \$50.00 loss.

The tenants have not provided any evidence, such as the quote, for loss of work, and therefore, I find that the tenants' have failed to establish a claim for \$180.00.

I further find that the landlord is not required to pay the tenants moving expenses, and the tenants' claim for \$200.00 must be dismissed.

With respect to loss of the internet, I am not satisfied that it was a material term of the tenancy, but I do accept the testimony of the tenants that it was necessary and it was promised by the landlord. The *Act* permits me to award a nominal amount where no value can be placed on a specific claim, and I find that the tenants' claim of \$50.00 is justified in the circumstances.

In summary, I find that the tenants have established a claim for \$220.00 for storage, \$50.00 for the loss of the internet, and \$225.00 for loss of laundry facilities, for a total of \$495.00. The balance of the tenants' application is hereby dismissed without leave to reapply.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$495.00.

This order is final and binding on the parties and may be enforced.

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 15, 2012.

Residential Tenancy Branch