



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed for a monetary order for alleged damage to the rental unit, for unpaid rent or utilities, for money owed or compensation under the Act or tenancy agreement, for an order to keep the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

The Tenants filed for a monetary order for return of the security deposit paid to the Landlord and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

I note the parties had been involved in one prior dispute resolution proceeding.

Issue(s) to be Decided

Is the Landlord entitled to the relief sought?

Are the Tenants entitled to return of the security deposit?

Background and Evidence

This tenancy began on April 1, 2010, with the parties entering into a written, month to month tenancy agreement. The Tenants paid the Landlord a security deposit of \$575.00 and a pet damage deposit of \$100 on April 1, 2010. The monthly rent was \$1,150.00, payable on the first day of each month.

Although the parties agreed they performed both incoming and outgoing condition inspection reports, only a copy of the outgoing condition inspection report was provided in evidence.

The tenancy did not end well for the parties. The Landlord had performed upgrades and renovations at the rental unit without applying for the necessary permits and approvals. The municipality issued a notice to the Landlord requiring the property to be vacated in seven days. The Landlord forced the Tenants to vacate the rental unit on very short notice. I note these matters were dealt with in an earlier hearing between the parties.

The Landlord claims the Tenants failed to remove garbage and other property from the rental unit at the end of the tenancy. The Landlord claims \$125.00 for this. The Landlord provided photographs of the items he alleges were left behind. He provided no invoice for this, as he had not done the work yet.

In reply, the Tenants testified they removed all their property when they vacated the rental unit. The Tenants state the Landlord's photographs were old, and taken before the Tenants property had been completely removed.

The Tenants have also provided a letter from a third party who explains they picked up six bags from the rental unit to bring to a charity and that, "There was not anything left behind at the house that I could see." The Tenants also testified that some of the items the Landlord claims were left behind are the Landlord's, or that they were there at the outset of the tenancy. The Tenants agree they left behind a shelf in the garage. This is noted in the outgoing condition inspection report.

The Landlord claims it cost \$100.00 to clean up dog feces at the rental unit. The Landlord testified this is based on three hours of work at \$25.00 per hour.

The Tenants dispute the amount claimed by the Landlord for this. They agree there may have been some dog feces left behind when they moved, and apologized to the Landlord for this in the hearing.

The Landlord claims \$400.00 to repair holes in walls at the rental unit, which he alleges the Tenants caused. The Landlord has provided photographs of some damages to the walls. Some of these occurred on a wall behind a sofa, and it appears the sofa rubbed up against the wall. There are also holes in a wall behind a door, which appear to be caused by the door knob striking the wall when the door is fully opened. The Landlord

says the walls need to be patched and repainted. The Landlord provided no invoice for this, as he had not done the repair work yet.

The Tenants claim that the mark on the wall from the sofa is normal wear and tear, after a tenancy of two years. They testified that some of the holes in the wall caused by the door knob were patched and repaired before they moved into the rental unit. They testified that the Landlord should have installed a door stop, to prevent the knob from denting the wall.

The Landlord claims \$500.00 for repair to the kitchen cabinets and countertops. He claims the Tenants scratched the cabinet and damaged the countertop. The Landlord provided no invoice for this, as he had not done the repair work yet.

The Tenants replied that one of their chairs may have lightly scratched the corner of the lower cabinet. However, the Tenants testified that these are the original cabinets and countertop in the house, which was built in the 1940's. The Tenants say they intended on sanding and repairing this, however, they were forced to vacate the rental unit on short notice.

The Landlord claims that the heating oil tank was full at the start of the tenancy and that the Tenants did not refill the tank at the end of the tenancy. The Landlord claims \$1,200.00 for heating oil he alleges the Tenants used but did not replace. The Landlord states that the last renters in the rental unit had left the oil tank full when they moved out. The Landlord explained there was no note of this on the incoming condition inspection report.

The Tenants reply that the Landlord has no evidence the oil tank was full at the start of the tenancy. The Tenants remarked that much of the previous hearing between the parties dealt with the fact the oil fired furnace did not function properly during periods of the tenancy. The Tenants have supplied copies of two bills for the oil they put in the tank during the tenancy, as well they testified they had a third delivery of oil, but could not locate their invoice for this.

The Landlord claims the Tenants failed to pay for all the utilities during the tenancy and claims \$2,096.73 as 75% of the water and other utilities not paid for. In evidence the Landlord has provided a copy of a "billing history" document with utility account details. This document appears to be a summary of charges for the rental unit property going back several years. It includes charges for penalties, water service, garbage removal, sewer service and charges, and for water consumption.

The Landlord testified that the Tenants were responsible for paying all utilities under the tenancy agreement. The Landlord testified that he asked the Tenants several times during the tenancy to pay the water bills. The Landlord also testified that he never actually knew if the bills were being paid until he received the property tax assessment from the local municipality.

The Tenants testified that they did not know about the water bills until the Landlord provided them with an invoice during the course of the previous hearing. The Tenants stated that the billing history includes penalties and charges from before the date when this tenancy began. They testified they do not feel they should have to pay penalties or for water for the previous renters. They also submit they should not have to pay for items the Landlord is responsible for.

In regard to the Tenants' claim for return of the security deposit and pet damage deposit, they testified that they provided their forwarding address in writing to the Landlord on the date they moved out of the rental unit, March 31, 2012

The Landlord had applied to retain the security deposit within 15 days of the end of the tenancy.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the following.

In a claim for damage or loss under the Act or tenancy agreement, the Applicant making the claim must provide evidence sufficient to prove:

1. That the damage or loss exists;
2. That the damage or loss occurred due to the action or neglect of the respondent in breach of the Act or tenancy agreement;
3. Verification of the amount claimed for the damage or loss is the actual amount required for compensation; and
4. That the Applicant mitigated, or minimized, the loss or damage in accordance with section 7 of the Act.

If the Applicant is successful in proving all of the four elements above, section 67 of the Act allows a monetary award to be made:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In regard to garbage removal, I dismiss the Landlord's claim. I find the Landlord had insufficient evidence to prove the Tenants left behind any property, except for the shelves in the garage. As these shelves are noted on the outgoing condition inspection report I find the Landlord agreed to allow these shelves to be left behind by the Tenants. Otherwise, the Landlord would have noted on the report that the shelves had to be removed.

I accept the Landlord's and Tenants' testimony, that the Tenants failed to remove all dog feces from the property, however, I find the Landlord is requesting an unreasonable amount in compensation for cleaning up after the dog. I allow the Landlord \$50.00 for this portion of the claim for the three hours work.

I dismiss the Landlord's claims for the holes in walls, or the marks on the walls. The Landlord is required under the Act to paint the rental unit every four to five years. The Landlord provided no evidence on when he last painted the walls. I find the Landlord failed to prove the Tenants damaged the walls beyond normal wear and tear. Furthermore, the Landlord has failed to provide verification that the amount claimed is the actual amount required to make these repairs.

I dismiss the claim of the Landlord for the repair of cabinets and countertops. Although the Tenants agree they caused a few small scratches on the corner of the cabinet, the Landlord has failed to provide verification that the amount claimed is the actual amount required to make the repairs. Furthermore, the cabinets and countertops are well beyond the useful life expectancy for these items. Policy guideline 40 sets out a life expectancy of 25 years for cabinets and counters. Therefore, the cabinets and counters have depreciated beyond the cost of repair and the Landlord's claim is dismissed.

I dismiss the claim to refill the oil tank. I find the Landlord had insufficient evidence to prove what the level of the oil tank was either at the beginning or at the end of the tenancy. Therefore, I find the Landlord failed to prove the Tenants used all the heating oil or that the Landlord suffered a loss for the cost of the heating oil.

I dismiss the claim for utilities. In evidence the Landlord provided a four page billing summary edited from an Internet website, with 21 different billing periods, dating back some five years before this tenancy began. Included in the billing summary are

penalties and amounts that accrued prior to the beginning of this tenancy, and were due and owing before the Tenants took possession of the rental unit. The Landlord provided no calculations to prove he had offset these previous amounts.

According to the calculations of the Landlord the bill totals \$2,795.64 and the Landlord requests \$2,096.73 of this. The Landlord does not indicate what amounts he attributes to the Tenants, and some of the items in the summary were not the responsibility of the Tenants to pay. Furthermore, it is not the role of a Dispute Resolution Officer to forensically audit financial records line by line, investigate amounts that might be owed and establish a monetary sum to prove an Applicant's claim. This leads me to find the Landlord has failed to prove or verify what amounts the Tenants might owe for the utilities, and therefore, I dismiss the claim.

I find that the Landlord has established a total monetary claim of **\$55.00** comprised of \$50.00 for cleaning dog feces at the rental unit and the \$5.00 towards the fee paid by the Landlord for this application. I have lowered the amount recovered on the filing fee for the Application, as the Landlord had limited success in the matter.

I order that the Landlord retain \$55.00 from the deposits of \$675.00 in full satisfaction of the claim, and all the other portions of the Landlord's Application are dismissed without leave to reapply. I order the Landlord to return the balance of \$620.00 to the Tenants.

I find the Tenants have established a claim for the return of the balance of their security deposit. I find the Tenants have established a total monetary claim of **\$670.00**, comprised of the balance of the deposit of \$620.00 and \$50.00 for their filing fee for the Application.

I grant the Tenants an order under section 67 for the balance due of **\$670.00**. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: June 15, 2012.

Residential Tenancy Branch