



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNSD, FF

For the landlord – MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for dispute Resolution. The tenants have applied to recover the security deposit and to recover the filing fee from the landlord for the cost of this application. The landlord has applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security 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.

Both parties attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants 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

- Are the tenants entitled to recover their security deposit?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to keep all or part of the tenants' security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy started on May 01, 2011. The tenants rented the entire house for a monthly rent of \$1,350.00. Rent was due on the first day of each month in advance. The tenants paid a security deposit of \$700.00 on April 25, 2011.

The tenants testify that the landlord did not do a move in or move out condition inspection of the property at the start and end of the tenancy. The tenants' testify that they tried to arrange a move out inspection with the landlord but the landlord failed to give the tenants any opportunity to do an inspection with the landlord. The tenants claim the reports the landlord has provided in evidence must have been completed later by the landlord. The tenants testify that they moved from the rental unit on April 04, 2012 and gave the landlord their forwarding address in writing on June 11, 2012. The tenants testify that the landlord has not returned their security deposit within 15 days of receiving their forwarding address and the tenant seek to recover their security deposit.

The landlord testifies that the tenants ended the tenancy with insufficient notice. The landlord testifies that the tenants sent the landlord a text message on March 08 saying they were moving out. The landlord testifies that she met the tenants on March 13, 2012 and the tenant informed the landlord they would be moving out on April 01, 2012 and would agree to pay half a month's rent for April. The landlord testifies that she agreed the tenants could pay half a month's rent and the landlord would suffer the loss of the other half of April's rent. The landlord testifies that the tenants therefore owe rent from April 01 to April 15, 2012 of \$675.00. The landlord testifies that the tenants failed to pay

the utilities of \$638.12 and caused some damage to the rental unit and the landlord seeks an Order to keep the tenants' security deposit.

The tenants' testify that the landlord told them on March 06 that the landlord was going to start renovations in the basement to turn the basement into a separate suite for the landlord. The tenants' testify that in the meeting on March 13, 2012 the landlord informed the tenants that the renovations would start at the beginning of April, 2012. The tenants' state they informed the landlord that they would be moving out as they rented the entire house did not want to lose half of their living space. The tenants' testify that the landlord told the tenants they could continue to live upstairs but this smaller space did not meet the tenants' needs. The tenants agree that they did not give a months' notice but state the landlord did not give the tenants notice that the renovations would be starting. The tenants heard on April 05, 2012 that the renovations were being started by the landlords Aunt and Uncle but the tenants had already moved out. The tenants' testify that they had agreed that they would pay half a month's rent for April if the landlord did a walk through inspection with the tenants and returned the tenants rent cheques for the following months. The tenants testify that the final utility bill has been paid by them and the tenants have provided evidence of the bill and receipts from the city showing the bill was paid in instalments by June 29, 2012.

The landlord testifies that the renovations were not given the go ahead and it was just a proposal put to the tenants as the landlord wanted to live in the basement and a suite would be required. The tenants found alternative accommodation before any work started or the plans were finalized. The landlord testifies that she was open to discussion about the renovations with the tenants and the landlords Aunt and Uncle were only coming to look at the property at the time these initial discussions took place.

The landlord testifies that the tenants caused damage to the rental unit and failed to leave the rental unit in a reasonable clean condition at the end of the tenancy. The landlord seeks to recover the sums of:

\$79.30 for carpet cleaning; the landlord testifies that the upstairs carpets had to be cleaned three times by the landlord but the carpets remain stained.

\$2.32 to have key cut for the garage as the tenants did not return this key

\$113.61 for a missing garden hose and garbage can, replacement keys for the house, a sink plug and cleaning supplies

\$11.75 for a missing coupling for the sprinkler system

\$12.31 for a 10 pack of halogen bulbs that was missing and more than half the halogen bulbs in the house were burnt out

\$148.15 to clean and paint the walls in the house as the tenants had left the walls filthy with mud and hand prints;

\$11.44 to replace the caulking around the bathtub which was falling off and had been new at the start of the tenancy;

\$1,225.68 for replacement flooring in the basement; the basement carpet had to be pulled up as the tenants had kept a cat without permission and the landlord is extremely allergic to cats. The landlord claims it was documented on the tenancy agreement that the tenants were allowed to have two small dogs but no cats

\$720.00 for the landlords labour costs to clean and paint the house and make it presentable for new tenants. This work took 48 hours and the landlord seeks \$15.00 per hour

The tenants dispute the landlords claim for damages and cleaning. The tenants' testify that they did clean the carpets with a carpet cleaner and any stains remaining on the carpets are normal wear and tear.

The tenants agree they did not return the keys to the landlord they did try to make arrangements with the landlord but heard nothing back from the landlord. The tenants testify that the garden hose was cracked and leaking at the start of the tenancy and was replaced by the tenants. The tenants state they took the hose they purchased with them at the end of the tenancy. The tenants' disputes that they took a sink plug with them. The tenant agree they did take the garbage can but when they asked the landlord about

returning the garbage can the landlord told them she did not want them at the property. The tenants deny removing a sprinkler coupling and state there was one missing which they replaced and they told the landlords friend about it and he said it was not a big deal and he would replace it. The tenants' testify that they did not take a box of halogen bulbs, they may have used them in the unit and was not aware that any had blown at the end of their tenancy. The tenants dispute that they left the walls filthy and state there were marks on the walls when they moved in along with nail holes from a previous tenant or the landlord.

The tenants' dispute that they are responsible for painting the house or replacing the caulking and state this work is a landlord's responsibility. The tenants dispute the landlords claim that the caulking was not new at the start of the tenancy. The tenants dispute the landlords claim for new flooring. The tenants' testify that the landlord has added two dogs and no cats onto her copy of the tenancy agreement and it is not on the tenants copy. The tenants' testify that the landlord is attempting to get the tenants to pay for her renovations to the basement as the carpets had been cleaned with a hypo allergenic vacuum and then shampooed. The tenants also dispute the landlords claim for labour costs and finds the length of time spent by the landlord to be farfetched. The tenants do agree that they failed to clean the microwave oven and the stove.

The landlord's lawyer asks the landlord when the notation was added to the tenancy agreement concerning dogs and cats. The landlord testifies that she added this notation to her agreement after the tenants had signed the agreement. The landlord testifies that she also completed the condition inspection reports after she had filed her claim against the tenants and these were completed from memory after she did a walkthrough of the unit.

The landlord states she has no other monetary claim for money owed or compensation for damage or loss.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the issue of the security deposit; I refer the parties to s.45(1) of the *Act* which states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenants argue that they had to find alternative accommodation as the landlord was going to remove half their living space by turning the basement into a separate suite for the landlord. The landlord argues that this was only a suggestion and was not agreed upon. I have considered both arguments and find had the landlord removed or threatened to remove the tenants use of the basement the tenant could have filed an application for dispute resolution to prevent the loss of the basement level or gain compensation from the landlord. As it was the tenants' choice to move they were responsible to give the landlord one clear month notice to end their tenancy. As the tenants failed to do so and the landlord agreed to cover the rent from April 15, 2012, I find the tenants are liable for rent from April 01, to April 15, 2012 to the sum of **\$675.00** and this sum will be deducted from the tenants' security deposit.

With regard to the landlords claim to recover the sum of \$638.12 for unpaid utilities; I am satisfied that the tenants have paid the utilities to the city and this section of the landlords claim is therefore dismissed.

With regard to the landlords application for damage to the unit, site or property; I find the landlord has provided a move in and move out condition inspection report detailing

cleaning and damages to the property which the landlord admits was completed for the purpose of this hearing and was not completed with the tenants. Therefore, I can place very little weight on this evidence. The landlord also admits that she added a notation on the tenancy agreement stating two dogs no cats after the tenants had signed the agreement. Consequently, I can place very little weight to the landlords claim that the tenants were aware the landlord had allergies and must not keep cats.

With this in mind I have used a test 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.

The landlord has provided some photographic evidence but is unclear and the landlord has provided some receipts for the items claimed. However, it is my decision that the landlord has failed to meet the burden of proof that the tenants are responsible for carpet cleaning, the garden hose, sink plug or cleaning supplies, the coupling for the sprinkler system, light bulbs, cleaning or painting, caulking, flooring or the landlords

labour for this work as the landlord has not shown that the damage or loss exists or that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement..

I do find however that the landlord has established a claim for the garbage can of \$18.55 as it was removed by the tenants, the cost of replacing the keys of \$17.83 and the landlords labour costs and a nominal sum for cleaning supplies for cleaning the stove and microwave of \$25.00. The landlord will receive a monetary award for this of **\$61.38** pursuant to s. 67 of the *Act*.

As the landlord has been partially successful with her claim I find the landlord is entitled to keep the security deposit of **\$700.00** pursuant to s. 38(4)(b) and this sum will be offset against the landlords monetary award.

The landlord is also entitled to recover the **\$50.00** filing fee from the tenants' pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$675.00
Replacement items and cleaning	\$61.38
Plus filing fee	\$50.00
Subtotal	\$786.38
Less security deposit	(-\$700.00)
Total amount due to the landlord	\$86.38

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 **\$86.38**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The tenants' application is dismissed 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: July 03, 2012.

Residential Tenancy Branch