



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of this application.

The landlord and both tenants attended the conference call hearing, each gave affirmed testimony and the parties were given the opportunity to cross examine each other on the testimony and evidence provided. The landlord and the tenants provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other, but neither party provided such evidence within the time provided in the *Act* and the Rules of Procedure. However, neither party opposed the inclusion of the evidence and therefore all evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

This fixed term tenancy began sometime in January, 2010 and expired on January 31, 2011 and then reverted to a month-to-month tenancy. The tenancy ultimately ended on May 1, 2012 after the tenants had given notice to vacate the rental unit. The landlord testified that rent in the amount of \$1,625.00 per month was payable in advance on the last day of the previous month. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$800.00, and on March 1, 2010, the landlord testified that the tenants were to pay a pet damage deposit in the amount of \$400.00, however only \$200.00 was paid to the landlord.

The landlord testified that the tenants called the landlord on April 1, 2012 saying that they could no longer afford to rent because they no longer had a room-mate. The tenants then gave the notice to the landlord in writing on April 2, 2012 by posting it to the landlord's door. The landlord claims half a month's rent because the landlord was successful in re-renting the rental unit on May 15, 2012.

The landlord also testified that the tenants smoked marihuana in the rental unit rendering it in need of new paint. The landlord hired someone to help with the painting, and claims \$50.00, although no receipt has been provided.

The landlord further testified that the driveway was new before the tenants moved in and the landlord claims \$30.00 for 2 hours of pressure washing the driveway and \$38.00 for driveway cleaner. The tenants' vehicle left oil stains on the driveway, and the landlord provided photographs to establish that claim.

The landlord further claims \$356.62 for an outstanding utility bill that was the responsibility of the tenants to pay. The parties had agreed in writing that the tenants would pay the water bill and rent was reduced to \$1,600.00 effective April 1, 2011 in exchange for the payment of the utility.

The landlord provided a list of claims as follows:

- \$67.50 for pressure washing the deck and back of the house – 4.5 hours;
- \$45.00 for digging and cutting all grass around the house and by the deck and back door – 3 hours;
- \$60.00 for painting the foyer because of holes made by nails and banging door – 4 hours;
- \$45.00 for painting the family room – 3 hours;
- \$800.00 for half a month's rent;
- \$356.62 for the water bill;
- \$1,500.00 for wages for the landlord for 13 days continue work to clean the house, driveway, etc. at \$15.00 per hour;

- \$95.00 for window cleaner;
- \$30.00 to paint the deck because of grease/oil from the tenants' barbeque – 2 hours;
- \$30.00 to power wash – 2 hours;
- \$100.00 for gasoline for the landlord's car;
- \$38.00 for driveway cleaner;
- \$50.69 for registered mail, photograph processing and photocopies;
- \$17.00 for paint equipment;
- \$55.00 for cleaning supplies, door riser;
- \$50.00 for a cleaning person;
- \$500.00 for blind damage in both bedrooms and dining room;
- \$300.00 for oil/grease on the driveway.

The landlord's claim is in the amount of \$3,339.81, plus the \$50.00 filing fee, less the security deposit and pet damage deposit totalling \$1,000.00, for a total claim of \$2,389.81.

The landlord also provided photographs of the rental unit which are all marked on the back to indicate what the photographs depict. The landlord also testified that a move-in and a move-out condition inspection report was completed by the parties, and provided a copy of the document which contains information at move-in as well as move-out. The document contains a signature of the tenant on move-in but not at move-out. The form does not contain a signature of the landlord on move-in or at move-out. Further, a copy of the following receipts was provided:

- \$95.20 for window cleaning inside and outside;
- Receipts for photographs;
- \$7.00 for paint supplies;
- \$24.06 for a 1 – 1/2X3Gold, which the landlord testified was for the door riser, a hacksaw and a 6 IN REIGER;
- \$38.06 for driveway cleaner;
- \$2.80 for DG KWIK WIPES which the landlord testified was for cleaning;
- \$4.20 for more painting supplies;
- Gasoline receipts.

The tenants provided the landlord with a forwarding address in writing on May 1, 2012.

The first tenant testified that the notice was given in writing on April 1, 2012. The tenant also babysits for neighbours of the rental unit and saw people moving items into the yard of the rental unit during the first week of May, 2012, and the tenant does not believe the landlord has suffered any loss of revenue.

The tenant further testified that the tenants had expected to pay the water bill from the security deposit and pet damage deposit, but the landlord has not returned either to the tenants.

The tenant also testified that the condition of the house is not properly reflected in the move-in condition inspection report, nor does the tenant believe that the photographs provided by the landlord are true depictions of the condition of the rental unit at the end of the tenancy. The other tenant had pressure washed the driveway and deck before vacating. The landlord attended the rental unit during the move-out condition inspection and kept asking the tenants to clean more, which they did, but the landlord didn't change the condition inspection report to reflect that, so the tenants refused to sign it.

The other tenant testified that the photograph provided by the landlord marked "behind fridge" is really behind the washer. Further, the landlord took the photographs before the tenants had moved out while doing an inspection. The photographs show furniture and belongings of the tenants.

The tenant further testified that the driveway was not new and previous tenants had left the oil marks.

The house was as clean or cleaner at the end of the tenancy than at the outset of the tenancy and the back deck required painting and repairing prior to the tenancy beginning.

The door that the landlord claims needed a riser at the end of the tenancy never had a riser on it during the tenancy at all and should have been replaced before the tenants moved in.

The tenant also stated that Section 14.2 of the Residential Tenancy Guide speaks to a landlord breaching a material term of the tenancy. The landlord entered the rental unit without the tenants' consent and without notice on April 28, 2012, went in through the storage room and moved the tenants' belongings into the hallway. The tenants were also without water in the kitchen from June 4, 2011 until June 23 or 24, 2011, and the tenants called a plumber because the landlord refused to. Eventually the landlord

reimbursed the tenants. Also, the landlord yelled at the tenants about an ant infestation on August 25, 2011, but the tenant took care of it.

Analysis

The *Residential Tenancy Act* 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.

In this case, the tenancy agreement states:

3. RENT (please fill in the information in the spaces provided)

(a) Payment of Rent:

The tenant will pay the rent of \$1,625.00 each (check one) ___ day ___ week ___ month to the landlord on the first day of the rental period which falls on the (due date, e.g., 1st, 2nd, 3rd, ... 31st) end of month day of each (check one) ___ day ___ week ___ month subject to rent increases given in accordance with the RTA.”

The only blanks that have been filled in on the tenancy agreement are the amount of rent, “31st” is circled, and the words “end of month” are written in the blank. I accept that the tenants gave notice to the landlord on April 1, 2012, however I also accept that the landlord did not receive it in writing until the 2nd of April, and the tenants moved from the rental unit on May 1, 2012. Therefore, I find that the tenants did not give a full month’s rent to the landlord, and since the landlord reduced the rent to \$1,600.00 per month during the tenancy, and was able to re-rent the rental unit on May 15, 2012, the landlord is entitled to a monetary order for half a month’s rent, or \$800.00.

The tenants do not dispute the outstanding water bill, and I find that the landlord is entitled to that claim. It’s not clear in the evidence whether or not the bill has been paid, and **I order recovery of \$356.62 to the landlord and the landlord must pay the bill if not already paid.**

With respect to the landlord’s claims for damages, the *Residential Tenancy Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear. Also, in order to be successful, the onus is on the landlord to prove that the

damages are beyond normal wear and tear and must be able 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 tenants' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate, or reduce such damage or loss suffered.

In this case, the landlord has claimed pressure washing the deck and the back of the house, which I find is not a tenant's responsibility unless the landlord can prove that the tenants' negligence caused more than normal wear and tear. The landlord has not satisfied that element for pressure washing, or for digging and cutting grass.

With respect to the landlord's claim for window cleaning, the *Act* requires a tenant to leave a rental unit reasonably clean, and cleaning outside windows is not the responsibility of the tenant. The landlord's receipt is for cleaning inside and outside, and there is no indication how much time or money was spent for cleaning inside, and therefore, I find that the landlord has failed to satisfy element 3 of the test for damages.

I have reviewed the condition inspection reports, and firstly, I find that the blinds that the landlord claims for the bedrooms and the dining room are not listed on the reports at move-in or move-out as being damaged. Therefore, I find that the landlord has failed to establish any claim as against the tenants for blinds.

I further dismiss the landlord's application for \$1,500.00 for the landlord's wages for 13 days of work to clean. The landlord is also claiming an additional \$50.00 for another person to clean, and no receipt for that service has been provided. The move-out condition inspection report shows a few items as being "dirty," however, the landlord did not dispute the tenant's testimony that the landlord told the tenants that more cleaning was required, and the tenants obliged, but the landlord refused to change the move-out condition inspection report. I find that the landlord has failed to establish a monetary claim for cleaning or for purchasing cleaning supplies, and I further find that as a result of the landlord's failure to change the condition inspection report after the tenants completed cleaning requested by the landlord, the condition inspection reports are not reliable.

The landlord also did not dispute the tenant's testimony that the door riser was never on the door and ought to have been replaced before the tenants moved in. Therefore, I find that the landlord has failed to satisfy element 2 in the test for damages.

With respect to the landlord's claims for \$100.00 for gasoline for the landlord's car and \$50.69 for registered mail, photograph processing and photocopies, those items are not recoverable under the *Act*, and the landlord's request for a monetary order for those items is hereby dismissed.

The landlord has separated the claim for painting into hours for each of the rooms claimed at \$15.00 per hour. The claim includes 4 hours for painting the foyer, 3 hours for painting the family room and 2 hours for painting the deck, in addition to \$17.00 for paint equipment. The move-in/move-out condition inspection reports show the foyer as "good" including walls and trim. The landlord claims painting in the family room but no family room appears on the reports at all. The basement walls, if that's where the family room is, shows on the report as "good." The comments on the report shows: "All windows inside and out needed to be washed, damaged wall, needed to be painted, deck grease from BBQ needed to be painted, each windows seal and windows dirty, the whole house is dirty, dusty and needed to be cleaned, bathroom dirty, dusty, tub stain." The landlord testified that the tenants smoke marihuana in the rental unit, which is not disputed by the tenants, however the landlord has only claimed painting the foyer, the family room and the deck. The photographs provided by the landlord do not depict any room in need of painting except for one photograph which is marked on the back, "lot of hole in the wall I have to paint family room and foyer and bedroom," but the landlord has not claimed for painting the bedroom, nor did the landlord testify which room the photograph is for. In the circumstances, I find that the landlord has failed to establish that the tenants are responsible for painting the rental unit.

Neither the move-in nor the move-out condition inspection reports mention the driveway other than the electrical outlets for the garage or parking area were good at the commencement of the tenancy; no markings appear at the end of the tenancy. Therefore, I find that the landlord has failed to establish driveway cleaning.

In summary, I find that the landlord has established a claim for unpaid utilities in the amount of \$356.62 and recovery of one half of a month's rent in the amount of \$800.00. The balance of the landlord's monetary claim is dismissed without leave to reapply.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

I order the landlord to keep the security deposit and pet damage deposit totalling \$1,000.00, and I order the tenants to pay the landlord the difference in the amount of \$206.62

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$206.62.

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: July 17, 2012.

Residential Tenancy Branch