



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for a monetary order for unpaid rent, authority to retain the tenants' security deposit, and to recover the filing fee.

One of the tenants and the landlords appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally.

Preliminary Matters

The tenant stated that they only received four pages of the landlords' evidence package. The landlords did not dispute the tenants' testimony regarding serving of evidence. As a result, the evidence of the landlord is deemed not to have been served on the tenants in accordance with the rules of procedure. As a result, and in the interests of administrative fairness, the evidence from the landlords was not considered. The landlords were advised that they could present oral testimony during the hearing as an alternative.

The landlords confirmed they received the evidence from the tenants and referred to the tenants' evidence during the hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

It was clear from the landlords' details of dispute that the landlords were also seeking money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. As a result, I have amended the landlord's application in accordance with the rules of procedures as this does not prejudice the tenants. The tenants provided a copy of the landlord's details of the dispute in their evidence, indicating they were aware of the claim of the landlord and the amount being claimed of \$665.00.

Issues to be Decided

- Should the landlords be granted a monetary order for unpaid rent?
- Should the landlords be granted authority to retain all or part of the security deposit?
- Should the landlords recover the filing fee?

Background and Evidence

The tenant submitted a copy of the fixed term tenancy agreement as evidence, which began on March 1, 2011 and expired on March 31, 2012. Rent in the amount of \$1,000.00 was due on the first day of each month. A security deposit of \$500.00 was paid at the start of the tenancy. Both parties agree the tenancy ended on March 31, 2012.

The tenants gave written notice that they would be vacating the rental unit on March 31, 2012. The landlords stated that they received the written notice from the tenants on March 2, 2012.

The landlords received the tenants forwarding address in writing on June 15, 2012 and made an application for dispute resolution four days later on June 19, 2012.

The landlords did not provide a breakdown of their monetary claim of \$665.00 in advance of the hearing. During the hearing, the landlords stated that their claim for \$665.00 consisted of the following:

Carpet wash (cleaning)	\$110.00
Oven Cleaning	\$50.00
Repair broken cabinet door	\$35.00
Repair closet door	\$55.00
Furniture pickup and disposal	\$130.00
Replace damaged thermostat	\$40.00
Repair kitchen faucet	\$65.00
Unpaid utilities	\$180.00
TOTAL	\$665.00

The landlords stated that a move-in condition inspection report was completed at the start of the tenancy and that a move-out condition inspection was scheduled for March 29, 2012, however, the tenant contacted them to advise that she was not available for

that date. The landlords affirm that the move-out condition inspection was re-scheduled for March 31, 2012 at 9:30 a.m., however, the tenants did not attend as they had already left for another province early that morning.

The tenant confirmed they left for another province on March 31, 2012, however, disputed the landlords' testimony by stating that she did not recall signing a move-in condition inspection report. The tenant also stated that she was available on March 30, 2012 for a move-out condition inspection; however, the landlords did not knock on her door to conduct the inspection. The tenants stated that she was unable to clean the carpets and the oven prior to vacating the rental unit.

The tenant acknowledged that the LCD screen on the thermostat in the rental unit had a black spot on the screen and that she spoke to her child about whether anything hit the thermostat. She advised that her son denied touching the thermostat and that the thermostat was like that when she arrived home one day, however, denied damaging the thermostat.

The landlords stated that they mailed the tenant a copy of the unpaid utilities. The tenant denies receiving a copy of the unpaid utilities. The landlords did not have a copy of the utility bills before them during the hearing to refer to. The tenant stated that the amount of \$180.00 for one month of utilities seemed very high and stated that she did not agree to pay that amount and was not aware of that amount.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Condition inspection reports – The parties dispute each other's testimony regarding the move-in and move-out condition inspection reports. As the landlords' evidence was not considered, the condition inspections reports were not available for consideration in this decision. Based on the disputed testimony, it is not clear whether the condition inspection reports were completed and therefore, pursuant to section 24 of the *Act*, the right of the landlords to claim against the security deposit for damages is extinguished.

Section 67 of the *Act* provides for compensation to be considered for damages or loss when a party is found to have not been in compliance with the *Act*, regulation or tenancy agreement.

It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Carpet wash (cleaning) and oven cleaning – The tenant stated the carpets and oven were unable to be cleaned prior to vacating the rental unit. The landlords have claimed \$110.00 for carpet cleaning and \$50.00 for oven cleaning, however, failed to provide sufficient evidence verifying the value of the loss or damage. The landlords could have provided a copy of the carpet cleaning receipt or provided testimony from the person who actually cleaned the oven as examples of how to verify the actual monetary amount. As a result, **I dismiss** this portion of the landlords' application due to insufficient evidence without leave to reapply.

Cabinet door and closet door repairs – The landlords claimed \$35.00 to repair the cabinet door and \$55.00 to repair the closet door. The landlords did not provide

documentary evidence, however, verifying the damage or loss, who was responsible for the damage or loss, or the value of the loss or damage. The landlords could have provided witness testimony from the person who repaired the cabinet and closet doors as an example in addition to providing completed move-in and move-out condition inspection reports and serving those on all parties in accordance with the rules of procedure. As a result, **I dismiss** this portion of the landlords' application due to insufficient evidence without leave to reapply.

Furniture pickup and disposal – The landlords claimed \$130.00 to pickup and dispose of the tenants' furniture. The landlords failed to provide documentary evidence or witness testimony supporting their claim that a loss exists, who was responsible for the loss and the actual monetary amount of the loss. The landlords could have provided a receipt from the person who performed any work involved and testimony from those who may have seen whether the tenants were involved, as an example. As a result, **I dismiss** this portion of the landlords' application due to insufficient evidence without leave to reapply.

Thermostat and kitchen faucet repairs – The tenant provided a photo showing the thermostat having a discolored LCD screen. It was not clear who caused the damage or whether the thermostat was later replaced. The landlord's state that the kitchen faucet was repaired, however, provided no documentary evidence supporting their claim. The landlords are claiming \$40.00 to replace the damaged thermostat and \$65.00 to repair the kitchen faucet. The burden of proof is on the landlords to prove the value of the loss or damage. The landlords did not provide evidence such as a receipt showing the replacement of the thermostat or repair of the kitchen faucet. As a result, **I dismiss** this portion of the landlords' application due to insufficient evidence without leave to reapply.

Unpaid utilities – The parties dispute each other's testimony in terms of the unpaid utilities. The landlords affirm that they provided a copy of the unpaid utilities to the tenants. The tenants deny having received a copy of any unpaid utilities and stated that they find the amount of \$180.00 to be very high. Due to a lack of invoices and other evidence to consider, I am unable to verify the value of the loss. The landlords did not have the copies of the invoices before them during the hearing to refer to. Therefore, **I dismiss** this portion of the landlords' application due to insufficient evidence without leave to reapply.

As the landlords failed to prove their claim, **I do not** grant the recovery of the filing fee.

I order the landlords to return the security deposit to the tenants in the amount of **\$500.00** before September 20, 2012. The security deposit accrued no interest between the start date of March 1, 2011 and the end date of March 31, 2012.

Conclusion

I dismiss the landlord's application due to insufficient evidence without leave to reapply.

I do not grant the landlord's recovery of the filing fee.

I order the landlords to return the security deposit to the tenants in the amount of \$500.00 before September 20, 2012.

This decision is final and binding on the parties, unless 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: August 29, 2012

Residential Tenancy Branch