



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, his agent and an agent for the tenants.

The tenant's agent testified the landlord was served with his photographic evidence by registered mail on November 30, 2012 in accordance with Section 89. Towards the end of the hearing the landlord testified that they had not yet received any evidence from the tenants or their agent.

As the tenant's agent had referred only to three specific pictures throughout the hearing and only generally to show the overall condition of the rental unit at the end of the tenancy I find the tenant will not be prejudiced if I don't consider the photographic evidence. I advised both parties of this decision during the hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is to a monetary order for unpaid rent; for compensation for damage to and cleaning of the rental unit; for all or part of the security deposit; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on January 3, 2009 for a month to month tenancy beginning on February 1, 2009 for the monthly rent of \$1,350.00 due on the 1st of each month with a security deposit of \$675.00 paid;
- A copy of a handwritten letter from the tenants dated August 9, 2012 providing the landlord with their notice that they intended to vacate the rental unit on or before September 9, 2012;
- A copy of a Condition Inspection Report recording the condition of the rental unit at the start and end of the tenancy. The move out condition inspection was

completed on September 12, 2012. The report is signed by the female tenant stating that she did not agree with the report, in particular regarding the condition of the walls and the type of paint used prior to the tenancy making it impossible to wash the walls and baseboards.

The landlord seeks compensation for partial rent payment for the month of September 2012 due to the tenant's late notice to end tenancy and for the costs to repair damage to the residential property and to clean the rental unit at the end of the tenancy.

The agent for the tenants submits that the tenants agree that the landlord is entitled to the payment of rent and bank charges resulting from their stop payment on the last partial month's rent cheque in the amount of \$675.00 (rent) and \$20.00 (bank charges). The agent also submits the tenants are responsible for the costs to remove oil stains in the driveway (\$150.00); replacement of a door stop in the basement (\$1.50) and stucco repairs on the exterior of the rental unit (\$125.00) as claimed by the landlord. The tenant's agent also acknowledged the tenants' responsibility for repairs to the deck required because of a stain in one location, but disagree with the landlord's claim to have the deck completely replaced.

The landlord's remaining claim is outlined in the following table:

Description	Amount
Furnace Repair – blocked line	\$45.00
Plumber to repair/replace front and back exterior taps	\$228.44
Painting and cleaning supplies	\$149.79
Tree replacement and planting	\$262.79
Cleaning/Repair bill	\$715.00
Duradek repair (replacement)	\$896.88

The landlord submits that the tenants had been provided with verbal instruction at least on two occasions on how to clean the filters and close the furnace system and written instructions in the documentation provided at the start of the tenancy. I note that the written instruction is in a document entitled "Letter of Welcome" and it states "Your cold air ducts, duct grills, and furnace filters should be vacuumed or changed at least every three months during the heating period of the year."

The landlord submits that because the tenants failed to clean the filter properly and close the heating system back up a blockage occurred in the line and the landlord incurred a \$45.00 service charge for repairs. The tenants submit they were not aware of the requirement to close the system and should not be held responsible for this charge.

The landlord submits that towards the end of the tenancy he discovered that the front yard tap was leaking; that the tenant indicated it had been leaking since the start of the

tenancy; that no reports had been made by the tenants that it had been leaking; and that the landlord had incurred costs for a plumber to repair the tap. The landlord provided a receipt for this service in the amount of \$113.90.

He also testified that during the move out inspection he noticed the back yard tap did not work and he had to call a plumber for a second service call for repairs. The landlord provided a copy of a receipt for this service in the amount of \$114.54. The landlord testified that the plumber was not able to advise him as to why the cold weather taps had been damaged the way they were but that they did require replacement.

The landlord submits that he had planted a tree on the residential property in the fall of 2011 as he had done at 6 other locations in the area and had asked the tenants to ensure it was watered properly to become established. The landlord states the tenants failed to do so and as a result the tree on this property was the only one that died, despite all coming from the same supplier. The tenants submit that they are not responsible for the tree's death.

The landlord has submitted an invoice from his property manager for cleaning and repairs that include: preparing walls and painting; dusting and cleaning fans, lightshades, behind and under the fridge, exterior of windows, dishwasher, furnace, hot water tank, pipes, kitchen counter tops and laundry cabinets, cold air returns; installing a doorstep; checking light bulbs and wiring issues; fixing the blockage in the furnace; weeding and trimming rocked area and flower beds and the lawn edge; reattaching a closet door; and fixing and reinstalling a handrail.

The property manager did not provide an hourly rate but did indicate a total of 33.5 hours work and a separate charge of \$45.00 for repairing the furnace for a total of \$715.00. Based on this information, it appears the hourly rate charged was \$20.00. The landlord has included a receipt for painting supplies in the amount of \$149.79 (there are no cleaning supplies listed on this receipt).

The tenants dispute the need for painting arises as a result of the tenancy but rather that the condition of the walls at the start of the tenancy was badly marked up. The condition inspection report signed by the tenant at the start of the tenancy does not confirm the tenant's position. The landlord testified the unit had last been painted in the fall of 2007.

The tenancy agreement stipulated the tenants were responsible for:

“the care and upkeep of the property and grounds surrounding the premises, including all patios, lawns, gardens, trees and shrubbery. More particularly, but without effecting the generality of the foregoing, the Tenant will: keep the lawns cut and the shrubbery trimmed and sprayed.”

The condition inspection report provides very specific reports on the condition of the rocked area (clean at the start of the tenancy – full of grass at the end); yard mowed

and raked (yes at the start of the tenancy – not around the edges at the end of the tenancy); flower beds weeded and clean (yes at the start of the tenancy – no at the end of the tenancy); lilac hedge pruned/weeded (yes at the start of the tenancy – no at the end of the tenancy)

The landlord also seeks compensation to replace the entire decking membrane as a result of the staining in an area that is 1 foot by 1 foot near the entry to the rental unit. The landlord testified that they have tried some methods to remove the stain but due to the lateness in the season they were unable to try everything to just remove the stain. The tenants acknowledge responsibility for stain removal but do not feel the replacement of the entire membrane is required.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As per the tenant's acknowledged agreement I accept the landlord's are entitled to the agreed upon compensation in the amount of \$971.50 for rent; bank charges; oil stain removal; door stop replacement; and stucco repairs.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In relation to the landlord's additional claims for compensation I am satisfied that the tenants were adequately instructed on the requirements to clean and maintain the furnace systems and as such have failed to fulfil their obligations to do so. As a result, I find the landlord is entitled to compensation for that repair in the amount of \$45.00.

While I accept that the landlord had not been informed by the tenant during the tenancy that the outside taps were not working properly and/or leaking the landlord's claim is solely for the repair of the taps and not for any damage that resulted by them not working.

As such, the burden is on the landlord to provide sufficient evidence that the tenants are responsible for the damage that caused the taps to be non-functional. As the landlord has stipulated that the cause for the damage is unknown, I find the landlord has failed to

establish that the tenants are responsible for this damage and I dismiss this portion of the landlord's Application.

In regard to the landlord's claim for painting and the associated prep work completed by the property manager, I note that the supplies were \$149.79 and the prep and painting costs are based on the property manager's hourly rate of \$20.00 per hour for 18.25 hours for a total of \$365.00 for a total painting claim of \$514.79.

Residential Tenancy Policy Guideline 41 states the useful life of an interior paint finish is 4 years and as per the landlord's testimony the unit was last painted in 2007 or at least 5 years ago. Despite the condition inspection report indicating that there are some holes, nicks and rub marks I find that the landlord has not provided any evidence to establish that these marks are anything more than wear and tear that would have had to have been repaired as part of a routine painting. For these reasons I dismiss the landlord's claim for painting and any associated supplies.

Despite the landlord's assertion that when he placed his for rent sign on the property that the area was extremely dry I find the landlord has provided no other evidence to establish that the tenants are responsible for causing the tree planting in fall of 2011 to die.

While I accept the landlord's testimony that the 6 other trees he had planted survived I find that there are too many variables, none of which, other than the landlord's assertion that the tenant failed to water the tree, have been addressed in the landlord's claim, that could contribute to the death of the tree.

In addition, I find that while the tenants were required, under the tenancy agreement, to care appropriately for the yard and gardens, when the landlord planted a new tree it was his responsibility to ensure it became established. Once established then the tenants would have been responsible to maintain and care for it. For these reasons, I dismiss this portion of the landlord's claim.

In regard to the landlord's claim for compensation for yard work I find the wording of the tenancy agreement is not sufficiently detailed to outline the expectations of the work required in the yard. However, I find there is sufficient detail in the Condition Inspection Report, signed by the female tenant at the start of the tenancy, that identifies what the expectation of the condition of the yard should be at the end of the tenancy.

As the female tenant signed the Condition Inspection Report at the end of the tenancy stating she disagreed with the Condition Inspection Report and she specifically identified that her disagreement was the condition on the interior of the rental unit, I find the tenants are responsible for compensating the landlord for weeding and trimming the lawn and flower beds.

Based on the documentary evidence and in the absence of any disagreement from the tenant in the move out Condition Inspection Report as to the cleaning issues I find the

landlord has established entitlement to compensation for the cleaning and other minor repairs (i.e. Reinstalling the handrail and doorstop).

Accounting for the above dismissal of the painting prep and painting charges from the property manager, I find the landlord has established a total value of \$305.00 for cleaning, minor repairs and yard work as per the property manager's invoice.

Finally, in relation to the landlord's claim to replace the decking membrane, as per the landlord's testimony I am not satisfied the landlord has taken all reasonable steps to ensure that he can remove the stain without replacing the entire membrane as such, I find this portion of the landlord's claim to be premature and I dismiss it with leave to reapply after he has been able to try to remove the stain only.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,371.50** comprised of \$971.50 agreed upon compensation; \$45.00 furnace repairs; \$305.00 cleaning; minor repairs; yard work; and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$675.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$696.50**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: December 14, 2012.

Residential Tenancy Branch