



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNR, MNSD, MNDC, FF
 Tenants: MNSD, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution, with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord; both tenants and their advocate.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for cleaning and repairs; 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, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for double the amount of the security deposit; compensation for damage or loss; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenants provided a copy of the tenancy agreement signed by the parties for a 1 year fixed term tenancy beginning on October 31, 2010 for a monthly rent of \$1,500.00 due on the 1st of each month with a security deposit of \$750.00 paid. The parties agree the tenancy ended by October 31, 2011. The tenants submit that they provided the landlord with their forwarding address prior to the end of the tenancy and that their forwarding address was documented in the agreement they signed November 10, 2011.

The landlord provided photographic evidence of the condition of the rental unit and the residential property at the end of the tenancy but did not provide any documentation of the condition of either at the start of the tenancy.

The landlord's photographic evidence of the yard shows the back part of the property completely overgrown including some areas with flowers and trees where tall flowers can barely be seen. The photographic evidence of the buildings show some areas requiring cleaning including one drawer containing items that appear to be forgotten;

some crumbs in the stove; lint in the dryer lint trap; a dirty toilet and bathroom sink; and damage to an outside deck.

The tenants contend that the tenancy agreement specifically restricted them from doing yard maintenance. The tenants refer to the clause entitled "Maintenance" that states that the tenant is not responsible for maintenance. The landlord testified that this reference is to maintenance to structures such as painting or repairs.

The tenants also submitted into evidence a letter from the landlord dated August 29, 2011 from the landlord that specifically advises the tenants that they are required to maintain the area in question and that he had cut the weeds down at that time but that if the tenants wished to continue in the tenancy they would have to either maintain the area or the landlord would do it for an increased rent amount.

The parties agree the tenants failed to pay rent for the month of October 2011. The tenants submitted a copy of an agreement signed by the parties that the tenants would pay the landlord \$50.00 per month to repay the landlord \$1,500.00 for rent owed. The agreement goes on to say that the tenants will add "interest that is equivalent to regular saving account, calculated with last payment, at that time." The parties agree the tenants made two payments.

The landlord seeks compensation as follows:

Description	Amount
Yard cleaning/debris removal – 35 hrs @ \$10.00/hr	\$350.00
Cleaning/garbage removal – 46 hrs @ \$10/hr	\$460.00
Dump Fees	\$63.10
Use of riding mower – 2 hrs @ \$20.00/hr	\$40.00
Use of truck – 10 hrs @ \$20.00/hr	\$200.00
Repair office doorstep – material/labour	\$100.00
Interest of 2% by agreement	\$37.20
October 2011 Rent (less amount paid of \$100.00)	\$1,400.00
Total	\$2,650.30

The tenants testified that they stopped paying the landlord \$50.00 per month as per their agreement noted above when the landlord failed to return their security deposit.

The tenants submit that there was an area in the workshop that the landlord had rented out to a local non-profit group for storage and that as a result the tenants were not able to use that portion of the workshop. The tenants estimate that the landlord charged the non-profit group \$100.00 per month. The tenant has no firsthand knowledge of any amount of rent paid to the landlord for the storage area.

The parties agree that the tenants were aware the area was being used for storage at the start of the tenancy but the tenants submit that they thought the use was temporary in nature and that landlord was not receiving compensation for the use.

The tenants also seek aggravated damages because they believe they were harassed and bullied by the landlord because he had entered the rental unit several times without their knowledge; he had walked in unannounced with potential new tenants; he had accused the tenant of being a thief; threatened to call the RCMP; the letter of August 29, 2011; insistence on inspections every two months; being forced into signing an agreement for the payment of rent for the month of October 2011.

The tenants seek the following compensation:

Description	Amount
Return of double the security deposit	\$1,500.00
Rent received by landlord for storage area	\$1,200.00
Aggravated Damages	\$2,245.00
Total	\$4,945.00

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.

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.

As the landlord provided not move in condition inspection report or any evidence to establish the condition of the rental unit at the start of the tenancy I find that the landlord has failed to establish that the tenants caused any damage to the rental unit. I therefore dismiss the portion of the landlord's claim for \$100.00 to repair the office doorstep.

In relation to the landlord's claims for yard cleaning I accept that the term in the tenancy agreement regarding maintenance is unclear, in that it does not specify what type of maintenance. However, from the landlord's letter to the tenants dated August 29, 2011

I find the landlord clarified for the tenants that they were responsible for the full yard maintenance for the rent that they were paying.

There is no evidence before me that any more discussion ensued regarding that letter and as such, I find the tenants then accepted the clarification of these terms and were therefore responsible to ensure the yard was cleaned and restored to an acceptable condition at the end of the tenancy.

As such, I find the landlord is entitled to compensation for this work. Based on the photographic evidence I find the landlord's submission as to the amount of work required to clean the property in the amount of \$350.00 (yard cleaning/debris removal).

However, I find the landlord suffered no loss for the use of his own truck and equipment with the possible exception of gas but as the landlord as claimed an hourly rate instead of any gas costs I find the landlord has failed to establish the value of this portion of his claim and I dismiss this portion.

While I accept that the rental unit required some cleaning and garbage removal at the end of the tenancy, based on the photographic evidence I find that the landlord has failed to provide sufficient evidence to establish that the unit required that 46 hours of cleaning and garbage removal. However, based on the hourly rate I find the total monetary claim, in the amount of \$460.00 for this cleaning to be reasonable.

I also find that as a result of the yard cleaning and the interior cleaning the dump fees being claimed by the landlord in the amount of \$63.10 to be reasonable and grant the landlord this amount.

In relation to the landlord's claim for unpaid rent I accept, from the testimony of both parties that the tenants failed to pay rent for the last month of their tenancy but that they have made 2 payments of \$50.00 each towards that debt. Therefore, I find the landlord is entitled to \$1,400.00 for unpaid rent.

As to the claim for interest, I find the inclusion of interest in an agreement for the payment of rent is contracting outside of the *Act* in contravention of Section 5 that states: "Landlords and tenants may not avoid or contract out of this *Act* or the regulations." I dismiss this portion of the landlord's claim.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept that at the latest the landlord had the tenants' forwarding address by November 10, 2011 and as such had until November 25, 2011 to either return the deposit in full or file an Application for Dispute Resolution claiming against the deposit. As the landlord

submitted his Application on November 26, 2012 I find the landlord failed to comply with Section 38(1) and the tenants are entitled to double the amount of the deposit.

In regard to the tenants' claim for compensation equivalent to what the landlord may have received as "rent" for the storage area I find the tenants have failed to provide evidence that the landlord received any rent for this space.

I also find that the tenants were aware that the area was being used for another purpose at the start of the tenancy and that despite their testimony that they thought it was temporary they have provided no evidence that they try to have the landlord give them access to the space during the tenancy.

For these reasons I find the tenants have failed to provide sufficient evidence that they suffered a loss; if they did that it resulted in any violation of the *Act*, regulation or the tenancy agreement; or establish the value of any such loss. I therefore dismiss this portion of the tenants' Application.

In relation to the tenants claim for aggravated damages I find the tenants have failed to provide sufficient evidence to establish any wrong doing on the part of the landlord, sufficient to warrant compensation.

For example, one of the items raised in their claim is the letter dated August 29, 2011. The tenants assert that the landlord was going to increase the rent if they did not do the yard work and that he was going to implement inspections every 2 months despite this not being in the tenancy agreement.

In effect, there was no evidence before me that the landlord did increase the rent; that the tenants started to do yard work; or filed an Application for Dispute Resolution to deal with these matters. From this I find that the tenants were not influenced by the landlord's letter at all.

As to the concern about the landlord's desire to inspect the unit once every 2 months, which the tenants contend was not a part of the tenancy agreement. Section 29(2) of the *Act* allows a landlord to complete an inspection of the rental unit on a monthly basis as long as the landlord has provided notice of entry in accordance with Section 29(1)(b).

I therefore find the landlord would have been allowed under the *Act* to inspect the unit even more frequently than he was proposing and because the provision is in the *Act* there is no need for it to be included in the tenancy agreement.

In addition, the landlord seeking to have the tenants sign a payment plan agreement for their failure to pay rent when it was due was an appropriate step for the landlord to take prior to pursuing the matter through dispute resolution at the Residential Tenancy Branch, I would cannot consider it bullying as characterised by the tenants.

I also find the tenants have failed to provide any evidence of threats or inappropriate entry into the rental unit at any time during the tenancy and the burden is on the party making the claim to provide it.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$773.10** comprised of \$1,400.00 rent owed; \$350.00 yard cleaning; \$460.00 interior cleaning and garbage removal; \$63.10 dump fees; less \$1,500.00 double the amount of the security deposit.

As both parties were at least partially successful I dismiss each party's claim to recover the filing fee.

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: February 1, 2013

Residential Tenancy Branch