



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: MNR, MND, MNDC, MNSD and FF
Tenants: MNSD and FF

Introduction

This hearing addressed applications by both the landlords and the tenants.

The landlords' application of November 19, 2012 sought a monetary award unpaid rent and loss of rent, damage to the rental unit, recovery of the filing fee for his proceeding and authorization to retain the security and pet damage deposit in set off.

The tenants' application of January 25, 2013 sought an order for return of their security and pet damage deposits in double and recovery of their filing fee. In addition, the tenants seek compensation for loss and damages.

As a preliminary matter, the tenants stated that they had not received the landlords' evidence package. However, Canada Post's tracking service confirmed that it was sent by registered mail on February 8, 2013 and a notice card delivered on February 11, 2013. Therefore, I find that the evidence was served on time and the fact that the tenants did not pick it up would not warrant an adjournment and the hearing proceeded.

Issue(s) to be Decided

The landlords' application requires a decision on whether they are entitled to a monetary award for claims submitted and authorization to retain the deposits in set off.

The tenant's application requires a decision on whether they are entitled to return of the security and pet damage deposits and whether the amounts should be doubled, and whether they are entitled to compensation for claimed damages.

Claims in damages require that several factors be taken into account: whether damages are proven and attributable to the tenant, the comparison of move-in vs. move-out condition inspection reports, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Claims for damage or loss under section 7 of the *Act* require that the claimant do whatever is reasonable to minimize the claimed loss.

Background, Evidence and Analysis

This tenancy began on July 1, 2012 under a 13-month fixed term rental agreement to July 31, 2013. Rent was \$1,650 per month, due on the 30th, and the landlord holds security and pet damage deposits of \$825 each, both paid on June 15, 2012.

The landlord stated that she had lowered the rent by \$200 per month on the understanding that the tenants might consider entering into a “rent to own,” agreement, an unproven assertion contested by the tenants.

The parties did complete move-in and move-out condition inspections, though not on the prescribed form. According to the tenants, the landlord proposed no claims for damages during the move out inspection.

Landlords’ Claims

The landlords submitted a number of claims for postage, copying, and travel. Such items are considered to be costs of doing business for which the *Act* provides no means for compensation and they are dismissed accordingly.

The landlords provided a number of receipts in support of some of their claims on which I find as follows:

Utilities for November - \$179.19. This claim is based on hydro usage of \$89.96 and gas of \$89.26 for November supported by receipts. As this cost to the landlord was a direct result of the tenants’ breach of the fixed term agreement, it is allowed in full.

Plumber's unnecessary call - \$168.00. The landlord submitted a copy of an invoice dated July 10, 2012 in support of this claim, but did not offer explanation during the hearing. Given that the issue arose so early in the tenancy, I find that I cannot fairly assess its validity at this time. The claim is dismissed.

Property management fees - \$80. This claim is supported by a receipt for the cost arranging and showing the property after the tenants gave notice on September 28, 2012. As there was no liquidated damages clause in the rental agreement, I find this claim should be allowed.

Rent subsidy - \$2,400. This claim is based on the aforementioned and contested claim by the landlord that she had lowered the rent for the tenants in expectation of an eventual agreement for purchase. I find that the rental agreement must prevail as to the monthly rent and this claim is dismissed.

Outstanding rent for October 2012 - \$200. This claim arose when the tenants unilaterally withheld \$200 from the October rent in compensation for some yard work they had done. Absent a written agreement between the parties, I find that the tenants did not have a right to withhold rent and the claim is allowed.

Rental Income loss for basement suite - \$3,400. The landlord stated and email evidence verifies that the tenants were assisting her to find tenants for the vacant basement suite. While the tenants had requested a finders' fee, they had not found tenants and received no compensation. The landlord stated that the tenants were acting alone for about a month until her property manager returned from travels. The landlord stated that the tenants had not returned the keys at that time, but the male tenant said he had done so immediately. In the absence of corroborating evidence, and given the somewhat unusual claim against a tenant acting as rental agent, a matter over which I would not have jurisdiction, I must dismiss this claim.

Subsidy to new tenants - \$4,200. The landlord makes this claim on the grounds that she had to reduce the rent to \$1,500 in order to obtain new tenants for December 2012 in keeping with her obligation under section 7(2) of the Act to do whatever is reasonable to minimize the loss. The claim is based on \$350 rent differential for 12 months. However, as previously noted, I find that the rent was \$1,650 per month and the differential was applicable only to July 31, 2012, nine months at \$150 per month. Therefore, taking into account that the amount claim is less than one month's rent and potentially saved the tenants a greater loss, I allow \$1,350 (9 x \$150) on this claim.

House cleaning - \$152.50. This claim is supported by a receipt and given the relatively modest amount in relation to the described condition of the home and the fact that the tenants had pets, it is allowed in full.

Garbage removal - \$60. This claim is supported by a receipt and I find it should be allowed in full.

Repair front yard landscaping - \$2,680. This claim is based on an estimate and is somewhat confused by the fact that a former tenant had taken care of the area in question. In addition, in the absence of any proof of willful damage, I find it questionable that, in a four month tenancy, even absolute neglect could result in damage of the claimed amount. I reduce the award on this claim to \$200.

Storage for garbage bins and wheel chair - \$120. The landlord claims \$30 per month for storing these items for four months. The tenant stated that he had returned to the property to remove them, and the landlord has asked him to leave immediately. The tenant said he has no further interest in these items and the landlord is free to dispose of them as she wishes. I accept the evidence of the tenant that he was dismissed in his attempts to retrieve them. The claim is dismissed.

Filing fee - \$100. As the landlords have partly succeeded, I find that they are entitled to recover one-half of their filing fee from the tenants.

Security and pet damage deposits – (\$1,650). As the landlords made application within 15 days of the end of the tenancy, as authorized under section 72 of the *Act*, I find that they are entitled to retain the security and pet damage deposits in set off against the balance owed.

Tenant's Claim

As to the tenant's claim, having found that the landlords are entitled to retain the security and pet damage deposits in set off, the tenants' claim for return of them in double under section 38(6) of the *Act* is dismissed.

Replace vacuum cleaner - \$170.00. The tenants make claim that they had to replace their vacuum cleaner, ruined by pet hair and odours left by the previous occupant. I must find that it was the tenants' decision to so use the tool and I cannot find the landlord responsible for it.

Replace nine light bulbs including two halogens - \$77.50. The tenants make claim that they had to replace bulbs missing at the beginning of the tenancy. I accept that bulbs were missing but, in the absence of receipts, I reduce the award on this claim to \$35 as more in keeping with prevailing costs for standard replacements.

Loss of use of two rooms - \$1,600. The tenants submit this claim on the grounds that two of the three bedrooms in the rental unit were so malodorous they could not be used for their stated purpose. The landlord noted that one or the other or both tenants had visited the rental unit for times prior to the tenancy. The tenant submitted a letter from a friend who had visited and confirmed that the room had been used only for storage due to the lingering odour of cat urine. I find some merit in this claim and will allow \$400 for the loss of use.

As this dispute arose from the tenants' breach of the fixed term agreement, I decline to award their filing fee.

Thus, I find that accounts balance as follows:

Award to landlords		
Utilities for November 2012	\$ 179.19	
Property management fees	80.00	
Outstanding rent for October 2012	200.00	
Subsidy to new tenants	1,350.00	
House cleaning	152.50	
Garbage removal	60.00	
Repair front yard landscaping	200.00	
One half of filing fee	<u>50.00</u>	
Sub total	\$2,271.69	\$2,271.69
Tenants' credits & award		
Security deposit (No interest due)	\$ 825.00	
Pet damage deposit (No interest due)	825.00	
Replace light bulbs	35.00	
Loss of use of two rooms	<u>400.00</u>	
Sub total	\$2,085.00	- 2,085.00
Balance owed to landlords by tenants		\$ 186.69

Conclusion

In addition to authorization to retain the security and pet damage deposits in set off, the landlords' copy of this decision is accompanied by a Monetary Order for \$186.69 for service on the tenants.

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 18, 2013

Residential Tenancy Branch

