



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenants application for the cost of emergency repairs, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for a Monetary Order to recover double the security deposit and to recover the filing fee from the landlords for the cost of this application.

Two of the tenants and the property manager attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The property manager and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

At the outset of the hearing the property manager attending testified that although they were property managers for this rental unit they were not appointed as such by the landlord but rather by the landlord's mortgage company who were repossessing the rental unit. The property manager testifies that therefore they should not be named as a landlord in these proceedings.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for the cost of emergency repairs?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a Monetary Order for double the security deposit?

Background and Evidence

The tenants testify that this tenancy started on May 01, 2012 although the landlord allowed the tenants to move in on April 15, 2012. This was a fixed term tenancy which was due to expire on April 30, 2013. The tenants testify that rent for this unit was \$2,250.00 per month and the tenants paid a security deposit of \$1,125.00 on April 09, 2012.

The tenants testify that when they moved into the rental unit the house had not been cleaned and was left in a filthy condition. The tenants also found many broken items and the landlords belongings were still stored in the garage. The tenants testify that another agent for the landlord did the move in inspection with the tenants and told the tenants that everything in the house would be sorted out and repaired and the landlord's belongings would be removed. The tenants' testify that they agreed to move in and clean the house and the landlord agreed to reimburse the tenants the prorated rent of \$1,125.00 that the tenants paid for April if the tenants cleaned the house.

The tenants' testify that the dryer did not work, the dishwasher was faulty, the master bathroom sinks did not working, the garage door and motor required repair and other issues. These items were not repaired and the landlord did not remove his belongings from the garage. The tenants testify that on July 17, 2012 they received a letter from this property management company informing the tenants that on August 01, 2012 they would be taking over as property managers because the landlord's property was being

repossessed by the landlord's mortgage company. From August 01, 2012 the tenants were instructed to pay their rent to the new property management company.

The tenants' testify that they gave the property management company a list of required repairs. The tenants testify that the landlord continued to come to the property and kept trying to enter the house without notice. The tenants' testify that they were confused as to what they should do particularly as the landlord cashed their rent cheque for August, 2012. The tenants' testify that they were given conflicting information as to who was the current landlord so the tenants decided to give their notice to end the tenancy based on the landlord's failure to maintain the property and due to the conflict about who was the legal landlord. The tenants gave the property management company and the landlord notice to end the tenancy on September 04, 2012 in writing and vacated the rental unit on September 07, 2012. The tenants attended a move out inspection of the house with the property manager and gave them and the landlord their forwarding address on September 11, 2012.

The tenants testify that during the tenancy they had a gas leak but could not get hold of the landlord to make repairs. The tenants' testify that they informed the landlord by e-mail and had to pay the sum of \$139.00 to repair the leak. The tenants' testify the landlord was also notified of this cost but the tenants have not been able to provide a copy of the repair bill as the tenant who has it in their possession now lives overseas.

The tenants seek to recover the following sums:

Double the security deposit	\$2,250.00
Compensation for cleaning and for landlords failure to make repairs and remove his belongings	\$1,125.00
Gas leak repair	\$139.00
Total amount of tenants claim	\$3,514.00

The property manager testifies that they received authorisation from the mortgage company that the mortgage company were taking over the property and the property management company was to collect rent from the tenants from August 01, 2012. The property manager testifies that they sent a letter to the tenants to inform them of this and notifying the tenants that rent must be paid to the property management company from August 01, 2012.

The property manager testifies that they received a letter from the tenants concerning the repairs and after obtaining permission from the mortgage company the property management company notified a contractor to contact the tenants to arrange to look at the repairs. The property manager testifies that the tenants told the contractor not to bother because the tenants were going to move out. The tenants then gave the property manager notice to end the tenancy effective on September 17, 2012.

The property manager testifies that they have no knowledge of any agreements between the tenants and landlord prior to August 01, 2012 as they had no involvement with the tenancy before then.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In the absence of any evidence from the landlord I have considered the tenants documentary evidence and testimony and the documentary evidence and testimony of the property manager concerning the events leading up to the property management companies involvement.

The property management company has provided a copy of the inspection reports. The move in inspection report documents that the rental unit was dirty in many areas, it documents issues with the garage door, the hot water tank, repairs to running boards, repair to a door under the stairs and baseboards downstairs, install a range fan, fix

master bedroom door, replace burnt out lights, replace toilet roll holder, repair a shower head, repair two leaking sinks and install a bedroom door.

The tenants have testified that none of the repairs were done by the landlord including the dryer which they later found to not work and the dishwasher had problems. A landlord is required under s. 32 (1)(a) of the *Act* to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The tenants have testified that the landlord agreed to reimburse the tenants the sum of \$1,125.00 for cleaning, for the repairs and because the landlord continued to store his belongings in the garage which formed part of their tenancy. The landlord has not appeared to dispute this and as I have no evidence to the contrary I find the tenants are entitled to a Monetary Order in compensation for these issues that were not rectified by the landlord at the start of the tenancy to the sum of **\$1,125.00** pursuant to s. 67 of the *Act*.

With regard to the tenants claim for double the security deposit; the tenants have provided a copy of the letter sent to the landlord dated September 11, 2012 in which the tenants request the return of their security deposit. The move out inspection report also shows the tenants forwarding address documented on that report. I therefore find the landlord was given the tenants forwarding address in writing.

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and

does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on September 11, 2012. As a result, the landlord had until September 26, 2012 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and has not filed an application for Dispute Resolution to keep the deposit. Therefore, I find that the tenants have established a claim for the return of double the security deposit to the sum of **\$2,250.00** pursuant to section 38(6)(b) of the *Act*.

With regard to the tenants claim to recover the cost of emergency repairs; I have no evidence before me such as a copy of the gas repair bill to show that this repair was required under an emergency repair nor do I have any evidence to show the actual cost of the repair. An applicant is required to meet a test for compensation of this nature and must provide verification of the cost claimed and proof that this occurred due to the actions or neglect of the landlord or as in this case that the repair was an emergency repair and the tenants followed s. 33 of the *Act* with regards to emergency repairs. The tenants' failure to meet this test means this section of their claim must be dismissed without leave to reapply.

As the tenants have been largely successful with their claim I find the tenants are entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

A Monetary Order has been issued to the tenants for the following sum:

Double the security deposit	\$2,250.00
Compensation	\$1,125.00
Filing fee	\$50.00
Total amount due to the tenants	\$3,425.00

Conclusion

I HEREBY FIND largely in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,425.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I find that the property management company was not appointed by the landlord and therefore bears no responsibility or relation to this matter. Only the landlords name will appear on the Monetary Order.

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 12, 2013

Residential Tenancy Branch

