



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes

For the tenants MNDC, MNSD, FF

For the landlord – MND, MNR, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants have applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; to recover double the security deposit; and to recover the filing fee from the landlord for the cost of this application. The landlord has applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; and to recover the filing fee from the tenants for the cost of this application.

The tenants, the landlord, the landlords agent and witness for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing; the tenant provided documentary evidence to the Residential Tenancy Branch but not to the other party in advance of this hearing.

Preliminary Issues

The landlord's agent testifies that only the male tenant TS was served by registered mail with the landlord's application and notice of hearing. The landlords agent stated that as both tenants live at the same address both parties would be served however only the male tenants name was on the registered mail documents. As there is no proof the female tenant was served with the landlords application and Notice of hearing only the party served will be named on any Orders issued.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to recover the security deposit?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

The parties agree that this month to month tenancy started on October 01, 2011. This was a verbal agreement for the tenants to rent this house for a monthly rent of \$1,750.00 which was due on the first day of each month. The tenants paid \$875.00 for a security deposit on October 01, 2011. The parties also agree that the landlord failed to complete a move in condition inspection of the property at the start of the tenancy.

The tenants' application

The tenant TS testifies that they had agreed to move from the property on December 01, 2012 and had started to remove their belongings from the property. The tenant testifies that on November 21, 2012 they went to the property to collect more of their belongings but found the landlord had changed the locks. The tenant testifies that the landlord would not let them onto the property to collect the box of belongings that the

landlord had put out on the driveway. The tenant testifies that the landlord had kept most of their belongings which consisted of three bikes, a bike rack, two nail guns and bags of the female tenants clothing. The tenant testifies that he called the landlord about the return of the tenants' belongings and was told by the landlord that they would talk about it in court.

The tenant testifies that he sought advice from the Residential Tenancy Office and was advised to call the police and to ensure they gave the landlord a forwarding address in writing. The tenant testifies that they put a letter in the landlord's mail slot on November 21, 2012 informing the landlord that the landlord had locked the tenants out of their home on November 21 before the agreement of November 30, 2012. The tenants also requested the return of their security deposit of \$900.00 and provided a forwarding address.

The tenants agree now that they only paid \$875.00 and not \$900.00 for the security deposit. The tenants seek to recover double the security deposit to the sum of \$1,750.00 and seek the sum of \$1,825.00 for the value of their missing belongings.

The landlord's agent testifies that the tenants had not paid rent for November, 2012 and were verbally asked to move out of the property. The tenants agreed to move out on November 15, 2012 but actually moved out on November 14, 2012 and removed substantially all their belongings at this time. The landlord's agent testifies that the landlord did change the locks on November 21, 2012 after advice from the Police. At that time the landlord also removed all the garbage left by the tenants and this was placed outside the property under cover. The landlord's agent testifies that the tenants came on November 21, 2012 and had access to pick up the boxes of garbage placed outside the house. The tenant collected one box of items but left the rest behind. The female tenant also came to the property and asked for their belongings, the female tenant swore at the landlord and left without collecting any belongings.

The landlord's agent agrees that the landlord has the tenants' three bikes, a bike rack and one drill. These items have been placed in storage for the tenants to collect.

The landlord's agent testifies that the landlord has not received the tenants forwarding address or this letter the tenant alleges was placed in the landlord's mail box. The landlord's agent testifies that the landlord did not return the tenants security deposit because of the damage and cleaning required in the unit.

The landlord's application

The landlord's agent testifies that the tenants rent cheques had often been returned throughout the tenancy as there were insufficient funds to honour them (NSF). The rent was often paid late and on November 01, 2012 the tenants again failed to pay the rent. The landlord has provided copies of bank statements showing the NSF cheques After the tenants were asked to vacate the unit the tenants said they would pay the rent before they left on November 15, 2012 however no rent has been paid and the landlord seeks to recover the sum of \$1,750.00 in unpaid rent for November.

The landlord's agent testifies that the tenants also failed to pay utilities for November and the landlord seeks to recover the sum of \$190.00. The landlord's agent agrees that they have not provided a copy of the utility bill in evidence.

The landlord's agent testifies that they had to take the tenants garbage to the dump this included cardboard boxes and a broken television set. The landlord seeks to recover the sum of \$92.00 for two trips to the dump and has provided the receipts in evidence.

The landlords' agent testifies that the tenants failed to clean the carpets at the end of the tenancy. The carpets were left in a filthy condition and the landlord had to have them cleaned. The landlord seeks to recover the sum of \$280.00 from the tenants for this work and have provided the carpet cleaning receipt in evidence. The landlord's agent testifies that the carpets had been clean prior to the tenancy starting.

The landlord testifies that the landlord had to repaint three quarters of the unit due to holes and scratches left on the walls by the tenants. The tenants also tore out a fire place and left the holes. The landlord seeks to recover the sum of \$265.88 from the tenants for paint and supplies and three receipts have been provided in evidence. The landlord's agent testifies that the unit had been freshly painted by the landlord prior to this tenancy starting.

The landlord's agent testifies that the tenants had also removed the curtains in the living room and dining room and blinds from one of the bedrooms. The landlord's agent testifies that the landlord has not made a claim for these items.

The tenant disputes the landlords claim. The tenant TS testifies that at the start of the tenancy the tenant had to paint the entire unit and the tenants had to have the carpets cleaned as they had not been cleaned prior to their tenancy commencing. The tenant testifies that they could not return to the unit to clean out the garbage as the landlord had changed the locks to the unit.

The tenant agrees that they failed to pay the rent for November on November 01, 2012. The tenant testifies that they would have paid it later however the landlord locked the tenants out.

The landlord's agent calls a witness BH. The landlord's agent asks the witness if the witness helped the landlord remove the garbage and a television and was the unit filthy. The witness responds that he did help the landlord remove garbage and there was nothing of value there. The witness testifies that the unit was filthy. The landlord's agent asks the witness if the witness saw any damage to the walls and was the carpet filthy. The witness responds that he did not notice damage to the walls except picture nail holes and holes where the fire place had been removed but he did notice that the carpets were filthy.

The tenant declines to cross examine this witness.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the tenants application to recover double the security deposit; I refer the parties to section 38 of the *Act* which states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The tenant has testified that he put their forwarding address in a letter and in the landlords mail box on November 21, 2012 however the landlord's agent disputes this and testifies that the landlord did not receive the tenants forwarding address. When one person's testimony contradicts that of the other then the burden of proof falls to the person making the claim and in this case the tenants should have provided corroborating evidence to support their claim that they did provide the landlord with a forwarding address in writing on November 21, 2012. When it is one person's word against that of the other and no corroborating evidence has been provided by the tenants then the burden of proof has not been met.

Consequently, the tenants' application to recover double the security deposit is dismissed with leave to reapply. At the hearing it was confirmed that the address on the tenants' application is the tenants forwarding address. The landlord therefore has 15 days from today's date to return the tenants' security deposit. The landlord has extinguished their right to file against the security deposit as the landlord failed to complete a move in condition inspection of the rental unit pursuant to s. 36(2)(c) of the *Act*. If the landlord fails to return the tenants security deposit within 15 days the tenants are at liberty to file a new application to recover double the security deposit.

With regard to the tenants claim for \$1,825.00 for the value of the tenants belongings; I have considered the evidence before me and find the tenants have provided no evidence to show what belongings were not returned by the landlord. The burden of proof falls to the tenants in this matter to show that the landlord has either kept or disposed of three bikes, a bike rack, two nail guns and bags of clothing. The landlord's agent agrees that the landlord has the tenant's three bikes, a bike rack and a drill in storage but disputes that there were two nail guns or bags of clothing. Consequently I find the tenants have not satisfied the burden of proof regarding the disputed items or the value of these items.

I HEREBY ORDER the landlord to return the tenants three bikes, a bike rack and a drill within 10 days of receiving this decision. The parties must agree upon a mutual day and time that the tenants will collect their belongings from the landlord. If the landlords fail to return the tenants' belongings as stated above the tenants are at liberty to reapply for a Monetary Order for the value of their belongings. The tenants claim for the sum of \$1825.00 is therefore dismissed with leave to reapply.

With regard to the landlords claim for unpaid rent of \$1,750.00; The tenants do not dispute that rent for November was not paid on November 01, 2012. Section 26 of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I therefore find that the rent that was due on November 01, 2012 was not paid. The parties agree that no legal Notice was given to end the tenancy and therefore I find it was the tenants choice to move from the rental unit; however rent must still be paid for the month of November as the earliest the tenants could have ended the tenancy would have been November 30, 2012 if the tenants had given written notice themselves prior

to the first of November. Consequently I uphold the landlord's application to recover unpaid rent of **\$1,750.00** and a Monetary Order has been issued to the landlord pursuant to s. 67 of the *Act*.

With regard to the landlords claim for unpaid utilities of \$190.00; the landlord has provided no evidence to support this section of the claim. No utility bills have been provided to show the actual amount of the utilities or evidence that the landlord has provided a copy of the utility bills to the tenants with a written demand for payment within 30 days. Consequently this section of the landlords claim is dismissed.

With regard to the landlords claim for carpet cleaning and garbage removal; the landlord's agent testifies that the tenants vacated the rental unit on November 14, 2012 however the tenant testifies that they had an agreement that the tenants would vacate on December 01, 2012 and the landlord changed the locks on November 21, 2012. In this matter both parties are making a different claim concerning the end date of the tenancy. Neither party has provided any corroborating evidence to show when the parties agreed that the tenants would vacate the rental unit. This date would have a bearing on whether or not the landlord was entitled to change the locks of the rental unit as in doing so prevented the tenants from returning to the unit to clean or remove garbage. As I have no corroborating evidence I cannot determine when the tenancy was due to end. Therefore I must dismiss the landlords claim for carpet cleaning and garbage removal because if there had been an agreement in place between the landlord and tenants that the tenancy would end on December 01, 2012 then by changing the locks the landlord prevented the tenants from returning to clean the carpets and remove all personal belongings and garbage. The landlords claim for carpet cleaning and garbage removal is therefore dismissed.

With regard to the landlords claim for painting the rental unit; the tenants' dispute that the unit had been painted at the start of their tenancy and claim that the tenants had to paint the unit. The landlord claims the unit was painted prior to the tenants moving in and the tenants caused damage to the walls which resulted in the landlord having to paint the walls. In this matter the landlord has the burden of proof to show that the

tenants caused damage to the walls that was beyond normal wear and tear. The landlord failed to complete a move in condition inspection report at the start of the tenancy. If this report had been completed it could have provided evidence as to the condition of the rental unit at the start of the tenancy. In this instance it becomes one person's word against that of the other and therefore the burden of proof is not met. The landlords claim for painting and supplies is therefore dismissed without leave to reapply.

As the landlord has been partially successful with this claim I find the landlord is only entitled to recover half the \$50.00 filing fee from the tenants to the sum of **\$25.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the sum of **\$1,775.00**. As the tenants have been unsuccessful with their claim the tenants must bear the cost of filing their own application.

Conclusion

The tenants' application is dismissed with leave to reapply.

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,775.00**. The order must be served on the tenant TS and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the landlord to return the tenants belongings; namely, three bikes, a bike rack and a drill within 10 days of receiving this decision.

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: April 04, 2013

Residential Tenancy Branch