



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, MNDC

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking an order to have doubled the security deposit returned and seeking an order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is landlord entitled to a monetary order as claimed?

Are the tenants entitled to the return of double the security deposit and a monetary order for compensation?

Background, Evidence and Analysis

The tenancy began on August 1, 2009 and ended on January 15, 2011. The tenants were obligated to pay \$2,250.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$1,125.00 security deposit. Both parties have filed an application seeking a monetary order.

I will deal firstly with the tenant's application. The tenants are seeking the return of double their security deposit. The tenants stated that the landlord was well aware of their new address as they were building a new house "20 homes or so from the rental property". The landlord disputes that the tenants provided their forwarding address in writing as required by the Act. Section 39 of the Act addresses this issue as follows:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The tenants acknowledge not providing their forwarding address and feel that the responsibility fell to the landlord as he was aware they were living down the street. Based on the tenants own testimony I am satisfied that the tenants did not act in accordance with Section 39 of the Act.

The tenants' application is dismissed in its entirety.

Counsel for the tenants advised that the tenant's did not have any issues with the following portion of the landlords claim: \$60.00 for rubbish removal, \$180.32 for the septic field repair, \$100.00 for clear coating some doors, and \$36.85 for some broken lights. As the tenants have agreed on these claims I find that the landlord is entitled to \$377.17.

The following items were still in dispute at the hearing and I will address the landlords' claims and my findings as follows:

Both parties agree that neither a move in or move out condition inspection report was conducted in accordance with the Act. Counsel for the landlord stated that although there was no formal inspection the parties had a "gentleman's agreement" and that a "walk thru" was done at the beginning and end of tenancy. The tenants adamantly dispute that any walk thru was done.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

First Claim – The landlord is seeking \$1,125.00 of unpaid rent for the time period of January 15-31, 2011. The tenants dispute this claim. The tenants stated that the tenancy ended on December 31, 2010 and that by agreement the tenants stayed on two weeks longer. The tenants provided an e-mail thread supporting their position. The landlord was unable to produce sufficient evidence to support this portion of their application and accordingly I dismiss this claim.

Second Claim – The landlord is seeking \$3,505.60 for painting to remediate the suite due to the tenants smoking in the unit and causing the paint to dull and have an odor. The two parties had vastly different views as to the condition of the suite at move in and move out. As stated above, a condition inspection report was not conducted at the beginning or end of tenancy. The condition is a vital and important tool to assist in having sound and successful tenancies. It was explained in great detail the importance of this to both parties. I am unable to ascertain the condition of the unit at move in and the changes to it, if any at move out. The landlord was unable to provide sufficient evidence to support this portion of their application and accordingly dismiss this claim.

Third Claim – The landlord is seeking \$1,948.80 to replace a wood burning stove. The landlord alleges that the tenants' damaged the existing stove by breaking the handle. The landlord stated that the stove is five years old. The tenants stated that the stove was much older than five years old and was in poor condition when they moved in. Counsel challenged this claim as the landlord has submitted an estimate and not an actual receipt as proof of out of pocket costs in addition to re-stating his position that without the condition inspection report the landlord is not entitled to the recovery of this claim. I agree with the tenant's counsel on this point, the landlord has not provided sufficient evidence to support this portion of his application and accordingly I dismiss this claim.

Fourth Claim – The landlord is seeking \$2,000.00 for the replacement of a boat. The landlord stated that the boat was approximately 20 years old but in good working condition and that to replace a boat of that quality would cost approximately \$2,000.00. The landlord stated that the tenants were negligent in caring for a boat that he provided for their use. The boat was found upside down in the ocean and was a total loss. The tenants stated that there was not an agreement for them to use the boat; on the contrary, the tenants stated that they called the landlord several times and requested

that he remove the boat from the common area of the property. The landlord did not provide any documentation that the boat was to be part of the tenancy, in addition the landlord has not provided any proof of any out of pocket costs. The landlord has not provided sufficient evidence to support this portion of his application and accordingly I dismiss this claim.

Fifth Claim – The landlord is seeking \$1,279.15 for the repair of hot tub. The landlord alleges that the tenants did not monitor the water levels nor did they clean the hot tub on a regular basis which resulted in rust developing. The landlord also alleges that the tenants overheated the pump by running the water level too low. The tenants adamantly dispute this claim. The landlord stated that the tenants did not properly secure the hot tub cover and due to their negligence the cover was blown down an embankment causing extraordinary damage. As a result of the cover being missing, the tub began to rust as well as the tenants running the tub so long that the pump overheated and required replacement. The tenants stated that the hot tub cover was secured but due to a violent wind storm it was blown right off the tub. The tenants counsel submitted that it was an “act of god” and not a malicious act with any intent to damage the landlords’ property. The tenants dispute the amount claimed by the landlord as they feel it is excessive and found suitable used covers at \$250.00. Based on all of the above I do find that the landlord is entitled to the recovery of some of the costs to replace the hot tub cover. I do find the tenants proposed amount the appropriate amount in this case and I therefore find that the landlord is entitled to \$250.00.

Sixth Claim – The landlord is seeking \$276.64 to repair and reset the alarm system. The landlord alleges that the tenant ripped out some of the wires and that they had changed the master code so that he was unable to use it. The tenants disputed this claim. The tenants stated that they had come home to find the alarm going off and being unable to turn it off. The tenants investigated further to find that the wires had been chewed through by mice or rats. The tenants provided a work order to support their position. I accept the version provided by the tenants. I do not find that the landlord is entitled to the recovery of this cost and accordingly dismiss this claim.

Seventh Claim – The landlord is seeking \$342.72 for carpet cleaning. The landlord alleges the tenant’s left the carpet dirty and soiled with animal urine and feces stains. The tenants dispute this claim. The tenants stated that when they moved in the carpets were not cleaned. The tenants stated that they did cause two stains and that they were agreeable to paying \$70.00. I again refer to the lack of condition inspection report or other supporting means to depict any changes in the condition of the unit; I accept the tenants’ acknowledgement and find that the landlord is entitled to \$70.00.

Eighth Claim – The landlord is seeking \$175.00 for rekeying the locks to the home. Counsel for the landlord advised that the landlord was abandoning this claim, accordingly I dismiss this claim.

Ninth Claim- The landlord is seeking \$53.75 for a “cat door” that he alleges the tenants damaged. The tenants stated that they did not have a pet and that the door was in poor condition at the outset of the tenancy. The tenants stated that they had blocked off this door with a basket and a tree stump as it was never used. The landlord acknowledged that the tenants did not have any pets. I do not find sufficient evidence before me to find in favour of the landlord and accordingly dismiss this claim.

Tenth Claim – The landlord is seeking \$100 for the replacement of oven racks, \$200.00 for house cleaning, \$ 200.00 for yard cleaning, and \$500.00 for miscellaneous expenses such as ferry costs, gas, and meals. The tenants dispute this claim. The landlord has not provided any receipts to support these claims and accordingly I dismiss this claim.

Eleventh Claim – The landlord is seeking \$1,950.00 for loss of revenue for the month of February. The landlord stated that due to the tenants leaving the unit in such a poor condition the work to remediate it took until late into February and that he should be compensated for that amount. Counsel for the tenants submitted that as in claim #1, the parties reached an agreed end date. Counsel also referred to the fact the landlords were attempting to sell the property for an extended time and that they had undertaken renovations as opposed to any repairs due to the tenancy. Based on the findings made in previous claims and the lack of condition inspection report I find that the landlord is not entitled to the recovery of this amount and I therefore dismiss this claim.

The landlord has established a claim for \$697.17. As the landlord has been successful in his application, the landlord is entitled to the recovery of his \$100.00 filing fee for a total award of \$797.17.

Counsel for both parties came to an agreement at the end of the hearing. It was specifically agreed by both parties that any monetary amount awarded to the landlord was to be deducted from the security deposit. Both counsel requested that I apply this agreement based on Section 63 of the Act. I find this to be a moot point as I have found that the tenants have extinguished their right to the security deposit and although the amount awarded to the landlord is less than the security deposit, the landlord is entitled to retain the entire amount as specified in Section 39 of the Act.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

The landlord is entitled to retain the \$1,175.00 security deposit.

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: May 27, 2013

Residential Tenancy Branch