



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. The tenants testified that they had not received the landlord's evidence package as the landlord had mailed it to the rental unit which they had vacated. The landlord testified that he had contacted the Post Office and they advised him the tenants' mail was being forwarded to them. The tenants submit that I should not permit the introduction of the landlord's evidence. I determined any prejudice the tenants might experience could best be sufficiently dealt with by an adjournment. The tenants stated they did not wish an adjournment and that they wished to proceed with the hearing at this time. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

- d. Whether the tenants are entitled to a monetary order and if so how much?
- e. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on June 1, 2012 when the parties entered into a one year fixed term tenancy that was to end on May 31, 2013. The tenancy agreement provided that the tenant(s) would pay rent of \$1100 per month payable on the first day of each month. The tenants paid a security deposit of \$550 and a pet damage deposit of \$275 at the start of the tenancy.

On December 28, 2012 the tenants gave the landlord they were vacating at the end of January 2013 and they paid the rent for that month.

There is a great deal of animosity between the parties. The parties have made little effort to work together. The tenants testified they called the police on the landlord 30 times during the course of the tenancy and 27 times in December 2012 and January 2013. The police attended on 4 separate occasions. The landlord denies he has misbehaved. He testified that on the occasion in which the police attended the tenants had not aware a problem existed with the power or noise because the tenants failed to tell him before calling the police.

Landlord's Claim:

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear.

The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. The landlord claimed \$400 for the cost to repair a rotten sill (including labor and materials). I determined the landlord has failed to prove that the tenant caused the damaged because of their failure to maintain heat in the rental unit which led to condensation. I determined extensive mould existed prior to the tenant's taking possession. The window in question was a single pane and susceptible to condensation. The landlord failed to prove the rot occurred during the short period of time the tenants were in possession of the rental unit. As a result I dismissed this claim.
- b. The landlord claimed \$250 for the cost of cleaning the suite. He testified he paid this sum to two cleaning ladies. The tenants denied this claim and presented a large number of photographs which shows the rental unit was reasonable cleaned when the tenants left. I determined the landlord failed to prove this claim and accordingly this claim is dismissed.
- c. I determined the landlord is entitled to \$45 for the depreciated value of the cost to replace a blind. The tenants testified the blind was damaged prior to them taking possession. I determined that the tenants caused some damage to the blinds and that the depreciated value of the loss to the landlord is \$45.
- d. I dismissed the landlord's claim for the cost of a shower curtain as the landlord failed to prove it was present at the start of the tenancy.
- e. The landlord claimed \$175 for the cost to replace a burned bathroom counter. He testified there were two burns on the counter. The tenants testified there was a crack in the counter and it needed replacement. I determined the landlord was entitled to \$100 of this claim being the depreciated value of the loss.

- f. I dismissed the landlord's claim of \$100 for the cost of the fridge shelf as the landlord failed to prove the damage was caused by the tenants.
- g. I dismissed the landlord's claim of \$50 for the cost of fridge damage as the landlord failed to prove the tenants caused this damage and failed to present sufficient evidence to prove the quantum of his loss.
- h. I dismissed the landlord's claim of \$150 for the cost of floor stains in the living room. The photographs produced by the tenant show stains were present at the start of the tenancy.
- i. I dismissed the landlord's claim of \$268.73 for the cost to replaced damaged glass. The tenant broke a window when she tried to gain access to the rental unit after forgetting her keys at work. The tenants replaced the window. The landlord testified the work was of poor quality. I determined the landlord failed to present sufficient proof to establish the claim he was making. The landlord has not replaced the glass and it is more than 3 months since the end of the tenancy. This claim has not been proven.
- j. The tenants were responsible for paying half of the hydro bill. The landlord presented a bill dated February 26, 2013 which covered the period December 25, 2012 to February 25, 2013 or 63 days. The bill was for \$315.63). The tenants were in the rental unit and responsible to pay their share of the hydro bill for 7 days in December and 31 days in January for a total of 38 days. The tenants' share of the hydro for this period was \$95.19 ($\$315.63 \div 63 \text{ days} \times 38 \text{ days}$ multiplied by the period of time the tenants were in the rental unit 38 days divided by half as the tenants were responsible for half of the bill). I determined the landlord is entitled to \$95.19.
- k. The tenants entered into a fixed term tenancy. The tenants are responsible to pay the rent for the entire fixed term subject to the landlord's obligation to mitigate and the tenants right to end the tenancy early in accordance with section 45(3) of the Residential Tenancy Act which provides as follows:

45(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The letter dated December 28, 2012 from the tenants to the landlord purports to terminate the lease on the basis that the landlord has been negligent in failing to attend to repairs/maintenance in a reasonable time and Breach of the Covenant of Quiet Enjoyment. However, section 45(3) requires that the tenants give the landlord a reasonable period of time to correct what they allege to be a breach of a material term. The tenants have not complied with this section and as a result they do not have a right to end the tenancy as they did. I determined the landlord sufficiently attempted to mitigate this loss as he had a number of open houses. I determined the landlord has established a claim in the sum of \$500 for loss of rent.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$740.19 plus the \$50 filing fee for a total of \$790.19.

Security Deposit

I determined the security deposit and pet damage deposit totals the sum of \$825. I ordered that the landlord is entitled to retain \$790.19 of the security deposit and pet damage deposit.

I further ordered that the tenants are entitled to the balance of the security deposit and pet damage deposit in the sum of \$34.81.

Tenants' Claim:

With regard to each of the Tenants claims I find as follows:

- a. I do not accept the submission of the tenants that they are entitled to double the security deposit and pet damage deposit. The landlord filed a claim against the two deposits with 15 days of the end of the tenancy. Part of the landlords claim was for damage caused by the tenants' pets. While the landlord was not successful in this part of the claim the landlord had the right to retain the pet damage deposit to see how this was determined. Further part of the landlord's claim was for loss of rent. Again the landlord had the right to retain the deposit to see how this claim was determined. The tenants are entitled to the return of \$34.81 which is the balance of the security deposit and pet damage deposit.
- b. I determined the tenants are entitled to reimbursement of the sum of paid to have a technician look at the furnace. I am satisfied the furnace created a hazard and the tenants were within their legal rights to ensure they were not put at risk by the presence of a defective furnace. The landlord failed to properly ensure the furnace had been properly serviced. The tenants are entitled to \$138.88.
- c. I dismissed the tenants claim in the sum of \$61 for hours missed in order for him to be present when the landlord was showing the property. The landlord had a legal right to show the property as he did and the plaintiff has no claim.
- d. I dismissed the tenants claim in the sum of \$1500 for mail theft. The tenants failed to prove the landlord stole their mail or that they had suffered a loss.
- e. The tenants claimed the sum of \$600 alleging the landlord attempted to extort money from them and \$2200 for harassment (the equivalent of 2 months rent). A dispute arose between the parties over whether there were sufficient funds in the tenants account to pay the rent for December and to pay a hydro bill. The tenants testified the landlord told them there were insufficient funds and

he demanded cash. He also cut the power and the police were called. The tenants did not give the landlord additional money. As a result I determined the tenants failed to prove the allegation of extortion.

However, I am satisfied the landlord acted in a high handed and unacceptable way when dealing with the tenants during this time period. The tenants testified they called the police 26 times during this period and the police attended on 4 occasions. The landlord testified that he was unaware the power was out as the tenants failed to advise him. I accept the tenants' evidence that the landlord created an unacceptable amount of noise. After considering all of the disputed evidence I am satisfied that the landlord has breached the covenant of quiet enjoyment and the tenants are entitled to compensation. There is no corresponding right of the landlord to quiet enjoyment. In the circumstances I determined the tenants are entitled to compensation in the sum of \$500 for breach of the covenant of quiet enjoyment.

- f. The tenants claimed the sum of \$450 for damage to personal goods due to mould and mildew. I am satisfied the tenants suffered the loss and that it was caused because the landlord failed to ensure the rental unit was of a condition required by the Residential Tenancy Act. However, the evidence of quantum of loss was not sufficient to justify the amount of the claim. I determined the tenants are entitled to half of this claim or the sum of \$225.
- g. I dismissed the tenants claim in the sum of \$418.83 for the cost of disbursements. The tenants testified they spent that sum for photocopying, photographs etc. The only jurisdiction an arbitrator has dealing with cost of litigation is the filing fee. As a result this claim is dismissed.

- h. I dismissed the tenants claim of \$193.55 for the cost move-in early fees for the rental unit they were moving to as the tenants breached the tenancy agreement and they are not entitled to this claim..

I determined the tenants have established a claim against the landlord in the sum of \$898.69 plus \$50 (reduced to reflect the limited success of the Tenants) for the cost of the filing fee for a total of 948.69.

Summary:

I determined that the landlord has established a claim against the tenants in the sum of \$790.19. I ordered the landlord may retain this sum from the security deposit and pet damage deposit leaving a balance owing to the tenants. I determined the tenants have established a claim against the landlord in the sum of \$948.69 including the balance of the security deposit. **I ordered that the Landlord pay to the Tenants the sum of \$948.69.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and 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: May 10, 2013

Residential Tenancy Branch