



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC OLC RPP FF

Introduction

This hearing was first convened, pursuant to monetary applications by the tenants and the landlord, on March 1, 2013. The hearing was adjourned and reconvened three times, as set out in my interim decision in this matter. Both tenants, one landlord and one agent for the landlord participated in the teleconference hearings on all four dates. Both sides submitted extensive documentary and other evidence. On May 6, 2013, I ordered the landlord and tenants to meet to allow the landlord to return the tenants' personal possessions, and then to submit lists of the items returned. I further ordered the tenants to amend their application to remove from their claim any items that the landlord has returned, and to submit their amended application to the Branch and the landlord. Both parties complied with these orders.

On the final reconvened date, June 4, 2013, I concluded the teleconference portion of the hearing and allowed the parties to submit additional documentary evidence regarding payment of August 2011 rent. I ordered the tenants to serve their evidence to the Branch and the landlord by June 11, 2013 and I ordered the landlord to serve their evidence to the Branch and the tenants by June 18, 2013. The tenants provided evidence to demonstrate that they had paid rent for August 2011, and the landlord withdrew the portion of their claim regarding August 2011 rent. I concluded the hearing on June 18, 2013.

I have reviewed all testimonial, documentary and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The rental unit was a condo in a strata building. The tenancy began on August 1, 2011, with monthly rent of \$1375 due in advance on the first day of each month. At the outset of the tenancy, the tenants paid the landlord a security deposit of \$687.50. The landlord did not complete a move-in condition inspection report with the tenants at the beginning of the tenancy.

Previous Dispute Resolution Hearings

On October 2, 2012, a hearing was convened pursuant to an application by the tenants for orders for repairs, a reduction in rent and monetary compensation. In the decision dated October 3, 2012, the arbitrator ordered the landlord to carry out repairs and granted the tenants a \$150 rent reduction beginning November 1, 2012 and effective until the repairs were completed, as well as recovery of their \$50 filing fee, which the tenants could deduct from their November 2012 rent. Therefore, the tenants' rent for November 2012 would have been \$1175.

On December 7, 2012 a second hearing was convened, pursuant to applications by the tenants and the landlord. The tenants applied to dispute two notices to end their tenancy and for an order of possession to the rental unit. The landlord applied for monetary compensation for unpaid rent, keys missing and miscellaneous items and cleaning and garbage disposal, as well as for an order to retain the security deposit in partial compensation of their claim. During that hearing the tenants stated that they no longer wished to take possession of the rental unit, and the arbitrator dismissed the tenants' application. In the decision dated December 8, 2012 the arbitrator found that the tenants had abandoned the rental unit and the tenancy had ended by November 20, 2013. The arbitrator accepted the evidence of the landlord that the rental unit contained rotting food, a foul smell and fruit flies, and the landlord had the right to enter the premises, discard garbage and do cleaning. The arbitrator allowed the landlord's claim for lock replacement in the amount of \$19.59, but dismissed the landlord's claims for replacement of keys, four appliance manuals and a microwave tray. The landlord was granted a monetary award, ordered to retain the security deposit of \$687.50 in partial compensation of their claim, and granted a monetary order for the balance.

Tenants' Application

The tenants stated that the basis for their claim was that the landlord did not have any intention of doing maintenance or the repairs ordered in the October 3, 2012 decision, and the landlord was planning to force the tenants to move out so they could attempt to

sell the unit. After the landlord served the tenants with a notice to end tenancy on October 24, 2013, the tenants began moving out of the rental unit. They discovered they were locked out of the unit on November 24, 2013, and they were therefore unable to retrieve the remainder of their personal belongings.

In their amended application, the tenants claimed monetary compensation totalling \$9026.95, for the following:

- 1) Double security deposit – the tenants have claimed double recovery of their security deposit, on the basis that the landlord did not return the tenants' security deposit within 15 days of November 20, 2013.
- 2) Packers and movers – the tenants stated that they were forced to move in a hurry because of the landlord's "bogus eviction."
- 3) Difference in rent for 12-month lease – the tenants claimed that because they had to move in a hurry, they had to take a rental unit that rents for \$275 more per month, and they have claimed the difference in rent for their 12-month lease.
- 4) Parking – the tenants entered a 12-month contract with the strata for parking. The parking contract expires at the end of June 2013. The tenants have claimed the parking fees from December 2012 through June 2013.
- 5) Security guard costs – the tenants stated that they were obliged, due to the landlord's past irrational behaviour, to hire a security guard to accompany them to attempt to retrieve their belongings on December 19, 2013.
- 6) Wage loss for attending dispute resolution hearings – the tenants have claimed their lost wages for the time that they have had to attend dispute resolution hearings.
- 7) Compensation for maintenance that was ordered but not carried out – the landlord did not comply with the order to carry out repairs, and the tenants have claimed compensation for loss of quiet enjoyment.
- 8) Food – the tenants stated that they could not retrieve numerous food items from the rental unit, and the landlord did not return any of these items.
- 9) Wire hangers, cleaning supplies and moving supplies – the tenants claimed that they left wire hangers, cleaning supplies and moving supplies in the unit that the landlord did not return.
- 10) Cherry laminate flooring – the tenants stated that they left 78.54 square feet of laminate flooring in the rental unit. They were able to retrieve some of the flooring on December 19, 2012, but when they attempted to retrieve the remainder of the flooring from the landlord on May 3, 2013, approximately 36.73 square feet of flooring was not returned to them. The tenants stated that because the colour of the flooring tends to change from lot to lot, the entire six boxes of laminate flooring will have to be replaced.

- 11) Paper shredder – the tenants claimed that when they retrieved their paper shredder from the landlord on May 3, 2013, it no longer worked.

The landlord's response to the tenants' application was as follows.

The issues of the security deposit, the end of tenancy and the food the tenants left in the rental unit have already been dealt with, in the decision of December 8, 2012. The tenants chose to move out, and the landlord should not be responsible for any of the costs associated with their move. The tenants' parking contract is a separate contract that the landlords are not responsible for. The tenants chose to hire a security guard, which was not necessary.

The landlord submitted that the issue of the repairs was dealt with in the decision of October 3, 2012, and the tenants had already been granted a rent reduction for the month of November 2012.

The landlord stated that they returned all of tenants' remaining possessions, including the rest of the laminate flooring and the paper shredder, on May 3, 2013. The landlord stated that when the tenants abandoned the unit, the landlord removed garbage and spoiled food, and stored the remaining possessions for the tenants to retrieve. The landlord made an inventory list of those items, but the tenants refused to sign the list.

Landlord's Claim

In their amended claim, the landlord sought the following compensation:

- 1) Replacement or repair costs for several items, including \$110 for replacement of fobs; paint for wall repairs; lighting fixture and bulb; \$27.36 for light bulbs; key replacement; drip tray; and freezer shelf.
- 2) Compensation for lost wages – the landlord claimed that the female landlord lost wages for eight weeks, from August 1, 2012 to October 1, 2012, due to the tenants' harassment and the female landlord's resulting stress. The landlord stated that the tenants used upsetting language toward the female landlord, bullied her and refused to cooperate with the landlord, which resulted in stress, anxiety and ultimately a complete breakdown by the female landlord. As a result, she had to take eight weeks off work.
- 3) Storage of the tenants' possessions – the landlord stated that they stored the tenants' possessions inside the rental unit until December 31, 2012, and then they moved them to the landlord's house. The landlord stated that he was unable to rent the unit for December 2012 because he was storing the tenants'

possessions there. The landlord sought further compensation for the responsibility of storing the items, as well as the labour to move them.

- 4) Canada Post costs – the landlord stated that he had to incur mailing costs because the tenants would not give the landlord a physical address to which he could personally deliver documents.

The tenants' response to the landlord's claim was as follows.

The landlord did not do a move-in inspection with the tenants, so there is no proof of the condition of the rental unit at the beginning of the tenancy. The landlord therefore cannot claim costs for damages. The tenants were not required under the lease to return the fobs. The tenants had to pay for lock replacement. The tenants only took the light bulbs that they purchased. The tenants deny taking a drip tray and a freezer shelf.

The tenants stated that there is no proof that the female landlord was off work for eight weeks, and any stress that the female landlord suffered was not the tenants' fault. The tenants denied bullying or harassing the female landlord.

The tenants opposed the landlord's claims for storage costs, as the tenants made three attempts to pick up their belongings before December 19, 2012.

Analysis

Tenants' Claim

The tenants' claim for recovery of the security deposit is *res judicata*, as the security deposit was already dealt with in the decision of December 8, 2012. That decision also dealt with the end of tenancy, in which the arbitrator found that the tenants had abandoned the rental unit, and the tenancy ended as of November 20, 2012. In regard to the tenants' claim for food items, the arbitrator found that that the rental unit contained rotting food, a foul smell and fruit flies, and the landlord had the right to enter the premises, discard garbage and do cleaning. I do not have jurisdiction to re-hear any matters that have already been determined. I therefore dismiss the tenants' claims for double recovery of the security deposit, moving costs, food items, the difference in rent and parking fees. The tenants' claim for compensation for the landlord's failure to do repairs is also *res judicata*, as that issue was addressed in the decision of October 3, 2012.

I find that the tenants did not provide sufficient evidence to establish that the landlord exhibited violent or threatening behaviour such that it was necessary for the tenants to

hire a security guard to accompany them to retrieve their belongings. I therefore dismiss that portion of their claim.

I find the tenants' claims regarding the wire hanger, cleaning and moving supplies and laminate flooring to be unreasonable. I do not accept the tenants' submissions that the landlord used the hangers for themselves, took cleaning and moving supplies or cut up pieces of the laminate flooring and failed to return them. I found the tenants' claim in general to be inflated and unreasonable. I further find that the tenants did not provide evidence of the age or condition of the paper shredder before they left it in the rental unit. I therefore dismiss all of these portions of the tenants' claim.

The tenants are not entitled to their claim for lost wages to attend dispute resolution hearings, as normally the only recoverable cost associated with the dispute resolution process is the filing fee. In this case, the tenants themselves filed an application and submitted extensive evidence, thus choosing to engage in the dispute resolution process. I therefore dismiss this portion of the tenants' application.

As the tenants were wholly unsuccessful in their application, they are not entitled to recovery of any portion of their filing fee.

Landlord's Claim

I find that the landlord is entitled to \$110 for fobs, as the fobs were not the tenants' property and ought to have been returned to the landlord. I also find that the landlord is entitled to \$27.36 for light bulbs, as it is a tenant's responsibility to replace all light bulbs during the tenancy.

As the landlord did not complete a move-in condition inspection report with the tenants, and therefore he could not establish the condition of the rental unit at the outset of the tenancy, I dismiss the landlord's claims for paint for wall repairs, a drip tray and a freezer shelf. The landlord did not break down the costs for the lighting fixture and the bulb, so I cannot grant an amount for the bulb. The issue of key replacement is *res judicata*, as it was dealt with in the December 8, 2012 decision.

I find that the landlord did not provide sufficient evidence to support their claim for monetary compensation for the female landlord's lost wages. It was open to the landlord to have only the male landlord or an agent of the landlord deal with the tenants, if the female landlord found it stressful. It was also open to the landlord to serve the tenants with a notice to end tenancy for cause at any time, if they believed that the tenants were

significantly interfering with or unreasonably disturbing the landlord. I therefore dismiss this portion of the landlord's claim.

I find that the landlord is not entitled to storage costs, as they did not incur any costs for storing the tenants' possessions. The landlord did not provide evidence that they made any attempt to re-rent the unit for December 2012, nor did they establish that they could not have moved the tenants' possessions to their house sooner. I therefore dismiss this portion of the landlord's application.

The landlord is not entitled to their claim for mailing costs, as normally the only recoverable cost associated with the dispute resolution process is the filing fee. The landlord filed their application to engage in the dispute resolution process. The tenants were not required to provide the landlord with a physical address where the landlord could personally serve them. I therefore dismiss this portion of the landlord's application.

As the landlord's application was only minimally successful, I find they are not entitled to recovery of their filing fee.

Conclusion

The tenants' application is dismissed in its entirety.

The landlord is entitled to \$137.36, and I grant the landlord an order under section 67 for that balance. This order may be filed in the Small Claims 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: July 12, 2013

Residential Tenancy Branch