



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNSD, MNDC, FF
 Tenants: MNDC, MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; her agent; her legal counsel and both tenants. The hearing was originally convened on July 18, 2013 and due to time constraints was adjourned until July 30, 2013.

While the tenants' Application had named the landlord's agent and the owner of the property as a party to this dispute, and the landlord's Application names only the owner of the property, I find it unnecessary for the agent to be named as a party to the dispute and I amend the tenants' Application to name only the owner of the property.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for damage to the rental unit; for damage or loss resulting from the tenancy agreement; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided are whether the tenants are entitled to a monetary order for double the amounts of the security deposit; for damage or loss resulting from the tenancy agreement and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on January 19, 2013 for a 1 year fixed term tenancy beginning on March 1, 2013 for a monthly rent of \$2,000.00 due on the 1st of each month with a security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 paid.

Both parties acknowledge that the female tenant had been provided access and viewing of the rental unit on January 12, 2013 and that the parties entered into the tenancy agreement on January 19, 2013 to begin on March 1, 2013.

The female tenant submits that she does not recall seeing any rat traps in the rental unit during any of her visits to the property until they moved in. The landlord submits that there were rat traps in the "rock room" from the first showing and that she had later added additional ones, as a precaution when she was aware the tenants were not planning to move in to the unit until a later date than the start of the tenancy.

The landlord submits that there had not been any rat infestations but due to the location of the property they had traps on site and had adapted the house to prevent any potential infestations.

The male tenant submits that it was only the female tenant who had viewed the house prior to entering into the tenancy agreement but had he viewed the property and seen the "rock room" he would not have entered into a tenancy. The male tenant submits that as a result of his experience in construction he knows that such a room would not meet code because it did not seal off moisture to the outside. The tenants did not provide copies of any local bylaws or codes restricting this type of room.

The tenants submit that they never discussed the rock room because the male tenant works out of town with prolonged absences from the family home. The female tenant did acknowledge that she found the "rock room" unusual but once the landlord explained the purpose she did not think it was a problem. The male tenant submits that had he known about the "rock room" he never would have agreed to enter into the tenancy agreement.

The parties agree that despite originally wanting to rent the property furnished the landlord agreed to have the furniture removed for this tenancy. The parties also acknowledge the landlord was made aware the tenants were uncertain as to when they would be moving in via email on February 13, 2013.

The parties also acknowledge the landlord sent, to the tenants, an email on January 24, 2013 that contained general information about the house and some details they would need to know, including information regarding the washer, dryer, furnace, vacuum system, water system, and outside taps.

In addition the landlord specifically describes the "rock room" as follows: "Like many homes on [the island] there is a "rock room" on the main floor of the house. Water is meant to trickle across the rock in rainy weather and out the front of the house. This is normal. If the water becomes excessive or spills onto the concrete let us know."

The parties agree that the female tenant attended the property again on January 27, 2013. The parties differ on the date of the third meeting that was conducted to provide

keys to the female tenant and complete a move in inspection. The tenants submit this occurred on March 2, 2013 and the landlord states March 9, 2013.

The landlord submits that her agent took photographs to record the condition but that a move in Condition Inspection Report was not completed or signed by the tenants. The landlord has provided copies of these 33 photographs. I note that there are no photographs of any cabinetry.

The tenants submit that they started their move in on April 6, 2013 and on April 8, 2013 the tenants wrote a letter to the landlord's agent advising him that they would not be moving into the property for the following reasons:

1. The house had been full of furniture when the female tenant viewed the house and that the furniture was "apparently placed over top of terrible stains on the carpet throughout the home";
2. The male tenant "identified black sludge on the rock that is directly under the house with no vapor barrier protecting the house from mould";
3. The rock room had a decomposing rat along with a few other skeletal remains;
4. The presence of multiple rat poison traps containing arsenic;
5. The finding of "a significant amount of droppings under a drawer in the kitchen along with multiple areas that have been chewed by rodents; and
6. The finding of "baking soda on shelves meant to absorb odors and spray foam on an outside wall of the home maybe to block rats."

The tenants seek return of the two month's rent that they had paid for the months of March and April 2013. The tenants provided their forwarding address to the landlord in the above noted letter and asked to have the two month's rent returned to that address. The tenants also seek return of their security deposit. The tenants submitted 54 photographs in support of their claim.

The landlord's legal counsel clarified the landlord was seeking four specific compensation packages:

1. Compensation for the expenses incurred by the landlord to prepare for the start of the tenancy as described in the following table:

Description	Amount
Ferry travel	\$268.75
Chimney cleaning	\$125.00
Chimney cap replacement	\$110.00
Furnace Filters	\$18.65
Rental Agent fees	\$120.00
Cleaning prior to possession	\$232.96
Keys made for tenants	\$6.72
Replacement smoke alarm	\$135.00
Re-keying prior to possession	\$60.00

Piano disposal and shed cleaning	\$296.80
Cleaning items	\$117.49
Keys made for new house sitter	6.72
Re-keying after repossession	\$120.00
Furniture storage – February and May 2013	\$436.80
Total	\$2,054.89

2. Compensation for expenses incurred to repair damage caused by tenants in the amount of \$425.00 for repairs to damaged kitchen cabinets; and
3. Compensation for expenses incurred by the landlord during the tenant's possession as outlined in the following table and requested by the landlord's legal counsel to be considered only if the tenants are granted to return of the rent for the months of March and April 2013:

Description	Amount
Rental Agent fees	\$515.20
Ferry Travel	\$25.95
Gardening	\$137.50
House Insurance	\$774.10
Water Systems	\$190.40
Municipality water	\$50.00
Propane	\$84.00
Total	\$1,777.15

4. Loss of rent for the months of May and June 2013 in the amount of \$4,000.00.

The landlord testified that she has not re-rented or attempted to re-rent the unit prior to the date of the hearing and is undecided as to what she intends to do with the property at this time. The landlord also submitted the tenants had returned keys to the rental unit.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32 of the *Act* requires a landlord 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 for the age, character and location of the rental unit make it suitable for occupation by a tenant.

In regard to the tenant's claim for return of the two month's rent for March and April 2013, I find that the female tenant had viewed the property and was provided additional information regarding the "rock room" that she could have conveyed to the male tenant prior to making a decision to sign a tenancy agreement.

As the male tenant submits that he would not have entered into a tenancy agreement had he known of the "rock room" I find it was the female tenant who the responsibility to inform the male tenant if she felt the "rock room" was a problem. The landlord's agent did not hide the "rock room" from the female tenant and I find she was fully aware of its existence prior to entering into the tenancy agreement.

In regard to the tenant's submission that the landlord failed to disclose a rat infestation, I find that while the house was prepared for the possibility of a rat infestation this does not necessarily mean that there had ever been an infestation prior to the start of the tenancy.

I find the tenant's submissions that the stains on the carpet were caused by rats are based on supposition and they have provided no evidence to establish this as fact. In light of the fact that the rental unit was empty for a substantial period of time I find that photographic evidence submitted by the tenants *may* be reflective of rats entering the home *after* the tenancy began.

I note as well that despite attending the property on at least 3 occasions prior to moving in to the rental property the female tenant at no time raised concerns regarding the potential for rats or any damage caused to areas of the home as a result of rats. Essentially, I find there is no evidence provided by either party to specifically identify when any rats may have gotten into the rental unit.

As such, I find the tenants have failed to establish that the landlord had failed to meet her obligations under Section 32 of the *Act* and I dismiss the portion of their claim seeking return of the rent for the months of March and April 2013.

As I have determined the tenants are not entitled to the return of rent for March and April 2013, I have not considered, as per the landlord's legal counsel's instruction, the portion of the landlord's claim seeking compensation for expenses incurred during the tenancy in the amount of \$1,777.15 and I dismiss this portion of the landlord's Application.

In relation to the landlord's claim for compensation for costs incurred in preparing the rental unit for the tenancy I find that the majority of items claimed are either routine maintenance that would be required whether or not a tenancy agreement was entered into; would have been required to be completed in order to rent the property to any tenant and is therefore not a loss resulting from preparing the property for rental but rather a cost of doing business; or a choice of the landlord.

Specifically, I find as follows:

Description	Outcome
Ferry travel	A cost of doing business - dismissed
Chimney cleaning	Required maintenance regardless of tenancy - dismissed
Chimney cap replacement	Required maintenance regardless of tenancy - dismissed
Furnace Filters	Required maintenance regardless of tenancy - dismissed
Rental Agent fees	A cost of doing business - dismissed
Cleaning prior to possession	Required maintenance regardless of tenancy - dismissed
Keys made for tenants	A cost of doing business - dismissed
Replacement smoke alarm	Required maintenance regardless of tenancy - dismissed
Re-keying prior to possession	A cost of doing business - dismissed
Piano disposal and shed cleaning	Choice of landlord - See below - dismissed
Cleaning items	A cost of doing business - dismissed
Keys made for new house sitter	Choice of landlord - keys returned by the tenants - dismissed
Re-keying after repossession	Choice of landlord - keys returned by the tenants - dismissed
Furniture storage – February and May	Choice of landlord - See below - dismissed

The costs for piano disposal; shed cleaning; and furniture storage were incurred because the landlord chose to enter a tenancy agreement that required her to store her belongings off site. The costs were not incurred from the tenants' ending the tenancy prior to the end of the fixed term.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy 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.

Despite the tenant's assertions that the work that would have been required to remediate any rat infestation and/or to enclose the "rock room" with adequate construction to bring it up to code I find by failing to comply with the requirements under Section 45(3) the tenants failed to give the landlord **any** opportunity to correct any problems or deficiencies with the rental property.

As such, I find the tenants are responsible for the payment of rent until the end of the fixed term of the tenancy agreement subject only to the landlord's obligation to mitigate her losses.

Section 7(1) of the *Act* states that if a landlord or tenant does not comply with the *Act*, regulation or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damages or loss that results.

Section 7(2) states a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As the landlord has submitted that she has not even attempted to re-rent the unit and is in fact unsure even on the date of the reconvened hearing if she intends to re-rent the unit, I find the landlord has taken absolutely no steps to mitigate her loss and therefore I dismiss the portion of her claim seeking compensation in the amount of \$4,000.00 for lost revenue.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As noted above, neither party has provided evidence to establish when rats entered into the home and/or caused damage. In the absence of a documented move in Condition Inspection Report or any photographs submitted by the landlord that showed the condition of cabinetry I find the landlord has failed to establish any damage to the rental unit caused by rats resulted during the tenancy. I dismiss this portion of the landlord's claim.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security and pet damage deposits or file an Application for Dispute Resolution to claim against them. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security and pet damage deposits.

Section 44 states that a tenancy will end in a number of ways including when the tenant give as landlord a notice under Section 45, 50; the landlord gives a notice that is compliant with the Sections 46, 47, 48, 49, or 49.1 of the *Act*; at the end of a fixed term that requires the tenant to vacate the rental unit; the landlord and tenant agree in writing; the tenant vacates or abandons the rental unit; or the tenancy agreement is frustrated.

As the tenants vacated the rental unit as of April 8, 2013, I find the tenancy ended on April 8, 2013 in accordance with Section 44(d), when the tenants vacated the rental unit. I find the tenants provided the landlord with their forwarding address in writing on that same date. Therefore, I find the landlord had until April 23, 2013 to either return the deposits or to file her Application to claim against them. As the landlord submitted her Application for Dispute Resolution on June 20, 2013 the landlord has failed to comply

with Section 38(1) and the tenants are entitled to return of double the deposit, pursuant to Section 38(6).

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$4,050.00** comprised of double the amount of the security and pet damage deposits and \$50.00 of the \$100.00 fee paid by the tenants for their application as they were only partially successful.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As the landlord was unsuccessful in her claim I dismiss her claim to recover the filing fee for her Application for Dispute Resolution.

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: August 14, 2013

Residential Tenancy Branch