



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNR
Tenants: MNDC, MNSD, FF

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; his agent; and both tenants.

While the landlord had not checked the box on his Application indicating that he sought to retain the security deposit I find that he has provided sufficient detail in his evidence and submissions to indicate that he had intended to seek retention of the deposit. As such, I amend the landlord's Application to include seeking to retain the deposit.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities and for all or part of the security deposit, pursuant to Section 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for compensation for damage or loss; for all or part of the security deposit 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

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on July 5, 2012 for a 9 ½ month fixed term tenancy beginning on July 15, 2012 for a monthly rent of \$1,600.00 due on the 1st of each month with a security deposit of \$800.00 paid.

The landlord submits the tenants failed to pay utility costs in the amount of \$2,164.43. While there was a substantial amount of detail on this issue provided as evidence the tenants testified that they no longer dispute the amount owed to the landlord for utilities.

The tenants submit that prior to entering into the tenancy agreement the landlord had advised the tenants that utility costs for the residential property would be around \$300.00 per month. They further state that once in the rental unit they found that the amounts were much higher, in fact their first bill was \$450.00 and there during the colder months that it was even higher.

The tenants acknowledge that they did not inform the landlord about these differences or their concern about at any time during the tenancy. The tenants seek compensation in the amount of \$1600.00 based on an average monthly overage of \$300.00. The landlord submits that he does not recall providing any figures related to hydro costs to the tenants prior to entering the tenancy agreement.

The tenants also submit that prior to entering into the tenancy agreement the landlord advised them that he intended to put the property on the market for sale in the spring. The landlord submits that he did advise the tenants that he intended to put the property on the market but that he was not specific about a timeframe.

The female tenant testified that she believed the landlord intended to put the property on the market in March or April 2013 which she believed would be suitable for her needs because she was attending school that was due to finish at the end of April 2013 and her workload is such that majority of work requires completion by February and March. The parties agree the showing began in mid January 2013 and end towards the end of March 2013.

The tenants submit that they are claiming \$1,700.00 based on her tuition costs for that period as a result of the disturbances this earlier than thought marketing. The female tenant submits that she did complete all of her work and her grades did not suffer.

The tenants seek compensation from the landlord in the amount of \$500.00 from the landlord for having to "co-ordinate" with realtors as to when they would be showing the property. The tenant submits that she requested they work a specific schedule for showings so that she would not be interrupted from her studies or from unexpected intrusions from realtors.

The parties both acknowledge that the tenant complained to the landlord regarding the first realtor who was assigned to the property because she would not respect the tenant's requests to not show the property at certain times and/or that she would just show up to show the property when the tenant was in the middle of work or study. The tenants acknowledge that the second realtor assigned to the property worked much better meeting the tenant's needs.

The tenants seek compensation in the amount of \$500.00 for pain, suffering, and anxiety as a result of all of these events during the tenancy, including the issues of trying to work out the outstanding hydro amounts while the landlords were trying to close the sale of the property.

The female tenant also testified that the residential property is at a resort that includes the real estate agency and a restaurant where she worked. She states that as a result of her complaint against the original real estate agent she was reprimanded at work and she voluntarily reduced her hours after that because she did not feel comfortable working for the organization and ongoing harassment from the realtor. The tenants seek compensation in the amount of \$500.00 for lost wages.

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.

Much of the evidence presented to me consisted of disputed testimony and different versions of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

In relation to the tenants' claim for compensation for the "misrepresentation of cost of utilities" the burden is on the tenants and as the landlord has provided testimony that disputes that he advised the tenants of any specific costs for utilities it is incumbent on the tenants to provide evidence to corroborate their position. The tenants have provided no additional evidence in regard to this portion of their claim.

Further, if the cost of hydro was of significant importance to the tenants they could have pursued confirmation of hydro costs from the supplier prior to entering into an agreement. In addition, the tenants, by their own testimony, confirmed that they never once raised the issue with the landlord for the entire duration of the tenancy in attempt to mitigate any losses. For these reasons, I dismiss this portion of the tenants' Application.

In relation to the tenants' claim for compensation for the "misrepresentation of date of real estate listing causing disturbance to my studies" I find that even if the landlord had committed to the marketing the property in "the spring" that the term itself is very vague. If the tenants felt that the time of when this occurred was significance they could have sought further clarity. I find that failure to have the landlord to commit to a specific date or month implies the tenants were satisfied with the vagueness of the term "spring".

I also note that if the tenants felt this was a breach of any promises made by the landlord they had the opportunity to seek an order from the Residential Tenancy Branch

to either commence the marketing at future date or to restrict the landlord's access to the property for the purposes of marketing. Again, I find that failure to pursue these remedies shows the tenants took no steps to mitigate any losses they may have suffered. I dismiss this portion of the tenants' Application.

I accept that the original real estate agent assigned the landlord's property was aggressive and failed to heed to the tenant's requests and that the landlord requested and had a new realtor assigned to his property after the tenant complained to the landlord about her behaviour. The tenants provided no evidence of any future complaints or concerns with the scheduling of the new realtor or the tenants' dealings with him in regard to scheduling or "coordination".

As such, I find the tenants have failed to provide sufficient evidence to establish that the landlord was in breach of the *Act*, regulation or tenancy agreement or that as a result the tenants suffered a loss. I dismiss this portion of the tenants' Application.

Under authority of the *Act* I can consider the tenants' request for compensation for pain, suffering, and anxiety as aggravated damages. Aggravated damages are an award, or an augmentation of an award of compensatory damages for non-pecuniary losses. Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour.

As I have so far found that the tenants have failed to provide sufficient evidence to establish any wrong doing on the part of the landlord I cannot grant award for a willful or reckless indifferent behaviour on the part of the landlord. I dismiss this portion of the tenants' Application.

As to the tenants' claim for lost wages for her voluntary reduction in hours, I find that that is a matter between the female tenant and her former employer and outside of the jurisdiction of the *Act*. Even if I were able to accept jurisdiction on the matter the tenant has provide no evidence of any of the claims she makes in relation to those matters including such items as confirmation of her employment; wages; pre and post incident schedules.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,164.43** comprised of utilities owed.

I order the landlord may deduct the security deposit and interest held in the amount of \$800.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,364.43**.

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

As the tenants were unsuccessful in their claim I also dismiss their request to recover the filing fee for their Application.

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 16, 2013

Residential Tenancy Branch

