



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNR, MNSD, MNDC, FF

For the tenants – MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants applied for a Monetary Order to recover the security deposit; other issues; and to recover the filing fee from the landlords for the cost of this application.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords permitted to keep the security deposit?

- Are the landlords entitled to a Monetary Order for Money owed or compensation for damage or loss?
- Are the tenants entitled to a Monetary Order to recover the security deposit?

Background and Evidence

The parties agree that this tenancy was due to start on May 15, 2013. A written tenancy agreement was entered into and signed by the parties on April 20, 2013. Rent was agreed at \$1,000.00 per month due on the first day of each month. The tenants paid a security deposit of \$500.00 on April 21, 2013. The tenants provided a forwarding address to the landlord on May 13, 2013.

The landlord JN testifies that the tenants viewed the unit and signed the tenancy agreement paying a security deposit on April 20, 2013. The tenants asked if they could move some items in a few days earlier and they walked through the house several times before getting the keys.

The landlord LC testifies that when the tenants viewed the house they said they liked it. On April 25, 2013 one of the tenants did another walkthrough of the house and on May 06, 2013 it was agreed that the tenants could get the key and move some boxes into one of the bedrooms. The landlord testifies they allowed the tenants to do this as the landlords still had some things to do to the unit and needed to remove their belongings. At this time the house had been freshly painted and the tenant KK commented on how happy she was with the way the house looked. The landlord testifies that they set up a date of May 13, 2013 to do the walk through of the house however the landlord testifies that the tenant moved all their belongings in prior to this date throughout the house and put a padlock on the back gate.

The landlord testifies that when they went to the house on May 13, as arranged they found a moving truck at the house and the tenants informed the landlords that they were

not w going to be moving in. The landlord testifies that the tenants had informed the landlords that there was a leak under a sink and the landlords were going to repair that on May 13, 2013. The landlord testifies that as the tenants did not give the required notice to move out the landlords seek to recover unpaid rent of \$1,000.00 from May 13 to June 15 when the unit was re-rented.

The landlords seek an Order to keep the security deposit of \$500.00 to offset against the rent. The landlord states that on their application they had added the security deposit to the claim amount rather than subtracting it.

The landlord testifies that they also seek to recover the cost of replacing the lock as the tenants refused to return the keys to the unit until the landlords' returned their security deposit. The landlord testifies that they changed the locks on May 13, 2013 and have provided a receipt in evidence showing the lock was purchased on May 13, 2013. The landlords seek to recover \$24.63 for the new locks.

The tenant KK testifies that they dispute the landlords claim for unpaid rent. The tenant testifies that the letter provided in the landlords' evidence has inconsistent dates.

The tenant KW testifies that they did sign the agreement to rent this house on April 20. When they first viewed the house it was quite dark and the landlords' belongings were still in the house making it difficult to see all aspects of the house. The tenant testifies that they specifically asked the landlords if there was any damp or mould issues as the tenant KK has a compromised immune system. The tenant testifies that the landlord said there had been some mould issues in the basement which had been addressed. The landlords then agreed to give the tenants a key when they had finished painting.

The tenant testifies that on May 07, 2013 KK met the landlord, received the key and the landlords said the tenants could start to move their belongings in. The tenant testifies that KK noticed a leak under the sink and mould in the cupboard. They asked the landlord about the leak and the landlord LC's first reaction was to ask if it was the

bathtub again. The landlord had not previously mentioned any issues with the bathtub. The tenants told the landlord LC that it was the sink and the landlord said she had applied bleach under the sink and asked if the tenants wanted the landlords to tile over this area. The landlords did not seem to be prepared to repair the leak.

The tenant testifies that on May 11, 2013 they had left there cats in the house in order to get them acclimatized to the new home. The tenant testifies that they later noticed their cat appeared to be suffering from a severe allergic response to something in the house. They spoke to the vet and were advised to look for toxins. The tenant testifies that they searched the house and found a large mouse or rat trap in the basement. They called the landlord JN to ask if there was any poison left in the house. The tenant testifies that they also found rodent droppings under the sink and behind the kitchen cupboards as the cupboards were not attached to the wall. The landlord JN informed the tenants that there was not any poison but he did not deny that there was a rodent problem.

The tenant testifies that on May 12, 2013 they started to move some boxes. While the tenants' were there someone came and told the tenants she didn't know anyone was in the house and she would have let herself into the house. The tenants testify that this person thought the tenants had moved into the house. The tenant testifies that they were only moving boxes in as agreed with the landlord. This person took the landlords lawn mower and the tenants called the landlord to inform him of this.

The landlord called the tenants back and was very irate that the tenants had started to move their boxes into the house. The tenant testifies that the landlord started to demand extra money and accused the tenants of moving in however the tenant testifies they were not living in the house and had only started to move a few things in as agreed. The tenant testifies that the landlord JN became verbally abusive and said if the tenants did not pay the extra money they could move out.

The tenant testifies that she was shocked and afraid by the landlord's behaviour and said they would get the money to the landlords by May 17, 2013. KK rang the landlord back but the landlord continued to demand more money or move out. The tenant testifies they then had some serious concerns about the landlords breaking the agreement. The tenant testifies that they felt threatened by the landlord and had fears that the landlords would not address all the problems in the house and that the house was not up to the standard they had expected. The tenants also had concerns that a stranger had keys to the house and could enter at any time.

The tenant testifies that a neighbour came to the house and witnessed the condition of the house. This neighbour has provided a signed statement outlining the issues he witnessed in the house and a further statement concerning the current tenants' problems with the house concerning mould issues. The tenant testifies that her father is also a residential and commercial contractor and when he looked around the house he found many deficiencies in the house. The tenant testifies that they are entitled to rent a house that is free from environmental toxins and rodents and they had no assurances that this house was in a fit condition to live in. The landlords had failed to disclose issues with mould and rodents and appeared to be incompetent with repairs as one pipe was sealed with a plastic bag.

The tenant testifies that on May 13, 2013 they took their cat to the vets and the vet said the cat was suffering from an allergic reaction to an environmental toxin. The tenants decided they could not stay in the house and so got a moving truck to start to move their boxes out of the house. The tenant testifies that their families came to help the tenants and witnessed their dealings with the landlords on May 13, 2013. Witness statements have been provided from family members concerning the house and landlords.

The landlord testifies that the current tenants living in the home had an issue where they had left a garden hose running for two days. This created some moisture in the house. They moved in on June 15, 2013 and the landlords state they have had no complaints

from these tenants. The landlords testify that they did not receive a report from the property management company concerning the house.

The landlord cross examines the tenants and asks the tenants who is the neighbour that viewed the house; the tenants respond that it is the next door neighbor [name provided]. The landlord asks the tenant why the tenants did not take pictures if the house was unfit to live in. The tenants respond that they did take some pictures on their cell phone and these have been provided in evidence the tenants testify that they took multiple pictures of some areas as they did not know which pictures would be the clearest. Some pictures did not come out such as behind the cabinets as they were too dark.

The tenants cross examine the landlords and ask why the landlords did not disclose all information about the previous leaks. The landlord LC responds that they did not know about the leak under the sink. The tenant asks LC if LC did not know then why did LC bleach the mould there. LC responds that it was done as part of the general clean under the sink. The tenant asks why the landlords offered to tile over the mould. The landlord responds that it looked like water stains and tiling would give it a waterproof surface. The tenants ask the landlord why they repaired a pipe in the bathroom with a plastic bag. The landlord responds that there is no pipe there and deny that this is a picture of the house. The tenants ask the landlords why they did not inform the tenants that there had been a leak in the bathtub. The landlords respond that there was no leak in the tub. The tenant asks if that is the case why did the landlord say is it the bathtub again. The landlord responds that she did not say this.

The tenant asks the landlords about the mouse/rat trap and why it is there if there is not a problem with rodents. The landlords respond that the trap has been there for three years. The tenants ask about the rodent dropping. The landlord responds that they did not know about the droppings and that is why the mouse trap was set.

The tenant testifies that they have further concerns about the landlords e-mail evidence in which the landlord has stated that they placed the house with a property management

company after the tenants moved out. The landlords have stated that a property management company did a safety inspection of the house and said everything was fine. The tenants question this e-mail and ask the landlords why they have not provided any evidence from this property management company showing that the house was fine. The landlords respond and state that they had two companies inspect the house the first company they decided not to use. The tenants ask the landlord about the e-mail sent to the tenants in which the landlords said that they got the AOK from the property management company before the landlords had filed for Dispute Resolution and now the landlords are saying they got the OK after they filed. The tenants ask the landlord was the e-mail untrue or the landlord's statements at the hearing untrue. The landlord responds that this was because they had an inspection done twice and both property managers said the house was fine.

The tenants ask the landlord if they ever got the house inspected by a contractor. The landlords respond that they did not because there were not mould or rodent issues.

The parties presented other evidence that was not relevant to my decision. I looked at the evidence that was relevant and based my decision on this.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim to recover unpaid rent from May 15 to June 15, 2013; I refer the parties to section 32 (1) of the *Act* which states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Having considered the evidence before me I find the tenants evidence more compelling that the house had problems with some leaks, mould and rodents which were not immediately apparent when the tenants walked through the unit and only became apparent after the tenants starting to move some of their boxes in and the tenants' cat became ill.

While I would normally consider that the tenants' recourse would be to ask the landlord to make necessary repairs and clean any rodent droppings up so the tenancy could continue; the tenants have testified that they specifically asked the landlord to disclose any information about previous mould issues due to one of the tenants' compromised immune system. I find the landlords did not disclose all relevant information to the tenants to allow the tenants to make an informed decision about renting the unit. I further I find the landlords testimony concerning the rodent problem to be sketchy at best. There are clearly rodents dropping shown in some of the tenants photographic evidence and a rodent trap in the basement. The landlords have testified that the trap has been there for three years so either the droppings are three years old and the landlords housekeeping is at fault in not clearing up the droppings during that period or the droppings are fresh.

I also find the landlords have testified that they have had the house inspected by two property management companies and they could find no fault with the property; however, the landlords have provided no evidence of this. The tenants have provided evidence from family members and an independent neighbour who witnessed the condition of the house and have provided written statements to that affect. I therefore find the tenants' evidence has more merit and I am therefore satisfied that the tenants are entitled to end the tenancy as the house was not provided to the tenants in a

condition suitable for the tenants to live in. I have found the tenants were able to end the tenancy without notice and this section of the landlords claim is dismissed.

With regard to the landlords claim for \$24.63 to change the locks; the tenants did not mention at the hearing why they did not return the keys to the landlord in testimony. However the tenants have submitted evidence in writing that the tenants called the landlords and expressed their desire to return the keys and the landlords wanted the tenants to meet to sign off that the landlords could keep the security deposit. The tenants submit that the landlord did not want to meet the tenants if the tenants refused to agree the landlords could keep the security deposit and told the tenants that the locks did not exist anymore and that the landlords did not require the tenants to return the keys. The tenants submit that they left the keys in the mailbox of the rental house on May 17, 2013 after trying the keys in the locks and finding that in fact the keys did still fit and the locks had not been changed.

As the tenants did not dispute the landlords claim at the hearing concerning the change of locks and the landlords claim for reimbursement of the new locks; the tenants did not therefore submit to cross examination concerning their written submissions. However a tenant is required to return any keys to a landlord at the end of the tenancy. As this tenancy ended on May 13 and the tenants still had the keys in their possession on May 17 then I find in favour of the landlords claim to recover the cost of **\$24.63** for new locks.

With regard to the landlords application to keep the security deposit, I find the landlords are entitled to keep the sum of \$24.63 from the security deposit pursuant to s. 38(4)(b) of the *Act*.

The tenants' application to recover the balance of the security deposit is therefore upheld. A Monetary Order has been issued to the tenants for **\$475.37** pursuant to s. 38(6)(b) of the *Act*.

I further find as the tenants have been largely successful with their claim that the tenants are entitled to recover the **\$50.00** filing fee from the landlords pursuant to s. 72(1) of the *Act*. As the landlords have been largely unsuccessful with their claim the landlords must therefore bear the cost of filing their own application.

Conclusion

I HEREBY FIND in partial favor of the landlords claim to keep part of the tenants' security deposit. I ORDER the landlord to keep \$24.63 from the security deposit.

The reminder of the landlords claim is dismissed without leave to reapply.

I HEREBY FIND largely in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$525.37** which is comprised of the balance of the security deposit and the filing fee. The order must be served on the landlords and is enforceable through the Provincial Court 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: August 28, 2013

Residential Tenancy Branch

