



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application 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 landlord for the cost of this application.

One of the tenants and the landlord 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 however the landlord's evidence was received late and has not been considered in this decision.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on May 15, 2013 for a month to month tenancy. Rent was agreed at \$700.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$350.00 which has been returned to the

tenants. The tenants also paid half of the rent for May of \$350.00 and ended the tenancy on May 25, 2013. The parties attended a move in and a move out inspection of the unit at the start and end of the tenancy and provided a forwarding address to the landlord in writing on May 25, 2013.

The tenant attending testifies that they did a move in inspection the day before they moved in with the landlord's wife. They had concerns about the level of cleanliness in the unit and were assured the cleaning would be done before they moved in. On the day the tenants moved in another inspection was done and the tenant testifies that the unit was still dirty and they had concerns about wires hanging and the oven element not working. The tenant testifies that they had to move in as they had given up their old rental unit. The tenant testifies that the paint work was poor and there were lots of scratches in the paint. The tenant testifies that the unit was so bad they did not unpack their boxes.

The tenant testifies that they found blood spots, animal hair, dirty floors and paint work and hanging wires. The oven was filthy and the tenant cleaned this. The tenant testifies that this was not documented on the move in inspection report as the landlords said they would clean the unit. The tenant testifies that his young child suffered from pink eye as a result of the unhygienic living conditions. The tenant has provided copies of text messages between them and the landlord where the landlord agreed to clean the unit. There was also an addendum to the tenant agreement which the landlord and one tenant had initialled. The landlord then sent another copy of that with an extra line added about the landlord's right to inspect the unit each month. The tenant testifies that the landlord added this after the tenant had initialed the original addendum. Copies of both addendums have been provided by photographic evidence.

The tenant testifies that due to the broken oven element the tenants were unable to use the oven and had to eat out for the first six days until the landlord repaired the oven. The tenants seek to recover the cost of these meals and have provided receipts in evidence to a total amount of \$175.35 for dinners and two lunches. The tenants also

seek additional gas used for their vehicle to drive to get dinner and lunches out. The tenants have provided copies of receipts for gas to a total amount of \$70.00. The tenants also seek to recover one parking fee incurred for a meal out of \$3.50.

The tenants seek to recover \$20.14 for medication to treat their sons pink eye and have provided a receipt in evidence. The tenants seek to recover a further amount for gas used for their truck when the tenants had to move out again. A receipt for this has been provided for an amount of \$11.05. The tenants also seek to recover the costs for a U-Haul truck of \$73.55 to move from the unit. A copy of the invoice for U-Haul has been provided in evidence. The tenants also seek to recover the amount of \$79.58 for the costs of developing three sets of photographs for evidence. A receipt has been provided for this.

The landlord disputes the tenant's claims. The landlord testifies that the tenant went through the house with the landlord's wife and the next day the tenants went through the house again with the landlord. The landlord testifies that this was not a house you could not live and the tenant was criticizing everything. The landlord testifies that he explained things to the tenant and showed the tenant what needed to be fixed. The landlord testifies that the tenant did not mention about blood on the wall to the landlord or it would have been put on the report. The landlord testifies that they did tell the tenant that they would clean the unit before the tenants moved in and the landlord states this was done to the best of his abilities.

The landlord testifies that the wire hanging was not live and was for an alarm system. The landlord agrees the oven was not working but testifies that he did repair this when the element came. The landlord asks the tenant why they did not move into a hotel while the landlords cleaned the house again. The tenant responds that that would have cost the landlord a lot more money. The landlord disputes the tenants claim for meals out and gas as the tenants did not inform the landlord that the house was not up to the tenant's standards. The landlord testifies that this is beyond his responsibility and the

tenants should not have taken the house if it was not up to their standards and the tenants cannot now hold the landlord responsible for fast food.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to section 32 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 reviewed the photographic evidence provided by the tenants I find the unit was not in a clean condition even though the landlord has stated that the unit had been cleaned to the best of his abilities. While I accept that different people have different standards of cleanliness it is my decision that the landlord did not provide a rental unit in a clean manner and having cleaned it to the best of his abilities the landlord expected the tenants to live in a unit that was far from clean. I also have concerns about the level of decoration and repair in the unit as the tenants' evidence clearly shows that the unit was not up to a standard that I would consider acceptable as defined under the *Act*.

It is therefore my decision that the tenants were entitled to end this tenancy as the landlord breached s. 32(1) of the *Act* and consequently the tenants are entitled to recover the rent paid for May of **\$350.00**.

With regard to the tenants claim for medication for their sons pink eye; I have no definitive proof from the tenants that their son's condition was solely caused by the

unclean conditions in the unit and not due to another source or a pre-existing condition. I must therefore dismiss the tenants claim for \$20.14 for medication costs.

With regard to the tenants claim for meals out, I find the tenants claim to be reasonable as the landlord did not provide a working oven to enable the tenants to cook meals for the family for six days. I do not find the tenants have eaten extravagantly over this time period and therefore I uphold the tenants claim for meals to the amount of **\$175.35**.

With regard to the tenants claim for gas to drive to places to eat out; the tenants have claimed an amount of \$70.00 for gas and a parking fee of \$3.50. I have no evidence as to how far the tenants had to drive to obtain meals or that the parking fee was incurred to get food. I therefore dismiss the tenants claim for parking and limit the tenants claim for gas to **\$25.00**.

With regard to the tenants claim for \$73.55 for the U-Haul truck; I find the tenants would not have incurred this charge had the unit been suitable for occupation, I therefore find the tenants are entitled to recover the sum of **\$73.55** for the U-Haul truck and a further **\$11.05** for the Gas for that truck

With regard to the tenants claim for photograph developing; as the tenants would not have incurred these costs if the landlord had provided a unit suitable for occupation I find the tenants are entitled to recover these costs of **\$79.58** from the landlord to develop three sets of photographs as evidence for this hearing.

As the tenants have been partially successful with their claim I find the tenants are entitled to recover the \$50.00 filing fee from the landlord pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenants for the following amount pursuant to s. 67 and 72(1) of the *Act*:

Return of rent	\$350.00
Meals out	\$175.35

Gas	\$25.00
Moving costs truck and gas	\$84.60
Photographs	\$79.58
Filing fee	\$50.00
Total amount due to the tenants	\$764.53

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for \$764.63. The order must be served on the respondent 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: September 18, 2013

Residential Tenancy Branch

