



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MNR, FF.*

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlords applied for a monetary order for unpaid rent and utilities, loss of income, cost of repairs and cleaning, the filing fee and to retain the security deposit in satisfaction of the claim. Both parties applied for monetary orders for compensation for loss under the *Act*.

The landlords served the tenants a copy of their application and notice of hearing in person on June 30, 2013. Despite having made application and having been served a copy of the landlords' application, the tenants did not attend the hearing. The landlords attended the hearing and were given full opportunity to present evidence and make submissions.

Since the tenants did not attend the hearing, their application is dismissed. Accordingly this hearing only dealt with the landlords' application. The landlords withdrew a portion of their application for \$500.00 for excessive use of utilities.

Issues to be decided

Are the landlords entitled to a monetary order for unpaid rent and utilities, loss of income, cost of repairs and cleaning, compensation the filing fee and to retain the security deposit?

Background and Evidence

The tenancy started on November 01, 2012 and ended on June 30, 2013. The monthly rent was \$1,000.00 payable on the first of each month and included utilities. Prior to moving in, the tenants paid a security deposit of \$500.00.

The tenancy ended pursuant to an agreement between the two parties that was mediated by an arbitrator on May 06, 2013. The terms of the agreement included that the tenancy would end on or before June 30, 2013 and that the tenants would pay full or prorated rent for June if they moved out prior to June 30, 2013.

The landlords testified that the tenants paid \$400.00 for June which was a subsidy that was paid directly to the landlords. The tenants failed to pay the balance of the rent and owed the landlords \$600.00 for June. The landlords stated that they advertised the availability of the rental unit on a popular website, starting June 06, 2014.

The landlords stated that despite giving the tenants 24 hour notice to show the rental unit on June 11, 14 and 15, the tenants were uncooperative and the landlords used the assistance of the police to show the unit on June 14, 2013. The landlord did not file copies of any further notices to the tenants to show the unit. The landlords are claiming loss of income for July 2013.

The landlords stated that the tenants moved out on June 30, 2013. The landlords visited the tenants in the morning of that day to serve them the notice of this hearing and to arrange for a move out inspection. The tenants agreed to do the inspection at 1:00pm. The landlords returned to the unit at 1:00 pm and found that the tenants had moved out and left a key under the mat.

The landlords filed photographs of the condition of the rental unit as left by the tenants and invoices for repair, general cleaning and carpet cleaning. The landlords stated that the tenants owed for movie rentals and filed evidence to support their claim.

The landlords stated that there were problems between the tenants and the occupants of the upper floor. These occupants had rented the upstairs for almost five years, but they moved out due to the problems with the tenants below.

The landlords are claiming compensation for the loss of these good long term tenants and have filed a letter from these prior tenants, confirming the reason for their move. The letter explains in detail the interactions with the tenants which caused them stress and sleepless nights.

In addition, the landlords are also claiming compensation for harassment and the deterioration of health brought on by the stress of dealing with the tenants and the financial losses suffered by the landlords from missed work and the loss of the tenants in the upper suite.

The landlord is claiming the following:

1.	Balance of rent for June 2013	\$600.00
2.	Loss of income for July 2013	\$1,000.00
3.	Movie Rental	\$90.60
4.	Carpet cleaning	\$85.00
5.	General cleaning	\$150.00
6.	Repairs	\$850.50
7.	Registered mail	\$20.16
8.	Compensation	\$2,000.00
9.	Filing fee	\$50.00
	Total	\$4,846.26

Analysis

1. Balance of rent for June 2013 - \$600.00

The tenants moved out on June 30, 2013 and paid \$400.00 for rent for June. In the absence of evidence to the contrary, I accept the landlords' testimony and award the landlords \$600.00 towards the balance of rent for June.

2. Loss of income for July 2013 - \$1,000.00

The landlords testified that they advertised the rental unit on June 06, 2013 and experienced difficulty showing the unit due to the non cooperative stance taken by the tenants.

On May 06, 2013, the landlords entered into the agreement with the tenants to end the tenancy effective on or before June 30, 2013. However they did not start advertising immediately and had one showing on June 14 with the assistance of the police. The landlords did not file any evidence to demonstrate that they advertised the availability of the rental unit after June 06, 2013.

Section 7 of the *Act* provides that a landlord 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 landlords took no steps to find a tenant for the period of May 06 to June 06, 2013 and provided evidence to show that they advertised just once on June 06, I find that the landlords did not do enough to mitigate their losses.

Even though I accept that the tenants did not cooperate with the landlords with regard to showing the unit, the landlords were able to show the unit on June 14 with the help of police. After that date, the landlords did not advertise the availability of the unit and did not contact the tenants with requests for additional showings. Therefore I find that they failed to mitigate their losses and accordingly their claim for the loss of income for July is dismissed

3. Movie rental - \$90.60
4. Carpet cleaning - \$85.00
5. General cleaning - \$150.00

The landlords have filed sufficient evidence by way of photographs and invoices, to support the claims for unpaid movie rentals, carpet and general cleaning and therefore I grant the landlords their claims for these items.

6. Repairs - \$850.50

The landlord has filed a receipt for several items including dead bolts, tighten sink pipe, and chip on fireplace hearth, repair and paint holes, repair ceiling tile replace grout and dispose of garbage for a total of \$850.50. The invoice does not provide a breakdown of the cost of individual items.

Residential Tenancy Policy Guideline #1 addresses **Landlord & Tenant – Responsibility for Residential Premises**. In part, this guideline provides as follows:

The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

The landlords indicated that the holes in the walls and the ceiling tile were poorly repaired by the tenants. I find that replacing grout and tightening the pipes fall under the category of general maintenance and are not the responsibility of the tenants. Since there is no breakdown for the individual services, I award the landlords half their claim in the amount of 425.25.

7. Registered mail - \$20.16

The legislation does not permit me to award any litigation related costs other than the filing fee.

8. Compensation - \$2000.00

The landlords have made a monetary claim for compensation for loss of wages, stress, and deterioration of health as a result of dealing with harassment from the tenants, police incidents involving the tenants and the false information provided by the tenants for landlord references.

The landlords also seek compensation for the loss of good long term tenants who occupied the upper floor, because of the problems they faced with the tenants below.

In regard to the landlords' monetary claim for compensation, I have reviewed the submissions of the landlord and based on the submissions and testimony of the landlord I find that the tenants' activities which involved the police, the ongoing fighting between the tenants which disturbed the upper tenants who constantly complained to the landlords, the abusive language used by the tenants and the refusal to cooperate with the landlords, was very stressful on the landlords and caused their health to deteriorate.

In addition, the landlords suffered a financial loss due to missed work and the loss of their long term tenant of the upper unit, following problems with these tenants. The new occupants of the upper unit also complained about these tenants which caused the landlords additional stress and suffering.

Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the landlords provided compelling evidence to support their claim of compensation for disruption, harassment and stress.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly, I find it appropriate to award the landlords a minimal award of \$500.00.

9. Filing fee - \$50.00

Since the landlords have proven a portion of their case I award them the recovery of the filing fee of \$50.00.

The landlord has established the following claim:

1.	Balance of rent for June 2013	\$600.00
2.	Loss of income for July 2013	\$0.00
3.	Movie Rental	\$90.60
4.	Carpet cleaning	\$85.00
5.	General cleaning	\$150.00
6.	Repairs	\$425.25
7.	Registered mail	\$0.00
8.	Compensation	\$500.00
9.	Filing fee	\$50.00
	Total	\$1,900.85

The landlords have established a claim of \$1,900.85. I order that the landlords retain the deposit of \$500.00 in partial satisfaction of the claim and I grant the landlords an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1,400.85. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$1,400.85**.

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 13, 2013

Residential Tenancy Branch

