# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and utilities, and for damage to the unit, site or property pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The male tenant (the tenant) confirmed that one of the landlords handed him a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on May 24, 2013. The tenants confirmed that the female landlord (the landlord) handed them copies of the landlords' dispute resolution hearing package on June 25, 2013. I am satisfied that the landlords served the above documents to the tenants in accordance with the *Act*.

The tenants confirmed that they have received copies of the landlords' written evidence package. The landlord said that she has received copies of the tenants' written evidence package on September 20, 2013. She said that as the male landlord has been out of the province, he has not received copies of the tenants' evidence package. I advised the parties that as the tenants served their written evidence to the male landlord at the same address as that noted by the landlords in their application for dispute resolution, I am satisfied that both parties have served their written evidence to one another in accordance with the *Act*.

At page 28 of the tenants' 178 page written evidence package, the tenants attempted to have their own claim for a monetary award of $4,510.00 considered in the context of the landlords' application for dispute resolution. As the tenants have not applied for dispute resolution to seek their own monetary award, I advised the parties that I could only

consider the landlords' application for a monetary award. I informed the tenants that they would need to submit their own application for dispute resolution if they are seeking a monetary award from the landlords. I have only considered the landlords' application for a monetary award, the only issue properly before me, and their application to be given authorization to retain the tenants' security deposit.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and utilities? Are the landlords entitled to a monetary award for damage arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, documents and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around each are set out below.

This one-year fixed term tenancy commencing on January 15, 2013 was scheduled to end by February 1, 2014. Monthly rent was set at $2,000.00, payable in advance on the first of each month. According to the terms of the written Residential Tenancy Agreement (the Agreement) signed by the parties, the tenants were responsible for paying for water, hydro and heat. The landlords continue to hold the tenants' $1,000.00 security deposit paid on December 18, 2012.

The parties conducted a joint move-in condition inspection on January 15, 2013. The landlord conducted her own move-out condition inspection on June 6, 2013 or June 7, 2013, after letting herself into the rental unit before she was to meet with the female tenant on June 7, 2013 to conduct the move-out condition inspection and obtain the tenants' keys to the rental unit. The tenants gave undisputed sworn testimony that the landlord already had the joint move-out condition report prepared before they met with the landlord on June 7, 2013. The tenants confirmed that they were provided copies of both the joint move-in condition inspection report and the move-out condition inspection report, which the female tenant did sign on June 7, 2013 prior to surrendering the tenants' keys.

The parties agreed that this tenancy ended on June 7, 2013, at which time the landlord obtained vacant possession of the rental unit. The parties agreed that the tenants paid $400.02 towards their June 2013 rent, an amount which the male tenant calculated on

the basis of the pro-rated rent for 6 days of June 2013. Although the tenants maintained that the landlord had given the tenants her oral approval for a mutual agreement to end this tenancy on June 6, 2013, and prior to the effective date of the landlords' 1 Month Notice, the tenant admitted that the tenants had no written agreement to end this tenancy early by mutual consent.

The landlords' application for a monetary award of $2,599.98 included the $1,599.98 portion of the tenants' June 2013 rent which was not paid (i.e., $2,000.00 - $400.02 = $1,599.98). The landlords also applied for separate authorization to retain all of the tenants' $1,000.00 security deposit. The landlords did not provide an itemized breakdown to support their application to retain all of the tenants' security deposit. However, they maintained that the tenants had paid only $100.89 of their water bill to the municipality. They also provided written, photographic and sworn testimony regarding damage that arose during this tenancy by way of large oil spills on their concrete driveway, parking area and decorative landscaping stone. In their application for dispute resolution, the landlords maintained that this damage could not be cleaned and far exceeded the value of the tenants' security deposit. They also alleged that the tenants damaged the front deck, where they had placed plants and flowers. They maintained that this deck was installed in 2008 at a cost of over $2,000.00, evidence of which they provided to support their claim. The landlords also cited damage that occurred when water leaked into the home when the tenants left the outside tap unattended, requiring carpet damage to be repaired and damage to walls from mould.

At the hearing, the tenant said that he did not realize that his calculations of rent should have included rent payment for seven days instead of six days. The female tenant gave sworn evidence that she drove by the rental home twice per day for some time after this tenancy ended. She gave undisputed sworn testimony that the landlord's vehicles were present on almost every occasion and that it was clear that the landlord had followed through with her stated intention to return to live in the rental unit very soon after this tenancy ended.

The tenants entered into written evidence a copy of a utility bill from the municipality demonstrating that they had paid the final $94.75 water bill for the period covering their tenancy on September 18, 2013. The landlord testified that she had not checked with the municipality since September 18, 2013 and did not know whether the tenants' water bill had in fact been paid.

The tenants provided sworn testimony and written evidence confirming that they had tried to clean the oil leak on the driveway but had been unsuccessful in their efforts. They maintained that this damage fell within what could be considered reasonable wear

and tear arising out of this tenancy and that they should not be held responsible for this damage.

The tenants maintained that the deck was covered in snow in January 2013 when this tenancy began and they had no way of checking the condition of the deck when this tenancy began. They provided sworn testimony and written evidence to support their claim that the deck had been subjected to pet urine and feces damage that pre-existed this tenancy from the landlords' dogs.

The tenant testified that the water damage resulted from an existing gap near the hose and outside tap that allowed water to enter the building as the tenants were washing their vehicles on the first nice day of the year. They did not realize there was leakage until they turned off the tap and saw the water that had entered through a gap, subsequently siliconed by the landlords or their representatives. They maintained that they were not at all aware of any potential leakage problem that might arise from using the outside water tap.

Analysis –Landlords' Claim for Unpaid Rent and Utilities

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenants were in breach of their Agreement because they vacated the rental premises prior to the February 1, 2014 date specified in that Agreement and prior to the June 30, 2013 effective end date to this tenancy identified in the landlords' 1 Month Notice issued to them. As they did not dispute the landlords' 1 Month Notice, they were deemed to have accepted that the tenancy would end on the effective date of that Notice. As I noted at the hearing, the *Act* requires that a mutual end to tenancy be completed in writing. As the tenants agreed that they did not have the landlords' written agreement to end this tenancy before June 30, 2013, the landlords are entitled to compensation for losses they incurred as a result of the tenants' failure to comply with the terms of their Agreement and the *Act*.

There is undisputed evidence that the tenants paid only $400.02 of the $2,000.00 in rent that was due for June 2013. This payment was to cover the period from June 1, 2013 until June 6, 2013, although the tenants did not yield vacant possession of the rental unit until June 7, 2013. On the basis of this undisputed evidence, I find that the tenants are responsible for unpaid rent for an additional day in June 2013, when they remained in possession of the rental unit. I find that the tenants pro-rated rent for the period ending on June 7, 2013 should have been $466.67 (I.e., 7/30 x $2,000.00 = $466.67) rather than the $400.02, they paid the landlords. As such, I award the landlords the

difference between what was paid for the period when the tenants remained in possession of the rental unit and what should have been paid. This results in a monetary award in the landlord's favour of $66.65 ($466.67 - $400.02 = $66.65).

Turning to the landlords' claim for loss of rent that occurred for the remaining 23 days of June, I note that section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. In this case, the landlord testified that she made no effort to re-rent the rental premises for June or any other month. She testified that she took up residency in these premises in August 2013. She said that she could not have rented the premises to anyone else during the month of June 2013, as the premises were too badly damaged to do so and that she reluctantly had to move back into this home as she had no other choice but to do so.

While I have taken into account the landlord's claim that she could not rent the premises out to anyone for June 2013, I find little evidence to support this assertion. The landlords' claim for damage is not extensive and, in fact, by the landlord's own admission little if any repairs have been undertaken. Although it may not have been possible to repair the damage to the driveway, this on its own would not prevent the landlord from attempting to advertise the availability of the premises for rent. Based on a balance of probabilities and given that the landlord has returned to live in this home where she once resided, I find that the landlords have not done nearly enough to attempt to mitigate their rental losses for June 2013, for which the tenants would otherwise have been held responsible. Under these circumstances, I dismiss the landlords' application for unpaid rent for the period from June 7, 2013 until June 30, 2013, without leave to reapply, as the landlords have not satisfied the duty under section 7(2) of the *Act* to mitigate the losses they have incurred.

Based on the tenants' written evidence demonstrating their September 18, 2013 payment of the remaining water bill owing from their tenancy, I dismiss the landlords' application to recover utilities owing from this tenancy, without leave to reapply.

Analysis – Landlords' Claim for Damage and Authorization to Retain Security Deposit

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual

monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I first find that the oil damage to the landlords' driveway far exceeds what could be considered reasonable wear and tear that could be expected during the course of a tenancy which did not last five months. The landlords entered undisputed written evidence that the male tenant enquired about the issue of oil and oil changes when the tenants were signing the Agreement. The landlords provided undisputed evidence that this oil leakage may have come from the truck of the father of the female tenant and was likely an issue of known concern to the male tenant at the time that the Agreement was signed. I have also examined the photographic evidence and confirm that this oil mark did not exist before the tenancy began and was unusually large and unsightly.

Although the landlords have not submitted receipts to demonstrate the extent of the damage, this is because the landlords have been unable to find a way to repair this stain from their driveway. The tenants provided sworn testimony, written and photographic evidence to confirm that this stain arose during the course of their tenancy. Driveways are expensive to replace and the stain appears to be a permanent feature of this driveway which was otherwise in satisfactory condition. As the landlords have not re-rented the premises to other tenants, I do not have the reduction in rental value as a measure to guide my decision on the landlords' request for a monetary award. While I do not agree that this damage from the oil stain on the driveway would prevent the landlords from re-renting the premises, I do find that the landlords have suffered a loss in the value of their property due to this stain that cannot be removed. Under the circumstances, I find that the landlords are entitled to a monetary award for the loss in value to their property as a result of the stain caused to their driveway arising out of this tenancy. As I find that the damage is by no means minor, I issue a monetary award in the amount of $750.00, to reflect a loss in value to their property experienced by the landlords as a result of the damage to their driveway. While this amount represents a fraction of the cost of replacing a driveway, the reality is that the driveway can still be used although it likely does affect the value of the property and any rental they may obtain from this property should they choose to re-rent the property.

Turning to the landlords' claim for damage to the deck, I give little weight to the landlord's claim that the joint move-in condition inspection report failed to show damage to the deck at the beginning of this tenancy. I accept the male tenant's assertion that it would be unlikely that tenants would shovel off a deck to inspect the true condition of a deck covered in snow during the joint move-in condition inspection conducted in mid-January. On a balance of probabilities, I find it more likely than not that the true

condition of the deck may not have been apparent at the time of the move-in condition inspection due to the timing of that inspection. I also find that there is sufficient evidence to call into question the cause of the damage to the deck which may just as likely have been caused before this tenancy began. I also find that the deck has not been repaired and that the landlords have not established any demonstrated losses for which they are entitled to receive compensation. Given the useful life of a deck, I do not find that relatively minor unrepaired damage to a deck would lead to a significant loss in value to the landlords' property. I dismiss the landlords' application for a monetary award for damage to their deck without leave to reapply.

I also dismiss the landlords' application for a monetary award for leakage that resulted from the tenants' use of the outside hose without leave to reapply. In coming to this determination, I find no evidence that the tenants were alerted to any potential problem that might arise from using the hose to wash their vehicles. While it is unfortunate that the tenants did not notice water dripping from the hose back into an unsealed section surrounding the outside tap, this appears to have resulted from a lack of adequate maintenance by the landlords to ensure that there were no gaps that would allow such damage to occur. I find that the tenants are not responsible for any lack of care or failure to follow instructions regarding use of the outside hose. I find that this damage resulted from what appears to have been a gradual deterioration in the condition of the sealant around the outside water tap in this rental home, reasonable wear and tear that would normally occur over time.

As the landlords have been partially successful in their application, I allow them to recover their $50.00 filing fee from the tenants.

I allow the landlords to obtain the monetary awards outlined above by retaining those amounts from the tenants' $1,000.00 security deposit. I order the landlord to return the remaining portion of the tenants' security deposit to the tenants forthwith. No interest is payable on the tenants' security deposit over this period.

I dismiss all other portions of the landlords' claim for a monetary award without leave to reapply.

Conclusion

I issue a $133.35 monetary Order in the tenants' favour under the following terms, which allows the tenants to obtain a return of their security deposit less the amounts allowed in this decision for unpaid rent, damage arising out of this tenancy and the landlords' filing fee:

| Item | Amount |
|---|---|
| Unpaid Rent for a Portion of June 2013 | $66.65 |
| Damage to Driveway Arising out of this Tenancy | 750.00 |
| Less Security Deposit | -1,000.00 |
| Recovery of Filing Fee for this Application | 50.00 |
| **Total Monetary Order** | **($133.35)** |

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 01, 2013

Residential Tenancy Branch