



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNSD, MNDC, FF
Tenant: MNDC, MNSD

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking compensation for damage to the unit site or property, compensation for damage or loss under the Act, the regulations or the tenancy agreement, to retain the Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Tenants filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement and for the return of the Tenants' security deposit and pet deposit.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on June 14, 2013, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on September 17, 2013, in accordance with section 89 of the Act.

The original hearing was held on September 25, 2013 and as there was considerable evidence and testimony the hearing was adjourned to November 6, 2013 so that all the evidence and testimony could be heard.

Issues to be Decided

Landlord:

1. Are there damages or losses to the Landlords and if so how much?
2. Are the Landlords entitled to compensation for damage or loss and if so how much?
3. Are the Landlords entitled to retain the Tenants' security and pet deposits?

Tenant:

1. Are there damages or losses to the Tenants and if so how much?
2. Are the Tenants entitled to compensation for loss or damage and if so how much?
3. Are the Tenants entitled to the return of the security and pet deposits?

Background and Evidence

This tenancy started on March 1, 2013 for a three month term with an expiry date of May 31, 2013. The Tenancy ended on the end of the fixed term or on May 31, 2013. Rent was \$1,100.00 per month payable on the 1st day of each month. The Tenants paid a security deposit of \$550.00 on March 1, 2013 and a pet deposit of \$225.00 on March 8, 2013.

The Landlord said a move in condition inspection report was completed and signed on February 28, 2013 and a move out condition in section report was completed on May 31, 2013, but the Tenants did not sign it, although the Tenants were present for part of the move out conditions inspection. The Tenant said the Landlord took approximately 3 to 4 hours to do the move out inspection and they were moving so he did not stay until the end of the inspection. The Landlord said it did not take that long to do the move out inspection.

The Landlord continued to say he made an agreement with the Tenant that the Tenant would provide the labour to paint the rental unit and the Landlord would provide the paint. The Landlord said the move in condition report indicates the walls were in OK and mostly clean condition at the start of the tenancy. The female Landlord said she thought the walls had been painted by the previous tenant 2 years prior to this tenancy. The Landlords said the Tenants damaged the walls by putting large holes in the walls around the windows and in one place cutting a deep groove in the drywall. The Landlord provided photographic evidence to support his claims. The Landlords continued to say that they told the Tenants to stop painting and they would get an inspection of the rental unit and deal with the repairs. As a result the Landlord said he is claiming \$954.00 for

expenses to repair the walls. The Landlord said there is \$92.00 in supplies, \$802.00 in labour and \$60.00 in paint. In addition the Landlord is claiming the cost of the home building inspection of \$315.00 because the Landlord believes the Tenant broke the surfaces of the paint on the walls and therefore there may have been additional damage to the drywall. The Landlords included paid receipts for the work done and the actually cost of painting was \$110.00 instead of \$60.00 which was the Landlords' estimate when they made the application.

The Landlord continued to say that the house was not left in a clean state, the fridge, the stove, windows and other things needed cleaning as well as the carpets need to be professionally cleaned. The Landlord said the Tenants had a dog and the unit had been smoked in which resulted in the need for professional carpet cleaning. The Landlords said they have claimed \$75.00 for general cleaning and \$126.00 for carpet cleaning. The Landlords said they have included receipts for the work which actually cost \$105.00 for general cleaning and \$147.00 for carpet cleaning. The Landlords continue to say that because of the damage and condition of the house they were unable to rent the unit for June, 2013 and the Landlords are requesting loss of rental income of \$1,100.00 which is the amount of rent they believe they have lost.

The Tenants said this is an old house in need of repairs and they had an agreement with the Landlords to repair and paint the interior of the house. The Tenant said that he is a painter by trade and when he started to prepare the walls for painting he found the drywall around some windows was rotten. The Tenant said when he scraped the walls in preparation for painting big chunks of rotten drywall fell out. The Tenant said the walls looked OK before he started scraping because the paint was holding the rotten drywall together. The Tenant said he did not damage the walls intentionally, the damage happened as a result of preparing the walls for painting.

The Tenants continued to say that they cleaned the rental unit before leaving. The stove was not cleaned as it had a self cleaning oven and this function did not work so they did not clean the oven and the carpets were clean so they did not hire a professional carpet cleaning company to clean the carpets. The Tenants' said they have a small poodle dog and the dog did not cause any damage to the unit or the carpets. As a result the Tenants are requesting the return of their security deposit of \$550.00 and their pet deposit of \$225.00 from the Landlords.

In addition the Tenants are claiming that because of the unhealthy environment in the rental unit caused by moisture and mold they are requesting the return of all the rent they paid the Landlords in the amount of \$1,100.00 for 3 months for a total of \$3,300.00. The Tenants said the rental unit had moisture issues that created a mold problem and that made the house unhealthy to live in. The Landlords said the home inspection report states that "moisture levels are not a concern".

The Tenants continued to say they are also claiming compensation for their labour to clean under the fridge and stove at the start of the tenancy for \$50.00, to clean up a basement flood from a malfunctioning hot water tank for \$50.00 and to clean up a

basement flood from the water holding tank leaking into the basement for \$50.00. The Landlord said the hot water tank was repaired the same day the Tenants reported it and there wasn't a lot of water on the floor and the leakage of the water holding tank was a result of the Tenants requesting the tank be pumped out and the pump out procedure caused water leakage into the basement. The Landlord said he responded to the Tenants requests as quickly as he could.

Analysis

It appears that although this was only a three month tenancy there are issues between the Landlords and the Tenants. With regards to the issue of damage to the walls of the rental unit, there was considerable testimony and discussion about the photographs taken and submitted by both parties. I accept both parties testimony and evidence that the walls were damaged when the Tenant prepared them for painting and this resulted in the replacement of some drywall in the rental unit at the Landlords' expense. As well I recognize that an agreement was made by the Landlords and Tenants to paint the interior of the rental unit. This agreement was testified to by both parties and is confirmed on the move in condition inspection report. Consequently the Landlords authorized the Tenants to paint the walls of the rental unit. I accept the Tenants testimony that he discovered the rot in the drywall around the windows when he was scraping the walls in preparation for painting. As a result I find the Tenants did not damage the walls intentionally, but as a result of the agreement the Tenants had with the Landlords to paint the walls of the rental unit. The Landlords said they told the Tenant to stop the painting and they would get a building inspection and repair the walls; therefore the Tenants were not able to repair any damage that was caused during the preparation for painting. As the rental unit is 50 plus years old and the Landlords authorized the Tenants to paint the interior of the rental unit; I find the Tenants are not responsible for the wall damage or the cost of the building inspection as it was a result of the wall damage and was the Landlords' choice to do a building inspection. Consequently I dismiss without leave to reapply the Landlords' claim for \$1,269.00 for wall repairs and the building inspection.

Further on review of the move in condition inspection report the stove and fridge are indicated as OK and clean on move in therefore I accept the Landlords testimony and evidence that general cleaning was completed at a cost of \$105.00. I award the Landlord \$105.00 for general cleaning expenses.

With respect to the carpets I accept that the carpets required professional cleaning as a dog was part of this tenancy and it is acceptable and normal practice to have the carpets professionally cleaned whenever a tenancy involves pets in the unit. I award the Landlords carpet cleaning costs of \$147.00.

The Landlords have also applied for loss of rental income because of the damage to the rental unit in the amount of \$1,100.00. As I have determined that the Tenants are not

responsible for the damage to the rental property therefore I also find the Tenants are not responsible for the loss of rental income for June, 2013 as a result of repairs to the walls of the rental unit. I dismiss without leave to reapply the Landlords' claim for lost rental income of \$1,100.00 for June, 2013.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Tenants have made a claim for the return of their rent of \$3,300.00 for unhealthy living conditions. The Tenants have not provided any corroborating evidence that proves the rental unit was unhealthy or that they suffered and ill effects from living in the rental unit; therefore as the Tenants have not proven a loss. I find the Tenants have not established grounds to be awarded the return of any rent for unhealthy living conditions. I dismiss without leave to reapply the Tenants claim for \$3,300.00 for unhealthy living conditions.

With respect to the Tenants claim payment for their labour to clean under the fridge and stove and to clean up water leaks in the basement, section 32 of the Act says Landlords and Tenants are responsible to maintain the rental unit. I find the cleaning under the stove and fridge and cleaning up the water leaks in the basement are maintenance items and therefore I dismiss without leave to reapply the Tenants request for payment for their labour to do these jobs.

In summary I have awarded the Landlords \$105.00 for general cleaning and \$147.00 for carpet cleaning. As a result of this, I Order the Landlords to retain \$252.00 of the Tenants security and or pet deposit. The Landlord will return the balance of the Tenants security and pet deposits in the amount of \$523.00 forth with.

As the Tenants were unsuccessful in these matters and the Landlords were only partially successful, I order both parties the bear the \$50.00 filing fee for these proceedings that they have already paid

Conclusion

The Landlords are order to return \$523.00 of the Tenants' security and pet deposits in full settlement of both the Landlords and Tenants applications.

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 25, 2013

Residential Tenancy Branch

