



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlords' application (filed July 29, amended November 12, 2013): MNSD, MNR, MND, FF

Tenants' application (filed October 11, 2013): MNSD, MNDC, FF

Introduction

This Hearing was convened to consider cross applications. On July 29, 2013, the Landlords filed an Application for Dispute Resolution seeking a monetary award for unpaid rent; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenants. On November 12, 2013, the Landlords amended their Application to include a request for a monetary award for damages.

The Tenants filed an Application for Dispute Resolution seeking return of the security deposit; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlords served the Tenants with their Notice of Hearing documents and copies of their documentary evidence by handing the documents to the Tenants in person on July 29, 2013. The Landlords also provided further documentary evidence and a copy of their amended Application to the Tenants, in person, on November 12, 2013.

It was also determined that the Tenants served the Landlords with their Notice of Hearing documents and documentary evidence by registered mail sent October 18, 2013. The Tenants provided the Residential Tenancy Branch with a photograph on October 21, 2013, which they did not provide to the Landlords. Therefore, the photograph was not considered.

Issues to be Decided

1. Are the Landlords entitled to a monetary award for loss of revenue, unpaid rent and utilities and damages?

2. Are the Tenants entitled to a monetary award for the cost of improvements and repairs to the rental unit and overpaid utilities?
3. Administration of the security deposit.

Background and Evidence

A copy of the tenancy agreement was provided in evidence. Monthly rent at the beginning of the tenancy was \$837.00, due on the first day of the month. The Tenants moved into the rental unit on December 1, 2010. The Landlords purchased the rental unit and took over the tenancy in June, 2012.

The previous landlord and the Tenants agreed that the Tenants could pay the \$418.00 security deposit by doing the equivalent value of improvements to the rental property. Rent included utilities.

On August 31, 2012, the Landlords issued a Notice of Rent Increase. Rent was increased by \$36.00, making monthly rent \$873.00 effective December 1, 2012. A copy of the Notice of Rent Increase was provided in evidence.

The Landlords' agent CH gave the following testimony:

CH testified that the Landlords received the Tenants' notice to end the tenancy effective June 30, 2013, by mail on June 5, 2013. The Landlords were unable to re-rent the rental unit until August 1, 2013, and seek loss of revenue for the month of July, 2013 in the amount of **\$836.00**.

CH testified that the tenancy agreement was made under a CMHC program called the Residential Rehabilitation Assistance Program (RRAP). RRAP offers assistance to landlords to complete mandatory repairs or modifications on units occupied by low income households. The Landlords provided a copy of the Tenant Declaration for the RRAP program in evidence.

The Tenants did not pay the rent increase and continued to pay \$837.00 until the end of the tenancy. The Landlords seek a monetary award in the amount of **\$288.00** for unpaid rent from December, 2012 to July, 2013.

CH stated that the Tenants moved the utilities into their name effective December, 2012. She stated that the Landlords "took the easier route" and decided that if the Tenants took hydro in their name, they would not enforce the rent increase.

CH stated that the RRAP program only allowed the two Tenants to live in the rental unit, but that the Tenants' son moved into the rental unit. CH stated that the Tenants also installed a washer and dryer which increased the utility bills. CH stated that utilities were limited to a maximum of \$50.00 per month under the tenancy agreement, but the Tenants and their son were using much more.

CH submits that the amount the Landlords paid in utilities over the \$50.00 allowed amounted to \$218.22 and that if their claim for unpaid rent in the amount of \$288.00 is disallowed, they believe they should be compensated in the amount of **\$218.22**.

CH testified that the Tenants removed a garden, sod and soil from the rental property when they moved out. CH stated that she got a verbal quote of \$115.20 to replace the soil (160 sq. ft. at \$.72 per square foot). The Landlords seek a monetary award in the amount of **\$115.20**.

The Tenants gave the following testimony:

The Tenants stated that they gave proper notice to vacate the rental unit. They testified that they sent their notice by e-mail and told the Landlords by phone before the end of May, and then mailed their notice on May 31, 2013. The Tenants stated that their new landlord called the Landlords for a reference before the end of May, 2013, so the Landlords knew they were moving out on June 30, 2013.

The Tenants testified that they put the hydro in their name in December, 2012, because the Landlords threatened to cut it off. The Tenants submitted that hydro was supposed to be included in the rent. They provided copies of hydro bills in evidence and seek to recover **\$569.79** in hydro payments made from December, 2012 to June, 2013.

The Tenants testified that their previous landlord gave them permission to install the washer and dryer and that he inspected and approved it.

The Tenants stated that they made improvements to the rental property, for which they seek compensation. The Tenants stated that they seek **\$600.00** for their labour (30 hours @ \$20.00 per hour) plus materials, calculated as follows:

Panel	\$73.86
Shelves	\$120.42
Vertical Blinds	\$61.45
Blinds	\$107.04
Fixtures	<u>\$45.21</u>
TOTAL materials	\$407.98

The Tenants provided copies of receipts in evidence.

The Tenants testified that they removed the garden because the Landlords' agent instructed them to do so.

The Tenants stated that they provided the Landlords with their forwarding address in writing by registered mail, sent July 16, 2013. A copy of the letter was provided in evidence. They submitted that there was no Condition Inspection Report completed at the beginning or at the end of the tenancy.

CH gave the following reply:

CH stated that the Landlords did not agree to pay for the panel and that they don't want it.

Analysis

1. Are the Landlords entitled to a monetary award for loss of revenue, unpaid rent and utilities and damages?

Section 45 of the Act states that a tenant to may end a month-to-month tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement. Section 52 of the Act requires a notice to end tenancy to be in writing and to be signed and dated in order to be an effective notice. E-mails and telephone calls are not effective notice because they do not comply with the requirements of Section 52 of the Act.

Section 90 of the Act deems service by mail to be effected 5 days after mailing the document. Therefore, I find that the Landlords received the Tenants' notice to end the tenancy on June 5, 2013, and that the earliest date that the Tenants could have ended the tenancy was July 31, 2013. I find that the Landlords are entitled to loss of revenue for the month of July, 2013, in the amount of **\$836.00**.

I find that the Notice of Rent Increase issued August 31, 2013, is not a valid notice. The maximum allowable rent increase for 2012 was 4.3%, in this case \$35.95. The Notice of Rent Increase increases rent by \$36.00 which is above the amount allowed by the regulations. Therefore, I dismiss the Landlords' claim for unpaid rent in the amount of \$288.00.

There is no provision in the tenancy agreement that the cost of utilities is limited to \$50.00 per month. The Landlords made reference several times to the RRAP agreement which is administered by CMHC, however the scope of the dispute resolution process does not extend outside the jurisdiction of the Residential Tenancy Act, the Manufactured Home Park Tenancy Act and the applicable regulations. Therefore, the Landlords' claim in the amount of \$218.22 is dismissed.

I find that the Landlords provided insufficient evidence to support their claim in the amount of \$115.20 for replacing soil. No invoices were provided and the Tenants testified that they were instructed to remove the garden when they moved. This portion of their claim is also dismissed.

I find that the Landlords' right to claim against the security deposit for **damages** was extinguished under Section 38(5) of the Act. However, pursuant to the provisions of Section 72(2)(b) of the Act, I order that the Landlords may apply the security deposit in partial satisfaction of their monetary award. Therefore, the Landlords have established a total claim in the amount of **\$418.00**.

2. Are the Tenants entitled to a monetary award for the cost of improvements and repairs to the rental unit and overpaid utilities?

I find that the parties came to an agreement that the Tenants would make improvements to the rental property in exchange for paying the security deposit. I find that all of the improvements for which the Tenants are now claiming were made in lieu of paying the security deposit, with the exception of the panel. The Landlords have indicated that they did not authorize, nor do they want, the panel. The Tenants have provided insufficient evidence that the Landlords did authorize the panel. Therefore, the Tenants may make arrangements with the Landlords to collect the panel. The Landlords are not responsible for any costs incurred in so doing. The Tenants' application for the cost of making the improvements is dismissed.

The Tenants provided copies of hydro bills in evidence, which were paid by the Tenants. As previously mentioned, there is no reference in the tenancy agreement with respect to a cap on the amount of hydro included in rent. Therefore, I find that the Tenants are entitled to recover the cost of the hydro in the amount of **\$569.79** from the Landlords.

Pursuant to the provisions of Section 90 of the Act, I find that the Landlords received the Tenants' forwarding address in writing on July 21, 2013. However, the Landlords filed their application against the security deposit on July 29, 2013 and the security deposit

has been set off against the Landlords' monetary award. Therefore the Tenants' application for return of the deposit is dismissed.

Set-off of Claims

I hereby set off the Landlords' monetary award against the Tenants' monetary award and provide the Tenants with a Monetary Order calculated as follows:

Tenants' award	\$569.79
Less Landlords' award (after set off of security deposit)	<u>-\$418.00</u>
TOTAL	\$151.79

Both parties have been partially successful in their applications and therefore I make no order with respect to recovery of the filing fee for either party.

Conclusion

I hereby provide the Tenants with a Monetary Order in the amount of **\$151.79** for service upon the Landlords. This Order may be filed in Provincial Court (small claims) and enforced 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: December 9, 2013

Residential Tenancy Branch

