



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, MNSD, FF
Tenants: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for utilities; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for compensation for damage to their personal property; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agree they entered into a tenancy agreement for a 15 month fixed term tenancy that began on May 1, 2013 for the monthly rent of \$950.00 plus 30% of the utilities. The parties also agree the tenants paid a security deposit of \$500.00 and a pet damage deposit of \$250.00. The parties agree the tenancy ended when the tenants vacated the rental unit on or before September 29, 2013.

The tenants submit that in or around September 16, 2013 they discovered mould in the rental unit that was not only found in the unit itself but also on much of the tenants' belongings including clothing and furniture. The tenants have provided photographic evidence of the damaged items. The tenants testified that they informed the landlord of this problem.

The parties agree the landlord investigated the problem and informed the tenants that there was nothing wrong with the unit but rather it was the tenants' habits that were causing the mould growth.

The landlord testified that prior to this tenancy she had had a previous tenant who she had provided a de-humidifier to because of high moisture complaints from that tenant. The landlord confirmed however that the de-humidifier had been removed from the rental unit prior to this tenancy. Both parties agree the landlord did not inform the tenants prior to the start of this tenancy that there had been a previous humidity problem.

The tenants submit that while they had given the landlord permission on that first day to go into the unit to investigate the situation that the following day the landlord was in the unit again with her maintenance person but that the tenants had not given permission for her to be in the unit.

The landlord seeks compensation in the amount of \$633.00 for utility charges for the duration of the tenancy. The landlord has provided no utility bills for the period. The tenants agree they owe utilities but that they have never been provided with any copies of utility bills.

The tenants seek return of their security deposit and pet damage deposit in the amount of \$750.00 and compensation for replacement of some items; costs for moving; and lost wages as follows:

Description	Amount
Replacement area rug (estimate provided)	\$200.00
Replacement shoes/boots (estimates provided)	\$526.00
Steam cleaning rental (receipt provided)	\$53.17
Additional Laundry costs 25 loads at \$4.00 per load	\$100.00
Gas (moving and vacating)	\$300.00
Lost wages (20 hours at \$23.24 per hour)	\$464.80
Couch (estimate provided)	\$1,200.00
Ottoman	\$250.00
Luggage (2 pieces) (estimate provided)	\$500.00
3 bookcases	\$75.00
Stuffed panda (estimate provided)	\$30.00
Entering rental unit without permission	\$500.00
Total	\$4,198.97

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

While I accept, based on the testimony of both parties, that the tenants owe the landlord money for utility costs incurred during the tenancy and in accordance with the tenancy agreement, I find the landlord has failed to provide any evidence to establish the value of those costs. As such, I dismiss the landlord's Application for Dispute Resolution in its entirety.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

As to the tenants' claim I find the landlord was aware of a previous humidity problem in the rental unit that required the use of a de-humidifier to ensure the rental unit was suitable for occupation by a tenant. As the landlord failed to inform the tenants of this requirement and as she failed to provide a de-humidifier I find the landlord failed to comply with the requirements of Section 32(1) and as a result the tenants suffered a financial loss.

I find the tenants have suffered a financial loss specifically for the costs of effecting cleaning and replacement of clothing and furniture as outlined above and as evidenced in their photographs. I also find the tenants have established the value of these losses with the exception of: gas for moving and vacating; the ottoman and 3 bookshelves. As such, I dismiss the portion of the tenants' claim for these three items.

I am also not satisfied, as there were two tenants and there is no medical documentation or mould testing results in evidence that would provide confirmation that the need to vacate was urgent or that there was a need for the male tenant to attend to all of the matters in dealing with the mould issue and the landlord. I therefore dismiss the portion of the tenant's claim seeking compensation for lost wages.

As to the tenants' claim for \$500.00 compensation for the landlord entering the unit without their permission, I find the tenants have provided evidence of only one such occurrence and that it was related to the tenants' complaint of mould and their insistence that the matter be dealt with urgently.

As such, I find it reasonable to expect that the landlord would be required to enter the rental unit on more than one occasion and that she might have another person with her who she felt could help her fix the problem. Therefore, I dismiss this portion of the tenant's claim.

As the landlord has failed to provide any justification for the retention of the security or pet damage deposit in any amount I find the tenants are also entitled to the return of the full security and pet damage deposits.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$3,409.17** comprised of \$2,609.17 replacement furniture/clothing and cleaning costs; \$750.00 return of both deposits; and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: January 20, 2014

Residential Tenancy Branch

