



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, MND, FF, OPR, OPC

Introduction

This hearing dealt with cross applications. The landlord filed an application seeking an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking the return of double their security deposit and a monetary order for compensation for money owed or compensation for damage or loss under the Act, regulation or the tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence. This matter was conducted over two days to ensure that the parties had ample opportunity to submit and review all the evidence.

Issues to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence and Analysis

The tenancy began on or about July 1, 2011. Rent in the amount of \$1038.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$475.00.

At the outset of the hearing both parties advised that the tenants vacated the unit on November 9, 2013; accordingly an order of possession is no longer required and I dismiss that portion of the landlords' application.

As both parties have filed an application they both bear the responsibility of providing sufficient evidence to support their claims.

I will deal first with the landlords' claims and my findings as follows.

Landlords' First Claim – The landlord is seeking the unpaid rent for the month of November 2013 and loss of revenue for December 2013 (\$1038.00X 2= \$2076.00). The landlord stated that she issued a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on November 2, 2013. The landlord stated the tenants did not dispute the notice and moved out on November 9, 2013. The landlord stated that the tenants had damaged the bathtub and was unable to rent the unit for the month of December as she was unable to find someone to repair it until November 27, 2013.

The tenants' disputed this claim. The tenant stated that the landlord had issued a notice for them to move out which they didn't dispute. The tenants acknowledged that they did not pay the rent for the month of November. I find that the landlord is entitled to the recovery of the unpaid rent for the month of November. The landlord is not entitled to the loss of revenue for the month of December. The landlord could have hired a different company to conduct the repairs and could have still made attempts to rent the unit for December 1. The landlord stated that she did not advertise the unit until November 27, 2013. The landlord has not satisfied me that she made sufficient attempts to mitigate her losses as is required by the Act. Based on all of the above I find that the landlord is entitled to \$1038.00.

Landlords Second Claim- The landlord is seeking cable costs above the agreed amount in the tenancy agreement for \$12.00 for the month of October and \$5.00 for the month of November. The tenant agreed with this claim. Based on the tenants acknowledgment the landlord is entitled to \$17.00.

Landlords Third Claim- The landlord is seeking \$124.95 for repairing the bathtub. The tenant agreed with this claim. Based on the tenants acknowledgment the landlord is entitled to \$124.95.

Landlords' Fourth Claim - The landlord is seeking \$22.28 for detergent to clean the carpets. The landlord stated that the carpets were stained and smelly. The tenant disputes this claim. The tenant stated that the carpets were stained at move in and that he had cleaned them prior to moving out. The landlord stated she had conducted a condition inspection report at move in but was unable to locate that document. The landlord had not been able to provide me with a "snapshot" of the units' condition at move in versus move out and the changes to it, if any. Based on the insufficient evidence before me I dismiss this portion of the landlords claim.

Landlords Fifth Claim- The landlord is seeking \$60.00 for the replacement of floor transition pieces. The landlord stated the pieces were new at move in but was unable to provide the receipt to reflect that. The tenant disputes this claim. The tenant stated that he had complained about the shoddy installing of the pieces several times to the landlord. The tenant stated that only one piece is damaged but only due to the poor installation and not tenant misuse. As stated in the previous claim the landlord did not provide a condition inspection report or receipts to support her claim. Based on the insufficient evidence before me I dismiss this portion of the landlords' application.

I will deal with the tenants' application and my findings as follows:

Tenants First Claim – The tenant is seeking \$3000.00 for the loss of quiet enjoyment. The tenant stated that anytime he asked the landlord to repair something she would tell him to move out. The tenant stated that the home was noisy and that it affected his family. The tenant stated he is seeking \$500.00 X 6 months = \$3000.00. The landlord adamantly disputed this claim. The landlord denied that she told the parties to move and that they were in no way restricted from having their quiet enjoyment.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,

2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenants have not satisfied me of all four grounds as listed above and as is required. Based on the insufficient evidence before me I dismiss this portion of the tenants' application.

Tenants Second Claim - The tenants are seeking \$622.90 for lost wages in having to deal with this matter on two separate days. The Act does not prescribe for the recovery of these costs and I therefore dismiss this portion of the tenants' application.

Tenants Third Claim- The tenants are seeking the recovery of lost laundry detergent and fabric softener in the amount of \$30.00 and \$168.75 for loss of use of the laundry room. The tenants stated that they were without the facilities for one month and seven days. The tenants stated that they had left these items behind in the laundry room at the end of tenancy. The tenants stated that the laundry room was locked off and no longer available to them. The landlord stated that she felt that \$15.00 was appropriate for the laundry supplies and stated that the laundry room was locked off for 7 days. Based on the above and on the balance of probabilities I find that the tenants are entitled to some compensation for the loss of use of the laundry room as well as the supplies left behind. I find that the appropriate amount is \$50.00 total.

Tenants Fourth Claim – The tenants were seeking the return of double the security deposit. The landlord stated that she had filed for dispute resolution on November 8, 2013; one day prior to the tenants moving out. The tenants did not provide the landlord with their forwarding address until they served her the notice of hearing documents outlining their claim. I find that the landlord has conducted this matter in accordance with the Act. The tenants are not entitled to the return of double the security deposit and I therefore dismiss this portion of their application.

In summary the landlord is entitled to \$1179.95. The tenants are entitled to \$50.00.

I apply the tenants claim towards the landlords claim leaving a balance of \$1129.95 in favour of the landlord.

As neither party has been completely successful in their application I decline to award the recovery of the filing fee for either party and they must bear that cost.

As for the monetary order, I find that the landlord has established a claim for \$1129.95. I order that the landlord retain the \$475.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$654.95. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$654.95. The landlord may retain the security deposit.

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: February 19, 2014

Residential Tenancy Branch

