



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNR, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlords filed their Application requesting a monetary order for unpaid rent and loss of rent, for money owed or compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

The Tenants filed under the category of “other” to dispute the amount claimed by the Landlords and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

This hearing was originally scheduled for December 6, 2013; however, at the request of the Landlords the matter was adjourned, as there was a medical situation which precluded the Landlords from participating in the first hearing. The matter proceeded on March 6, 2014, and was concluded that date.

Issue(s) to be Decided

Are the Landlords entitled to the relief sought?

Are the Tenants entitled to the relief they seek?

Background and Evidence

This tenancy began on May 1, 2012, with the parties entering into a written, month to month tenancy agreement. The Tenants were allowed early possession around the middle of April 2012. The monthly rent was \$1,150.00, payable on the first day of each month. The Tenants were to pay a security deposit and pet damage deposit but failed to do so, despite the written request of the Landlords. Incoming and outgoing condition inspection reports were completed and submitted in evidence. The Tenant that appeared at the hearing signed the incoming report.

In July of 2012, the Landlords issued a 10 day Notice to End Tenancy for unpaid rent.

In August of 2012 the Tenants again failed to pay their rent in full at the time it was due. The Landlords applied and received an order of possession for the rental unit. The Tenants were ordered to vacate the rental unit in two days. The Tenants filed for a Review Consideration of the order of possession but that Review was dismissed.

The Landlords testified and provided evidence that the police were called to attend the rental unit to keep the peace at the time the Tenants were vacating. The police had been called in one earlier instance, when the Tenants refused to allow the Landlords to inspect the rental unit pursuant to a notice of entry which appears to have been duly given.

In evidence the Landlords submitted a redacted copy of the police reports. The report of September 2, 2012, sets out that the police attended on September 1, 2012, as the Tenants were supposed to vacate the rental unit but had apparently sent the Agent for the Landlord a text message saying they would not be leaving. According to the police report, the officer who attended at the rental unit on September 1, declared that the rental unit had been abandoned and advised the Landlords they could change the locks.

The Landlords now claim for losses arising from the tenancy. The Landlords claim as follows:

	Amounts Claimed for by the Landlords	
a.	Unpaid rent for September 2012	1,150.00
b.	Loss of rent for October 2012	1,150.00
c.	Replace locks & keys	171.26
d.	Cleaning supplies	32.51
e.	Flooring materials	816.34
f.	Toilet seal	17.57
g.	Paint	147.53
h.	Caulking & misc. supplies	57.13
i.	Dump fees	192.70
j.	Cleaning labour and labour for flooring etc.	3,195.00

k.	Heating oil	156.22
l.	Filing fee	100.00
	Total claimed	\$7,186.26

The Landlords testified that the Tenants did not pay the rent for September 2012, although they stayed in the rental unit until the first of September. The Landlords further claimed that due to the condition the rental unit was left in by the Tenants they had to clean and make repairs to the rental unit and were unable to rent for October of 2012. Therefore, the Landlords claim for two months of rent.

The Landlords testified that the Tenants did not return the keys to the rental unit and the Landlords had been advised by the police to change the locks. The Landlords claim \$171.26 for replacing the locks and keys.

The Landlords testified and submitted photographic evidence that the oven and stove was not cleaned, and the Landlords had to pay someone to clean the rental unit and had to purchase cleaning supplies. These amounted to \$32.51.

The Landlords claim the Tenants' pets caused significant damage to the carpets in the rental unit, in particular the living room and two bedrooms. The Landlords testified that when they went to view the property it had a very strong odour of pet urine and the litter box for the cat had not been cleaned. The Landlords also claim the Tenants smoked in the rental unit despite it being described as a non-smoking unit in the tenancy agreement.

The Landlords submitted photographs of the rental unit which they took at the end of the tenancy and allege these depict puddles of urine on the hardwood floors left by the Tenants' pets. The photographs also depict deep stains through to the back of the carpets, cat feces under the kitchen sink, cigarette butts on the floors and carpets, piles of debris throughout the rental unit, apparently broken furniture left behind, many scrapes and scuff on the walls and floor trim, and garbage left behind.

The Landlords submit that the carpet was installed in January of 2010, however, due to the strong smell of cigarette smoke and pet urine stains in the carpet, these had to be replaced. The Landlords testified that it was cheaper to install laminate flooring than carpet and claim \$816.34 for flooring materials.

The Landlords claim the Tenants damaged the toilet seal and this required repairs. The Landlords also submit that the bathroom and toilet were not cleaned.

The Landlords testified they had to repaint the rental unit due to the odour of smoke and the damage to the walls and trims. The floors were also painted with an odour removing paint or sealer.

The Landlords claim for other supplies, such as caulking for the bathroom flooring and a rubber stopper which they allege the Tenants damaged and removed. The Landlords also had to purchase numerous trash bags in order to remove the debris left behind by the Tenants.

The Landlords claim for \$192.70 for dump fees for the trash and debris left behind by the Tenants. This included the removed carpet and broken furniture left by the Tenants.

The Landlords had paid a person for cleaning, making repairs, painting and installing the flooring. This person submitted a bill for labour, which included trips to the dump, cleaning walls, floors, cupboards, drawers, counters, windows, doors, appliances, bathtub and shower, and closets. The person also patched and repaired the walls and painted 3 bedrooms, the kitchen, living room, hallway, entrance and stairs. They installed the laminate flooring in the living room, 2 bedrooms, stairs and landing, and cleaned up the yard. The Landlords claim \$3,195.00 for the labour. The invoice sets out the hours worked and the amounts charged for the various work performed.

In reply to the Landlords' claims, the appearing Tenant testified the Tenants did not abandon the rental unit. The Tenant testified they had moved a load of their possessions to their next rental unit and when they returned the Landlords had put their entire living room out onto the lawn. The Tenant testified she called the police to keep the peace. The Tenant alleges the Landlords threw the Tenants' possessions out.

The Tenant testified they did not refuse entry to the Landlords that instead, they wanted to be home when people viewed the rental unit because they have an aggressive dog and did not want people hurt.

The Tenant alleged that the rental unit had housed a marijuana grow-operation prior to them moving in and the whole house was not clean. The Tenant acknowledged that the Landlords had paid the Tenants to complete painting of the rental unit before they moved in, to give them early possession. The Tenant alleged the rental unit was very dirty when they moved in and required cleaning.

The Tenants allege that the Landlords are colluding with the person who performed the cleaning and repairs, as this person is a relative of the Landlords.

The Tenant testified that the Tenants would agree to pay the September rent to the Landlords; however, the Tenants did not agree to pay for October.

The Tenants acknowledge that their dog did urinate inside the rental unit a couple of times. Nevertheless, the Tenant alleged that the claims of the Landlords were malicious and they simply want the Tenants to pay for renovating the floors and other portions of the rental unit. The Tenant again alleged the Landlords were colluding with the person who performed the repairs.

The Tenant testified that the puddles on the floor around the litter box were not urine, but rather it was water for cleaning the floors, but the Tenants had been thrown out by the Landlords and did not have an opportunity to finish cleaning.

The appearing Tenant alleged that the other Tenant was also colluding with the Landlords as he was a relative through marriage to one of the Landlords. The appearing Tenant alleged the other Tenant had all of the evidence the Tenants needed to rely on; however, they had split up and the other Tenant failed to give her the evidence to use in this hearing.

The appearing Tenant testified that, for example, the other Tenant had signed the condition inspection report and the tenancy agreement, but she did not agree with the incoming condition inspection report. The appearing Tenant alleged the family of the Landlords was working against her with the other Tenant. The appearing Tenant testified she had spoken with the other Tenant on the morning of the day of the hearing and he had assured her he would call into the hearing.

The appearing Tenant testified that the Tenants still had a couple of days in the rental unit at the time they began moving. The Tenant acknowledged that while they were in the process of packing and moving their possessions they did smoke cigarettes in the rental unit because at this point they, "... just didn't care..."

In final submissions, the Landlords replied that the rental unit had never been a grow operation. The Landlords did acknowledge the male Tenant was a relative, and that they had been trying to help the Tenants out when they rented to them.

The Landlords explained they had paid the Tenants to complete the painting in the rental unit, although the Tenants did not complete this work. The Tenants were also paid to perform four hours of cleaning in the rental unit, according to the invoice supplied in evidence by the Landlords, as they wanted early possession. The Landlords submitted an invoice indicating the carpets in the rental unit had all been professionally cleaned a few days before the Tenants moved in.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence, the photographs and the testimony, and on a balance of probabilities, I find as follows.

I find the Tenants breached section 37 of the Act, by failing to return the rental unit to the Landlords in a reasonably clean state, and by failing to repair the damages they caused in the rental unit. I find none of the damages caused by the Tenants could be considered reasonable wear and tear.

I accept the evidence of the Landlords that the Tenants' pets caused damage to the carpets to the extent they had to be replaced. The photographs indicate dark stains that have gone right through the backing of the carpet. Furthermore, the Tenants acknowledged the pets may have urinated on the carpets a couple of times. Nevertheless, based on the photographs of the carpets and its backing, it would appear that the pets had urinated on the carpets much more than two or three times.

I found much of the Tenant's evidence lacked credibility, as there were several contradictions in her testimony. For example, the Tenant testified it was her that called the police to attend the rental unit on September 1, 2012; however, the police report sets out that the Agent for the Landlord was the complainant who called for the police on that date. Likewise the Tenant testified that the rental unit was very dirty and she did not agree with or sign the incoming condition inspection report; however, the condition inspection report bears the signature of the Tenant agreeing to the condition of the rental unit at the outset of the tenancy.

I also find that the photographs, condition inspection report, invoices and other evidence presented by the Landlords indicate that the rental unit also needed extensive cleaning, patching and painting after the Tenants vacated, as well as the replacement of the carpeting. I find there was significant garbage and debris that had to be removed as well.

I find that repairing and remediating the rental unit due to the breaches of the Act by the Tenants have caused the Landlords to suffer an additional loss of rent for the month of

October. The Landlords did submit evidence they began advertising the rental unit to be available for September 1, 2012, although it was unavailable due to the condition it was left in by the Tenants. I find the Landlords did mitigate their losses in this regard. As to the allegations that the Landlords had colluded with the person doing these repairs, I find that the Tenants had insufficient evidence to prove the Landlords or the person performing the repairs had conspired against the Tenants. I find that the amounts claimed and the hours charged were reasonable given the state of the rental unit when the Tenants left it. The amounts and hours claimed did not appear to be exaggerated or unreasonable, given the condition of the rental unit after the Tenants vacated.

Section 7 of the Act states:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

In regard to the carpets being replaced, policy guideline 40 to the Act sets out that,

“When applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement.”

[Reproduced as written.]

In this instance the carpets were nearly three years old at the end of the tenancy. The policy guideline holds that the useful life of carpets is 10 years. Therefore, I reduce the amount of the cost flooring materials by 30% to account for this depreciation.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Having made the above findings, I find the Landlords have established the following amounts that must be paid by the Tenants for the damages and losses that occurred:

	Amounts Allowed in Landlords' Claims	
a.	Unpaid rent for September 2012	1,150.00
b.	Loss of rent for October 2012	1,150.00
c.	Replace locks & keys	171.26
d.	Cleaning supplies	32.51
e.	Flooring materials	571.34
f.	Toilet seal	17.57
g.	Paint	147.53
h.	Caulking & misc. supplies	57.13
i.	Dump fees	192.70
j.	Cleaning labour and labour for flooring etc.	3,195.00
k.	Heating oil	156.22
l.	Filing fee	100.00
	Total claimed	\$6,941.36

I grant the Landlords a monetary order in the amount of **\$6,941.36**. This order must be served on the Tenants and may be enforced in the Provincial Court (Small Claims Division).

I dismiss the Application of the Tenants without leave to reapply, as I found the claims of the Tenants had little or no merit.

Conclusion

The Tenants breached the Act and tenancy agreement by failing to pay rent, by causing damage to the rental unit and by failing to clean the rental unit to a reasonable state at the end of the tenancy. These breaches have caused the Landlords to suffer a loss and the Landlords are granted a monetary order for their proven losses.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: March 21, 2014

Residential Tenancy Branch

