



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MNSD MNDC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenants agreed they received the Application for Dispute Resolution by registered mail. I find that the tenants were properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there was insufficient notice to end the tenancy and they suffered rental loss; have they proved that extraordinary cleaning was need due to the tenants' actions? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on September 6, 2006, a security deposit of \$600 was paid and rent is currently \$1399 a month. It is undisputed that the tenant vacated on September 30, 2013 and paid rent for September.

Both parties agreed that the tenants did not give Notice to End their tenancy in writing by the end of August 2013. The tenant said he tried to contact the landlord by telephone at the beginning of September but could not contact them until September 4, 2013. When they gave their verbal notice, they said the landlord insisted on written

notice, although the landlord knew for some time that they were planning to move. The tenant said they gave written notice on September 7, 2013 and the landlord said they did not receive it until September 15, 2013.

The landlord claims as follows:

\$1399 : rental loss for October 2013

\$750: for cleaning

\$1199: refund of overpayment for hydro use

The tenant objected to the high cleaning cost. They said they had cleaned the home, although they maybe were not as particular as the landlord would have liked as the home was so old. They recounted how the single pane windows had condensation causing mould to form and the toilet had a leak that made it impossible to clean properly. They had never brought an Application for Dispute Resolution and they included no written complaints to the landlord about these problems. They pointed out that the cleaning person's statement appeared to have been written by the landlord and that the landlord had replaced the carpets when they had left because they were so old.

The landlord agreed she had written the statement concerning the cleaning but said the cleaning lady had signed it. She described the amount of cleaning to be done; there were cobwebs everywhere, the tenants had put cement like caulking on the windows that had to be removed with hammer and chisel as it was full of mould. The window glass was so dirty that special products and hours had to be spent on them to remove the yellow spots, the cupboards needed scraping to remove grease and dirt and the bathrooms and sinks were extremely dirty and mould had even penetrated the stainless steel faucets. The signed invoice noted the charge as \$750 for the cleaning.

The parties agreed that the landlord had kept some appliances in the basement and used the hydro from the home. The tenant discovered this in 2012 and confronted the landlord after getting estimates from hydro of a possible cost of \$2600 to run these items for 6 years. The landlord offered him \$1400 to settle this matter and the tenant accepted and the landlord paid him \$1400. Now the landlord states he overpaid the tenant as he has obtained some estimates of possible costs to run the appliances and requests the refund of \$1199 based on his estimates. At least one of the appliances is no longer there and the tenant disagrees with the landlord's estimates as he states there was a refrigerator, freezer and power tools that he observed when he confronted the landlord.

In evidence is a tenancy agreement, a condition inspection report done at move-in (signed by the tenants) and move-out (not signed by tenants), a Notice of a Final

Opportunity to do a condition inspection report at move-out and invoices and statements.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

The onus of proof is on the landlord to prove their claim. Section 45 of the Act states a tenant must give notice effective on a date not earlier than one month after the landlord receives the notice and is the day before the day in the month that rent is due. In other words, to legally end the tenancy on September 30, 2013, the tenant had to give notice by August 31, 2013. Section 52 of the Act states the notice must be in writing. Whether or not the written notice was given September 7th or 15th, I find the tenant gave insufficient notice to end the tenancy and the landlord is entitled to rental loss for October 2013 in the amount of \$1399.

Although the tenant claimed the house had deficiencies at move-in and was very old and this caused the problems that required extra cleaning, I find the move-in report dated August 26, 2006 states that all walls, floors, doors, blinds, light fixtures, blinds, kitchen cabinets, stove, refrigerator, sinks and toilets and sun deck floor are clean, spotless and with no damage. In handwriting, one exception is noted of a white spot near the living room window which indicates to me that the inspection was done thoroughly and the premises were exceptionally clean. A third party inspected the premises on behalf of the landlord at move-out and notes the dirty condition of many areas as the landlord detailed in her evidence. I find the weight of the evidence is that the home required extensive cleaning at move-out. I find the landlord entitled to recover \$750 which they paid to a third party as per the invoice in evidence.

In respect to the request for a refund of overpayment of hydro, I find that the tenant discovered the landlord was using their hydro for several items in the downstairs area in the Fall of 2012 and he obtained estimates from hydro of potential costs of \$2600 to run those appliances. The landlord agreed that he had been using their hydro for several years and he made an offer of \$1400 to settle the hydro problem. I find the evidence from the parties is that the tenant accepted that offer and the landlord paid him. I find the parties made a verbal contract to settle the matter in the Fall of 2012 and I decline to interfere with that contract now. I dismiss this portion of the landlord's application.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Rental loss for October 2013	1399.00
Cost of extensive cleaning	750.00
Filing fee	50.00
Less security deposit with interest	-619.37
Total Monetary Order to Landlord	1579.63

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: March 05, 2014

Residential Tenancy Branch