



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

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

The Landlord filed their Application requesting a monetary order for unpaid rent, for compensation for cleaning and making repairs to the rental unit, for money owed or compensation under the Act or tenancy agreement, for an order to keep the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

The Tenants filed for a monetary order for money owed or compensation under the Act or tenancy agreement.

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 Issues

The Tenants filed their Application against the Landlord on November 18, 2013, although they did not file any evidence in support of their claims against the Landlord. The Tenants testified they had photographs and other evidence but did not know how to submit these in evidence.

The Tenants agreed they had received the usual hearing package from the branch; this contains instructions on the hearing process and how to submit evidence. Furthermore, the Notice of Hearing received by the Tenants (which contains the dial in codes required to dial into the hearing), includes information on the importance of submitting evidence, how to submit evidence and the importance of deadlines to submit evidence.

The male Tenant testified he has a disability and was not able to read the instructions. However, the female Tenant agreed she was able to read. Despite his testimony, I note that it appears the male Tenant filled out the Application for Dispute Resolution and he has signed it.

The Tenants also testified they, "... went to a couple of places and were told to hold onto the evidence." The Tenants stated that one of the places they went to was a government agent's office and the other was a Residential Tenancy Branch office. The Tenants then testified they had no idea evidence was supposed to be provided for the hearing.

The Landlord filed his Application on December 5, 2013, and served the Tenants and the Branch with his evidence on February 25 and 27, 2014. The Landlord would not agree to an adjournment for the Tenants to provide evidence. The Landlord testified they have had lots of help and advice, and waited four months to now say they have evidence they wish to submit.

The Tenants then replied that nobody they talked to would accept their evidence.

Based on the above, the testimony of the parties, and the rules of procedure, I did not allow an adjournment for the Tenants to supply evidence. I find the Tenants had ample opportunity to provide this evidence in accordance with the rules of procedure and failed to do so. I did explain to the Tenants that they could still testify as to their evidence and submissions, and they did so.

The Tenants were not pleased with this finding and testified that they did not know what to do with their evidence and did not know about the rules of procedure for the hearing.

At one point during the hearing, when I explained to the Tenants that there is a legal expression that, "ignorance of the law is no excuse", the male Tenant became extremely hostile and alleged I had slandered him personally by calling him ignorant. I explained this was not the intent of the legal expression and I was not referring to him personally.

I note the issue of the male Tenant's behaviour arose constantly throughout the hearing. He repeatedly interrupted the other party and the Arbitrator, despite several warnings not to do so, and despite explanations that he would have his opportunity to testify and ask questions of the other party.

Therefore, the Tenants' phone line had to be muted toward the end of the hearing as he simply would not cease interrupting the proceedings. The Tenants were able to hear all the testimony during this time. I also note that prior to the end of the hearing, the male Tenant apologized for being confrontational during the hearing and they proceeded to testify with their reply to the Landlord's claims. I am satisfied that both parties had the opportunity to be heard and submit their claims during this hearing of 80 minutes.

Issue(s) to be Decided

Are the Tenants entitled to the compensation sought?

Is the Landlord entitled to the compensation and relief sought?

Background and Evidence

This tenancy began on or about November 1, 2010, with the parties agreeing to a month to month tenancy and rent of \$650.00 per month. The parties did not complete a written tenancy agreement; however, the statutory terms for tenancy agreements apply to all tenancies in the province and the Act recognises oral tenancy agreements.

The Tenants paid a security deposit of \$375.00 to the Landlord when they occupied a different rental unit prior to taking possession of the subject rental unit. The parties did not submit evidence on when the earlier tenancy had begun, although they agreed the security deposit had been carried forward to this tenancy. The parties agree that no condition inspection reports were performed in accordance with the Act.

The Tenants vacated the rental unit in November of 2013. The parties do not agree on the circumstances surrounding the end of the tenancy.

The Tenants' Claims

The Tenants allege in their Application they were forced to move out of the rental unit due to mold and water damage.

The Tenants testified that the day they moved into the house the roof was leaking and there was a tarp on the roof over the hole. The Tenants allege they saw mold in the rental unit on December 1, 2010. The Tenants testified they actually moved into the rental unit in November. They testified they had pictures of the mold, although these were not submitted in evidence as described above.

The Tenants testified they did not write the Landlord about this, although each month when they paid the rent they asked when these repairs would be made. They testified the Landlord simply told them the rent had to be paid, and did not do the repairs.

The Tenants testified they want compensation as it took them six to eight hours to clean up the rental unit when they moved in. They testified that one of the family missed 148 days of school due to illness caused by the mold. The Tenants also allege they made repairs to a balcony which they should be compensated for.

The Tenants testified they lived in the house for two years and had to use the wood burning fireplace for heat for the entire time. They testified it was illegal to use a fireplace as the main source of heat and wanted compensation for this.

The Tenants seek \$575.00 in compensation for the above claims.

Landlord's Reply to the Tenants' Claims

The Landlord testified he met on the first of each month with the Tenants to collect the rent and does not recall them ever having a comprehensive discussion about repairs being required for the rental unit. He testified the Tenants never informed him there was mold in the rental unit.

The Landlord testified that he now resides in the rental unit and there is no mold.

The Landlord's Claims

The Landlord testified that on October 17 of 2013, he gave the Tenants a two month Notice to End Tenancy because he wanted to move back into the rental unit. A copy of the Notice was provided in evidence. The Landlord testified he had been living in a trailer on the property where the rental unit was located, and was at the trailer on the property once or twice a week. The Landlord submitted things were not working out well between himself and the Tenants and he decided that he wanted to move back into the rental unit, where he now resides.

The Landlord submitted that at the time he gave the Tenants the two month Notice to End Tenancy the Tenants owed \$200.00 in October rent. At this same time the male Tenant gave the Landlord an invoice in the amount of \$382.00, for 20 hours of cleaning up water damage inside the rental unit and for repairing the back deck. The Landlord and the Tenant looked at the alleged work performed by the Tenant in the rental unit and the Landlord was not satisfied with the work that had been done on the deck or that it was necessary to clean up any water. The Tenant apparently took back the bill for \$382.00 and then told the Landlord he was desperate to get food for his family. The Landlord testified he gave the Tenants \$50.00 for food. According to the Landlord, the Tenant later text messaged the Landlord and told him he made up the water story because he was embarrassed that he lost his wallet with the \$200.00 for the Landlord.

At the end of October the Landlord received a call from a different property owner, seeking a reference for the Tenants who were applying to rent with this person. A day or two later the Tenants told the Landlord they were moving out. The parties arranged to meet at the rental unit for an outgoing inspection.

On November 5, 2013, the Landlord went to the rental unit and found the Tenants had not completely moved out, nor had they cleaned up their garbage and other debris. The Landlord testified he found several windows were broken in the rental unit. He testified that all the light bulbs had been removed from the rental unit and it was dim inside and he had to move a light bulb from room to room to inspect the unit.

The Tenants informed the Landlord they had no money to completely move or pay for gas to take the garbage and debris to the dump. The Landlord suggested a deal with the Tenants to clean and do repairs before they vacated the rental unit.

The Landlord testified he knew the Tenants were entitled to one month of rent under the two month Notice to End Tenancy. The Landlord and the Tenants came to an arrangement where the Landlord paid the Tenants \$1,300.00 in cash, which included the one month of rent required under the Notice, a refund for 28 days for the November rent already paid, and the Tenants would clean and repair the rental unit before they left on November 7, 2013. The majority of the security deposit was signed over to the Landlord, and the Landlord was to keep the balance of \$125.00 for repairs to the windows. The Landlord testified they both agreed to this and put it in writing. In evidence the Landlord submitted a handwritten note with these calculations. The male Tenant testified during the hearing that he had signed this note in agreement.

The Landlord testified and submitted he would have returned the \$125.00 to the Tenants had they cleaned and done the repairs as they had agreed to.

The Landlord testified when he returned to the rental unit on November 10, 2013, the promised cleaning and repairs had not been done by the Tenants.

The Landlord testified that on November 11, the male Tenant returned to the rental unit property in an angry mood and began yelling at the Landlord. According to the Landlord the Tenant was accompanied by another person, and the Tenant was yelling about mold in the rental unit and demanding the Landlord pay him \$575.00. The Tenant refused to return the keys to the rental unit to the Landlord.

The Landlord testified that he could not secure the rental unit due to the broken windows and because the locks had to be changed because the Tenants did not return their keys. The Landlord claims he was not able to move into the unit until November 28, 2013. The Landlord also claims the Tenants removed the window coverings which had been new at the outset of the tenancy.

The Landlord claims for the return of the rent for November of \$606.67 for the 28 days he did not have vacant possession.

The Landlord claims for the \$200.00 in rent owed for October 2013.

The Landlord claims for the \$50.00 he gave the Tenants for food.

The Landlord also claims for caulking and glass, totalling \$98.43; for the replacement of window coverings \$77.51 is claimed; for the replacement of the locks and having new keys cut in the amount of \$109.73; for labour to remove debris to the dump and clean up the yard in the amount of \$100.00; for the filing fee for the Application \$50.00. The Landlord also claimed to keep the portion of the security deposit he still holds, in the amount of \$125.00.

In support of the above claims, the Landlord has submitted invoices and photographs in evidence.

The Landlord also asked for damages for an irreparable broken hearth, bathtub, stained glass window and door, although no estimates were provided on these.

In reply to the Landlord's claims, the Tenants agreed they owed the Landlord \$200.00 for October 2013 rent.

The Tenants testified that one of the windows had been broken when their three year old child slammed the door. They testified they were not responsible for the other

windows. The Tenants testified that one of their children placed a toy beside one of the windows and it simply shattered. The Tenants agreed that three windows were broken in the rental unit, but testified not all of these were their fault.

The Tenants further testified that the Landlord began taking pictures while the Tenants were still doing runs to the dump. The Tenants admit they left some garbage in an area behind the stairs, although they also testified they left no mess in the yard and had cleaned up all of their garbage and debris before they vacated.

The Tenants agree they gave no written Notice to the Landlord to move out early in November.

The Tenants testified that someone told them they could keep the keys and that is why they did not return them.

The Tenants denied removing window coverings.

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 each Applicant 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 Respondent. Once that has been established, the Applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Applicant 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 and testimony, and on a balance of probabilities, I find as follows.

Tenants' Claims

I dismiss all of the Tenants' claims without leave to reapply, due to insufficient evidence.

I found the Tenants had insufficient evidence of mold in the rental unit or that they suffered any losses as a result of the alleged mold. I find they had insufficient evidence they spent time cleaning the rental unit nor of missing any school. I find the Tenants failed to prove that the Landlord violated the Act, regulations, or tenancy agreement, and their claims are dismissed. As described above, I found the Tenants had ample opportunity to submit evidence prior to the hearing but they failed to do.

Landlord's Claims

I find that the tenancy ended by operation of the Two Month Notice to End Tenancy issued to the Tenants, and that the tenancy ended on December 31, 2013, under the Act.

If the Tenants wanted to end the tenancy early, prior to the effective date of the Notice, they were required under section 51 of the Act to give the Landlord written notice. They admitted they did not do so. They did not end the tenancy in accordance with the Act, and therefore, it ended under the Notice issued by the Landlord.

Nevertheless, I accept that the Landlord had vacant possession of the rental unit by November 28, 2013. As the Tenants breached the Act and did not give the Landlord the required Notice to End Tenancy, I allow the Landlord loss of rent for November 2013, although for 28 days only in the amount of **\$606.67**, rather than the full month of rent.

The Tenants agreed they owed the Landlord **\$200.00** in rent for October 2013, and I grant this amount to the Landlord.

I dismiss the Landlord's claim for the \$50.00 he gave the Tenants for food, as this appears to have been a gift and is not claimable under the Act.

I accept the evidence of the Landlord regarding the broken windows and find the Tenants breached section 37 of the Act, by failing to repair the damages they caused prior to leaving the rental unit. I do not find the windows broke through normal wear and tear. Therefore, I allow the Landlord's claims for caulking and glass, totalling **\$98.43**.

I find the Landlord had insufficient evidence to prove the window coverings were in the rental unit at the start of the tenancy, and dismiss this claim, without leave to reapply.

I find the Tenants failed to return the keys to the Landlord and allow the claim for the replacement of the locks and having new keys cut in the amount of **\$109.73**.

I also accept the evidence of the Landlord that significant cleaning and removal of debris was required. I allow **\$100.00** in labour to remove debris to the dump and clean up the yard.

I also allow the Landlord the filing fee for the Application **\$50.00**.

I dismiss the Landlord's claims for damages for an irreparable broken hearth, bathtub, stained glass window and door, as there was insufficient evidence provided on the costs of repairing these.

I also note that by failing to perform an incoming or outgoing condition inspection report in accordance with the Act, I find that the Landlord extinguished his right to claim against the portion of the security deposit that the Tenants did not sign over to him. However, as the Landlord applied to keep this within the timelines of the Act I do not double the remaining portion.

Based on the above, I find that the Landlord has established a total monetary claim of **\$1,164.83** comprised of the above amounts and the \$50.00 fee paid by the Landlord for this application.

Pursuant to section 72, I order that the Landlord retain the remaining portion of the deposit of \$125.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,039.83**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants' Application is dismissed due to insufficient evidence.

The Landlord has established a total monetary claim of \$1,164.83, and may retain the remaining portion of the security deposit in the amount of \$125.00, and is granted an order for the balance due of **\$1,039.83**.

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: April 07, 2014

Residential Tenancy Branch

