



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for damages or loss under the Act and for the return of double the security deposit.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Procedural matter

On February 13, 2014, this matter proceeded for the full amount of time it was scheduled, and as the matter was not completed it was adjourned to my next available date, which was April 17, 2014.

Issues to be Decided

Are the tenants entitled to monetary compensation for damages?

Are the tenants entitled to double the security deposit?

Background and Evidence

The parties entered into a fixed term tenancy which began on October 1, 2013 and was to expire on September 30, 2013. Rent in the amount of \$2,000.00 was payable on the first of each month. A security deposit of \$1,000.00 was paid by the tenants.

The tenants claim as follows:

a.	Compensation to cover additional moving expenses	\$ 160.00
b.	Loss of use of garage	\$ 220.00
c.	Cost to replace stolen vehicle part	\$ 25.31
d.	Loss of quite enjoyment	\$ 850.00
e.	Compensation for having to use an 8 year old refrigerator	\$1,055.00
f.	Loss of use of one parking space	\$ 500.00
g.	Home phone service	\$ 429.45
h.	TV services not provided	\$ 300.00
i.	Lack of TV channels of tenant's choice	\$ 180.00
j.	Sharing internet with other renters in the household	\$ 400.00
k.	Double the security deposit	\$2,000.00
l.	Filing fee	\$ 100.00
	Total claimed	\$6,219.77

Compensation to cover additional moving expenses

The tenants testified that when they moved into the rental unit the stairs to the back door were not yet installed and as a result the movers had to carry their belongings through the main entrance. The tenants stated that this move took two hours longer than it took when they had previously moved into exactly the same type of house, but with backstairs installed.

The tenants testified that they did not provide any documentary evidence from the moving company to support that using the main entrance stairs increase their moving time. The tenants stated they never made any complaint to the landlord during the tenancy regarding this issue.

The landlord testified that the tenants were aware when they entered into the tenancy agreement that the backstairs would not be completed until after they moved in as the property was under construction. The landlord stated that it makes no sense that it would take the movers longer to move the furniture using the main entrance as this is the closest entrance to the premises. The landlord stated the tenant did not notify him during the tenancy that they incurred extras cost and have provided no evidence that a loss exists.

Loss of use of garage

The tenants testified that they seek compensation for the loss of use of the garage between October 1, 2012 and October 23, 2012 because the landlord had building supplies stored in the garage. The tenants stated that they did not make any formal complaint to the landlord.

The landlord testified that the tenants were aware that a small amount of building material would be stored in the garage as work was still being completed on the building and would not be fully available until the 20th of October 2012. The landlord stated the tenants used the garage during this time and this was not an issue during the tenancy.

Cost to replace stolen vehicle part

The tenants testified that as a result of the garage not being available, their car was broken into and they had to replace a stolen vehicle part. The tenants stated the local police were notified. The tenants stated that they notified the landlord that the car was broken into; however, they did not ask the landlord at the time or at any time during the tenancy to pay for the stolen vehicle part. Filed in evidence is a receipt.

The landlord testified that the receipt is not in the tenants' name and there is no evidence to support that this part is to replace a stolen vehicle part as the tenant has not provided any police report. The landlord stated this was not an issue during the tenancy.

Loss of quiet enjoyment

The tenants testified that they seek compensation for loss of quiet enjoyment due to construction work that was being completed in the lower rental unit from October 1, 2012 to November 2012. The tenants stated the workers were coming into her rental unit and that they were even working on a Saturday.

The landlord testified that the tenants entered into the tenancy agreement knowing the rental premise was under construction as the lower unit was still being completed. The landlord stated that the inside of the tenants' rental unit was fully finished and if the workers were in their unit it was to fix items at their request, such as the blinds.

The landlord testified there is a common room that can be accessed from inside the tenants' unit and from an exterior of the building. The landlord stated this room is the mechanical room for all the rental units and it was this room that the construction workers were accessing, not the tenants' rental unit.

The landlord testified that any noise or inconveniences due to construction in the lower rental unit were never mentioned during the tenancy.

Compensation for having to use an 8 year old refrigerator

The tenant testified that they seek compensation for having to use an eight year old refrigerator with broken shelves and the door was scratched and dented. The tenants seek compensation from October 1, 2012 to April 30, 2013.

The landlord testified that the tenants were provided a working refrigerator and it was not eight years old. The landlord stated that there were no broken shelves, however,

agreed there was a minor scratch in the refrigerator door, which had not impact on the working condition. The landlord stated he did eventually replace the refrigerator as they were on good terms and thought it was good to build the relationship with the tenants.

Loss of use of one parking space

The tenants testified that when the lower tenants moved into the rental unit in December 2012, they parked their vehicle in the driveway and this blocked their access to park in the garage the entire tenancy. The tenants stated that the traces of tire marks in their photographs support that they were unable to use the garage. The tenants seek compensation from December 1, 2012 to September 30, 2013. Filed in evidence is a photograph, which depicts no vehicles blocking access to the garage.

The landlord testified that the lower renters had their own designated parking spot and if they were parking in wrong area the tenants should have informed him during the tenancy that a problem existed. The landlord stated traces of tire marks in a driveway is not evidence, as this is normal for a driveway.

Home phone service

The tenants testified they were promised a home phone service at the start of the tenancy and this service was not provided. The tenants stated the landlord gave them two options the first being rent would be \$1,800.00 with water include or \$2,000.00 which would included water, heat, gas, electricity, TV, internet and the phone.

The landlord testified that he never agreed to pay for the tenants' telephone service. The landlord stated the tenancy agreement provides for all the utilities such as water, electricity, heat, cablevision, and garbage collection.

The landlord testified that the tenants were informed that he would not be paying for this service and it was not part of the tenancy agreement and there was no further issue during the tenancy.

TV services not provided

The tenants testified that they were not able to watch live TV or record TV programs from December 1, 2012 to September 30, 2013 as the TV service was shared between three households. The tenants stated they could not provided specific dates or times.

The landlord testified that the tenants were provided cablevision as per the tenancy agreement. The landlord stated this was not an issue during the tenancy.

Lack of TV channels of tenant's choice

The tenants testified that the landlord promised them that they could have TV channels in russian and this was not provided.

The landlord testified that he never agreed to provide the tenant with russian channels. The landlord stated the tenants were provided with a medium cable package.

Sharing internet with other households

The tenants testified that they had internet service during their tenancy; however, it was a shared service with the other renters. The tenants stated they should have had their own internet service as they were concerned about their privacy. The tenants stated they notified the landlord of their concerns at the start of the tenancy and the landlords deny this request. The tenants stated they took no further step to resolve the issue of a shared internet service.

The landlord testified that the tenants were provided with free WIFI internet. The landlord stated that on the day of installation the tenants wanted an independent internet service as they were concerned about privacy issues. However, the landlord stated he was not agreeable to provided them with their own independent service as when calculating the cost of rent it was based on a WIFI service which internet was provided.

Double the security deposit

The tenants testified that they seek double the security deposit. The tenants stated on October 1, 2013, they provided the landlord with their forwarding address by text message. The tenants stated that in the original message they provided the landlord had the incorrect postal code and they sent a second text message indicate the correct postal code.

The landlord testified that he received a text message from the tenants with their forward address and on October 5, 2013, a cheque was mailed to the address provided.

The landlord testified when he returned from a planned trip on October 20, 2013, he notice that the cheque was never cashed and he contacted the tenants. The landlord stated later her received a message from the tenant that the cheque was not received. The landlord explained that this was likely due to the tenant providing the wrong postal code on the original text message. However, as the cheque was not returned he issued a new cheque to the tenants and placed a stop payment on the original cheque. Filed in evidence is a copy of the original cheque and a copy of the stop payment.

The landlord testified that the tenants have provided conflicting addresses as the customer receipt which was attached to the express post that he received from the tenants indicates the same unit number, address and postal code as in the October 1, 2014, text message, however the street name is not the same.

The landlord testified it would be unfair to apply a penalty provision, when the error is a result of the tenants providing an incorrect postal code in a text message.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Compensation to cover additional moving expenses

The evidence of the tenants was that they incurred extra moving expenses when they moved into the rental premise; this calculation is based on a previous move in a different residence. The evidence of the landlord was that this was never an issued during the tenancy.

I find the tenants position unreasonable as there are many factors to consider when moving furniture. There is no evidence from the moving company to support such a claim. I find the tenants have failed to prove a loss exists. Therefore, I dismiss this portion of the tenants' claim.

Loss of use of garage

The evidence of the tenants was that they did not have use of the garage for a short time at the start of the tenancy. The evidence of the landlord was the tenants had use of garage and that the landlord occupied a portion for a short period of time due to storing building material.

While the tenants may have been entitled to compensation for the loss of a portion of the space, I find the tenants failed provide sufficient evidence to the actual portion of space lost, as there were no photographs showing the area in which they did not have use. Further I also find the tenants failed to mitigate as this was not an issue during the tenancy. Therefore, I dismiss this portion of the tenants' claim.

Cost to replace stolen vehicle part

The evidence of the tenants was that when they notified the landlord that a vehicle was broken into at the start of the tenancy, they did not inform the landlord of a stolen vehicle part or ask the landlord to pay the item.

I find the tenants have failed to prove a loss exists, as there was no evidence to support that a vehicle part was stolen when they alleged the car was broken into, such as a police report. I further find the tenants failed to mitigate the loss as this was not an issue during the tenancy. Therefore, I dismiss this portion of the tenants' claim.

Loss of quite enjoyment

The evidence of the tenants was that the noise from the construction in the lower unit and the construction workers were entering their rental unit interfering with their right to quite enjoyment; however, I find the tenants' evidence conflicting as the evidence would support the construction worker only entered their rental unit to fix items at their request, such as the blinds.

Further, the area that the workers were entering on a regular basis was a mechanical room. The boiler and other mechanical devices are held in this area for all rental units and as the lower unit was under construction it was reasonable for workers to be accessing this area. The evidence further supports that the workers were not entering through the tenants unit as there was a secondary door on the exterior of the building.

Also the tenants were aware when the entered into the tenancy agreement that the lower rental unit was under construction and it would have be reasonable for the tenants to conclude that there would be some construction noises during the normal working hours. It also would have been reasonable if the noise was not reasonable that they would have provided the landlord with a written letter of complaint during this time, with specific detail, which they did not.

Based on the above, I find the tenants have failed to prove a loss exists. Therefore, I dismiss this portion of the tenants' claim.

Compensation for having to use an 8 year old refrigerator

The evidence of the tenants was that several shelves in the refrigerator were cracked and the door dented. The landlord denied any shelves were cracked, but agreed there was a cosmetic scratch on the door and replace the refrigerator to build a relationship with the tenants. The tenants did not deny the original refrigerator was operating properly.

I find the tenants have failed to prove a loss exist, as they have no documentary evidence, such a photograph to prove the shelves were cracked and unusable. I find the landlord provided the tenants with a refrigerator as stated in the tenancy agreement; the tenants are not entitled to compensation for cosmetic scratches. Therefore, I dismiss this portion of the tenants' claim.

Loss of use of one parking space

The evidence of the tenants was that they were unable to access the garage due to another renter blocking their access from December 1, 2012 to September 30, 2013.

The tenants submit photographs of a driveway, indicating the tire marks as evidence to support that the garage was blocked. However, the photograph shows there is no vehicle blocking access to the garage. I find the tenants' position of the tire marks unreasonable as it would be impossible to prove whose tire marks are on the driveway without performing extensive forensic analysis and in any event tire marks are not evidence of blocking access to the garage. What would have been reasonable for the tenants to do if this vehicle was blocking their access for such an extended period of time, would have been to contact the landlord and notify them that a problem existed. I find the tenants have failed to prove a loss exists. Therefore, I dismiss this portion of the tenants' claim.

Home phone service

The evidence of the tenants was that a home phone was to be provided by the landlord by verbal agreement. The landlord denied every agreeing to pay for a phone service. The tenancy agreement supports that no phone services was provided.

I find in the absent of any further written agreement that the tenants have failed to prove that the landlord has violated the tenancy agreement or the Act. Therefore, I dismiss this portion of the tenants' claim.

TV services not provided

The evidence of the tenants was they were unable to watch live TV or record TV programs. The evidence of the landlord was this was never an issue during the tenancy and that the tenants were provided with cablevision as agreed to in the tenancy agreement.

I find in the absence of any further evidence the tenants have failed to prove a loss exists as the tenants were provided with cablevision for the duration of the tenancy. Further, there is no evidence that during the tenancy that they notify the landlord of any problems existed with the cablevision. Therefore, I dismiss this portion of the tenants' claim.

Lack of TV channels of tenant's choice

The evidence of the tenants was that the landlord agreed to provide them with Russian channels. The landlord denies ever agreeing to provide Russian channels to the tenants.

I find in the absence of any further evidence, such as a written agreement signed by the parties which specifically indicated Russian channels that the tenants have failed to prove a loss exists as the tenants were provided with cablevision as specified in the tenancy agreement. Therefore, I dismiss this portion of the tenants' claim.

Sharing internet with other households

The evidence of the tenants was that they had internet service during the term of the tenancy.

I find the tenants have failed to prove a loss exists or a violation of the Act, by the landlord as the internet service was provided as specified in the tenancy agreement. Therefore, I dismiss this portion of the tenants' claim.

Double the security deposit

Under section 38 of the Act, the tenants are required to provide the landlord with their forwarding address in writing, and that must be served in a method approved of in the Act, such as registered mail.

On October 1, 2013, the tenants sent their forwarding address to the landlord by text message. Text message is not an approved method under the Act. Further, the text message the landlord acknowledged receiving, did not provide the correct postal code. Although the tenants later sent the correct postal code by text message, there is no evidence that was received.

On October 4, 2013, the landlord returned the security deposit to the tenants by mail to the address provided by the tenants in the original text message. The cheque was never received by the tenant and was never returned to the landlord. As a result, the

landlord issue and new cheque which was received and cashed by the tenants and stop payment was issued on the original cheque.

I find the tenants have failed to prove the landlord has violated the Act as it would be unreasonable to apply a penalty provisions when the tenants have breached the Act, when they failed to provided their correct address in a method approved of under the Act. Therefore, I find the tenants are not entitled to double the security deposit.

In light of the above, I dismiss the tenants' application without leave to reapply. The tenants are not entitled to recover the cost of the filing fee from the landlord.

Conclusion

The tenants' application is dismissed.

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: May 12, 2014

Residential Tenancy Branch

