



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with monetary claims by the landlord and the tenants. The hearing first convened on April 9, 2014. Due to time constraints, I adjourned the hearing. The hearing was reconvened and concluded on June 4, 2014. Both landlords and both tenants participated in the teleconference hearing on these dates.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?
Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

The tenants first occupied the rental unit, a single-family dwelling, on October 15, 2011, in a fixed-term tenancy that ended on November 1, 2012. On that date the parties entered into a second fixed-term lease that was to end on November 1, 2013. Monthly rent, due in advance on the first day of each month, was \$950. At the outset of the tenancy the tenants paid the landlord a security deposit of \$475. On November 1, 2011 the landlord and the tenants carried out a move-in inspection and completed a condition inspection report.

On August 12, 2013 the landlord served the tenants with a notice to end tenancy for unpaid rent. On August 24, 2013 the landlord and the tenants carried out a move-out inspection and completed a condition inspection report. On the report, the tenants gave

the landlord written authorization to retain the security deposit of \$475 toward outstanding rent.

Landlord's Evidence

The landlord's claim is based on unpaid rent, lost revenue and damage to the rental unit which the landlord submitted was caused by conditions the tenants created that led to the growth of mould.

The landlord stated that the rental unit has been owned by the landlord and her family since her grandfather built it, in about 1952. The landlord stated that they have never had any previous problem with mould. The landlord stated that the tenants were concerned about their hydro bills, so they covered the windows with plastic to conserve energy. They did not consistently use a dehumidifier that the landlord told the tenants must be kept running at all times, and they stuffed the closets full of clothes, saddles and boxes, which spurred mould growth.

The landlord stated that the tenants' failure to clean the gutters led to some leaking, but there was no mould present in the attic as claimed by the tenants. The landlord had an electrician verify this.

The landlord has claimed the following:

- 1) \$2945 for unpaid rent until August 2013 – the landlord submitted a copy of the tenant ledger, showing the unpaid rent owing, as well as emails between the landlord and the tenants showing that the tenants acknowledged some unpaid rent during the tenancy;
- 2) \$1900 for lost revenue for September and October 2013 – the landlord stated that because of the damage caused to the unit, they were unable to re-rent it before the end of the tenants' fixed term;
- 3) \$336 for assessment of water damage and gutter cleaning – the electrician who inspected the attic for mould also did other work around the rental unit between August 8, 2013 and August 24, 2013. During that time the electrician found that the gutters were "absolutely chock-full" of leaves, needles and other debris, and as a result there was a small leakage of water into the attic from a small area of the gutters on the south side of the house. The electrician's labour of four hours at \$75 per hour plus applicable tax came to \$336;
- 4) \$235 for mould removal and repairs – the landlord submitted an invoice that indicated a charge of \$175 for five hours of labour and \$60 for materials;

- 5) \$742 for labour – the landlord submitted a time sheet for an individual who did yard work from August 10, 2013 through October 21, 2013. The time sheet only identified the individual's first name and did not establish that the work was done at the rental unit address;
- 6) \$38.75 for recycling fees – the landlord did not provide evidence to support this part of their claim; and
- 7) \$470.04 for fuel and restaurant costs from October 7 to October 26 – the landlord submitted receipts for costs they incurred while travelling from their home in another city to the rental unit.

In support of their claim, the landlord submitted photographs, receipts, invoices, a tenant ledger and a written statement from the electrician who inspected the attic for mould and cleaned the gutters.

Tenants' Evidence

The tenants have claimed monetary compensation of \$5273.05, but they did not provide a monetary order worksheet or another specific breakdown of their claim.

The tenants stated that before they entered into the tenancy they asked the landlord about hydro costs, and the landlord estimated that it would be \$120 to \$130 per month. The tenants stated that there were heating problems in the unit, and in mid-March 2012 the landlord replaced five base board heaters and half of the breaker box. The tenants stated that after this was done, their hydro bills were still much higher than the landlord's estimate.

The tenants stated that they started to smell mould in mid-July 2013, and they informed the landlord of the problem. The landlord told the tenants that they would do an inspection on August 8, 2013. On that date the tenants asked the landlord what they were going to do about the problem, and they told the landlord that the mould had destroyed a lot of their belongings, and they were both suffering serious health problems because of the mould.

The tenants arranged for a restoration company to come and inspect the rental unit, which was carried out on August 10, 2013. The restoration company's report indicated that the roof was leaking because a nail gun was used improperly.

The tenants stated that they always had the ceiling fan on in the kitchen when they were cooking, and although the bathroom fan was very old and did not work very well, they used that fan and had the window open whenever they had a shower. The tenants

acknowledged that they did have “quite a bit of stuff,” but they deny that it had anything to do with the mould.

The tenants stated that the landlord’s photographs of the rental unit were taken in October 2013, more than two months after the tenants had vacated, and therefore they were not related to the tenants’ situation. The tenants stated that they cleaned everything, including the windowsills, before they vacated.

Analysis

Upon consideration of the evidence and on a balance of probabilities, I find as follows.

Landlord’s Claim

I accept the landlord’s evidence that the tenants owed \$2945 in unpaid rent. The tenancy agreement clearly indicates that rent is \$950 per month, and the ledger shows the amount of \$2945 outstanding. The tenants did not provide evidence to dispute this portion of the landlord’s claim.

I find that the landlord did not provide sufficient evidence to establish their claims for lost revenue and yard work. The landlord did not provide sufficient evidence to show that they took steps to re-rent the unit as soon as possible. The repairs and cleaning done by the electrician were carried out during the month of August 2013, and the landlord did not establish that other extensive cleaning or repairs was required before they were able to advertise the unit to re-rent. As the landlord was not successful in establishing their claim for lost revenue, I find that their claim for the costs of any yard work done after the tenants vacated also fails. The landlord did not provide sufficient evidence to establish that yard work was required during the month of August 2013, while the tenants were still in the unit.

I find that the landlord is not entitled to the amounts claimed for the labour of the electrician, the other mould removal and repairs or recycling. It was not reasonable to have an electrician carry out gutter cleaning at a rate of \$75 per hour. The electrician’s invoice did not provide a breakdown of the time for checking the attic for mould, and I am not satisfied that an electrician is an appropriate expert in mould. The invoice for \$235 does not describe the work done or even identify that the work was done at the rental unit address. The landlord provided no evidence to support their claim for recycling fees.

It is not clear whether the landlord's claims for fuel and restaurant costs are associated with the landlord's efforts to re-rent the unit or for costs associated with the dispute resolution process. I find that either way the landlord is not entitled to these amounts. The landlord would have incurred costs to re-rent when the tenancy ended, regardless of whether the tenants breached the lease. The fixed term ended on November 1, 2014. The only cost associated with the dispute resolution process that is normally recoverable is the filing fee.

As the landlord's application was partially successful, I find they are entitled to partial recovery of their filing fee, in the amount of \$50.

Tenants' Claim

I find that the tenants' claim was not sufficiently clear. It is the responsibility of the applicant to break down and clearly describe their claim, and the tenants did not do so in this case. I further find that the tenants may have by their actions caused the development of mould, and they did not mitigate the problem by contacting the landlord sooner than July 2013. It is clear from the tenants' photographs that the mould had accumulated on their possessions for some time before the tenants reported it to the landlord.

Conclusion

The tenants' application is dismissed in its entirety.

The landlord is entitled to \$2995. I order the landlord to retain the security deposit of \$475 in partial compensation of this amount and I grant the landlord an order under section 67 for the balance due of \$2520. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The remainder of the landlord's claim 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: June 9, 2014

