



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord –MNR, MNSD, MNDC, FF

For the tenant – MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants applied for a Monetary Order to recover the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

One of the tenants and an agent for the landlord (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord permitted to keep the security and pet deposits?
- Is the landlord entitled to a Monetary Order for money owed or compensation or damage or loss?
- Are the tenants entitled to a Monetary Order to recover the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on October 01, 2013 for a fixed term tenancy due to end on September 30, 2014. The tenants vacated the rental unit on December 31, 2013. Rent for this unit was \$900.00 per month due on the 1st of each month. The tenants paid a security deposit of \$450.00, a pet deposit of \$200.00 and a laundry card deposit of \$6.00 on October 01, 2013. Both parties attended a move in and a move out inspection of the unit and the tenants provided a forwarding address in writing on January 02, 2014.

The landlord testifies that the tenants gave late notice to end their tenancy. This notice is dated December 23, 2013 and was effective on December 31, 2013. The landlord testifies that they were not able to re-rent the unit until May 01, 2014. The landlord testifies that the unit was advertised on several internet sites and on the landlord's website. The landlord seeks a loss of rental income for January, 2014 of \$900.00.

The landlord testifies that the tenants were given a rent incentive for signing a year's lease of \$75.00 per month. The lease agreement notifies the tenants that if they break the lease before it expires the landlord will seek to recover the monthly rent concession.

The landlord therefore seeks to recover the amount of \$225.00 for three months of the rent concession.

The landlord testifies that the lease agreement also informs the tenants that a fee of \$350.00 will be charged to the tenants if the tenants end the tenancy prior to the end of the lease. This amount is used to cover costs to re-rent the unit and is not charged as a penalty. The landlord seeks to recover \$350.00 from the tenants.

The landlord requests an Order to keep the security and pet deposit to offset against the landlord's monetary claim. The landlord also seeks to recover the \$50.00 filing fee from the tenants.

The tenants dispute the landlord's claim. The tenant testifies that the landlords were aware that the unit had suffered previously with bedbugs and mice but had not notified the tenants of this issue prior to the tenants signing the lease agreement. The tenant testifies that they discovered bedbugs in their unit and although the landlord did carry out a treatment with a pest control company this did not eradicate the bedbugs and the landlord told the tenants that they would have to live with these bugs for a few more weeks until a follow up treatment was done. The tenant testifies that the landlord did do a canine inspection after the first treatment but no follow up treatment was conducted.

The tenant testifies that they also had an issue with mice in the unit in November, 2013. The landlord did some pest control and put down poison however another mouse was found on December 15th. Maintenance arrived to fill the mouse hole but another mouse was found on December 17th and was followed back to another hole. This hole was not filled in and the underlying mouse issue in the building was not resolved.

The tenant testifies that the baseboard heaters were not adequate to warm up the unit when temperatures were freezing and the landlord provided electric heaters as a temporary solution. These contributed to high Hydro bills for the tenants and blown fuses.

The tenant testifies that there were very strong odours coming into the unit through the range hood. This was reported to the landlord two days after the tenants took possession of the unit and was not resolved. The tenants had to leave the range hood fan running 24/7 which also increased the tenants' hydro bill. The hallway of the building also smelt strongly as the fans in the hallway had been turned off to preserve heat. This led to other smells from other units stagnating in the hallways. The hallway carpets were also very stained and dirty but no action was taken by the landlord despite reports made by the tenants. The tenant testifies that there were also some minor issues such as a missing blind panel which was reported in September but not replaced until November; a ripped balcony netting and debris in the eaves, damage to a crisper in the fridge, the fuses blew frequently in the unit, the exterior buzzer did not work; the tension adjuster on the fire door outside the tenants unit was broken resulting in disturbance to the tenants every time the door slammed shut; inadequate snow removal on the property and the dumpster outside the building frequently overflowed and the surrounding area was littered with garbage.

The tenant testifies that due to these issues with hygiene and maintenance in and around the unit the tenants decided they could not stay in the unit as the landlord had breached the *Act* by not informing the tenants of these issues and by not complying with s.32 of the *Act*. The tenants gave written Notice to the landlord with the reason for the Notice. The tenant therefore disputes that they owe rent for January or that they should have to pay back the rent concession given or the fee because they ended the tenancy before the lease expired.

The tenants seek compensation from the landlord for expenses incurred in having to have their belongings heat treated for bedbugs; so any bedbugs were not transferred to their new unit. The tenants removed their belongings into a van and had them all heat treated there. The tenants have provided a copy of the receipt for this treatment and seek to recover \$577.50.

The tenant testifies that the landlord agreed to pay their laundry costs for washing all items due to the bedbugs and the tenants therefore seek to recover \$75.00

The tenant testifies that when they moved into the unit they did not expect to have to move out again a few months later as they were forced out due to the landlords non compliance with the Act the tenants seek to recover the moving costs incurred of \$106.65 for the U-haul van; moving supplies such as bags for storage of \$4.47; an amount to have their mail forwarded through Canada Post of \$50.35; and \$63.98 for food supplies during the move for their family as they were not able to prepare and cook food in the unit.

The tenants also seek to recover the additional costs for Hydro for the space heater and for running the fans. The tenants have estimated this extra cost as \$64.39 and have provided the Hydro bills for the term of the tenancy to show the difference in cost. The tenant testifies that the landlord had agreed to pay any additional Hydro costs.

The tenants also seek a rent reduction of 25 percent for the three months of the tenancy as they were forced to live with bedbugs, mice, inadequate heating, smells and other issues which devalued their tenancy. The tenant testifies that they also left the rental unit on December 19, 2013 when the first treatment for bedbugs was done and did not return to actually live there after finding more bedbugs on their mattress. The tenants seek an amount of \$618.75 based on the reduced rent they paid with the rent concession.

The tenant testifies that an error was made on their calculations for a monetary claim. The tenant amends their claim to \$2,211.09

The landlord agrees to pay the tenants laundry costs of \$75.00. The landlord also agrees that they would reimburse the tenants additional costs for Hydro and were waiting on the Hydro bills from the tenants which were only received on April 11, 2014.

The landlord disputes the tenants claim for the heat treatment for bedbugs as the landlord testifies that a bedbug treatment and a canine inspection were both done in the tenants unit. The canine inspection was done on December 31, 2013 and no bedbugs were found so potentially the follow up treatment was not required.

The landlord disputes the tenants claim for all costs associated with the move including the truck, supplies, food and mail redirection.

The landlord disputes the tenants claim for a rent reduction of 25 percent. The landlord agrees that they are responsible for snow clearance but as they have nine buildings to get round they have to wait longer some days for snow to be cleared. The landlord testifies that the hallway carpets were shampooed prior to the tenants moving into the unit and these carpets have now been changed. The landlord testifies that garbage is collected on a Tuesday and a Friday. There is one bin that services 60 units and it is the responsibility of the landlord's cleaners to clear up any overflowing garbage which the landlord agrees has clearly not been done.

The landlord testifies that when the tenants complained about a lack of heat the landlord sent someone to their unit to investigate and make any repairs; also to investigate the smells and replace a component in the range hood. The heat issue was investigated on five occasions and a space heater was provided as on some occasions it was found that there was inadequate heat from the baseboard heaters.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for a loss of rent for January as the tenants vacated without proper notice and before the end of their lease term; I refer the parties to section 32(1) and 32(5) of the *Act* which states:

(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Having reviewed the evidence before me I find the landlord is in breach of s. 32 (1) of the *Act* as a result the landlords violated a material term of the tenancy. I find the condition of the building to be less than satisfactory concerning the carpeting in the hallways, the garbage overflowing in the outside area and the issues the tenants suffered with bedbugs and mice which were not disclosed to the tenants prior to signing this lease agreement. It is my decision that the tenants were entitled to end the tenancy without one clear months notice and before the lease term expired. Consequently I find the tenants are not obligated under the *Act* to pay a loss of rent for January, 2014 and this section of the landlords claim is dismissed.

With regard to the landlords claim to recover the rent concession given over the term of the tenancy; as the landlord breached the *Act* then it is my decision that the tenants are not responsible to reimburse the landlord for the rent concession given of \$225.00. I further find that as the tenants are entitled to end the tenancy prior to the end of the lease that the landlords are not entitled to recover the fee of \$350.00 indicated as a fee charged for breaking the lease to cover costs to re-rent the unit. These sections of the landlords claim are dismissed.

The landlord's application for an Order to keep the tenants security, pet deposit and laundry card deposit and to recover the filing fee are also dismissed.

With regards to the tenants' application for money owed or compensation for damage or loss; a landlord is required to ensure that the rental unit is well maintained and fit for occupation. It is less than satisfactory for a landlord to expect the tenants to continue to live in this unit without first resolving the issues. I therefore find as the tenants moved into this unit in good faith and incurred certain expenses in doing so that any moving expenses incurred when they moved out as a result of the landlords non compliance with the *Act* must be reimbursed by the landlord. Therefore, I find the tenants are entitled to recover the following costs:

The moving truck of \$106.65

Supplies of \$4.47

Food during the move \$63.98

Canada post mail redirection of \$50.35.

I further find that as the bedbugs in the unit were not there as a result of the tenants' actions or neglect that the tenants were wise to have their belongings treated so any live bedbugs could not be transferred to their new unit. Had the landlord followed through with a second treatment then this may not have been necessary. Two treatments for bedbugs are generally recommended. I therefore find in favour of the tenants claim to recover the cost of this treatment for \$577.50.

With regard to the tenants claim to recover \$75.00 for laundry and \$64.39 for extra hydro costs; the landlord agrees that they had agreed to reimburse the tenants for these costs. I therefore uphold the tenants claim to recover the sum of \$75.00 and \$64.39.

With regard to the tenants claim for a rent reduction of 25 percent for the three months of their tenancy; I find the tenants had to live with bedbugs, mice, inadequate heating, bad odours and other incidental inconveniences for the period of their tenancy. I find the tenants should be compensated for the loss of their quiet enjoyment of their unit due to these issues which devalued their tenancy. I find the amount of 25 percent rent reduction to be a reasonable figure to place on the loss of their enjoyment of the rental unit and therefore I uphold the tenants claim to recover the amount of \$618.75.

I Find the tenants are entitled to recover their security deposit of \$450.00, their pet deposit of \$200.00 and the laundry card deposit of \$6.00 pursuant to s. 38(6)(b) of the *Act*. The tenants are also entitled to recover the \$50.00 filing fee pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenants for the following amount:

Bedbug treatment	\$577.50
Moving costs	\$225.45
Extra costs for laundry and hydro	\$139.39
Rent reduction for three months	\$618.75
Security, pet and card deposits	\$656.00
Filing fee	\$50.00
Total amount due to the tenants	\$2,267.09

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,267.09**. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court as an order of that Court.

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: April 30, 2014

Residential Tenancy Branch

