



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: damage to the rental unit; for unpaid rent and utilities; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and to recover the filing fee for the cost of making the Application.

The Landlord appeared for the hearing along with both Tenants. No issues were raised by any of the parties in relation to the service of the Landlord’s Application which was personally served to the Tenants. Only the Landlord provided documentary evidence prior to the hearing which I determined had been served to the Tenants in accordance with the Rules of Procedure.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were given the opportunity to present their evidence and to cross-examine the other party, and make submissions to me. I have reviewed the Landlord’s documentary evidence and the testimony of both parties, but I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid and lost rent?
- Is the Landlord entitled to unpaid utilities and insufficient fund charges?
- Is the Landlord entitled to a Monetary Order for damage to the rental unit?

Background and Evidence

Both parties agreed that this tenancy started on September 1, 2013 for a fixed term of one year. A written tenancy agreement was completed which established rent payable by the Tenants in the amount of \$1,150.00 on the first day of each month. The Landlord

requested a security and pet damage deposit from the Tenants at the start of the tenancy but neither was paid during the tenancy.

The Landlord completed a move in condition inspection report on August 30, 2013 with the Tenants and completed a move out condition inspection report on December 5, 2013 in the absence of the Tenants; a copy of the report was provided as evidence for this hearing.

The Landlord testified that the Tenants had provided a number of post dated cheques for the rent and that the November, 2013 rent cheque bounced. However, the Tenants paid the rent in cash on November 13, 2013. As a result, the Landlord claims a **\$25** late fee and pointed to section 11 of the tenancy agreement which states that "Late payment of rent, returned cheques or non-sufficient funds cheques are subject to a minimum service charge of \$25.00 each, plus an amount of any service fees charged by a financial institution to the Landlord."

The Landlord testified that she received from the Tenants on November 22, 2013, written notice to end the fixed term tenancy. The notice was provided as evidence for the hearing and was dated December 1, 2013 and explains that the Tenants will be leaving on January 1, 2014.

The Landlord testified that she made immediate efforts to re-rent the suite by employing a rental agent, at a cost of **\$275** which she claims from the Tenants, to find new renters. The Landlord testified that she attended the rental suite with potential new renters on November 25, 2014 and saw that the Tenants were making preparations to vacate the suite. The Landlord again attended the unit on November 29, 2013 with new renters for a viewing and this time discovered that the rental suite had been vacated and abandoned with damage.

The Landlord testified that she made several attempts to make contact with the Tenants by phone to complete a move out condition inspection report, but the Tenants did not return her calls or provide a forwarding address in writing.

The Landlord testified that no rent was paid by the Tenants for December, 2013 and the rent cheque they had provided at the start of the tenancy bounced. As a result, the Landlord claims for December, 2013 rent in the amount of **\$1,150**, the late rent fee of **\$25** and an additional **\$7** for bank charges she incurred for December, 2013; the Landlord provided documentation to support these charges.

In addition, the Landlord claims **\$181.90** for electricity usage for the period of December, 2014 as she testified that she had to keep the heating on after the Tenants had left because it was the winter period. The Landlord also claims for water usage by the Tenants during the tenancy until December 30, 2014 in the amount of **\$27.94**.

The Landlord testified that when she attended the rental suite on December 5, 2013, she completed the move out condition inspection report, documented the state of the suite after the Tenants had left and made preparations to make the necessary repairs and cleaning.

The Landlord then presented documentary evidence in the form of 13 photographs to demonstrate the state of the unit at the start of the tenancy and 71 photographs showing damage to the unit at the end of the tenancy. The Landlord also referred me to the move in and move out condition inspection reports which also indicate the damages. As a result, the Landlord claims the following amounts for damage to the rental suite.

Wall repair and repainting for Tenant and Tenant's pet damage	\$1,207.50
Paint materials	\$355.41
Repair to the master bedroom patio screen door	\$92.40
Landlord's labour for repairs, clean up and waste removal (8.25 hours @ \$20 per hour)	\$165
Dump Fees	\$31
Replacement of silicon in the bathroom	\$15.21
Replacement of security lights	\$50.52
Professional cleaning services for the unit	\$170.62
TOTAL	\$2,087.66

The Landlord testified that the Tenants had left the rental unit unclean and damaged at the end of the tenancy. There was extensive damage to the rental unit walls with scuffs, marks, holes and pet urine stains.

The Landlord testified that the master bedroom screen door had been dented and cracked by the Tenants which had to be replaced. The Landlord testified that the rental suite had to be cleaned thoroughly by a cleaning company as the Tenants had not cleaned the counters, washed the walls, floors and bathrooms and did not clean the appliances.

The Landlord testified that her husband had to do a lot of the repairs and had to haul away garbage left by the Tenants including a tarp which the Tenants had put over the

shed without permission and nailed into the aluminium soffits. The Landlord's husband also had to clear the yard of garbage which had been mixed up with the garden soil which also had to be disposed of at the landfill.

The Landlord referred to the photographs that had been taken at the start of the tenancy showing the bathroom was clean and undamaged and then referred to photographs indicating yellow staining around the bath enclosure at the end of the tenancy which had to be all removed and resealed.

The Landlord testified that the Tenants had removed a security light from the rear of the rental unit and replaced it with another one which no longer functioned. The Landlord referred to her comparative photographs showing the two different security lights.

The Tenants testified that they had informed the Landlord in October, 2013 not to cash any of the post dated cheques provided to her as they had closed their account down and therefore they should not have to pay any of the late fees. When questioned about why they did not pay the Landlord rent on November 1, 2014, the Tenants replied that they did not have the money until November 13, 2013 at which point the rent was paid.

The Tenants submitted that they moved out of the suite on November 27, 2014 because they could no longer afford to pay for rent and they were not getting on with the Landlord. They confirmed that the December, 2014 rent had not been paid.

In relation to the unpaid utilities, the Tenants submitted that they were responsible for the utilities during the tenancy but the Landlord failed to give them a copy of the bill and therefore they should not be obligated to pay for the utilities claimed.

In relation to the damages, the Tenants denied all of the damages claimed by the Landlord. The Tenants submitted that a lot of the junk left behind was created by the Landlord's husband who had caused this mess and their dogs have never urinated inside the rental suite.

The Tenants submitted that the damage testified to by the Landlord was present at the start of the tenancy and that they were prevented from coming back to the unit to clean the suite because the Landlord had changed the locks. This was vehemently denied by the Landlord.

The Tenants submitted that the rear security light was not working and they replaced it with one they found at the rental suite which was fully functional at the end of the tenancy.

The Tenants denied the damage to the master bedroom screen and stated that they cleaned the bathroom enclosure with regular cleaning products which caused this damage and this was the fault of the cleaning products.

The Tenants submitted that a lot of the repairs being claimed by the Landlord, such as broken handles, were present at the start of the tenancy and that picture pin holes did not give the Landlord a right to paint the whole unit.

Analysis

I have considered the following provisions in analyzing the evidence in this case:

- 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 the Landlord 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 Landlord. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, section 7(2) of the Act requires a party making a claim for compensation to do what is reasonable to minimize the damage or loss.
- Section 37(2) of the Act requires a Tenant to leave a rental suite at the end of the tenancy reasonably clean and undamaged except for reasonable wear and tear.
- Section 26(1) of the Act stipulates that a Tenant must pay rent when it is due under a tenancy agreement whether or not the Landlord complies with the Act.
- In dispute resolution proceedings, Section 21 of The Residential Tenancy Regulation states that a condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the

inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

- Policy guideline 30 to the Act explains that neither the Landlord nor Tenant can break a fixed term tenancy except for cause or by agreement of both parties.
- Section 7 (c) and (d) of the *Residential Tenancy Regulation* allows a Landlord to charge a fee of no more than \$25.00 for late payment of rent which is documented in a tenancy agreement and for a service fee charged by a financial institution for the return of a Tenant's cheque.

By taking into consideration the above provisions in assessing the Landlord's claim, I make the following findings on the balance of probabilities in relation to the Landlord's monetary claim.

I find that the Tenants have not disclosed sufficient evidence that they had grounds under the Act to end a fixed term tenancy. Not being able to pay the rent or a strain in the relationship between a Landlord and Tenant does not give right to a Tenant to break or abandon the tenancy. The Tenants did not commit to the date they had stipulated on their written notice to end the tenancy, instead choosing to leave the tenancy several days after giving the notice. As a result, I find that the Tenants are liable for December, 2013 rent in the amount of **\$1,150.00**, as this would not have given sufficient time for the Landlord or the rental agent to find renters for December, 2013.

The tenancy agreement required the Tenants to pay their rent on the first day of each month and that a fee would be charged for late payment and returned cheques. Therefore, if the Tenants had closed their account and informed the Landlord that their post dated cheques were not viable, they were still obligated to pay rent on the first day of each month in another manner, which would then have prevented the Landlord from trying to cash the cheque.

I also find that as the Tenants left before December 1, 2013 and did not pay rent for this month, the Landlord had the right and an obligation to try and cash the Tenants' post dated cheque in an effort to obtain funds. As a result, I find that the Landlord is entitled to the late fees and bank charges, as required by the tenancy agreement and the regulation, in the amount of **\$57**.

In relation to the unpaid utilities claimed by the Landlord, I find that even though the Tenants did not give proper notice to end the tenancy, the Tenants cannot be held

responsible for utilities not actually used by them. As a result, I dismiss the Landlord's claim for the electricity bill.

The Tenants acknowledged that they were liable for their water usage but seemed to think that a failure of the Landlord to provide them with utility bills absolved them from paying this debt all together, which I find is not the case. As a result, I award the Landlord \$13.97 for the water usage as calculated by the Landlord from the first water bill provided as evidence. As the water usage amount of \$13.97, calculated by the Landlord from the second water bill, relates to a period of water usage for 3 months and the Tenants were only in possession of the rental suite for two of these months, I reduce this amount accordingly by a third to \$9.31. Therefore, the Landlord is awarded a total amount of **\$23.28** in water usage costs by the Tenants for the time they occupied the rental suite.

In relation to the Landlord's claim for the rental agent's fees in the amount of **\$275** which she had to employ to find new renters, I find that had the Landlord not found new renters for January, 2014 with the use of the rental agent, the Tenants could have been liable for further and increased losses as the fixed term tenancy was not ending until September, 2014. As a result, I find that the Landlord mitigated her loss in this respect and I find that she is entitled to this fee, as shown on the rental agent's invoice.

In relation to the Landlord's remaining claim for damages to the rental suite, I have taken into account the extensive photographic evidence provided by the Landlord, the invoices verifying the losses claimed and the comparative evidence resulting from the condition inspection reports and the photographic evidence. As a result, I find that the Landlord has proved this portion of the claim and that the amounts claimed are appropriate based on the evidence provided.

I find that the Tenant's allegations in relation to the damages to the rental suite are unfounded and the submissions lacked credibility and were not supported by any corroborative or supporting evidence. The Tenants rely solely on their testimony to deny the Landlord's damage claim and in the face of the overwhelming evidence provided by the Landlord, this is not sufficient to undermine the Landlord's evidence.

I do not accept the Tenant's testimony that the Landlord changed the locks to the rental suite which prevented them from taking part in the move out condition inspection report. I find that the Landlord's evidence that she tried to contact the Tenants to arrange for them to be present is more compelling as the Tenants did not provide a forwarding address and thus hindered the Landlord in making arrangements to complete the report at the end of the tenancy with them.

As a result, I find that the Landlord has proved a total claim of damages to the rental suite in the amount of **\$2,087.66**.

As the Landlord has been successful in this claim, the Landlord is also entitled to recover from the Tenants the **\$50** filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$3,642.94**.

Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$3,642.94**. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make the payment

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 06, 2014

Residential Tenancy Branch

