



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MND, MNDC, MNSD, FF
 Tenants: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for damage and cleaning of the rental property; for lost revenue; for registered mail costs; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for compensation; for all or part of the security deposit and a parking deposit; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties for a 6 month and 4 day fixed term tenancy beginning on August 24, 2013 for a monthly rent of \$1,300.00 due on the 31st of each month with a security deposit of \$650.00 paid. The tenancy ended on January 31, 2014 by mutual agreement; and
- A copy of a Mutual Agreement to End Tenancy signed by the parties on January 10, 2014 to end the tenancy on January 31, 2014.

The parties agree the tenancy ended by mutual agreement on January 31, 2014. However, the parties also agree that keys were not returned to the landlord until

February 1, 2014. The landlord states it was the tenants who called her and asked to return the keys on February 1, 2014; the tenants state it was at the landlord's request.

The landlord submits the tenants did not vacate the rental agreement by 6:00 p.m. on January 31, 2014 as required by the mutual agreement to end the tenancy and that the tenants did not attend the move out inspection at the agreed upon time on January 31, 2014. The landlord provided no evidence that she provided a written notice of the inspection time. The tenants did not attend a move out inspection and the landlord did not complete a move out inspection report.

The parties agree that on December 25, 2013 the tenant reported to the landlord that there was damage to the hardwood floor. The landlord's plumber identified on December 27, 2013 that the "pipeline at faucet was loose, the water through the line to the floor" [reproduced as written]. The landlord submits that it required further investigation from "a few professionals why this was caused and who's responsible should take".

The landlord testified that the water had been leaking from the pipes. She submits that after the tenants vacated the rental unit the plumber on February 12, 2014 found that the tenants had left the drainpipe from the sink full of sand which caused the water to not be able to flow smoothly. The landlord seeks \$1,800.00 for repairs to the hardwood floors. The landlord submitted a copy of an invoice for this amount.

The landlord submits that the tenants failed to report the damage to the landlord within a reasonable time to minimize damage. The landlord submits that the tenants actually were aware of the damage that they intentionally covered it up by placing a carpet on top of it. The tenants submit that they had the carpet over that area for the duration of the tenancy.

The landlord submits that her plumber, her contractor and her insurance adjuster all stated that the tenant should have informed the landlord early about the damage before it had gotten so bad but she did not provide any written statements or affidavits from the any of these people. The landlord also could not describe how the tenants would have known the damage was occurring before it actually occurred.

The landlord also seeks compensation in the amount of \$1,300.00 for lost revenue as the repairs were completed in February after the tenancy ended but before the landlord could re-rent the unit to another tenant. The landlord testified that the owner of the property has not re-rented the unit but rather she has now moved back in to the rental unit herself.

The tenants suggest that it was the landlord's choice to wait until the tenancy ended to make the repairs. The landlord submits the tenants had been complaining about the landlord interfering with their lives so they did not want to disturb them anymore.

The landlord also submits the tenants failed to clean the rental unit and seeks compensation in the amount of \$180.00 for professional cleaners. The landlord has provided small photographs to show the condition of the rental unit. The landlord submitted a copy of an invoice for this amount.

The landlord seeks to recover the costs of registered mail, in the amount of \$15.00, for serving the tenants with notice of their claim.

The tenants submit that they had provided the landlord with their forwarding address on February 17, 2014. The tenants seek return of the security deposit. The tenants state they also paid a parking deposit of \$25.00. The landlord stated that she paid that deposit on behalf of the tenants and they never provided any payment. The tenants testified they could not provide any evidence of the payment.

The tenants also seek compensation in the amount equivalent to 1 month's rent for having to live in the rental unit with the floor damaged. The tenants agreed that they could eat in the unit; they could sleep in the unit; and that they could use the unit generally but they could not invite guests over because the flooring was too ugly.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(3) of the *Act* requires a tenant to repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

While the landlord submits that they tenants should have been aware that the floor was damaged before it showed signs of damage and the tenants knew there was damage but covered it up, I find the landlord has provided little evidence to establish these points. I accept, however, that the damage was caused by leaking pipes, which the tenants had not control over.

I find the landlord has provided suppositions on her part that are not backed up by any documentary or corroborating evidence. I find the act of placing a rug on a floor does not, in itself, constitute that the tenants knew that there was damage on the floor. The tenants submit that carpet had been placed there during the whole tenancy and there is no evidence to contradict this statement.

For these reasons I dismiss the landlord's claim for the cost of repairs to the flooring.

As the landlord has now moved into the rental unit and is no longer receiving income from the rental unit she I find the landlord has not suffered any loss of revenue for completing repairs to the unit after the tenancy was over.

Further, as I have determined the landlord has failed to provide sufficient evidence that the tenants are responsible for any damage I also cannot find that the tenants would be responsible for any lost revenue when the damage was not their fault. For these reasons, I dismiss the landlord's claim for lost revenue.

However, in relation to the landlord's claim for cleaning, I find that the landlord has established through their photographic evidence and invoice that the tenants failed to clean the rental unit sufficiently. I therefore find the tenants have failed to comply with the requirements under Section 37 to leave the unit reasonably clean. I find the landlord is entitled to compensation in the amount of \$180.00 for cleaning.

As to the landlord's claim for registered mail, I note that the Act does not allow for the recovery of costs associated with the service of documents for the purposes of dispute resolution proceedings. I dismiss this portion of the landlord's Application.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept the landlord filed an Application for Dispute Resolution the day after she received the tenants' forwarding address and as such has complied with the requirements under Section 38(1). As such, I find the tenants are not entitled to double the deposit.

In relation to the tenant's claim for return of a parking deposit, I find the tenants have failed to provide any evidence that they paid such a deposit. In addition, I note the landlord disputes that the tenants ever paid a parking deposit. I dismiss this portion of the tenants' claim.

As to the tenants' claim for the return of rent for the month of January 31, 2014, I find that the landlord took action immediately upon receiving a report from the tenant that

the floor was damaged and as such, I find the landlord has not violate any part of the *Act*, regulation or tenancy agreement.

Further, I find the tenants I find the tenants have failed to provide any evidence that as a result of the condition of the flooring they suffered any loss in value of the tenancy. I find it was the tenants' choice to not invite guests over during the last month of their tenancy. For these reasons, I dismiss this portion of the tenant's claim.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$470.00** comprised of \$650.00 security deposit less \$180.00 awarded to the landlord for cleaning.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As both parties were only partially successful in their claims I dismiss both claims for the recovery of the filing fees for their respective Applications.

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 10, 2014

Residential Tenancy Branch

