



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords – MNR, MND, MNSD, 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 landlords applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for a Monetary Order to recover the security deposit; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant 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

- Are the landlords entitled to a Monetary Order for unpaid rent or utilities?

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to recover the security deposit?

Background and Evidence

The parties agreed that this tenancy originally started on July 15, 2012 for a six month fixed term. At the end of the six month term a new tenancy agreement was entered for each of the following six months until the final agreement was entered into on February 01, 2014 for a six month term to May 31, 2014. At the end of this term the tenancy reverted to a month to month tenancy. The tenancy ended on June 30, 2014. Rent for this unit was \$1,220.00 per month plus 50 percent of hydro. The tenant paid a security deposit of \$600.00 on July 15, 2012. Both parties attended the move in condition inspection of the unit at the start of the tenancy. At the end of the tenancy the inspection was conducted and the tenant did not sign the inspection report. A forwarding address was provided to the landlords in writing on June 30, 2014.

The landlords' application

OW testified that the tenant failed to pay the final hydro bill of \$57.62. This amount was the tenants calculated share of 50 percent and was prorated for the tenant's days living in the unit. A copy of the utility bill has been provided in documentary evidence and shows the landlords' calculations.

OW testified that the tenant was given two opportunities to attend the move out condition inspection of the property. The tenant did not sign the move out inspection report. The landlord testified that the tenant asked the landlord for some paint to patch the walls. The tenant had attempted to patch up some of the paint work; however, the

patches the tenant had painted could be visibly seen on the walls, there were also some blue marks on a closet door and the laundry room door has some scratches. OW referred to the landlords' photographic evidence showing these areas. These areas required repainting and the landlords have provided an invoice from a painting contractor who painted these areas for \$300.00.

OW testified that there was some general cleaning required in the unit. The blinds and window tracks were left dirty. SS testified that the tenant was shown how dirty the blinds were but the tenant refused to accept this. The landlords have provided photographic evidence showing these areas and an invoice from the cleaner for \$50.00.

OW testified that the tenant had removed the door stoppers on the laundry room door. OW referred to the landlords' photographic evidence taken at the start of the tenancy which indicates that the door stoppers were in place at that time. The landlords seek to recover \$23.22 for door stoppers and some paint brushes used to repaint the unit. The landlords have provided the receipt in documentary evidence.

The landlords seek an Order permitting the landlords to keep part of the security deposit in satisfaction of their claim. The landlords also seek to recover the \$50.00 filings fee from the tenant.

The tenant disputed the landlords' claims. The tenant testified that she did not do any wall painting and disagreed that there were marks left on the closet or laundry room door. The tenant referred to her photographic evidence which shows these areas of the unit.

The tenant testified that she has a documented letter from a friend who helped the tenant clean the unit at the end of the tenancy. The tenant referred to this letter and testified that it details that the blinds and ledges were cleaned.

The tenant disputed the landlords' claims that the tenant had removed the door stops. The tenant testified that the landlords' photographs were taken of the door stops before the tenant moved in. When the tenant moved in the tenant testified that there were no door stops.

The tenant agreed that the landlords may deduct the tenant's share of the hydro bill of \$57.62 from the security deposit.

The tenant's application

The tenant seeks an Order to recover the balance of the security deposit of \$542.38.

The tenant testified that the landlords did not protect the tenant's right to quiet enjoyment of the rental unit. The tenant testified that the landlords lived upstairs and although the tenant understood that there would be some noise transferred between the two units, the noise from the landlords' unit was of screaming, yelling and banging after 11.00 p.m. at night. The tenant testified that other people visiting the tenant's unit could also hear this noise and have written statements concerning the noise.

The tenant testified that the first six months was not too bad so the tenant did renew her lease with the landlords; however, after this time the tenant became fearful of the landlord SS but had to keep renewing her lease each six months for the next two years as the tenant is a single parent and could not afford to leave the unit. The tenant seeks \$3,800.00 in compensation for a loss of quiet enjoyment.

The tenant also seeks to recover the \$50.00 filing fee from the landlords.

The landlords disputed the tenants claim for compensation for a loss of quiet enjoyment. OW testified that the tenant sent the landlord text messages in the few weeks prior to the end of the tenancy in which the tenant has stated that she would be happy to move back to the unit in the winter months if the landlords do not have a tenant. The tenant also expressed how happy she was and wanted to come back to the unit. OW testified

that if the tenant was so fearful of SS or unhappy about the noise from the landlords' unit why would the tenant have expressed her desire to return and stated how happy she had been living in the unit.

OW testified that prior to the tenant moving out the landlords had asked the tenant if she had known anyone interested in renting the unit. The tenant recommended the unit to a friend and co-worker. OW questions why the tenant would recommend someone she was so close to if living in the unit was so awful.

The landlords disputed the tenant's claim about being fearful and for the loss of quiet enjoyment. SS testified that the tenant was not held captive in the unit and could have moved out whenever her lease was up for renewal. Instead the tenant continued to renew her lease every six months. SS testified that the tenant never made any complaints against the landlords concerning noise. SS testified that she does not yell at her son and they are a happy family. OW testified that there will be some normal living noise between the units and an occasional family argument but the landlords could also hear the tenant speaking to people in her unit at a normal volume.

The tenant testified that there was an incident when the tenant's sister went to the landlords' door to ask them to keep it quiet. SS then called the tenant and was very rude to the tenant.

SS testified that she does not recall a time when the tenant's sister came to the door to complain about noise. SS testified that they always had a good relationship with the tenant.

The tenant refers to the text messages provided in evidence by the landlords. The tenant testified that these messages were just the tenant's way to keep things calm.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords' application; I find the tenant has not disputed that there is an outstanding amount for hydro of **\$57.62**. I therefore find the landlords are entitled to recover this amount from the tenant's security deposit pursuant to s. 38(4)(b) of the *Act*.

With regard to the landlords' claim for cleaning, I am satisfied from the evidence before me that there was some minor cleaning to be done in the rental unit. This is indicated on the move out condition inspection report and the photographic evidence provided by the landlords; however, under the *Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlords might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlords are not entitled to charge the former tenant for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenant failed to meet the "reasonable" standard of cleanliness required and their claim for \$50.00 is dismissed without leave to reapply.

With regard to the landlords' claim for damages relating to the paint patches on the wall and the marks on the closet and laundry room door. A tenant is required under s. 32 of the *Act* 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. It is clear from the photographic evidence and the inspection report provided by the landlords that there are patches in the paintwork on the walls and marks on the doors. The tenant's photographic evidence shows the walls from a different angle and therefore the patching of paint cannot be seen. The tenant disputed that she painted the walls however, from the evidence provided I find the landlords' evidence relating to this matter is more compelling. I therefore uphold the landlords' claim to recover **\$300.00** to repaint the walls, and doors.

With regard to the landlords' claim for door stoppers and paint brushes; I have considered the evidence before me and find the landlords' evidence that the door stoppers were in place at the start of the tenancy to be more compelling. It is clear from the evidence provided that the door stoppers were not there at the end of the tenancy. As I have also awarded the landlords the costs for painting I find the landlords are entitled to recover the amount of **\$23.22** for replacement door stoppers and paint brushes.

As the landlords claim has merit I find the landlords are entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*.

With regard to the tenant's claim for compensation for the loss of quiet enjoyment of the rental unit; having heard both parties testimony in this matter and having read the written statements from the tenant's witnesses, I find the landlords' evidence more compelling that the tenant was happy living in the rental unit. The tenant had the opportunity to end the tenancy after each of the six month leases expired and choose instead to remain living in the unit. If the noise and disturbances were so bad or continually bad over the period of the tenancy that would warrant an order for compensation to be issued to the tenant, I am at a loss as to why the tenant remained living in the unit. Furthermore the text messages sent by the tenant to the landlord show a picture of harmony to the point that the tenant requests to return to live as a tenant in the winter months. Had the tenant's quiet enjoyment of the rental unit been so disturbed then I find that any reasonable person would not be requesting the landlords to either re-new the lease every six months or request a new tenancy in the winter months. I find the tenant's evidence that these messages were sent to the landlords to 'calm things down' has little credibility. I further find the written statements carry little weight as the tenant has not asked these persons to attend the hearing to give testimony under oath or submit to cross examination. Subsequently, I find the tenant's claim for \$3,800.00 in compensation is denied.

With regard to the tenant's claim to recover the security deposit; As I have awarded the landlords the amount of **\$430.84** I find the landlords are entitled to deduct this from the security deposit pursuant to s. 38(4)(b) of the *Act*. This leaves a balance of **\$169.16** which must be returned to the tenant pursuant to s. 38(6)(b) of the *Act*.

As the tenants claim has little merit I find the tenant must bear the cost of filing her own application.

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. The landlords are entitled to keep the amount of **\$430.84** from the security deposit.

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$169.16**. The Order must be served on the landlords. If the landlords fail to pay the Order, the Order is enforceable 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: November 25, 2014

Residential Tenancy Branch

