



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 an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The hearing first convened on September 23, 2014. The landlord had named only one tenant as a respondent, as she only had that tenant's forwarding address. In the hearing the other five tenants called in and confirmed that they consented to be added as respondents in this matter. I then adjourned the hearing to allow the landlord to serve the other five tenants with her application and evidence.

The hearing reconvened on November 19, 2014. The landlord, a witness for the landlord, all six tenants and an advocate for the tenants participated in the teleconference hearing on that date.

At the outset of the reconvened hearing, the landlord stated that she had not been served with one tenant's photographic evidence. The tenant stated that he tried to personally serve the landlord with the evidence but she refused to accept it, so he left it in the landlord's mailbox. The landlord stated that she may have thrown out the evidence. I determined that the landlord was deemed served with the evidence, and I admitted the photographs.

The parties were given full opportunity to give affirmed 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?

Background and Evidence

The rental unit is a house on a property shared with a cottage. During the tenancy, the tenants occupied the house and the landlord occupied the cottage.

The tenancy began on August 29, 2013 as a fixed-term tenancy to end on April 30, 2014. The tenancy agreement indicates a “grand total” of \$2956.60 for monthly rent, which appears to include rent of \$2800 plus additional fees for insurance, cable, internet, phone and water. The utilities were supplied to both the house and the cottage together. The hydro and water bills were put in one tenant’s name.

The tenants paid the landlord a security deposit of \$1400 and a pet deposit of \$1400. On August 29, 2014 the landlord and the tenants carried out a move-in inspection and completed a condition inspection report.

During the winter of 2013 the tenants discovered that the cottage did not have separate hydro and water, but was supplied these utilities under the same accounts as for the house. The tenants and the landlord then came to an agreement whereby the landlord reimbursed the tenants for some of the past utilities bills and agreed to pay a portion of these utilities from that point on.

The tenancy ended on April 30, 2014. The landlord and the tenants attended the rental unit on May 1, 2014 to carry out a move-out inspection. The landlord submitted handwritten notes indicating items she believed required cleaning or repairs. The landlord moved back into the rental unit on June 1, 2014.

Landlord’s Evidence

The landlord claimed the following compensation:

- 1) \$260 for lawn repair

The landlord stated that the front and back lawns required reseeding, due to damage done by one tenant’s dog and “high traffic” on the lawn. The landlord submitted two invoices showing a total of \$460 for lawn repair. The landlord submitted a handwritten document which appears to be signed by the tenant who owned the dog, agreeing to pay \$100 from the pet deposit for damage done by the dog; further, the other tenants appear to have signed authorizing the landlord to keep a further amount from the security deposit for front lawn repairs. The landlord added a separate note indicating that the further amount agreed upon was \$160; however, in the document signed by the tenants the amount appears to read \$60.

- 2) \$424.86 for paint and paint supplies and \$1050 for painting labour

The landlord stated that the tenants damaged the walls and trim, and these areas required repairs and painting. The landlord submitted photographs showing some damaged areas of wall and trim, as well as invoices and receipts. The landlord paid \$877.72 for paint and paint supplies, as well as \$1660 for painting labour, but she claimed reduced amounts on the basis that there was some pre-existing damage noted on the move-in inspection report.

- 3) \$98.81 for cleaning and repairing supplies and \$500 for cleaning

The landlord stated that at the end of the tenancy the house and property required cleaning and repairs. The landlord submitted photographs showing some dirty and damaged areas in the house and on the property; however, it is not clear whether the photographs were taken before or after the tenancy ended. The landlord submitted invoices and receipts, as well as an anonymous letter from an individual who claimed to have cleaned the rental unit.

- 4) \$7461.19 for flooring and furniture

The landlord stated that the tenants caused extensive damage to the oak wood floors, and it had to be completely refinished because some of the scratches were so deep. The landlord submitted a letter from a flooring professional, who expressed the opinion that if not for the "significant recent scratches and scuffing... the floors would likely not have required sanding for many years." The landlord acknowledged that the floors were installed when the house was built in 1956. The landlord provided an invoice for the floor refinishing, in the amount of \$4748.84.

The landlord stated that the tenants caused a lot of water damage to a solid teak dining table, stained a loveseat so badly that it needed to be replaced and damaged other chairs. The landlord claimed the amounts of \$608.34 and \$2104; however, these amounts do not clearly correspond with the estimates for repairing or replacing these items.

- 5) \$7529.70 for lost revenue and utilities

The landlord stated that she was unable to re-rent the unit because of the poor condition of the unit when she was showing it for re-rent. The landlord stated that she was able to rent out the cottage beginning June 1, 2014 and she moved into the house at that time, so the landlord adjusted the amount of lost revenue claimed for June and July 2014.

- 6) \$193.18 for advertising costs

The landlord provided receipts to establish that she advertised the rental unit for re-rent during the months of March and April 2014. As noted above, the landlord stated that she was unable to re-rent the unit because of the conditions of the house and property when she was showing it for re-rent.

Tenants' Response

The tenants submitted a copy of an email from one of the tenants, KM, who on May 3, 2014 sent the landlord her forwarding address. The tenants submitted that because the landlord did not apply to keep the deposits until May 20, 2014, the tenants were entitled to double recovery of the security and pet deposits.

The tenants stated that half of the landlord's handwritten evidence is illegible, and it is very confusing how the landlord got to the final numbers in her monetary claim. The tenants questioned the validity of the landlord's witness statements, particularly the anonymous letter from the individual who claimed to be the cleaner. The tenants stated that some of the landlord's photographs were taken before the tenancy ended, and the photographs that the landlord submitted were not representative of the whole home.

The tenants stated that they believed the landlord was trying to pass on renovation costs to them. The tenants submitted that the damage to the floors was nominal wear and tear. The tenants acknowledged that they did damage to the dining room table, but stated that the landlord's claim was excessive.

The tenants stated that they were cooperative when the landlord showed the house to prospective new tenants; however, the landlord did not give the tenants proper notice each time, so the tenants could not have it ready for showing on those occasions.

Analysis

I find that the landlord made her application in time, as the tenants could not verify that the landlord received the email or if so on what date, and therefore the email cannot constitute a forwarding address in writing. Therefore, the tenants are not entitled to double recovery of the pet and security deposits.

In regard to the landlord's claim for monetary compensation, I find as follows:

1) Lawn repair

I find that the tenants agreed in writing to pay for a total of \$160 for repairs to the front and back lawns, and I grant the landlord this amount. The landlord did not provide sufficient evidence to establish that the tenants were responsible for paying more than this amount, as she did not explain how she determined what portion of this cost was directly attributable to the tenants' actions or neglect.

2) Painting

The landlord did not provide evidence of the age of the paint. The photographs show some damage to the walls and trim that may have occurred during the tenancy; however, the move-in

condition inspection report and the move-out inspection notes were not particularly helpful in establishing what damage was done by the tenants and what may have been pre-existing. I find it is likely that some of the painting was required as a result of damage done during the tenancy, and I therefore grant the landlord a nominal award of \$300 for painting costs.

3) Cleaning

The landlord's evidence regarding cleaning was not clear. As noted, the photographs were not dated and only showed a few areas of the rental house and property. The anonymous witness statement holds little or no weight. However, the landlord gave testimony regarding the dirty and damaged areas at the end of the tenancy, and I find it likely that some cleaning was required. I therefore grant the landlord a nominal award of \$150 for cleaning costs.

4) Flooring and Furniture

I find that the landlord is not entitled to any compensation for floor refinishing. Under the Residential Tenancy Policy Guidelines, the average useful life of wood flooring is 20 years. In this case, the flooring is nearly 60 years old and has well outlived its useful life. Further, I am not satisfied that the majority of scrapes and scuffs depicted in the landlord's photographs were any more than normal wear and tear.

The tenants acknowledged doing damage to the dining table but felt that the landlord's claim was excessive. As noted, the landlord's estimates for replacement dining table, loveseat and chairs do not correspond with the amounts the landlord has claimed for these items. Further, the landlord did not provide the age of these items and did not take into account depreciation. I find that the landlord is entitled to a nominal award of \$300 for the damaged dining table.

5) Lost revenue and utilities

I find that the landlord is not entitled to any compensation for lost revenue or utilities. The tenants paid full rent and were entitled to occupy the unit until the end of the tenancy, and they were not required to keep the unit in showcase condition for the landlord to show to prospective new tenants. The landlord did not present any evidence that the tenants willfully prevented the landlord from showing the unit. The tenants are not responsible for the landlord's inability to re-rent the unit, and are therefore not responsible for the landlord's lost revenue.

6) Advertising Costs

The landlord is not entitled to her advertising costs. The costs of re-renting are generally part of the landlord's cost of doing business. Further, as set out above, I find that the tenants did not prevent the landlord from showing the rental unit.

As the landlord's application was partially successful, I find that she is entitled to partial recovery of her filing fee, in the amount of \$50.

Conclusion

The landlord is entitled to \$960. I order that the landlord retain this amount from the security and pet deposits in full satisfaction of the claim. I grant the tenants an order under section 67 for the balance due of \$1840. This order may be filed in the Small Claims Court and enforced 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: December 10, 2014

Residential Tenancy Branch

