



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlords for a monetary order and an order to retain the security deposit in partial satisfaction of the claim and a cross-application by the tenants for a monetary order and an order compelling the landlords to return the security deposit. Both parties participated in the conference call hearing.

At the hearing, the tenants advised that they had received just one set of photographs from the landlords. Although the landlords were required to serve each respondent with a full set of evidence, because the tenants acknowledged that they had both had opportunity to view the photographs, I have determined that they are not prejudiced by the landlords' failure to comply with the Rules of Procedure and I determined that the photographs should be admissible.

Issues to be Decided

Are the landlords entitled to a monetary order as claimed?

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on May 1, 2013 and ended on July 29, 2014. They further agreed that rent was set at \$850.00 per month and that at the outset of the tenancy the tenants paid a \$400.00 security deposit. They further agreed that they conducted move-in and move-out inspections at the beginning and end of the tenancy. A copy of those inspections was submitted into evidence by both parties.

The tenants seek the return of their security deposit as well as compensation owing pursuant to a 2 month notice to end tenancy (the "Notice"). The parties agreed that in early July, the landlords served the tenants with the Notice advising that a close family member would be moving into the rental unit. They further agreed that no later than July 15, the tenants gave the landlords notice that they would be vacating the rental unit on July 31, 2014.

The landlords testified that prior to the time they gave the tenants the Notice, they had verbally advised the tenants that they needed them to vacate the rental unit and the tenants agreed to

do so at the end of August. The tenants then returned to the landlords and asked the landlords to serve them with a formal 2 month notice to end tenancy pursuant to the *Residential Tenancy Act* (the "Act"). The landlords at that time served them with the Notice. They argued that they should not be responsible to compensate the tenants because (a) the tenants had verbally agreed to end the tenancy; and (b) the tenants did not have to leave at the end of July but could have remained in the unit until the end of August.

The landlords testified that the tenants did not leave the rental unit in reasonably clean condition. The landlords claimed that the tenants did not adequately clean the rental unit. The male landlord, A.F., conducted the move-out condition inspection of the unit with the tenants and noted in the condition inspection report that the tenants had left a closet organizer and that the oven was dirty but otherwise noted that the unit was in acceptable condition. The report also indicates that the floors and carpets were steam cleaned. A.F. testified that he noted that the floors and carpets were steam cleaned because he asked the tenants whether they had performed cleaning and when they replied that they had, he took their word for it. He testified that when his wife returned and inspected the unit, she discovered that the carpets were soiled and, because she has higher cleaning standards than him, determined that the unit had not been adequately cleaned.

The landlords testified that after the end of the tenancy, they had to wash windows, vacuum floors, vacuum window sills and beneath the stove and refrigerator, wipe down walls, cupboards and appliances, clean the oven, wipe down the bathroom, shower and toilet, clean behind the washer and dryer and power wash the outside landing area. They claim they spent a total of 6 hours cleaning the rental unit and seek to recover their labour costs at a rate of \$30.00 per hour for a total claim of \$180.00. The landlords provided a photograph of the soiled oven, dust in several corners of the unit, soiled areas on the front of cupboards, a soiled dust cloth which was presumably used to clean window sills and a soiled area beside the washer and dryer. They did not provide a photograph of the outside landing area but claimed that it was stained with urine and feces.

The tenants testified that they cleaned the unit to the best of their abilities and argued that if the landlords were not satisfied with the cleaning, they should have pointed out areas that required further cleaning so the tenants could perform that cleaning. They further argued that the soiled area beside the washer and dryer was inaccessible because they could not pull out the washing machine. The landlords responded by saying that when they cleaned that area, they did not pull out the machine but simply reached beside it to clean. The tenants claimed that they cleaned the outside landing area.

The landlords seek to recover \$211.24 as the cost of steam cleaning carpets and floors at the end of the tenancy. The landlords testified that they rented a steam cleaning machine from a local grocery store and purchased cleaning solution for a total cost of \$53.74. They further testified that it took them approximately 1 ½ to 2 hours to steam clean the carpet and floors and another 2 hours in travel time to go back and forth from the grocery store. The landlords claim compensation for their labour at a rate of \$30.00 per hour for 4.5 hours for a total claim of

\$211.24. They provided photographs of the carpet showing several stains and also provided photographs showing the soiled water which was extracted from the carpet after they cleaned it. The landlords provided no photographs of the laminate which they stated also required cleaning.

The tenants argued that they rented a steam cleaner and used it to clean the unit to the best of their ability. The tenants did not provide a copy of the receipt for the steam cleaner.

The landlords seek to recover the cost of replacing a closet door to which an organizing unit was attached. The landlords provided photographs showing that the wire organizer was attached to the door and testified that there were large holes in what they described as a brand new door and stated that they could not fill the holes because it would have left marks. They testified that they spent 5 ½ hours of time traveling to the hardware store to purchase the door and supplies, incurred costs for gasoline, and spent time painting and fitting the door. They provided receipts showing that they spent \$29.03 for gas and \$144.60 for the new door and paint and accessories to paint it.

The tenants claimed that the fixture left just 4 small screw holes, each “a hair bigger than the size of a tack” which could easily have been filled.

The landlords seek to recover costs associated with developing photographs, travel time to and from the store and the Residential Tenancy Branch and time spent filling out their application for dispute resolution.

Both parties seek to recover from the other the \$50.00 filing fees paid to bring their claims.

Analysis

First addressing the tenants' claim, I note that a verbal agreement to end the tenancy is not effective under the Act to end the tenancy. Written notice by one of the parties is required. Because the landlords wanted to end the tenancy to permit one of their family members to occupy the unit, the tenants were well within their rights to ask the landlords to comply with the law and serve them with a formal notice pursuant to section 49 of the Act.

Section 51(1) of the Act provides that when landlords have served tenants with a section 49 notice, the landlords are obligated to pay the tenants the equivalent of one month's rent in compensation. The tenants have the option of withholding their last month's rent as compensation. Section 50 permits tenants who have received a section 49 notice to give the landlords 10 days' notice that they will be ending the tenancy earlier than the date specified on the notice and section 50(3) specifically states that this notice does not disentitle the tenants from compensation.

Although the landlords might have preferred that the tenants live in the unit rent free in the month of August rather than moving out at the end of July and requiring payment of \$850.00, I

find that the tenants were legally entitled to elect to act as they did. I find that the tenants are therefore entitled to compensation pursuant to section 51(1) and I award them \$850.00.

Turning to the landlords' claim, in order to prove their claim, the *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and
4. Proof that the applicant took reasonable steps to minimize the loss.

Section 37(2) of the Act requires tenants to leave the rental unit in reasonably clean condition and undamaged except for reasonable wear and tear. While the condition inspection report should ideally be determinative of the condition of the unit at the end of the tenancy, I accept that it is entirely possible that upon closer inspection, landlords may discover areas which require further cleaning. With respect to the tenants' argument that they should have been told what areas required cleaning so they could perform that cleaning themselves, the tenants were required to leave the unit reasonably clean at the time they surrendered possession to the landlords and participated in the inspection of the unit. The landlords do not have an obligation to point out problems and give the tenants opportunity to rectify the situation.

I find that the photographs provided show that the oven was not adequately cleaned, the cupboard fronts needed to be wiped down and there was a soiled area beside the washing machine that needed to be cleaned. I find insufficient evidence to show that the bathroom required cleaning or that walls and windows required cleaning. While there were areas which were dusty, I am unable to find that those areas were not left reasonably clean. I remind the landlords that the standard for cleaning is not perfection, but reasonableness. While the landlords claimed that the outside landing area required power washing, they did not provide evidence to support that claim and as the tenants claimed to have cleaned the area and as the condition inspection report does not indicate that the area was soiled, I find that the landlords have not proven that additional cleaning was required outside.

I find that the tenants failed to comply with section 37(2) of the Act in cleaning the areas I have identified and that as a result of that failure, the landlords had to spend time cleaning the unit. I find that the landlords are entitled to be compensated for the time they spent cleaning those areas, but I find that it should not have taken more than one hour to clean the identified areas. The landlords seek to be compensated at a rate of \$30.00 per hour which is approaching the rates a professional cleaner would charge. As the landlords are not professional cleaners, I find a rate of \$20.00 per hour to be more appropriate. I find that there was nothing the landlords could have done to minimize this loss.

I find that the landlords have met the test for proving that they are entitled to be compensated for cleaning and I award them \$20.00.

Although the tenants claimed that they steam cleaned the carpet, they did not provide a receipt as proof that they did so. Further, the landlords' photographs show that the carpet was still soiled and I find that even if the tenants did steam clean the carpet, it required further cleaning. The landlords provided no photographs of the floor showing that it required further cleaning and because of the lack of evidence to corroborate their claim that the floors were unclean, I find that they floors were reasonably clean as reflected in the condition inspection report.

I find that the landlords are entitled to recover the cost of the carpet cleaner and cleaning solution rental but I find their claim for the cost of their travel time to be both unreasonable and exaggerated. I find that they should have been able to steam clean the one carpeted room in 1 hour so I find that 1 hour of labour at a rate of \$20.00 per hour is sufficient to compensate them for their time. I find that there was nothing the landlords could have done to minimize this loss.

I find that the landlords have met the test for proving that they are entitled to be compensated for steam cleaning the bedroom and I award them \$73.74 which represents \$53.74 for the cost of renting the steam cleaner and purchasing cleaning solution and \$20.00 for their labour.

I find that the tenants affixed an organizer to the closet door and were responsible either to remove that fixture at the end of the tenancy and repair the damage to the door or to obtain the landlords' written permission to leave the fixture there. The tenants failed to do either and I find that the landlords had to repair the damage as a result. However, I find that the damage was cosmetic and did not affect the function of the door or prevent it from being used as a door. Further, the damage was to the interior of the door and therefore the impact of the damage was minimal. I find that the landlords failed to minimize their losses by simply filling and painting the holes left by the fixture and rather chose to replace the door which I find was unreasonable. I find that the landlords have met the test for proving that they are entitled to recover what it would have cost to perform the reasonable repair of filling and painting the holes and I find that an award of \$20.00 will adequately compensate them.

As for the landlords' claim for the cost of developing photographs, travel to and from the store and to and from the Residential Tenancy Branch and the time to prepare their claim, I dismiss that claim as the only litigation related expense I am empowered to award under the Act is the cost of the filing fee.

As both parties have enjoyed some success in their applications I find that they should each be responsible for their own filing fees so I dismiss their respective claims for recovery of those fees.

In summary, the tenants have been awarded \$850.00 and the \$400.00 security deposit must also be credited to them for a total of \$1,250.00. The landlords have been awarded \$113.74 which represents \$20.00 for cleaning, \$73.74 for carpet cleaning and \$20.00 to repair the closet

door. Setting off these awards as against each other leaves \$1,136.26 payable by the landlord to the tenants. I grant the tenants a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are granted a monetary order for \$1,136.26.

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: February 27, 2015

Residential Tenancy Branch

