Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD, MNDC, MND, O

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord. Both files were heard together.

The tenant's application is a request for a monetary order for $12,580.53 and a request for recovery of their $100.00 filing fee.

The landlord's application is a request for a monetary order for $8450.00 which includes the $100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, however both the landlords and the tenants stated that they believe they have covered the majority of the issues in their written statements and therefore only a small amount of oral testimony was added..

All testimony was taken under affirmation.

Issue(s) to be Decided

The issues are whether or not either of the landlord or the tenants have established a monetary claim against the other, and if so in what amount.

Background and Evidence

This tenancy began on September 1, 2013 for a fixed term expiring September 1, 2014.

The tenants had paid a security deposit of $1100.00 on August 17, 2013 and a pet deposit of $600.00 on August 18, 2013.

Tenants claim

The tenants have broken the claim down into 15 sections that I will deal with below.

1-Fortis gas

The tenants argue that there is only one gas meter on the rental property and they paid all the gas utility bills in full, however there is a carriage house on the property and therefore they believe that the landlord should reimburse them 40% of the gas utility costs for the portion of gas used by the carriage house.

The landlord stated that there is no gas line to the carriage house and therefore it's impossible for the tenants in the carriage house to have used any gas.

2-Electrical utility charges

The tenants stated that prior to signing the lease agreement they asked the landlords how much it would cost to heat the house during the winter months, and the landlords told them that the average cost was $400.00 per month. They explained to the landlord they could not afford that amount, and the landlord's agreed to lower the rent by $200.00 per month for the months of December, January, and February and this was written into the agreement.

The tenants further state that the electrical utility for the winter months were much higher, as much as $900.00, even though they were primarily heating the rental unit with gas heat.

The tenants therefore believe that they were misled by the landlords, and they would not have rented this house had they known the actual cost of the electrical utility. They therefore believe that the landlord should reimburse them for any costs over and above the $400.00 amount that had originally been quoted to them by the landlords.

The tenants further stated that when they confronted the landlord with these extremely high bills the landlord verbally agreed to pay anything above the $400.00 amount originally quoted.

The landlord responded with a denial of ever verbally agreeing to pay anything over the $400.00 amount that was estimated for the average monthly cost of the electricity.

Further, the landlord stated that they based that estimate on information that had been given to them by the previous tenants and therefore were in no way attempting to mislead the present tenant's, however in good faith they also reduced the rent by $200.00 per month to assist the tenants in the three coldest months of the year.

The landlord further argues that he is been living in the rental unit these past winter months and has supplied the invoices that show that his utility usage is far less than these tenants, and therefore since he has no control over how much electricity the tenants use, he does not feel that he is responsible to reimburse anything over and above the $200.00 amount that he has already agreed to.

3-Storage in the garage

The tenants argue that the tenancy agreement allowed for storage in the garage, and the landlord subsequently require them to remove their belongings from the garage, and they therefore believe they should be reimbursed for their time to remove the belongings, and are also requesting a rent reduction of $400.00 per month for the loss of use of the storage area.

The landlord argues that storage was never included in the tenancy agreement, and in fact the box beside the word storage has not been ticked off as included. They did however allow the tenants to store a few things in the garage as listed on the tenancy agreement; however it was never agreed that they would have the full use of the garage.

4-Loss of use and enjoyment due to landlord entering the property without 24 hour notice

The tenants have stated that the landlord accessed the property on numerous occasions without the proper 24 hour notice and they found this invasive and troubling, and a breach of their quiet enjoyment.

The tenants further stated that there were five occasions when the landlord entered the property without prior notice and they are therefore requesting $100.00 for each of those occasions, for a total of $500.00.

The landlord argues that since there is also a carriage house on that property there are times when he's required to be on the property to attend to the carriage house tenants requests.

5-Loss of use and enjoyment due to needed repairs not being completed

The tenants also argue that they should be reimbursed for loss of use of enjoyment of the rental unit due to items not being fixed around the home. They claim that numerous repairs that were needed and pointed out to the landlord however only a handful of those issues were addressed during the tenancy.

The tenants are therefore asking for $1000.00 for loss of use and enjoyment as a result of the need for ongoing repairs that were not addressed.

The landlord argues that whenever they were requested to look at an issue they complied whether or not they felt it was necessary.

The landlord further states that an extensive amount of work and upgrades were done on the house prior to the tenants moving in, and over $4000.00 was spent on materials and cleaning, and he has supplied a text from the tenants that shows that when they moved in they felt the house was great and in good livable condition.

Landlord further states that he has supplied statements from previous tenants that show that whenever a repair was required at the rental property he took care of it.

6-Health related issues

The tenants argue that the female tenant suffered significant health issues due to the mold growing in the rental unit that was not dealt with by the landlord. They argue that as a result she ended up in hospital because of symptoms that were so severe, and as a result she also lost three weeks of school and lost employment time.

The tenants are therefore requesting that the landlord pay $400.00 per week for lost school $2000.00 for pain and suffering, $1000.00 for lost employment, and $125.00 for five hours time spent dealing with mold issues.

The landlord argues that they had a mold specialist, and review the property and after his review they asked him if it was due to tenant use, and the specialist clearly states that based on his observations it is the result of tenant use.

The landlord further states that on numerous occasions they instructed the tenants that to help reduce the moisture it would be helpful to open a window or use the exhaust fan, and he fails to see how it's his responsibility for their failure to comply.

7-Repairs to the home

The tenants also claim that they spent a total of 10 hours labour on the home and are requesting $250.00 for their labour, and an additional $15.00 for gas to pick up materials. They claim they had to do weather stripping and winterizing due to many leaks and drafts around the house.

In response to this claim the landlord again has stated that when the tenants moved into the rental unit they stated it was in good livable condition, and although he had numerous complaints from the tenants about repair issues he dealt with as many as them as he could. He also points out that the photos of the house taken by the tenants when they vacated show that the house is in good livable condition even though the tenants claim it needed extensive repairs.

Items number 8, 9, 10, 14 and 15 of the claim

Items number 8, 9, 10, 14 and 15 on the tenant’s application relate to photographic evidence costs, video evidence costs, registered mail costs and photocopying evidence costs.

Items number 11, 12, and 13 of the claim

These items are requests for return of damage deposit, pet deposit, and a request for an order for the landlord to pay double of both.

Analysis

Fortis gas

The tenants are requesting that the landlord pay 40% of the gas utility because of a carriage house on the same property; however the landlord states that there is no gas line going to the carriage house and the tenants have provided no evidence to refute that claim. Therefore since there is no evidence to show that the carriage house has been using any gas, I deny the request for the landlord to pay of 40% of the gas utility

Electrical utility charges

It is also my finding that the landlords are not liable for the cost of the tenants electrical utilities as I am not convinced that the tenants were misled by the landlords or that the landlords misrepresented the amount of the utilities.

There is no way for landlord to control how much electricity the tenants use when and therefore if the amount of electricity used is higher than had been estimated by the landlords, it is something over which the landlords had no control. Further the landlords have already given the tenants a $200.00 reduction in the rent to cover the cost of higher electricity in the winter months and after viewing the utility costs billed to the landlord over this past winter I do not find that the original estimates were far out of line.

Further, although the tenants claim the landlord agreed during a phone conversation to pay anything over and above $400.00, the landlord denies that claim and without any further evidence the tenants have not met the burden of proving that portion of their claim.

I therefore also deny the request for utility charges.

Storage in the garage

The tenants are claiming a reduction of $400.00 per month for loss of use of storage in the garage claiming that they had put some sporting goods, tires, a dresser or and some other items in this space and the landlord subsequently require them to remove their items.

It is my finding however that the tenancy agreement did not require that storage be supplied and in fact, that box beside storage was not checked off. There was some notations made on the tenancy agreement beside storage that stated “Christmas tree and boxes in garage”, however it's my finding that the loss of storage of a Christmas tree and some boxes is not a significant loss of storage and if the tenants had stored other items such as sporting goods, tires, a dresser etc. I find that these items were not included in the items that were listed in the notation on the side of the tenancy agreement and should not been stored in the garage in the first place.

I therefore deny the claim for loss of use of storage in the garage.

Loss of use and enjoyment due to landlord entering the property without 24 hour notice

When there are two rental units on the property and therefore it's reasonable to expect that the landlord may have to attend to the property on occasion due to issues with the other rental unit.

If the landlord does attend the property to deal with issues in the other rental unit on the property that is not an unreasonable loss of use and enjoyment.

This portion of the claim is therefore also denied.

Loss of use and enjoyment due to needed repairs not being completed

Section 32 of the Residential Tenancy Act states:

> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this case I reviewed the extensive lists of requested repairs sent to the landlord by the tenants and it appears to me that the tenants have moved into an older home that was in a reasonable state of repair, suitable for occupation, and then attempted to get the landlord upgrade the rental unit. This is an older house, and that must be taken into consideration, and the tenants cannot expect the landlord upgrade the house to bring it up to new house condition.

Further, even if some repairs were required, the extensive size of the lists presented to the landlord would have made it very difficult for the landlord to get to all the items “required” on those lists.

I also find it very suspect that these lists of required repairs suddenly appeared after the landlord refused the tenants request to reimburse them a portion of their electrical utility costs.

I therefore also deny this portion of the tenants claim.

Health related issues

Although I do not dispute the tenants claim that the female tenant ended up in hospital with severe flu-like symptoms, there is no evidence provided that shows a diagnosis that the illness was caused mold.

There was a mold inspection done, however on that inspection report it states that there were no health issues observed or reported by the tenant or the client.

Further, although the report does state that the parties should report flulike symptoms to their doctor, as stated above there is no evidence to show that the female tenant's flulike symptoms were in any way connected to mold in the rental unit.

Repairs to the home

I also deny the claim for repairs to the home. First of all, although the tenants claim to have put 10 hours labor into repairing the home, they have not given any itemized breakdown of how those 10 hours were spent. Further as stated above, I am not convinced that this house was in need of extensive repair, considering the age of the home.

Items number 8, 9, 10, 14 and 15 of the claim

These are all considered costs of the dispute resolution process, and I have no authority to award costs I therefore deny this portion of the claim.

Items number 11, 12, and 13 of the claim

These three items relate to the request for return of the security and pet deposits, however it's my finding that the tenants right to the return of their security and pet deposits has been extinguished by the tenant's refusal to participate in the moveout inspection.

Section 35 of the Residential Tenancy Act states that the landlord and tenant must inspect the condition of the rental unit on, or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed-upon day.

In this case the parties had agreed upon a date to do the moveout inspection, however at the time for the scheduled inspection the tenants refused to participate because the landlord did not bring a copy of the move-in inspection report with him.

There is nothing in the Residential Tenancy Act that requires that the moveout inspection report be done on the actual document on which the move-in inspection report was done; the requirement is that it be done in the proper form. The landlord was prepared to do the inspection, with a proper form, and the tenants refuse to do it.

Also, Residential Tenancy Regulation number 17 states:

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

In this case however it is my finding that the landlord was not required to propose a second opportunity, because the issue was not that the tenants were not available at the time offered, (and in fact the tenants were available), the issue was that the tenants refused to participate.

Section 36 of the Residential Tenancy Act states that the tenants right to the return of the security or pet deposit or both is extinguished if the tenant fails to participate in the moveout inspection.

Filing fee

Having denied the tenants full claim I also deny the request for recovery of their filing fee.

Conclusion

The tenants claim is denied in full without leave to reapply.

Landlords claim

Shower issue

The landlord claims that the tenants continued using the shower even though they knew the shower was leaking and as a result caused extensive damage resulting in the need for extensive repairs.

The landlord further claims that, on a request from the tenants, he inspected the property on February 20, 2014 and told the tenants that he thought the shower was leaking because the door was not being completely closed. It wasn't until April 28, 2014 that the tenants told him that it was still leaking, over two months later thereby causing much more damage.

The landlord further argues that the male tenant said he would continue to use the shower until the RTO told him not to, thereby causing even further damage.

The landlord therefore believes that the tenants should pay for the extensive cost of repairing the damage caused by the leaking shower. On his application he requested an estimated amount of $4000.00, however the actual cost turned out to be $5040.00.

The tenants argued that they informed that landlord that the shower was leaking and the landlord failed to take any steps to mitigate the damage. Further the landlord did not tell him to stop using the shower after his initial visit, and therefore they continued to use it.

The tenants therefore believe that there was no negligence on their part and that they are not liable for the cost of this repair.

Floor damage

The landlord claims that the wood floor in the rental unit was in good condition when the tenants moved into the rental unit; however when they vacated it was contaminated with dog urine and needed to be replaced.

The landlord therefore believes that the tenant should be held liable for the cost of the replacement of that floor. On his application the landlord had estimated $2500.00 however the actual cost turned out to be however the actual cost was $2445.09.

The tenant’s response to the landlords claim with regards to the flooring is that the photo used by the landlord that the landlord claims shows the floors in good condition, is the photo they took at the end of the tenancy and supplied with their evidence. They

therefore believe that this shows that the floor was in the same condition as the landlord claims it was at the beginning of the tenancy.

Glass handle

The landlord states that a glass handle was completely destroyed during the tenancy stating that the photo evidence clearly shows the damage. He argues that this was a vintage handle and is difficult to replace and therefore is estimating a replacement cost of $100.00.

The tenants did not respond to the claim for the damaged glass handle.

Toilet damage

The landlord states that his photo evidence clearly shows that there was a fork lodged in the toilet which required him to “snake” the toilet for approximately 3 hours and then had to completely remove the toilet, and as a result the toilet was damaged. The landlord is therefore requesting the replacement cost of that toilet. On the application the landlord had estimated $400.00 for the replacement of the toilet however the actual cost of the toilet was $173.23, plus he is requesting $50.00 for his time to pick up and installed toilet, for a total of $233.23

The tenants argue that the damage was not caused by the fork which was lodged in the toilet, the damage was caused by the landlords use of the snake to attempt to dislodge the fork. They therefore do not believe that they are liable for this damage.

Further the tenant argues that the landlord did not give a detailed breakdown of the toilet replacement cost on his application.

Yard work

The landlord argues that the landscaping in the rental property was in good condition when the tenants moved in, however the tenants failed to maintain the rental property and as a result he had to pay to have the property brought back to the condition in which the tenants received it. On his application the landlord had estimated cost for the yard work of $1000.00, however the actual cost was $1050.00.

The tenants argue that they should not be held liable for any the cost of the yard work as there was nothing in the tenancy agreement requiring them to maintain the yard.

Unaccounted for weatherproofing

The landlord is claim $100.00 for unaccounted for weatherproofing; however the landlord has provided no information as to what this portion of the claim is about.

The tenants have made no response to this portion of the claim.

Dishwasher

On the original application the landlord had also claimed $250.00 for broken dishwasher; however the landlord has provided no information or evidence in support of this portion of the claim.

The tenants made no response to this portion of the claim.

Analysis

Shower issue

It is my decision that the landlord has not met the burden of proving that the damage resulting from the leaking shower was a result of any negligence on the part of the tenants.

The tenants reported the leak to the landlord, and therefore it was incumbent upon the landlord to ensure that he investigated properly to determine what was causing the leak. In this case the landlord made an assumption that the leak was being caused by the door not being close properly, however he did no further investigation to verify that assumption.

Further, even if the tenants had continued using the shower knowing it was leaking, there is no evidence to show that the damage caused by the leaking shower had not already occurred prior to the tenants first reporting it to the landlord.

I therefore deny the claim for the cost of repairing the damages caused by the leaking shower.

Floor damage

It is my finding that the landlord has shown that the floor in the rental unit was damaged by the tenants to the point where it needed replacing.

The tenants have argued that the photos show that the floor was in the same condition when they moved out as it was when they moved in, however photos do not show the smell of urine penetration and is my finding that the landlord has shown that the damage to the floor was a result of urine penetration that occurred during the tenancy.

Therefore I will allow a portion of this claim, however I will not allow the full amount claimed because wood floors are considered to have a life expectancy of 20 years, and therefore since I do not know the age of these floors I must allow for some depreciation. The landlord claims that the floors had been refinished prior to the tenants moving into the rental unit, however he has provided no evidence in support of that claim.

Therefore, since it does appear the floors were in reasonable condition at the beginning of the tenancy I will allow 50% of the replacement cost, for a total of $1222.54.

Glass handle

Accept that the glass handle was damaged during this tenancy, as there is no mention of a broken glass handle on the move-in inspection report and the photo evidence clearly shows that the handle was broken at the end of the tenancy.

The landlord however has not supplied any independent estimates of the cost of replacing this handle and therefore I will only allow small portion of this claim.

I will allow $25.00 for the damaged glass handle.

Toilet damage

It's my finding that the landlord has shown that a fork had become lodged in the toilet during the tenancy, and although the damage may have occurred as a result of an attempt to remove the fork, it's my decision that the tenants are still liable for that damage as this damage would not have occurred had the fork not been lodged in the toilet.

Further I will allow the full amount claimed by the landlord for this repair as the landlord has supplied a receipt for the actual cost of the toilet and I find $50.00 to be a reasonable amount for the landlord's time to pick up and install the toilet.

Yard work

Generally a tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes.

In this case the landlord has already testified that there was a carriage house on this property as well, and therefore this would fall under the multiunit residential complex, and the landlord would be responsible for the yard work.

I therefore for deny the landlords claim for yard work.

Unaccounted for weatherproofing

Since the landlord is given no information as to what this portion of the claim is about I deny the claim for unaccounted for weatherproofing.

Dishwasher

Since the landlord has given no information as to what this portion of the claim is about I deny the claim for broken dishwasher.

Therefore the total amount of the landlord’s claim that I have allowed is as follows:

Floor repair	$1222.54
Damaged glass handle	$25.00
Replace toilet	$233.23
Total	$1480.77

Further, since I have allowed a portion of the landlords claim, I will allow 50% of the filing fee for a total of $50.00.

Conclusion

I have allowed $1530.77 of the landlords claim.

The remainder of the landlords claim is dismissed without leave to reapply.

The landlord holds a combined security/pet deposit of $1700.00, which exceeds the amount I have allowed and therefore I will not be issuing a monetary Order.

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: March 24, 2015

Residential Tenancy Branch