



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNSD, MNDC, FF

For the landlord – MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied for a Monetary Order to recover the security deposit, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application. The landlords applied for a Monetary Order for unpaid rent or utilities; for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlords to keep all or part of the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and the female landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

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

Background and Evidence

The parties agreed that this month to month tenancy started on July 01, 2010. Rent for this unit was \$900.00 per month due on the 1st of each month. The tenants paid a security deposit of \$450.00 on June 14, 2010.

The tenants' application

The tenants testified that they could not provide a forwarding address to the landlord as they did not have the landlords' address. The tenants testified that their mailing address did not change throughout the tenancy and remained the same after they vacated as this is a community that uses PO Box addresses. The landlords had used the tenants' PO Box address at the start of the tenancy to send receipts to the tenants for the first three months' rent. The tenants seek to recover the security deposit of \$450.00.

The tenants' testified that at the start of the tenancy the landlords had left 10 percent of propane in the tank and the tenants paid \$100.00 for this propane. At the end of the tenancy the tenants left 20 percent of propane in the tank and therefore they seek to recover \$200.00 from the landlords for this propane.

The landlord testified that she has never received a forwarding address from the tenants and would not know that the tenants had the same PO Box address after they vacated

the rental unit. The landlord testified that she does not recall ever using the tenants PO Box address at the start of the tenancy to send rent receipts to the tenants. The landlord testified that the tenants could have sent their forwarding address in writing to the address identified on the tenancy agreement as the landlords had their mail forwarded through Canada Post

The landlord disputed the tenants' claim that the propane tank only had 10 percent of propane in it at the start of the tenancy. The landlord testified that the landlords never left the tank go below 20 percent. The landlord disputed that the tenants left 20 percent of propane in the tank at the end of the tenancy. The landlord testified that the tank gauge showed the tank had just under 20 percent of propane left in it. The landlord testified that she does not recall the tenants paying \$100.00 for propane at the start of the tenancy and utilities were the tenants' responsibility. The landlord testified that during the move out inspection they did not look to see how much propane was left in the tank.

The tenants seek to recover the filing fee of \$50.00.

The landlords' application

The landlord attending testified that the tenants did not provide proper notice to end the tenancy. The tenants sent the landlords a text message on July 03, 2014 which said they had been offered a three bedroom house for \$800.00 and it looks like they will be taking it. The Notice was provided late and was not in writing. The tenants moved out on August 01, 2014. The landlord testified that as on July 05, 2014 they put advertisements on the classified sites to get the unit re-rented. They had a potential tenant for August 15, 2014 but this did not work out. A for rent sign was put in the window of the unit on August 01, 2014. The unit was initially advertised for \$900.00; however, this was reduced to \$875.00 to try to get the unit re-rented for August. The unit was not re-rented until October 01, 2014.

The landlord testified that the tenants also left a dishwasher in the unit and some boxes in the shed. There was also a gazebo left on the property. The tenants did not remove their belongings until August 10, 2014.

The landlords testified that they seek to recover rent of \$900.00 for August. During cross examination the landlord agreed that the unit had been re-rented for August 15, 2014 and a new tenancy agreement was entered into with new tenants. These new tenants did not pay their rent and moved out two weeks later. The landlord amended their claim for unpaid rent from August 01, 2014 to August 15, 2014 to \$450.00.

The landlord agreed that they conducted a move in condition inspection with the tenants at the start of the tenancy; however, no inspection report was filled in. At the end of the tenancy a move out inspection report was completed with the landlord and the female tenant. The report was not completed fully as the landlord did not know how much the repairs would be; so the tenant just signed the top of the report to say she had attended the inspection on August 01, 2014.

The landlord testified that they found damage to the unit. The unit was new seven years ago and the landlords had previously lived in the unit. The landlord seeks to recover the following costs for damage, cleaning and labour to repair damage:

- Three blinds in the living room were bent and chewed. The landlord seeks \$121.91. Receipts have been provided for \$38.94 and \$37.97.
- The door frame and weather stripe were left scratched and chewed. The landlord seeks to recover \$8.07 for the weather stripe and withdraws their claim for the door frame. A receipt has been provided for \$8.07.
- The front door screen was damaged. The mesh and frame are missing and the handle was broken. The landlord has provided a receipt for \$16.54 for the handle and testified that she had a phone estimate for the screen door of \$175.00.
- The back door screen handle was left broken. The landlord has provided a receipt for \$16.14.

- The front main door knob was damaged. The female tenant stated her children had swung on it during the move out inspection. The landlord estimates the cost to replace the knob will be \$19.00.
- The kitchen sink tap was broken and leaking. The landlord has provided a receipt to replace this for \$75.98.
- The kitchen and dining room floor has multiple tears and scratches. The landlord had a verbal quote for 0.99 cents a square foot and the area is 12X19 feet. This work has not yet been completed.
- The closet in the master bedroom had a permanent urine stain. The trim and one panel have to be removed and replaced. The landlord estimates that this repair will be \$100.00.
- Two towel rails in both bathrooms had been removed and the screws were missing. The landlord seeks to recover \$2.69 plus labour costs to replace the screws and rehang the rails.
- Outlet covers in the bathroom were missing the landlord did not know the cost to replace these.
- The deck gate latch was missing the landlord has provided a receipt for \$4.75.
- There were multiple cigarette burns on the deck railing. The landlord estimates that the replacement cost for this 2X6 board will be \$16.00.
- The toilet paper holder was missing from the master bathroom. The landlord has provided a receipt for \$2.27.
- Cable covers were pulled off the wall. The landlord has provided a receipt for two replacements at \$3.29 and \$3.29;
- Four floor vents had to be replaced; three were missing and one was left broken. The landlord has provided receipts to a total of \$18.24.
- The bathroom vanity had water damage at the bottom where water had caused it to bubble. The whole vanity may need to be replaced. The landlord has not gained an estimate for this repair or replacement so seeks to recover \$100.00 although the cost to replace will be higher.

The landlord testified that they spent 40 hours making repairs and cleaning the unit. This includes the repairs mentioned above plus the following repairs and cleaning. The landlords seek \$20.00 per hours for this work to an amount of \$800.00:

- The bathroom faucet was seized. This was repaired by the landlord.
- A stained bedroom carpet had to be cleaned by the landlord;
- The support was broken of a kitchen drawer; outlet covers in both bathrooms had to be replaced;
- A large pile of sand had to be removed from the yard;
- Garbage in the yard and under the deck had to be removed;
- The second bedroom closet doors had to be repaired;
- Cleaning costs as the overall condition of the unit was poor;
- The crayon marks left on the outside of unit had to be removed.

The landlord testified that there were other things purchased as shown on the receipts but the landlord does not seek to recover any further amounts from the tenants. The landlord reduces their claim to the amounts mentioned above.

The landlord seeks an Order to keep the security deposit of \$450.00 and to recover the filing fee of \$50.00.

The tenants disputed the landlords' claim for loss of rent for August. The tenants agreed that they did not give written notice to the landlord and the text message was only sent on July 03, 2014 as the tenants did not know until then that they were getting their new place. The tenants testified that the landlords did know that the tenants would be moving out by July 31, 2014. The tenants testified that a new family moved into the unit on August 15, 2015. The tenants dispute that they left belongings in the unit. The dishwasher provided with the unit broke down and the landlords refused to replace it. The tenants purchased a dishwasher and had it fitted at their own expense. This was left as the tenants did not know how to disconnect it. The boxes left in the shed belonged to the landlord.

The tenants testified that the blinds in the living room were bent and chewed at the start of their tenancy. The landlord had lived in the unit with two children and a dog prior to the tenants moving in. No move in inspection report was completed at the start of the tenancy to show the condition the unit was in when the tenants moved in.

The tenants testified that the door frame was just scratched and would only need repainting. The tenants agreed that their cat did damage the weather stripping and they do not dispute the landlords' claim for \$8.07. The tenants disputed the landlords' claim that they damaged the screen door. The screen was already torn so the tenants removed it. However the rest of the screen was intact and the latch never worked and caused the door to slam open in the wind.

The tenants disputed the landlords' claim that they damaged the back door handle. The tenants testified that they never used the back door as there was no railing on the steps. The tenants do however agree that their children swung on the front door knob and may have damaged it. The tenants do not dispute the landlords' claim for \$19.00. The tenants disputed the landlords' claim for the kitchen tap. The tenants testified that this tap did not leak during their tenancy and was not damaged more than normal wear and tear.

The tenants disputed the landlords' claims that they caused the bathroom faucet to seize. The tenants testified that this shower faucet never worked during their tenancy. The tenants disputed the landlords' claim for new flooring in the kitchen and dining room. The tenants testified that the flooring had multiple tears and scratches when they moved in particularly a tear in front of the pantry door, the fridge and the laundry room.

The tenants disputed the landlords' claim for carpet cleaning. The tenants testified that they had cleaned the carpets and the stain in the master bedroom was there at the start of the tenancy. The alleged urine stain in the closet was not urine but was moisture as all the closets in the unit suffered with moisture and mould.

The tenants disputed the landlords' claim that they damaged a kitchen drawer support. The tenants testified that the kitchen cabinets moved during different sessions. In the winter the drawers would close but in the summer months they would not close properly where things shifted due to the warmer weather. The tenants had no knowledge of a broken support.

The tenants testified that the towel racks and outlets covers were taken off at the end of the tenancy so the tenants could paint the bathrooms. These were placed in the bathroom cabinets. The tenants testified that the outside outlet cover does not have a cover as it is a GFI switch. The tenants testified that the latch on the back gate did break but this was through normal wear and tear. The latch was left in the unit. The tenants do not dispute the landlords' claim for \$16.00 to replace the deck railing due to cigarette burns.

The tenants do not dispute that they left sand in the yard from their children's sand box. The tenants do however dispute the landlords' claim to clean it up as the yard was all dirt. The tenants agreed that some garbage may have been left outside but some of it could have been left from before they moved in. The tenant testified that the toilet roll holder was removed by the tenants but was left in the bathroom cabinet. The tenants disputed that the cable covers were ever attached to the walls properly.

The tenants testified that the closet doors always worked and the tenants had no issues with them during the tenancy. If they do not open and close now then it is not the fault of the tenants. The tenants testified that at the start of the tenancy the landlords left the unit in a dirty condition and the tenants had to pay \$250.00 to have the unit professionally cleaned. The last five days of the tenancy were spent cleaning and painting the unit after the tenants had removed their belongings.

The tenants do not dispute the landlords' claim for four vents at \$18.24. The tenants testified that the vanity was never fitted properly and it had no silicone or kick plate. Any damage would be normal wear and tear on a vanity that simply sits on top of the

linoleum. The tenants do not dispute the landlords' costs in labour to remove crayon from the outside of the unit.

The tenants asked the landlord why there is a different parties name on the top of one of the receipts provided in evidence. The landlord responded that this account at the store is the landlord's brother's account and they used it to get contractors rates to keep the costs down.

The tenants disputed the landlords' claim to keep the security deposit.

The landlord made some closing statements and testified that they were never contacted by the tenants about repairs needed in the unit. The unit has never had mould issues. The tenants did have a cat which caused the urine stains in the closet. The landlord testified that when they lived in the unit their children were one and two years old and could not cause damage to the unit.

The tenants made some closing statements and testified that in the four years they lived in the unit the landlords never carried out an inspection and the only maintenance that was done was a repair to the skylight. The tenants testified that it is not their responsibility to do repairs and anything damaged was normal wear and tear.

Analysis

The tenants claim

I refer the parties to s. 38 (1) of the *Act* which states:

Return of security deposit and pet damage deposit

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

The tenants have testified that their address has not changed as it was a PO Box address which they have kept after vacating the rental unit. The tenants argued that the landlord should have known their forwarding address was their PO Box address and therefore the tenants did not provide it again in writing after the tenancy ended. The tenants also argued that they did not have the landlords' forwarding address. The landlord argued that she would not know that this was the tenants' forwarding address.

I have considered both arguments and evidence before me and find the tenants should have provided a forwarding address in writing to the landlord pursuant to s. 38(1)(b) of the *Act*. It is not sufficient for the tenants to assume that the landlord knew that their PO Box would not change after the tenants vacated the unit or that the tenants remained in the same area. As far as the landlords' forwarding address; the tenants could have used the address provided by the landlord on the tenancy agreement as the landlords had their mail forwarded to their new address. Even if the landlords had not arranged a mail forwarding service with Canada Post as long as the tenants sent a letter with their forwarding address to the landlords' address provided on the tenancy agreement as the address for service this would be deemed to be sufficiently served.

Consequently I find the tenants claim to recover the security deposit is premature. The security deposit will be dealt with under the landlords' claim.

With regard to the tenants' claim to recover \$200.00 for propane; In this matter the tenants have the burden of proof to show that they paid \$100.00 at the start of the tenancy for 10 percent of propane left in the tank. The tenants would also have to meet the burden of proof to show that they left 20 percent of propane in the tank at the end of the tenancy. When one person's testimony contradicts that of the other then it is a matter of one person's word against that of the other and the burden of proof is not

meet. Consequently, the tenants' claim to recover \$200.00 for propane is dismissed without leave to reapply.

As the tenants' claim has no merit the tenants must bear the cost of filing their own application.

The landlords' application

With regard to the landlords' application to recover a loss of rent for August; the landlord attending did not disclose at first that the unit had been rented to other tenants from August 15, 2014. I discussed with the landlord that the new tenants would be responsible for any rent from the date that they entered into a new tenancy with the landlord and these tenants cannot be held responsible for any rent after August 15, 2014. As such the landlord amended their claim to recover a loss of rent due to improper notice from August 01 to August 15, 2014 to an amount of \$450.00. I accept that the tenants did not provide proper notice to end the tenancy. Section 45 (1) of the *Act* states:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenants' method of providing Notice is also improper as Notice must be in writing and text messaging is not considered to be in writing for the purpose of the *Act*. The Notice should have been provided by June 30, 2014 in order to have been effective by July 31, 2014. I therefore find in favor of the landlords' amended claim to recover **\$450.00** in lost revenue for August, 2014.

With regard to the landlords' claim for damage to the unit, site or property: I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The tenants do not dispute the landlords' claim for the weather stripe at \$8.07; the front door knob at \$19.00; the deck rail at \$16.00; the floor vents at \$18.24; and for undisclosed labour costs to remove the crayon. Consequently, I uphold the landlords' claim to recover the amount of **\$61.31** for materials. I further allow the landlord an amount of **\$20.00** in labour costs to remove the crayon and a further amount of **\$60.00** for labour costs to repair the above mentioned damage. I further find it is likely that the tenants did not remove all the garbage from the yard and under the deck and despite the tenants' claims that the yard was all dirt the tenants were responsible to remove any sand put on the yard from their children's sand box. I therefore award the landlords a further amount of **\$40.00** for their labour to remove garbage and the sand.

With regard to the landlords' claim for the reminder of the damage; I am not satisfied that the landlord has met the burden of proof. The landlord did not complete a move in condition inspection report at the start of the tenancy and the tenants have testified that much of this damage was there when they moved in, that the unit had not been cleaned at the start of the tenancy and that any other damage was no more than wear and tear. As explained to the parties at the hearing the purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report completed at the start of the tenancy, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed. The landlord has provided some photographic evidence; however, these show some damages but there is no evidence to show it was caused by the tenants.

It is my decision that the landlords have insufficient evidence to show that the damage or loss happened solely because of the actions or neglect of the tenants in violation of the *Act* or agreement; or verification of the actual amount required to compensate the landlords for much of the claimed damage. Consequently, the reminder of the landlords' claim for damages and cleaning is dismissed without leave to reapply.

With regard to the landlords' claim to keep the security deposit, as the landlord has been partially successful with their claim for unpaid rent and damages; I Order the landlord to keep the security deposit pursuant to s. 38(4)(b) of the *Act*. The amount of **\$450.00** will be offset against the landlords' monetary award.

As the landlords' claim has some merit I find the landlords are entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords for the balance:

Loss of rent for August	\$450.00
Damages	\$181.31

Filing fee	\$50.00
Less security deposit	(-\$450.00)
Total amount due to the landlords	\$231.31

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

For the reasons set out above, I grant the landlords a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$231.31**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the 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 31, 2015

Residential Tenancy Branch

