



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

These hearings were convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords on August 12, 2014 for a Monetary Order for: damage to the rental unit; for unpaid utilities; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep the Tenants’ security deposit; and to recover the filing fee.

The Landlords appeared for the original hearing on March 3, 2015 but the Tenants did not. The original hearing was adjourned because the Landlords explained that they had submitted documentary and digital evidence to support their Application prior to the original hearing. However, this evidence was not before me. As a result, I granted the Landlords an adjournment to enable them to submit their documentary evidence again to the Residential Tenancy Branch.

Both parties were sent an Interim Decision dated March 3, 2015 explaining the reasons for the adjournment of the original hearing, along with notice of the date and time for this reconvened hearing. The male Landlord appeared for this hearing and the evidence had been submitted as requested prior to this reconvened hearing.

Again there was no appearance for the Tenants during the one hour duration of this hearing or any submission of evidence prior to the hearings. Therefore, I turned my mind to the service of documents for this hearing by the Landlord. The Landlord testified that he served each Tenant separately with the Application and his evidence by registered mail. The Landlord provided the Canada Post tracking numbers in oral evidence which were noted in the file. The Landlord testified the Tenants had received and signed for the documents the next day as shown by the Canada Post website.

Based on the undisputed evidence of the Landlord, I find the Tenants were served with the documents for this hearing pursuant to Section 89(1) (c) of the Act.

As a result, I continued the proceedings in the absence of the Tenants and considered the undisputed evidence presented by the Landlord in this hearing.

The Landlord explained that he had submitted a copy of the gas bill into written evidence which was not before me. The Landlord explained a copy of this had been served to the Tenants in his submissions to them. Pursuant to Rule 3.17 of the Residential Tenancy Branch Rules of Procedure, I allowed the Landlord to fax this document to me after the hearing had been concluded.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for damage to the rental suite?
- Are the Landlord entitled to a Monetary Order for unpaid utilities?
- Are the Landlords entitled to keep the Tenants' security deposit in partial satisfaction of their monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on August 28, 2011 on a month to month basis. A written tenancy agreement was completed and the Tenants paid \$600.00 as a security deposit at the start of the tenancy which the Landlords still retain. Rent for this tenancy was established in the amount of \$1,200.00 payable on the first day of each month. The Landlord testified that move in condition inspection report was conducted with the Tenants at the start of the tenancy; however, the Landlord was unable to provide a copy of this into written evidence.

The Landlord testified that the tenancy ended with a notice to end tenancy for landlord's use of the property which was served to the Tenants with an effective vacancy date of July 31, 2014. The Landlord testified that the Tenants accepted the notice and did not pay rent for July 2014 as allowed under the notice to end tenancy. The Landlord testified that during the last month of the tenancy the Tenants began to slowly move out of the rental suite and it was during this time he was verbally given a forwarding address by the Tenants. The Landlord noted the Tenants' forwarding address and visited the location to ensure the Tenants were indeed residing at the address provided which he was able to confirm; this was the address that the Landlords used to serve documents to the Tenants.

The Landlord testified that on the last day of the tenancy, July 31, 2014, the Tenants had not full vacated or cleaned the rental suite. As a result, the Landlord provided the

Tenants with the next day to provide him with a clean and vacant unit. However, on his return, the Tenants had left the rental suite with all of their possessions and had not cleaned the suite.

The Landlord testified that he employed a family member who had a cleaning business to clean the rental suite at a cost of **\$320.00**. This included: steam cleaning the windows and window sills of mould; cleaning the curtains; scrubbing the walls, floors, ceilings of dirt and smoke stains; removal of nails from wall surfaces, cleaning bathrooms and the kitchen; and, scrubbing the gas oven. The Landlord provided an extensive amount of photographic evidence prior to the Tenants moving in. In comparison, the Landlord provided a similar amount of photographs taken after the Tenants had moved out which indicates the damages testified to by the Landlord.

The Landlord had provided in his monetary breakdown of his claim, the cost of replacing and installing the gas oven. However, the Landlord explained that he was able to clean the oven and re-use it and therefore withdrew this portion of his monetary claim. The Landlord insisted that he wanted compensation for the additional time he had spent cleaning the gas stove but did not provide a particular amount testifying that it took him eight hours to clean it.

The Landlord testified that the Tenants had damaged the kitchen countertop and cabinets; the countertops had been used by the Tenants to cut food directly on to rather than using a chopping board. The Landlord indicated this damage in his photographic evidence and explained that it was not possible to repair this.

The Landlord also testified that the kitchen hood was no longer working as the Tenants had clogged it full of grease and had failed to clean it during the tenancy. The Landlord testified that the replacement cost of the worktop and the kitchen hood was very expensive. As a result, he went to a second hand store where he was able to purchase a complete set of worktops, cabinets, a fan hood and a sink, all as a combination package (as individual items could not be purchased separately) for price of **\$400.00**, which he now seeks to claim back from the Tenants.

The Landlord testified that at the start of the tenancy, the Tenants were responsible for paying two thirds of the water and gas bills by placing these into their names. However, the Tenants failed to pay these utilities which the Landlord now seeks to recover. The Landlord provided a document after the hearing which he received from a collections company informing him that he was required to pay **\$139.24** relating to a gas company. A copy of this was provided into written evidence.

The Landlord also provided a quarterly breakdown of water bills which had not been paid by the Tenants during the course of the tenancy. However, the amounts documented as owed during the course of the tenancy, resulted in an amount well over what the Landlord was claiming, even when the amount was calculated for the Tenants' portion that was owing during the hearing. The Landlord was informed that he could not increase his claim amount without putting the Tenants on notice for the increased amount. However, the Landlord decided that he just wanted to pursue the reduced amount of water utilities in the amount of **\$863.00** as claimed in the Application.

The Landlord testified that under the tenancy agreement the Tenants were required to maintain the yard. However, the Tenants failed to undertake yard maintenance during the tenancy, instead using the yard as a dumping ground for their garbage. The Landlord provided photographic evidence in support of his testimony. The Landlord also provided an invoice from the same clearing company used for which he was charged **\$80.00** for the front lawn maintenance and cleaning of the garbage within.

The Landlord withdrew his claim for a rent increase which the Tenants did not pay as he was unsure when the rent increase was imposed and when it was due to take effect.

Analysis

Section 37(2) of the Act requires a Tenant to leave the rental unit at the end of a tenancy reasonably clean and undamaged, except for reasonable wear and tear. Policy Guideline 1 to the Act details the responsibilities of landlords and tenants. Under the "Windows" section, the policy guideline provides that a tenant is responsible for cleaning the inside of the windows and tracks during the tenancy, including removing mould.

Although the Landlord failed to provide a copy of the move in condition inspection report, I am satisfied by the Landlord's extensive photographic evidence that the Tenants were provided with the rental unit at the start of the tenancy in a reasonably clean and undamaged state. The Landlord's photographic evidence relating to the state of the rental suite at the end of the tenancy is not reflective of the same state it was provided to the Tenants at the start. I find the Landlord's comparative photographic evidence and his oral testimony above is sufficient and conclusive evidence that the Tenants had not complied with Section 37(2) of the Act.

I find the costs claimed by the Landlord for the cleaning in the amount of \$320.00 which were verified through the invoice provided, are reasonable and reflective of the damage and lack of cleaning shown in the Landlords' photographic evidence. Therefore, I award this amount to the Landlord. However, I deny the Landlord's claim for cleaning costs of

the oven because I note that the invoice provided by the Landlord for the cleaning costs includes the “scrubbing of the gas oven”. Therefore, this amount is reflected in the Landlord’s award for **\$320.00**.

In relation to the Landlord’s claim of \$80.00 for the yard cleaning and maintenance, I accept the Landlord’s oral testimony that the Tenants were required to maintain the yard during the tenancy. Furthermore, Policy Guideline 1 to the Act specifies that for a single family dwelling where the tenant has exclusive use of the yard, the tenant would generally be responsible for routine yard maintenance. The Landlord’s photographic evidence clearly shows that the Tenants failed to maintain the yard. Therefore, I find the Landlords are entitled to the **\$80.00** claimed as verified by the invoice for this amount.

In relation to the Landlord’s claim for the countertops and kitchen hood fan, again I find that the Landlord’s photographic evidence and oral testimony satisfies me that the Tenants caused this damage by not taking the appropriate precautions and cleaning obligations during the tenancy to prevent this. I find the Landlord mitigated losses by seeking second hand replacement of the countertop and kitchen hood which he had to purchase as one package of items. I am convinced that purchasing new countertops, cabinets and a kitchen hood fan would have far exceeded the amount claimed by the Landlords in their Application. Therefore, I find the Landlords are entitled to the **\$400.00** claimed.

In relation to the Landlord’s claim for utility costs, I accept the undisputed testimony of the Landlord that the Tenants were responsible for two thirds of the utilities during the tenancy. The Landlord has provided evidence in the form of a history of the water utilities for the rental unit which satisfies me that the amount being claimed in the Application was unpaid by the Tenants. Therefore, I find the Landlords are entitled to water utilities in the amount **\$863.00**.

In relation to the Landlords’ claim for the gas utilities in the amount of \$139.24, I find that the document the Landlord provided after the hearing is not sufficient for me to award this amount to the Landlords. The document provided is a demand for this amount from a collection company; however, it fails to show what this amount actually comprises of and to what dates the payment refers to. In the absence of further details relating to this portion of the claim, I am unable to award this amount to the Landlords.

As the Landlords have been successful in this matter, the Landlords are also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlords is **\$1,713.00 (\$400.00 + \$863.00 + \$320.00 + \$80.00 + \$50.00)**.

In relation to the Landlords' claim for the Tenants' security deposit, although the Tenant did not provide the Landlord with a forwarding address, I accept the Landlord's evidence that he did verbally receive an address from the Tenants before the tenancy had ended which the Landlord had noted. I accept the Landlord's oral evidence that the tenancy was ended through a notice to end tenancy that had an effective date of July 31, 2014 which is when the tenancy ended. The Landlords made their Application on August 12, 2014. Therefore, I find that the Application to keep the Tenants' security deposit was made by the Landlords within the 15 day time limit provided by the Act after the tenancy had ended.

As the Landlords already hold **\$600.00** in the Tenants' security deposit, pursuant to Section 38(4) (b) of the Act, I order the Landlords to retain this amount in partial satisfaction of the claim awarded. The Landlords are granted a Monetary Order for the outstanding balance of **\$1,113.00** (\$1,713.00 - \$600.00), pursuant to Section 67 of the Act.

Copies of this order are attached to the Landlords' copy of this decision. This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) as an order of that court if the Tenants fail to make payment.

Conclusion

The Tenants have caused damage to the rental unit and have not paid utility costs. Therefore, the Landlords are entitled to keep the Tenant's security deposit. The Landlords are issued with a Monetary Order for the outstanding amount of **\$1,113.00**.

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: April 10, 2015

Residential Tenancy Branch

